
(1955) 02 CAL CK 0016
In the Calcutta High Court
Case No : Criminal Revn. No. 282 of 1954

Corporation of Calcutta

APPELLANT

Vs

Director of Rationing and Distribution

RESPONDENT

Date of Decision : 09-02-1955

Acts Referred:

Abolition of Privy Council Jurisdiction Act, 1949 — Section 8
Bengal General Clauses Act, 1899 — Section 3(32)
Calcutta Municipal Act, 1923 — Section 386, 386(1)
Constitution of India, 1950 — Article 300

Citation : AIR 1955 Cal 282 : (1955) CriLJ 792 : (1956) 2 ILR (Cal) 710

Hon'ble Judges : Mitter, J; Guha Ray, J

Bench : Division Bench

Advocate : S.K. Basu and Sunil K. Basu, for the Appellant; A.K. Sen, Jr. Standing Counsel and Nani C. Chakravarty, for the Respondent

Judgement

Guha Ray, J.—This petition by the Corporation of Calcutta is for revision of an order of acquittal of the Opposite Party, the Director of Rationing and Distribution, representing the Food Department of the Government of West Bengal in a case u/s 488 read with Section 386(I)(a), Calcutta Municipal Act, 1923, The allegations on which the prosecution is based are briefly that during the financial year 1951-52. the Opposite Party was carrying on trade at premises No. 259, Upper Chitpur Road, Calcutta, and was using, or permitting the use of, the said premises for the purpose of storing rice, flour, etc., under the provisions of the Bengal Rationing Order, 1943. No licence, however, was taken for this purpose by the Opposite Party as. required by . Section 386, Calcutta Municipal Act, 1923, for the year in question.

It is further alleged that from 1943-44 to 1948-49 the Opposite Party had paid license fees for different shops under Sections 175 and 386 for storing rice, etc., but since then he has been refusing to do so on the ground that he or rather the Government of West Bengal which he represents is not liable for such licence fees. The learned Magistrate without going into the merits of the case acquitted

the Opposite Party on the short preliminary ground that he was not liable for licence fees and for this view, he relied on the decision of this Court in the case of -- Corporation of Calcutta Vs. Sub-Post Master, Dharamtola Post-Office, . The short point for decision in this case is thus whether the Opposite Party or rather the Government of West Bengal which he represents is liable for licence fees.

2. Section 386(I)(a) is as follows: No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a license granted by the Corporation in this behalf, namely, any of the purposes specified in Schedule 19. Item No. 8 of Schedule 19 is "storing, packing, pressing, cleansing, preparing or manufacturing, by any process whatever, any of the following articles" and then follows a list, which includes rice, flour, etc., the articles said to be stored by the Opposite Party in this case. Section 488 provides for the punishment of any contravention of the provisions of this as well as other sections and the maximum punishment provided is a fine of Rs. 250. Sub- section (2) further provides for the imposition of a daily maximum fine of Rs. 50 in the event of a continuation of the offence after conviction.

3. The first point for consideration now is whether Section 386 is of general application requiring persons who store even for domestic consumption the articles in question to take out licenses or they apply only to those who store these things for purposes of trade, etc. If they apply to those who store them for purposes of trade, a further question arises, namely, whether the word "trade" necessarily carries with it the idea of an exchange of goods for goods or money for the purpose of making a profit, so as to exclude the Opposite Party from the purview of the section because there was no idea of profit behind his storing of these articles, the whole object of the Government in this matter being to secure a proper distribution of these essential articles of food. The case which the learned Magistrate relied on furnishes a complete answer to all these questions and with that answer we are in respectful agreement.

That answer is first, that on a plain reading of Section 386 it cannot be held to be of general application but must be held to be limited to premises falling within the description of the sub-heading "Factories, trades and places of public resort"; secondly, that "trade" in this section means an exchange of goods for goods or money without the additional idea of such an exchange being for the purpose of making a profit.

