
(1976) 12 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 5849 of 1975

Dalip Singh and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 02-12-1976

Acts Referred:

Punjab Municipal Act, 1911 — Section 188, 197

Citation : AIR 1977 P&H 109 : (1977) 1 ILR (P&H) 675

Hon'ble Judges : R.S. Narula, C.J.; O. Chinnappa Reddy, J.; Bhopinder Singh Dhillon, J

Bench : Full Bench

Advocate : R.S. Bindra, Surinder Singh Dhaliwal, for the Appellant; D.N. Rampal, Asst. A.G. (Punjab) and Harinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, C.J.—The circumstances in which the question of interpretation and true scope of the expression "regulation" in Section 188 (e) (ii) of the Punjab Municipal Act (3 of 1911) (hereinafter called the Act) has arisen in this writ petition are these.

2. The petitioners who are the Jhatka meat sellers carrying on business in different localities of Hoshiarpur have filed this petition to impugn the notification of the Punjab Govt., dated September 12, 1975 (Annexure P-1), which is in the following terms:--

"The following amendment in Jhatka bye-laws published with Punjab Government Notification No. 403 dated the 8th July, 1974, as subsequently amended vide Notification No. 6826-C-49/54188, dated 29-8-1949, made by the Administrator, Municipal Committee, Hoshiarpur, in exercise of the powers conferred on it by Sections 188 and 189 of the Punjab Municipal Act, 1911, having been confirmed by the Governor of Punjab as required by Section 201 of the said Act is published for general information and shall come into force within the Municipality of

Hoshiarpur on 15-10-1975:

AMENDMENT

"In bye-law XVI the following shall be substituted:

"Meat whether boiled or unboiled prepared by the Jhatka process shall be sold only in the shops licensed by the committee and only in shops situated in the Municipal Meat Market near City Kotwali." What happened in pursuance of the notification was that the petitioners were pressed to shift their business from their existing shops to the specified market near the Kotwali. The petitioners have resisted the action on the following three grounds:--

(i) that the impugned notification could not have been issued u/s 188 or 189 of the Act;

(ii) that the framing of the bye-law in question is illegal as the same had been done without complying with the statutory requirements of Section 200 of the Act; and

(iii) that the respondent No. 2 Committee has not provided the petitioners with shopping accommodation in the new market and it is not possible for them to do so.

3. It is conceded by the learned counsel for the respondents that the reference to Section 189 in the notification Annexure P-I is intended to be to Section 197 of the Act. It is settled law that mere reference to a wrong provision of law does not affect the validity of an order or a notification if it is otherwise authorised under some provision of law. The notification is said to have been issued u/s 188 (e) (ii) read with Section 197 (a) of the Act. Section 197 (a) reads as follows:--

"The committee may, and shall if so required by the State Government, by bye-law-

(a) prohibit the manufacture, sale or preparation or exposure for sale, of any specified articles of food or drink, in place or premises not licensed by the committee."

It cannot be seriously disputed that the above-quoted provision merely authorises the Municipal Committee to prohibit the sale, etc., of articles in any place or premises not licensed by the Committee, that is, the only prohibition which can be imposed under this provision is not to allow the trade being carried on without license. In fact this is conceded by the learned counsel for the respondents. The only question that remains for consideration is whether the restriction imposed by the bye-law in question is authorised by Section 188 (e) (ii) of the Act. That provision is in the following terms.-

"A committee may, and shall if so required by the State Government by bye-law,--

(a) to (d)

(e) provide

(i)

(ii) for the inspection and proper regulation of markets and stalls, for the preparation and exhibition of a price nur-rent and for fixing the fees, rents and other charges to be levied in such markets and stalls."

The question that calls for decision is whether in exercise of the power to make a bye-law providing for "proper regulation of markets and stalls" can a bye-law be framed providing for a particular commodity being sold only in shops situate in a particular market in a particular locality within the concerned municipal area. Mr. R. S. Bindra, the learned senior counsel for the petitioners, who has vehemently argued this petition has relied on the following judgments in order to persuade us to answer the above question in the negative:--

(i) Ghanya Lal v. Municipal Committee; Montgomery AIR 1928 Lah 540;

(ii) Mula Mal v. Emperor AIR 1929 Lah 607;

(iii) Wariam Singh v. Municipal Committee, Nabha AIR 1953 Pepsu 127;

(iv) Haji Ismail Haji Mohd. Ramzan Vs. Municipal Committee, Malerkotla and Another, ; and

(v) Municipal Committee Vs. Haji Ismail and Another, .

