

(1959) 11 KL CK 0041

In the High Court Of Kerala

Case No : O.P. No's. 579, 580 and 647 of 1959

Joseph

APPELLANT

Vs

Municipal Council, Palai

RESPONDENT

Date of Decision : 18-11-1959

Acts Referred:

Constitution of India, 1950 — Article 254, 366(10)

Citation : (1960) KLJ 252

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : S. Narayanan Potti, P. Karunakaran Nair in O.P. 579/59 and K.K. Mathew, P. Karunakaran Nair in O.P. 580/59, K.K. Mathew and George Vadakkell in O.P. 647/59, for the Appellant; M.U. Isaac, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.

These three petitions raise a common question relating to the operation of sections 286 and 287 of the Travancore District Municipalities Act, 1116. That Act was passed by His Highness the Maharaja of Travancore on the 5th July, 1941. Sections 286 and 287 read as follows:

286: (1) The Municipal Council may construct or provide public landing places, halting places and cart-stands and may levy fees for the use of the same.

(2) A statement in English and a language of the district of the fees fixed by the council for the use of such place shall be put up in a conspicuous part thereof.

Explanation.--A cart-stand shall, for the purposes of this Act include a stand for carriages and animals.

287: Where a Municipal Council has provided a public landing place, halting place or cart-stand, the executive authority may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the

Municipal Council, of any public place or the sides of any public street.

According to sub-section (5) of Section 3 of the Act "carriage" means any wheeled vehicle with springs or other appliances acting as springs; and includes any kind of motor car, motor lorry, motor omnibus, motor cycle, bicycle, tricycle and riksha; and according to sub-section (6) of that section "cart" includes any wheeled vehicle which is not a "carriage".

In exercise of the powers conferred by section 286, the Palai Municipal Council resolved - resolution No. IX-(1) - (a) dated 12-9-1958 - to provide a public bus stand with effect from 1-10-1958, and to levy fees for its use at the following rates:

Rates of Fees

1. For buses starting from within Palai Municipal limits and returning to Palai Municipal limits. Fee per day commencing from midnight to the next midnight or fraction of a day.... per day Re. one

2. For buses passing through Palai Municipal limits. Fee per day commencing from midnight to the next midnight or fraction of a day.. nP. 50 per day

The notification on the subject is Ext. P dated 18-9-1958. It was published in the Kerala Gazette dated 23-9-1958. (Part III, page 174).

3. The concluding portion of the notification shows that the Executive Authority in exercise of the powers u/s 287 of the Act also prohibited the use of any other public place or the sides of any public street "within the Palai Municipal limits" as a bus stand or halting place.

4. Ext. R, is the minutes of an urgent special meeting of the Palai Municipal Council held on 22-11-1958. It shows that the following resolution was passed at that meeting:

No further action, however, appears to have been taken by the Executive Authority to restrict the ambit of the prohibition embodied in Ext. P.

5. The Travancore-Cochin Motor Vehicles Act, 1125, came into force on the 5th January 1950. Section 72 of that Act reads as follows:

Government or any authority authorised in this behalf by Government may, in consultation with the local authority having jurisdiction in the area concerned determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

This section continued in force until it was replaced by section 76 of the Motor Vehicles Act, 1939 (Central Act No. IV of 1939) on its extension to Travancore-Cochin by the Part B States (Laws) Act, 1951 (Central Act No. III of 1951). The only difference between section 72 of the Travancore-Cochin Motor Vehicles Act,

1125, and section 76 of the Motor Vehicles Act, 1939, is the addition of the word "State" before the word "Government" in the two places where the latter word occurs in that section.

6. The first contention of counsel for the petitioners is that section 72 of the Travancore-Cochin Motor Vehicles Act, 1125, effected an implied repeal of sections 286 and 287 of the Travancore District Municipalities Act, 1116, in so far as they related to motor vehicles, and that Exts. P and R should be considered as of no effect. The Travancore-Cochin Motor Vehicles Act, 1125, was enacted, as the preamble shows, in order to provide "a uniform law relating to motor vehicles", and we see no reason why sections like 286 and 287 to the extent they militate against such uniformity should not be considered as having been repealed by implication.