4. The next and the most important point for consideration is whether the Opposite Party on the State of West Bengal which he stands for is a person falling within the scope of Section 386. That the Opposite Party even in his official capacity is a person within the meaning of the word in Section 3(32), Bengal General Clauses Act, goes without saying and even the State, composed as it is of a large number of parts, each of which is represented by one or more individuals satisfies that definition. The legal personality of the Union and the State is placed beyond doubt by Art. 300 of the Constitution of India. It is,

therefore, clear that the Opposite Party is a person even though he might represent the State and in the absence of anything to the contrary, would be normally within the scope of the prohibition embodied in Section 386, Calcutta Municipal Act, 1923.

5. This at once takes us to the second and the most important part of the question, namely, whether the Opposite Party as representing the State is bound, like the subject, by legislation imposing a tax or a license fee. In *Corporation of Calcutta Vs. Sub-Post Master, Dharamtola Post-Office*, relied on by the learned Magistrate, their Lordships considered themselves bound by the decision of the Privy Council in -- "*the Province of Bombay v. Municipal Corporation of the City of Bombay*" AIR 1947 PC 34 (B) which they took to be an authority on the general question as to when the Crown is bound by such statutory provisions and followed it, making it quite clear at the same time that had the question been *res integra* and had it been open to them to consider the question untrammelled by a decision of the Judicial Committee, they might have examined the reasonableness and propriety of applying the principles as enunciated by English Courts and also how far they should be applied to Indian conditions. It was argued on behalf of the Opposite Party by the Junior Standing Counsel that this decision is binding on us and so is the decision of the Privy Council and he went so far as to say that if this was the law of the land before independence, it has continued to be so even under the new Constitution, in view of Article 372.

6. Before proceeding to examine the soundness of this proposition, it is necessary to see in the first place whether there is anything in the facts of AIR 1950 Gal 417 (A) to distinguish it from those in this and in the second how far at present the decision of the Privy Council is binding on us.

7. Under Article 395 of the Constitution, the Indian Independence Act, 1947, and the Government of India Act, 1935 together with all Acts amending or supplementing the Government of India Act 1935 but not including the Abolition of the Privy Council Jurisdiction Act, 1949, have been repealed. While the jurisdiction of the Privy Council was abolished with effect from 10-10-1949, S. 8 of that Act lays down that any order of His Majesty in Council made on an Indian appeal and petition, whether before or after the appointed day, shall for all purposes have effect, not only as an order of His Majesty in Council but also as if it were an order or decree made by the Federal Court in the exercise of the jurisdiction conferred by this Act. Evidently, the binding value attaches under this section to the decree and the order and to nothing more. The reasoning and the rules laid down in a decision appear to have been deliberately excluded from having such effect.

8. As already stated, this prosecution is for the Opposite Party's failure to take out a license for the financial year 1951-52 when the Constitution of India had already come into force. The prosecution of the Sub-postmaster of Dharamtola Post Office was for his failure to take out a license for 1945-46 when India was still a subject country with the Privy Council at the apex of its judicial pyramid

and the decision itself was in 1948 before the Abolition of the Jurisdiction of the Privy Council Act 1948 came into force. That necessarily makes a world of difference between the two cases as far as the compulsive force of the decisions of the Privy Council goes, so that while in that case their Lordships of the High Court were really bound by that decision we are not, though that decision is always entitled to respectful consideration.

As the Supreme Court observed in -- "Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd." AIR 1950 SC 218 (C) with reference to -- "Spooner v. Juddow" 4 I A 353

"This reasoning and conclusion, although they have not now the compelling force they had before the 26th January 1950 are entitled to great respect."

The decisions of the Privy Council while they are no longer binding on the Courts in this country still retain, like the decisions of any other country, whatever persuasive value . they may intrinsically have. Corporation of Calcutta Vs. Sub-Post Master, Dharamtola Post-Office, is thus clearly distinguishable from this case in which we are entitled to examine the whole question afresh and in doing so, we are not bound to follow the Privy Council decision unless its reasoning appears to us to be sound in its application to bur existing law.

