
(1919) 08 BOM CK 0006

In the Bombay High Court

Case No : Criminal Application for Revision No. 186 of 1919

Emperor

APPELLANT

Vs

Sorab Merwanji Alpaivalla

RESPONDENT

Date of Decision : 07-08-1919

Acts Referred:

Bombay Tramways Act, 1874 — Section 24

Citation : (1919) 21 BOMLR 1103

Hon'ble Judges : Shah, J;Hayward, J

Bench : Division Bench

Judgement

Shah, J.—The petitioner before us was charged before the Chief Presidency Magistrate with the breach of two bye-laws under the Bombay Tramways Act (Bombay Act 1 of 1874). It was alleged against him that he did not leave a tram car when asked to do so, even though the interior of the car contained the full number of passengers, and, secondly, that he travelled on the rear platform of the tram car contrary to the provisions of bye-law No. 6.

2. The trial Magistrate has found the accused guilty of both the charges, and sentenced him to pay fines in respect of those charges.

3. The facts are not in dispute. On the 4th March last the petitioner was found standing on the rear platform of a tram car near Bori Bunder when, it may be taken for the purposes of the present petition, the tram car was full. He was asked to leave the car. but he refused to do so, and hence the prosecution. The bye-laws in question have been framed u/s 24 of the Bombay Tramways Act. The Bombay Electric Supply and Tramways Company, Ltd., who are in the position of grantees under the Act in virtue of the provisions of Section 31 of the Act, have power to make regulations from time to time u/s 24 of the Act, among other things, for regulating the travelling in or upon any carriage belonging to them; and for better enforcing the observance of all or any such regulations it is lawful to the grantees subject to confirmation thereof by the Governor-in-Council to make bye-laws for any of the purposes mentioned in the section and from time

to time repeal or alter such bye-laws. The bye-laws including bye-laws Nos. 6 and 7 were duly confirmed by the Governor in Council, and published as required by the section. Subsequently in February 1917 a notice to passengers was issued by the Traffic Manager of the Company allowing until further notice three passengers who may wish to do so to stand on the rear platform of all cars excluding the front car of a two-car tram. In February 1919, however, this notice was in effect cancelled and a new notice to passengers was issued by the Managing Director under which only three persons (in addition to any conductor or Inspector on duty there) belonging to any of the four classes of persons mentioned in the notice were to be permitted to stand on the rear platform of a tram car. and passengers other than those mentioned in the first clause of the notice or in excess of the prescribed number were prohibited from standing on the rear platform and were told that any passenger acting contrary to the terms of the notice would render himself liable to removal and to prosecution under the Company's bye-laws. Both these notices have been quoted in the judgment of the lower Court. It is an admitted fact that neither the first notice of February 1917 nor the second notice of February 1919 was confirmed by the Governor in Council. It is argued on behalf of the petitioner that the first notice must be assumed for the purpose of this application to have been validly issued and must be taken to have effected a modification of bye-law No. 6; and that the second notice issued by the Tramway Company is illegal so far as it modifies the first notice. On the other hand it is argued that neither notice has any legal validity so far as it modifies bye-law No. 6 and that any person offending against bye-law No. 6 can be proceeded against according to law. It is further argued on behalf of the Company that u/s 24, apart from the bye-laws, the Company has the power to make regulations for travelling in or upon any carriage and that though these notices may not have the force of bye-laws any breach of which is punishable under the Act, in so far as neither notice is restrictive of any right of a passenger travelling by a tram car they were properly issued by the Tramway Company in order to regulate the traffic. The terms of bye-law No. 6 providing that no person shall travel on the platform of any car are clear, and the act of the accused is clearly contrary to the terms of this bye-law. His action is not contrary to the terms of the notice of February 1917, but that notice was cancelled in February 1919, and as a matter of fact the petitioner has acted in contravention of the terms of the second notice. In the view I take of these notices it is unnecessary to consider whether the accused would be justified in standing on the rear platform as he did either under the first notice or under the second notice. In my opinion both these notices within certain limits involve a modification of bye-law No. 6 and to that extent require the confirmation of the Governor-in-Council under s, 24 to have any legal effect. As the modifications of the bye-laws involved in these notices have not been confirmed by the Governor-in-Council, for the purposes of this case it must be taken that neither the first notice nor the second notice existed. The propriety of the act of the accused under the Tramways Act must be judged with reference to the terms of bye-law No. 6; and it is clear on the facts that he acted contrary to the terms of that bye-law.

4. As these two notices to passengers have been discussed before us, I think it is right to point out that when a rule in the terms of bye-law No. 6 is framed and when any modification of that rule is contemplated, it is but right that it should be made in the manner provided by law, that is it should be duly confirmed by the Governor-in-Council and published as required by Section 24. In practice such notices involving modification of any bye-law without such confirmation are apt to mislead the travelling public. For instance under the first notice the passengers would naturally be under the impression that so long as the number mentioned in the notice is not exceeded, any person can stand on the rear platform, though even then every one of the three persons other than the servants or officers of the Company would be offending against bye-law No. 6; and under the second notice so far as it refers to classes of persons other than the servants or officers of the Company in the first clause, the result would be the same, i. e., any such person not being a servant or officer of the Company would be offending against bye-law No. 6 even though he may be permitted to stand on the rear platform under the notice. That is a state of things brought about by these notices which is not desirable as it in effect involves a differential treatment of persons offending against bye-law No. 6.