7. In 31 L.J.C.P. 223, the question arose as to whether an earlier Act empowering one body to name the streets and to number the houses in a town should be considered as impliedly repealed by a later Act which gave the same power to another body. Erle C.J. said:

I think that where the same power is given to two different bodies to number houses, the exercise of these powers concurrently by both bodies would be entirely destructive of the object for which they were conferred; they cannot therefore exist together, and, in accordance with general principles, the power more recently conferred overrides that which was conferred by the prior Act.

In 32 L.J.C.P. 41 the question was whether the provision in an earlier Act which precluded the charging of more than 4s. for every 1,000 cubic feet of common gas was superseded by a provision in a later Act which precluded only the charging of more than 5s. 6d. per 1,000 cubic feet of common gas. It was held that the earlier limit did not survive the enactment of the later provision.

8. In 103 L.J.K.B. 364, Scrutton L.J., said that Parliament can alter an Act which it has previously passed by saying "I repeal the previous Act", and that it can produce the same effect "also in another way, namely, by enacting a provision clearly inconsistent with the previous Act". In that case, it was contended that an implied repeal was not possible because the later Act provided that compensation should be assessed in accordance with the earlier Act. The contention was rejected. Maugham L.J. said:

It is quite plain that the Legislature is unable, according to our Constitution, to bind itself as to the form of subsequent legislation; and it is impossible for Parliament to say that in no subsequent Act of Parliament dealing with this same subject-matter shall there be an implied repeal

In (1907) 7 Austr. C.L.R.I, Isaacs J., stated the proposition as follows:

The latest expression of the will of Parliament must always prevail. An express repeal of or exemption from an earlier enactment is not more effectual than if it were created by implication. The only difference is in ascertaining the fact and

extent of the implied exemption or repeal.

9. That the Travancore-Cochin Legislature had the power to repeal all or any portion of the Travancore District Municipalities Act, 1116, cannot be disputed. It has not expressly done so. The only question is whether it has done so by implication. As already stated we take the view that it has.

10. Sutherland deals with implied repeals as follows:

"Attendant to, and dependent upon a recognition of the power to repeal a law lies the judicial doctrine of implied repeals." (Statutory construction, Vol. 1, 3rd Edition, page 460).

Two of the reasons for the doctrine as given by Sutherland are:

(1) that "the legislature cannot be accredited with the prowess nor have they the time to delve into the myriadic accumulations of laws which would be necessary if repeals are to exist only by express declaration"; and (2) that "the legislature is presumed to intend to achieve a consistent body of law.

11. The further contention of the petitioners is that even assuming that the Travancore-Cochin Motor Vehicles Act, 1125, had not impliedly repealed sections 286 and 287 of the Travancore District Municipalities Act, 1116, in so far as they related to motor vehicles those sections cannot be considered as operative subsequent to the extension of the Motor Vehicles Act, 1939, to Travancore-Cochin. There can be no doubt that the Travancore District Municipalities Act, 1116, is an "existing law" within the meaning of that expression as defined in Article 366(10) of the Constitution. It is equally clear that the Motor Vehicles Act, 1939, as it was extended to Travancore-Cochin only by the Part B States (Laws) Act, 1951, has to be treated as far as that State is concerned as a post-constitution enactment by Parliament on a concurrent subject. In these circumstances it is not disputed that Article 254 of the Constitution is not available to resolve the repugnancy between section 76 of the Motor Vehicles Act, 1939, and sections 286 and 287 of the Travancore District Municipalities Act, 1116.

12. The controversy has hence to be resolved on the basis of the general principles applicable to the subject. In view of our conclusion in paragraph 7 above, however, it is unnecessary to discuss those principles or apply them to the facts of this case. In the light of what is stated above, these petitions have to be allowed and we do so with costs, advocate's fee Rs. 50/- in each of the three cases.