9. The case in AIR 1947 P. C. 34 (B) has now to be considered. This was a case in which the Municipal Corporation of Bombay wanted to carry out certain works on Government land.

10. The principle that the Crown is not bound by legislation in which it is not named either expressly or by necessary implication was accepted by the Bombay High Court but it further held that if it could be shown that that legislation could not operate with reasonable efficiency unless the Crown were bound, that would be a sufficient reason for saying that the Crown was bound by necessary implication. While disapproving of this interpretation of the rule, their Lordships of the Privy Council say that even if the High Court were correct in this interpretation its method of applying it would be open to the objection that regard should have been had, not to the conditions which it found in existence many years after the passing of the Act but to the state of things which existed or could be shown to have been within the contemplation of the legislature in 1886 when the Act in question was passed and it might also be objected that the view taken by the High Court appears to ignore the possibility that the legislature may have expected that the Crown would be prepared to co-operate with the Corporation so far as its own duty to safeguard a wider public interest made cooperation possible and politic and may well have thought that to compel the Crown's subservience to the Corporation beyond that point would be unwise.

Here the Privy Council refers to the case of --"Gorton Local Board v. Prison Commissioners" (1904) 2 KB 165 (E). In dealing with the contention of the respondent that whenever a statute is enacted for the public good, the Crown though not expressly named, must be held to be bound by its provisions and that

as the Act in question was manifestly intended to secure the public welfare, it must bind the Crown, the Privy Council says that though the proposition is supported by early authority, namely Bacon's Abridgement and other text books, it could not now be regarded as sound. In -- "Attorney General v, Hancock" (1940) 1 KB 427 (F) Wrottersley J. cited a series of decisions in which the Crown was not held to be bound though the statute in question was clearly for the public benefit. (1904) 2 KB 165 (E) was cited by their Lordships as a plain and striking example and they say that the apparent purpose of the statute is one element and may be an important element, to be considered when an intention to bind the Crown is alleged and that if it can be affirmed that at the time when the statute was passed and received the royal sanction it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound then it may be inferred that the Crown would be bound. Their Lordships add here that when the Court is asked to draw this inference, it must be always remembered that if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words. Then they go to say further that

"the maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein. But the rule so laid down is subject to at least one exception. The Crown may be Bound by necessary implication. If that is to say, it is manifest from the very terms of the statute that it was the intention of the Legislature that the Crown should be bound then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions."

Then after a consideration of the terms of Section 265 and Section 222(1), Bombay Municipal Corporation Act, 1886, their Lordships could find no reason to say that by necessary implication the Crown was bound by these sections of the Act. In -- Corporation of Calcutta Vs. Bhupal Chandra Sinha and Another, Chunder and Cuha JJ. in a case u/s 421, Calcutta Municipal Act, 1923, applied the test laid down by the Privy Council, namely, that if it could be affirmed that at the time when the statute was passed and received the royal sanction it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it might be inferred that the Crown had agreed to be bound and held that the Crown was bound by necessary implication.

11. This Privy Council decision which follows earlier, English decisions undoubtedly lays down the law correctly for the U. K. but does it do so for India, although it almost studiously refrains from considering the course of Indian legislation? The legal position of Privy Council decisions at the present moment being exactly like that of any other foreign decision, this Court is entitled to put this question to itself and also to try to answer It. This is so not merely as to what the law is just at present but also as to what it was for the last one hundred years or so.