The only provision of the Act with which Shadi Lal, C. J., dealt in the case of Ghanya Lal (supra) was clause (a) of Section 197 of the Act. It was held that the bye-law prohibiting the sale by auction of fresh fruits and vegetables at any place other than the one specified therein could have been framed under clause (d) of Section 197 which had since been repealed. Similarly in the case of Mula Mal (supra) Sub-clause (ii) of clause (e) of Section 188 of the Act did not at all come up for consideration as the discussion in that case was also confined to the scope of clause (a) of Section 197. The learned single Judge of the Pepsu High Court who decided Wariam Singh's suit (which suit had been transferred to the original side of the High Court) no doubt held that the power to regulate does not authorise the absolute prohibition of the subject-matter upon which the authority is to be exercised. It was observed that in the exercise of the powers to regulate, the Municipal Committee may exercise all reasonable forms of restraint over the thing regulated so long as it stops short of actual prohibition as "to regulate means to govern by or subject to certain rules or restrictions."

There is no quarrel with the proposition of law laid down to the above extent. I agree with the observations of the learned Judge to the effect that the power to regulate implies a power of restriction and restraint as to the manner of conducting specified business and also as to the building or section in or upon which the business is to be conducted, I, however, regret my inability to agree with him that the scope of the word "regulation" does not extend to include the power of prohibition of a business being conducted at any place except the one

earmarked by the Municipal Committee for that purpose. There is no warrant for holding that "regulation" of a market or a stall can merely be confined to the mode in which the business is to be carried on, and does not extend to earmarking areas in localities in which alone particular kind of goods may be sold in the accommodation provided by the Municipal Committee for the purpose. The learned Judge has in the course of the judgment observed as below:--

"It (the bye-law framed by the Municipality u/s 188 (e) (ii), might direct the mode in which the business is to be carried on or impose restrictions under which it is to be conducted at a particular place, but that does not con-fer the power to stop business at every place except the one fixed for it by the Committee".

There appears to me to be a slight contradiction in the proposition of law laid down in the above sentence by the learned Judge. If it is once conceded that a bye-law framed under the relevant provision can authorise that a business should be conducted only at a particular place, it does not stand to reason how it can then be held that there is no power to stop business at every place except that particular place.

4. Haji Ismail Haji Mohd. Ramzan Vs. Municipal Committee, Malerkotla and Another, was first dealt with at single Bench level by A. N. Grover, J. The bye-law which was impugned in that case was in the following terms:--

"(i) No person shall sell wholesale or by auction any fruit, vegetables or sugar-cane, within the municipal limits at any premises other than Sabzimandi or any other place specially demarcated by the Municipal Committee in this behalf. The Municipal Committee will demarcate premises for the purpose of sale, wholesale or by auction of any fruit, vegetables or sugarcane, from time to time as the necessity may arise.

(ii)

(iii) In the Sabzi Mandi or in any other specified premises number of plots to be licensed shall be fixed by the Committee and each plot shall be let out by public auction on the spot under an agreement drawn by the Committee for this purpose,

(iv) and (v)"

The Malerkotla Municipal Committee in exercise of the power conferred by the above-quoted bye-law demarcated only four shops for the purpose of sale and auction of fruits, vegetables and sugar-cane within its limits, and prohibited the wholesale or sale by auction of any fruits, vegetables, etc., except in those four specified shops in the Sabzi Mandi of Malerkotla. It was not only the bye-law but the action taken thereunder by the Malerkotla Municipal Committee which was impugned by Haji Ismail Haji Mohd. Ramzan in the writ petition which was allowed by the learned single Judge, while, agreeing with the ratio of the judgment of Chopra, J., in Wariam Singh's case AIR 1953 Pepsu 127 (supra), the learned single Judge held that the power to make bye-laws for the inspection and

proper regulation of markets and stalls does not authorise the Committee to make such bye-laws as would have the effect of confining the sale of certain commodities or articles to particular localities only.