5. The other two points raised on the half of the petitioner may be briefly dealt with. The first is that these rules were not put up in a conspicuous place inside the tram car as required by Section 17 of the Act and bye-law No. 28. It is clear however that the consequence of not properly complying with these provisions is not specified, and I do not think that any non-compliance by the Company with this provision can afford any valid answer to the charge against the petitioner. I do not express any opinion as to whether the bye-laws were put up in a conspicuous place inside this particular car as required by the Act. The Magistrate's finding on this point is rather halting; but for the purpose of this petition it is not necessary to examine that finding.

6. The second point urged on behalf of the petitioner is that the terms of the second notice are unreasonable. I do not think that the question really arises for our consideration, as bye-law No. 6 remains unaffected thereby. In so far as the notice purports to modify the operation of bye-law No. 6, it requires the confirmation of the Governor in Council, which has not been obtained.

7. The last point urged on behalf of the petitioner is that in any case the conviction under bye-law No. 7 is not justified under the circumstances. Taking the bye-laws Nos. 6 and 7 together it seems to me that the bye-law No. 7 contemplates a person remaining in the interior of a car, when the car contains the full number of passengers for which accommodation is provided in such interior. No doubt it provides that the person when asked to leave the car shall do so. But it seems to me that in the present case the accused never got into the interior of the car and was throughout standing on the rear platform. His action therefore properly falls within the scope of bye-law No. 6 and is outside the scope of bye-law No. 7. In any case his act amounted to a breach of bye-law No.

6 and he could not be properly convicted in respect of the same act under the following bye-law.

8. I would, therefore, set aside the conviction and sentence in respect of the charge under bye-law No. 7 and direct the fine, if paid, to be refunded. I would confirm the other conviction and sentence.

Hayward, J.

9. I concur. The accused has in my opinion been rightly convicted of the offence of refusing to get down from the platform of the car when so requested under bye-law No. 6, but he has in my opinion been wrongly convicted of remaining in the interior of the car when requested to go out under bye-law No. 7 of the bye-laws under Sections 24 and 25 of the Bombay Tramways Act 1 of 1874.

10. The accused was admittedly travelling on the platform which has been treated, it seems to me, as outside the car by bye-law No. 6. He never entered the interior of the car which would seem to me not to include the platform according to the ordinary meaning of the words used in bye-law No. 7. The conviction was, therefore, in my opinion, right under bye-law No. 6, but wrong under bye-law No. 7 of the bye-laws confirmed by the Governor-in-Council under Sections 24 and 25 of the Bombay Tramways Act I of 1874.

11. It has, however, been urged that the prosecution was invalid, because notice had been issued in February 1917 by the Tramways Company stating that owing to shortage of cars they did not intend to enforce the bye-law prohibiting passengers from travelling on the platform pending further orders during the war, and it has been urged that it was not open to them after having once issued that notice to modify it by the subsequent notice of February 1919 in which they intimated that they intended in future to enforce the bye-law more strictly and only to permit the privilege to some specified persons, mainly officials of the police and the Company, as they had obtained a further supply of cars since the end of war. It has, however, not been disputed that neither of these notices could have had the legal effect of modifying the bye-law, because neither of these notices had been confirmed by the Governor-in-Council as required under Sections 24 and 25 of the Bombay Tramways Act I of 1874. It is not necessary to discuss what the position would have been if contrary to their notices an unsuspecting passenger had been prosecuted for travelling on the platform by the Tramway Company, because that is not the case here, and it would be exceedingly improbable that any such prosecution would be instituted by a responsible body like the Tramway Company. The case here is a perfectly simple one. The offender had full intimation of the withdrawal of the previous privilege, he was shown the notice intimating that the bye-law would in future have to be more strictly enforced, he nevertheless deliberately with full knowledge of the position refused to comply with the perfectly reasonable and legitimate demands of the officers of the Tramway Company. This, therefore, in my opinion, is not a case in which the offender is entitled to any sympathy. It was entirely his own

fault He acted with full knowledge that he was liable, if he disobeyed the request of the officers, to prosecution under the bye-laws that had been sanctioned and never modified by the Governor in Council under Sections 24 and 25 of the Bombay Tramways Act 1 of 1874.

12. It seems to me, therefore, that it is incumbent on us to confirm the conviction and sentence of Rs. 20 for the offence against the bye-law No. 6, but on the other hand to reverse the conviction and direct the repayment of the fine of Rs. 15 inflicted under bye-law No. 7 of the bye-laws as confirmed by the Governor-in-Council under Sections 24 and 25 of Bombay Tramways Act I of 1874.