As far back as 1902, the matter was considered by the Madras High Court in --

"Bell v. Municipal Commissioners for the City of Madras" 25 Mad 457 (H) in two illuminating concurring judgments. which seek to show that though in England, owing to historical causes, the Legislature has proceeded on the view that the Crown is not bound by a Statute unless expressly named in it and in many statutes the Crown is expressly stated to be bound, it is impossible to say broadly that in India the Crown is not bound by a Statute or the taxing provisions of a Statute unless expressly named in it, such express inclusion being altogether exceptional and it would be more correct to say from the uniform course of Indian legislation that as a general rule the Indian Legislatures have proceeded on the assumption that the Government will be bound by the Statute unless expressly or by necessary implication excluded from its operation, and that statutes imposing duties and taxes bind Government as much as its subjects unless the very nature of the duty or the tax is such as to be inapplicable to Government and whenever it is the intention of the legislature to exempt the Government from any duty or tax which in its nature is not inapplicable to Government, the Government is specially exempted by legislation and this is specially so in regard to taxes imposed by the legislature for, the benefit of local authorities and in particular Municipalities. In other words, it takes a view diametrically opposed to that prevailing in England and set forth by the Privy Council in the case referred to.

12. The gradual enlargement of the powers of the Indian and Provincial legislatures with regard to legislation affecting the prerogatives of the Crown, as pointed out in the Madras case, makes instructive reading. Section 43 of 3 and 4 of William IV (1833) cap. 85 empowered the Governor General in Council to make laws and regulations, etc., save and except, among other laws and regulations, any law and regulations which shall affect in any way any prerogative of the Crown. By Section 59 of this. Act, the Provincial Governors were no longer to have the power of making laws except in case of urgent necessity and then only until the decision of the Governor General in Council was signified thereon. There was a qualified removal of this ban on the legislative power of Governor General in Council by Section 26 of 16 and 17 Victoria (1853), cap. 95 which provides that no law or regulation made by the Governor General in Council shall be invalid by reason only that the same affects any prerogative of the Crown, provided that such law or regulation shall have received the previous sanction of the Crown signified under the Royal Sign Manual of Her Majesty, countersigned by the Board of Commissioners for the affairs of India.

The Government of India Act, 1858, by which the Government of India was taken over by Her Majesty did not make any changes in the legislative power of the Governor General in Council. The Secretary of State for India under this Act replaced the Court of Directors of the East India Company and the one noticeable feature of this Act is that Section 65 distinctly provides that the Secretary of State of Council may sue and be sued as a body corporate & the property and effects hereby Vested in Her Majesty for the purpose of the Gov- . eminent of India or acquired for the same purposes, shall be subject to the same judgments

and execution as they would, while vested in the same company, have been liable to in respect of debts and liabilities lawfully contracted "and incurred by the said Company. Section 32, Government of India Act, 1915/19, Section 176, Government of India Act, 1935, and Art. 300 of the Constitution continue this liability to being sued and the right to sue on the part of the Secretary of State in Council, the Federation of India, the Provincial Government and the Union Government and the State Governments up to the present.

Section 22, Indian Councils Act, 1861, confers similar general powers of legislation on the Governor General in Council subject to certain exceptions which, however, do not include legislation affecting prerogatives of the Crown and as a matter of fact, Section 24 "ex major cautela" lays down that no law or regulation made by the Governor General in Council subject to the power of disallowance by the Crown as provided in Section 21 shall be deemed invalid by reason only that it affects the prerogative of the Crown. Section 19 provides that it shall not be lawful for any member of the Council to introduce without the previous sanction of the Governor General, any measure affecting the public Revenues of India or by which any charge would be imposed on such revenues, clearly implying that such measures could be introduced with the previous sanction of the Governor General. Sections 42 and 43 confer a general power of legislation on the Governors of Bombay and Madras subject to certain limitations and Section 38 lays down for these two Presidencies a rule similar to that in Section 19 for the Governor General in Council. Section 46 empowers the Governor General to declare and limit from time to time the extent of the authority of the Lieutenant Governor of Bengal and Section 48 confers on the Lieutenant Governors in Council to make laws for the peace and good government of their provinces in the same way and subject to the same limitations as the Governors in Council of Madras and Bombay. "

These provisions continued in force right up to the Government of India Acts, 1915 and 1919. Section 65 of the Act of 1915 continued in the Act of 1919 confers on the Indian legislature general powers of legislation on certain matters, subject of course to certain exceptions, which do not include legislation affecting Crown's prerogatives. One of the exceptions is legislation affecting any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown. This exception is reproduced verbatim from Section 22 of the Act of 1861, Section 24 of which, as already stated, expressly lays down that no law will be invalid only because it affects a prerogative of the Crown. Evidently then the exception does . not include legislation affecting Crown's prerogatives.