That finding was not supported by any particular reason. In fact the writ petition was allowed by the learned Judge on the ground that by making bye-laws which could have the effect of entrusting such business to only one or more persons to the exclusion of the general public, the result would essentially be to create a monopoly of "a nature that could not be sustained under Article 19 of the Constitution. In the appeal of the Malerkotla Municipal Committee against the judgment of Grover, J., in Municipal Committee Vs. Haji Ismail and Another, the Division Bench mainly confined its dictum to the unreasonableness of the rigour of the order actually passed in the case by confining the trade to four shops. The learned Judges held:--

"The conclusion of the learned Judge is, therefore, correct that the power in clause (a) of Section 197 does not extend to fixing and limiting the sale of fruits and vegetables by the impugned bye-laws to four shops in the Sabzi Mandi at Malerkotla."

It was further held in connection with Section 188 (e) (ii) that when the dictionary meanings of the word "regulation" are taken into consideration:--

"It becomes clear that ordinary meaning of this word is prescription of rules for control of conduct. In Sub-clause (ii) of clause (e) of Section 188, the word is used in this sense when it is considered with the whole context of that Sub-clause along with other matters that are dealt with in that sub-clause and when the meaning is taken in the light of those matters. The word is not to be read in isolation, but it is to be read in the context in which it has been used and in that context it does not bear the meaning which the learned counsel has tried to give it. u/s 188 (e) (ii) the appellant Municipality has not the power to make the type of regulation that it has done in confining the business of sale, wholesale or by auction, of fruits and vegetables to four shops in the Sabzi Mandi. In this respect too I agree, with respect, with the opinion of the learned Judge."

Again in the last sentence of paragraph 5 of the judgment it was observed by the Division Bench as below:--

"So the restriction placed by the appellant Municipality in the impugned bye-laws confining the business of the sale, wholesale or by auction, of fruits and vegetables to just four shops in Sabzi Mandi of Malerkotla is, to use their Lordships' expression, more than a reasonable restriction on the right of the respondents in this case."

A careful reading of the judgment of the Division Bench shows that the order allowing the writ petition was upheld, mainly for two reasons, namely:--

(i) that an order confining a particular business to four shops in the Sabzi Mandi could not be authorised u/s 188 (e) (ii); and

(ii) that such an order was violative of Article 19 of the Constitution as the restriction imposed thereby was not reasonable.

5. The second consideration which weighed with the learned Judges of this Court in the case of *Municipal Committee Vs. Haji Ismail and Another*, is not relevant for our purpose as the learned counsel for the petitioners has expressly stated that he does not rely on Article 19 of the Constitution as he is not permitted to invoke that Article on account of the President's proclamation under Article 359 of the Constitution during the current emergency. The learned Judges of the Division Bench did not go to the extent to which Grover, J., went in *Haji Ismail Haji Mohd. Ramzan Vs. Municipal Committee, Malerkotla and Another*, while interpreting Section 188 (e) (ii) of the Act. In these circumstances nothing stated in the judgment of the Division Bench in the case of *Municipal Committee, Malerkotla* is of direct avail to the petitioners.

6. As a last resort, Mr. Bindra has referred to the judgment of the Supreme Court in *Asa Ram Vs. The District Board, Muzaffarnagar*, in order to persuade us to hold that the word "regulation" does not include the power to direct a trade being carried on only within the earmarked area in a Municipality. One of the questions that arose for decision before the Supreme Court in *Asa Ram's* case (supra) was whether the word "regulation" used in Section 26 (a) of the U. P. Town Areas Act includes the power of issuing a licence. Their Lordships were pleased to answer that question in the affirmative. Nothing beyond that has been stated in the judgment of the Supreme Court. Their Lordships have merely stated that the licensing power is included in the power to regulate. It has nowhere been hinted that the power to regulate does not include the power to direct that a particular trade should be carried on within a particular area. After carefully considering all the above cases and hearing counsel for the parties we are inclined to hold that the word "regulation" in Section 188 (e) (ii) is of vast amplitude and includes the power to frame bye-laws authorising the Municipality to confine certain trades within specified municipal areas.

7. The second ground on which the bye-law in question has been impugned is that it was passed without previous publication required by Section 200 of the Act. That provision states:--

"All bye-laws made under this Act shall be subject to previous publication."

The only allegation made by the petitioners in this behalf is contained in paragraph 13 of the writ petition in the following words:--

"That the procedure prescribed by Sections 200 and 201 of the Act and the General Rules framed by the State Government in exercise of the powers given to it by Section 240 of the Act for making the bye-law was not complied with in the present case and as such the impugned bye-law is altogether lacking in legal value."