Section 80A entitles the provincial legislature to legislate. As far as the imposition of a charge on the revenues of India went, Section 67(2) required the previous sanction of the Governor General for the Indian Legislature and similarly Section 80C requires the previous sanction of the Governor for the introduction in the Provincial legislature of a measure affecting the public revenue of the

province. A bill passed by the Central Legislature required the assent of the Governor General u/s 68/2 before it could become an Act and where the Governor General reserved it for the signification of His Majesty's pleasure, it did not become an Act till the notification by Governor General of the signification of the assent of His Majesty in Council. Section 69 provides a further hurdle for Indian legislation before it could be placed on the Statute book. When a bill became an Act, with the assent of the Governor General, an authentic copy of it had to be sent to the Secretary of State by the Governor General and even at that stage it was lawful for His Majesty to signify his disallowance of the Act. It was under the Government of India Act, 1915/19 that the Calcutta Municipal Act of 1923 was passed by the Bengal legislature.

13. This broad account of the gradual extension of the powers of the Indian and Provincial legislatures thus reveals three distinct phases, as far as legislation affecting the prerogatives of the Crown goes, namely first, up to 1853, complete negation of any power in the Indian Legislature to legislate so as to affect such prerogatives and complete negation of any legislative power in the Provincial Legislature except in cases of emergency; secondly from 1853 to 1915, the Indian Legislature was entitled to legislate subject of course to certain limitations and so as to affect Crown's prerogatives and this was expressly provided and the legislatures of Madras, Bombay and Bengal were also entitled to legislate within certain limitations so as to charge the public revenues of the respective provinces; and thirdly from 1915 right up to 1937 when the Government of India Act, 1935, came into force, the Indian legislature was given general powers of legislation, subject of course to certain exceptions not including the Crown's prerogatives and the Provincial Legislatures were also empowered to legislate and both the Indian and the Provincial Legislatures could legislate imposing charges on the public revenues of India and the Provinces respectively. These powers were throughout hedged in with a number of conditions but subject to these conditions and within the limits of the area defined, these legislatures were competent to legislate not as an agent or delegate of the Parliament but as bodies vested with plenary powers of legislation as large and of the same nature as those of the Parliament itself. ("The Queen v. Burah" (1879) 3 AC 889 (I)).

Though in the third phase there is no express provision as in the second that no legislation would be invalid by reason only that it affects prerogatives of the Crown, the omission to mention in the exceptions the prerogatives of the Crown coupled with the provision for legislation so as to impose charges on public revenues,--which is certainly a form of interference with at least one of the Royal prerogatives, namely the right to hold its property exempt from taxation justifies the inference that at least this form of interference was retained under the Act of 1915 as well. In other words, a legislation could not under the Act of 1915 be said to be invalid merely because it imposed a charge on the public revenue.

14. It has now to be seen whether the inference drawn from the relevant provisions of the different constitutional Acts is strengthened by relevant