In reply thereto it has been stated in the corresponding paragraph of the return

of the State as below:--

"Paragraph No. 13 of the petition is denied as wrong and baseless. The procedure prescribed by law has been duly followed in amending the bye-law and consequently it has the force of law and is replete with legal value."

The Hoshiarpur Municipal Committee in paragraphs 12 and 13 of its return has averred as under:--

"12. The contents of this paragraph are incorrect. Wide publicity was given to the proposed amendment before the necessary order was passed. A copy of the notice regarding the proposed amendment was pasted outside the office of the Municipal Committee and also at other conspicuous places in the town for information of general public. The District Public Relations Officer was also informed to bring it to the notice of the general public. However, no objections were received against the proposed amendment.

"13. The contents of this paragraph are incorrect. The procedure prescribed under law was duly followed."

The petitioners did not file any rejoinder In reply to the respective returns of the two respondents. Nor did they point out at any stage as to the precise manner in which the requirements of Section 200 of the Act had not been complied with. At the hearing of the petition learned counsel has invited our attention to Rule 5 of the Punjab Municipal (General) Rules which lays down detailed procedure for publication of "public notices". I think that rule is not relevant as there is vast difference between the publication of public notices and the publication of the draft of a proposed bye-law. Mr. Bindra has then referred to Section 21 of the Punjab General Clauses Act, which is in the following terms:--

"Where, by any Punjab Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then, unless such Act otherwise provides, the following provisions shall apply, namely:--

- (1) the authority having power to make the rules or bye-law& shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft shall be taken into consideration;
- (4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-

laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made." The objection of Mr, Bindra is that the respondents have not produced the draft of the proposed bye-law to show whether it conforms to the requirements of Section 21 and to show whether a date had or had not been specified therein on or after which the draft was to be taken into consideration. Mr. Harinder Singh Giani submits that in the absence of any specific allegation in the petition on any of these points his clients were not called upon to produce evidence to rebut any such allegation. We agree with the counsel for the respondents that if the petitioners were serious in attacking the notification on this ground a duty was enjoined on them to specifically plead the facts on the basis of which non-compliance with the requirements of Section 21 of the Punjab General Clauses Act was sought to be alleged. On the material available before us it is not possible to hold that the requirements of Section 21 of the Punjab General Clauses Act or in turn of Section 200 of the Act were not complied with before framing the impugned bye-law,

8. The last submission of the counsel which is based on the allegation made in paragraph 10 of the writ petition is that the total number of stalls set up by the Municipality in the meat market near the City Kotwali meant for Jhatka sale is twelve whereas the number of persons doing the business of sale of Jhatka meat within the boundary of the Hoshiarpur Municipality may be more than one and a half dozen. It is on that basis that it has been stated that it would be impossible for the Municipal Committee to accommodate all the Jhatka sellers in the 14 or 16 shops set up by them. In reply to that allegation the Municipal Committee has stated in its return that there is adequate accommodation and arrangement for all the meat sellers of the city and the petitioners should not worry on that account as they are being accommodated in the meat market to which the entire business would be confined. The State Government has also averred in paragraph 10 of the return that the Municipal Committee is bound to accommodate all the meat sellers of the city and the petitioners should leave it to the Committee to accommodate them suitably in the meat market to which the whole business of meat would be confined.

At the motion hearing of this petition Mr. Harinder Singh Giani, learned counsel for the respondent-Municipal Committee stated (as recorded in the order of the Motion Bench, dated November 10, 1975) that the Municipal Committee is prepared to allot premises to the petitioners in the licensed market all once. The petitioners did not want to avail of that opportunity at that stage in view of the right which they were seeking to assert and, therefore, obtained an undertaking from the Municipal Committee through the Court that no action would be taken against them unless they are served with at least six month's notice as contemplated by clause (a) of Section 197 of the Act. Even at the hearing of the

petition today Mr. Harinder Singh Giani, learned counsel for the Municipal Committee, has conceded that the Committee is bound to provide business accommodation to the petitioners in the meat market in question and has undertaken on behalf of the Municipal Committee that this would be done. The Municipal Committee would be bound by this undertaking. If the petitioners wish to avail of the undertaking given by the respondent Municipal Committee, they should apply to the Municipal Committee for such accommodation within two months from today.

9. Subject to the direction based on the undertaking given by the Municipal Committee, this petition is dismissed without any order as to costs.