measures actually passed by the Indian and Provincial legislatures. Did these legislatures act on the assumption that the Crown was not bound by such statute unless it was named therein either expressly or by necessary implication or did they proceed on the footing that the Crown was bound by the statute unless it was excluded from its operation either expressly or by necessary implication? Under the Court-fees Act, the Government has to pay court-fees like any other litigant, there being no exemption in its favour but under the Stamp Act, instruments executed by or on behalf of or in favour of the Government which would otherwise be liable to stamp duty, are exempted by proviso (1) to Section 3. Section 90, Registration Act, exempts certain documents executed by or in favour of the Government u/s 9, Specific Relief Act, the Central and the State Governments are exempted from being sued for recovery of possession under it. Section 2(a) and (b), Easements Act, exempt from the operation of the Act certain prerogatives and customary rights of the Crown, now of the Government. The now repealed proviso to Section 20, Sea Customs Act, exempted goods belonging to Government from liability to customs duties. This proviso was repealed in 1924 and by Amending Act 45 of 1951 Sub-section (2) was inserted to make it clear that the provisions of Sub-section (1) describing the dutiable goods will apply to all goods belonging to part A and B States and used for the purposes of a trade or business carried on by or on behalf of that Government. Whether the insertion of the new sub-section by implication exempts the Central or Union Government or not, the fact remains that as the Act stood before the amendment of 1924, which repealed the proviso to Section 20 goods belonging to Government were expressly exempted.

Section 1(4) of the now repealed Indian Ports Act of 1889 exempted from the operation of the Act vessels belonging to or in the service of Her Majesty or the Government of India. Section 2(l) Indian Port Act, 1908, gave the same exemption to all vessels belonging to or in the service of His Majesty which in 1950 was replaced by the Central Government or a State Government. Section 4, Merchant Shipping Act, Act 21 of 1923, exempts ships belonging to the Government or His Majesty, except where specially provided. u/s 8, Bengal Cess Act, Act 9/1880 the Government was not liable to the cesses without the consent of the Governor General in Council. It was deleted by the Government of India (Adaptation of Indian Laws) Order, 1933.

Two Acts, Municipal Taxation Act, 11 of 1881 and Railways (Local Authorities' Taxation) Act 25 of 1941 have a special bearing upon the question. Section 3 of the first empowered the Central Government to prohibit by an order in writing the levy by a Municipal Committee, as defined in Section 2 of any specified tax on the Secretary of State for India in Council and this was deleted only in 1937, when Section 3A was inserted empowering the Provincial Government to prohibit by an order in writing the levy of any specified tax on the Provincial Government by a Municipal Committee and Section 5 provides that so long as such an order remains in force, the Provincial Government is to pay to the Municipal Committee such sums as may be determined by an officer specially appointed for this

purpose.

Section 135(1), Railways Act, 1890, lays down, that a railway administration shall not be liable to pay any tax to any local authority unless the Central Government has by notification in the Official Gazette declared the railway administration to be so liable and Sub-section (2) provides that while such a notification is in force, the railway administration will be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum as may be determined by an officer to be appointed for the purpose. Section 3, Railways (Local Authorities Taxation) Act, 25 of 1941 really reproduces the provisions of Section 135(1) and (2), Railways Act, in the case of the property vested in the Central Government, being the property of a railway and lays down the qualifications of the person to be appointed for determining the sum to be paid by the railway- administration.

It seems pretty clear from these Acts that the Indian legislature acted on the assumption that the Crown would be bound unless excluded either expressly or by implication oftener than on the assumption that the Crown would not be bound unless named either expressly or by necessary implication. In the Madras case it is pointed out that u/s 17, Inventions and Designs Act, 1888, since repealed which is substantially a reproduction of Section 27, English Patents Act of 1883, the Crown is expressly included. Section 21, Patents and Designs Act, 2 of 1911, provides a patent shall have to all intents the like effect as against His Majesty the King as against a subject. In Section 37(3), Indian Electricity Act, it is laid down that rules made by the Central Electricity Board in pursuance of Clause (f) and Clause (g) of Sub-section (2) shall be binding on the Crown (now the Government). This, however, seems to be more of an exception than the rule. Then as further pointed out in the Madras case, under the different Municipal Acts, the Government is specially exempted from the payment of certain tolls and taxes but not from others.

15. The course of legislation in India thus clearly favours the view taken by the Madras High Court and is opposed to the view of the Privy Council which accordingly we are unable to follow. In our view then, the law even up to the coming into force of the Government of India Act, 1935, was that the Crown or the Government was bound by a statute unless it was exempted from its operation either, expressly or by necessary implication.

16. The question that next arises is whether the Act of 1935 and thereafter the Constitution brought about any changes in this matter. Sections 154 and 155, Government of India Act, 1935, and Arts. 285 and 289 of the Constitution are the relevant provisions. Section 154 of the Act of 1935 expressly provides for the exemption of property vested in His Majesty for purposes of the Government of the Federation except in so far as any Federal law may otherwise provide, from, all taxes imposed by or by any authority within a Province or Federated State. There is a proviso to the effect that till any Federal Law otherwise provides, such property shall continue to be liable or treated as liable to any tax to which it was

liable or treated as liable at the commencement of -Part III of the Act, i.e., the part dealing with the provinces. Federal property was thus clearly exempted from local taxation. Section 55, however, provides that the Government of a Province will not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India. Proviso (a) to the section makes it clear that this exemption will not extend to trade or business carried on by a Provincial Government outside its own territory, or any income arising from it or any property occupied for the purposes thereof. It is, therefore, quite clear that the Provincial Governments were not exempted from local taxation while the Federal Government was.

These two provisions suggest that if these were not there, the Federal Government as well as Provincial Governments would have been liable to the taxation from which they are expressly exempted, for had the position been that the Crown was not bound by any statute except when it was named expressly or by necessary implication as held by the Privy Council, there would have been hardly any necessity for these two provisions, for almost all Indian Statutes, with the exception of a very few, as far as could be found, do not name the Crown expressly. Whether any does so by necessary implication is a matter of construction on which it is difficult here to express any opinion. These also then go to support the view taken by the Madras High Court and are against the one taken by the Privy Council.

17. If this was the law before independence and not what the Privy Council declared it to be, the question raised on behalf of the State that the rule laid down by the Privy Council still continues to be the law under Article 372 hardly arises. As already pointed out, S. 8, Abolition of Privy Council Jurisdiction Act, 1949, attaches a binding effect only to an order or decree in an Indian Appeal dealt with by the Privy Council before the appointed day and not to a declaration of the Privy Council's view of the law, though the order or the decree may be based on such a view. Besides the definition in Section 2(1) of "existing Indian Law" in the India (Adaptation of Existing Indian Laws) which is. an order of the Governor General u/s 9(1), Indian Independence Act, includes only Acts, Ordinances, Regulations, rules, orders, or bye laws but not the declaration of the law by a Court. While Section 18(3), Indian Independence Act, continues in force "existing Indian Laws", it does not define "existing Indian Laws" and that is done by the order referred to. It is thus clear that what the Privy Council declared to be the law is not continued by any provisions of law.

18. Article 285 of the Constitution of India is substantially a reproduction of the provisions of Section 154 of the Act of 1935 and so is Article 289 of the provisions of Section 155 of that Act. In other words, the position contemplated by the Act of 1935 is still retained under the Constitution, the property of the Union Government being exempt from not merely State taxation but also from taxation by any authority within a State and the State property being exempt from Union taxation only except in certain circumstances.

19. The view, therefore, taken by the Privy Council cannot be held to have laid down the law correctly for India where the different constitutional provisions and the course of legislation referred to already convergently point to a very different rule of construction, namely that the State is bound by a statute unless it is excluded from its operation either expressly or by necessary implication.

20. As already found, the Opposite Party would be normally within the scope of the prohibition embodied in Section 386, Calcutta Municipal Act, 1923, in the absence of anything to the contrary. The only thing which was supposed to be to the contrary was the rule of construction by which the State was not held to be bound by a statute unless it was named in it expressly or by necessary implication. That, in our opinion, is not a correct rule for this country. Consequently, the learned Magistrate's order of acquittal on this preliminary ground, namely that the O. P. was not liable to the payment of license fees cannot be sustained and must be set aside and the case must be sent back to him for disposal according to law. The rule is accordingly made absolute.

Mitter, J.

21. I agree.