

(1899) 12 AHC CK 0008
In the Allahabad High Court

M.J. Powell

APPELLANT

Vs

The Municipal Board of Mussoorie

RESPONDENT

Date of Decision : 15-12-1899

Acts Referred:

Citation : (1900) ILR (All) 123

Hon'ble Judges : Arthur Strachey, C.J.;Knox, J;Burkitt, J;Blair, J;Banerji, J;Aikman, J

Bench : Full Bench

Judgement

Arthur Strachey, C.J.—The petitioner in this case has been convicted and sentenced by a Magistrate of the Dehra Dun district for a breach of Rule 19, part 2 of the bye-laws made by the Municipal Board of Mussoorie under the North Western Provinces and Oudh Municipalities Act (No. XV of 1883). The first ground stated in the petition is as follows:--"Because the Magistrate could not legally take cognizance of the offence complained of, as no complaint was made either by the Municipal Board or by any person authorized by the Board on that behalf." That is the only point which the Division Bench dealing with this case has referred to the Pull Bench. It relates to Section 69 of Act No. XV of 1883, which provides that "a Court shall not take cognizance of an offence punishable under this Act, or the rules made under this Act, except on the complaint of the Municipal Board, or of some person authorized by the Board in this behalf. Now on the 27th April 1897, as appears from a copy of the minutes of the Board, the following resolution was passed under the head of "Appointment of Public Prosecutors." "Resolved that the Chairman, Vice. Chairman, Health Officer and Secretary be vested with authority u/s 69, Act XV of 1883, to institute prosecutions on behalf of the Board." In the present case a complaint against the petitioner of a breach of the bye-law in question was made to the Magistrate by the Secretary of the Board. There can be no doubt that the authority under which he professed to make the complaint was the resolution which I have just quoted. It is not shown or suggested that, apart from that resolution, the Board gave any authority for the prosecution. The question is whether, by reason of the

resolution, the Secretary was a person authorized by the Board in this behalf within the meaning of the section so as to entitle the Court to take cognizance of the offence on his complaint. On behalf of the petitioner it has been contended that the words "authorized by the Board in this behalf" do not include a general authority to prosecute in regard to offences under the Act or rules generally, such as that given by the resolution, but are confined to a specific authority to be given by the Municipal Board in relation to the specific offence for which the accused is to be prosecuted. In other words, that the case contemplated by the closing words of the section is one in which the determination to prosecute for the offence is the determination of the Municipal Board alone, and in which the Municipal Board having decided that there shall be a complaint, merely authorizes some person to lay that complaint before the proper Court. There is no authority to be found upon this point. It is clear that the section was enacted with a two-fold purpose. The object was, in the first place, to exclude prosecutions for what may be called municipal offences from the interference of irresponsible persons, and to secure that such prosecutions should have the guarantee of the responsibility of the Municipal Board. A further object, in my opinion, was to relieve the Municipal Board of the necessity of itself dealing with each individual case of prosecution for a municipal offence, and to enable it to assign that particular function to some other person or persons. Now the first complaint spoken of in the section is the complaint of the Municipal Board. It is clear that the Municipal Board can make a complaint. But, as it is a corporate body, the only way in which it can make a complaint is to authorize some person to make one on its behalf, just as it can only do any other act through the instrumentality of some agent. So that, if the section stopped there, such cases could only be prosecuted by the Municipal Board considering the individual case and the propriety of the prosecution, passing a resolution that the prosecution should be instituted, and directing its officer to take the necessary proceedings. That is how the matter would stand if the section ended with the words "Municipal Board." It is clear that the remaining words of the section were intended to provide for another sort of case. If the argument for the petitioner is sound, in a case where a Municipal Board desired not itself to make a complaint, but to authorize some other person to make one, it would have to adopt exactly the same procedure as I have just pointed out, it would have to adopt if making the complaint itself. The argument is that the authority there spoken of only means an authority to file the particular complaint, that authority being conferred after the Board had, as in the other case, itself determined on a prosecution by resolution passed at one of its meetings. It appears to me that such a construction involves two consequences, each of which is sufficient to condemn it. The first is that it renders the concluding words of the section absolutely superfluous. The second is that it entirely defeats what I think was the obvious intention of the Legislature that some relief at all events should be given to the Municipal Board, which has necessarily other and many duties to perform, without forcing on it that detailed and individual examination of every case which is required where the complaint is made by the Board itself. Of course the

wording of the section is not quite as exact as might be wished, because to some extent, and taken literally, the two parts of it overlap each other. A "complaint of the Municipal Board" in itself implies the Board authorizing some body to make the complaint, because, as I have said, the Board being a corporate body cannot make a complaint at all without authorizing some one to make it. Again, if the Board does authorize some person in the words of the second part to make a complaint, that complaint is, strictly speaking, the complaint of the Board itself. But when you look at the section with an eye to the object which the Legislature had in view, I think the meaning is pretty clear. "Complaint of the Municipal Board," I think refers to a case where the Board is the real author of the complaint, in the sense that the complaint is the result of the determination of the Board itself. The complaint spoken of in the last words of the section similarly means, in my opinion, a complaint which is the result of a determination, not by the Board itself but by some person authorized by the Board in that behalf. That appears to me to be the only way in which you can give effect to the distinction which the Legislature evidently had in view, and to all the words of the section which the Legislature has enacted. If this view is correct, it follows that the Legislature meant by the concluding part of the section to empower a Municipal Board to give authority to some other person, not merely to do the formal or mechanical act of putting a complaint before the Magistrate, which it would have to do if it desired to make the complaint itself under the first part of the section, but to determine whether there should be a complaint at all. Is there any thing in any word of this section which is inconsistent with this view? The words used are as general as possible:--"Authorized by the Board in this behalf." A general authority, that is an authority to act in all cases or in a class of cases, is a familiar form of authority to an agent or an officer. The word "authorized" would include it just as much as the narrower kind of authority, which consists in authorizing an agent merely to take specific action in a particular case. That the wider meaning is not an exceptional or anomalous one is further shown by the instances cited by Mr. Chamier of other enactments, such as Section 59 of the N.-W.P. Rent Act, 1881, Section 51 of the Code of Civil Procedure, and Section 19, explanation 2, of the Limitation Act, 1877, in which the same words "authorized in this behalf" are clearly used in the sense of a general authority. Then if the language used is wide enough, why should we go out of our way to place restrictions on it? The Government Advocate has pointed out what would be the result of restricting it in the manner suggested. In some of the larger Municipalities constituted under this Act he said--and I think with truth--that the section would be utterly unworkable if so restricted. In a large community with a multiplicity of local business, and where offences against bye-laws of greater or less importance are of constant occurrence, it is impossible that the Municipal Board should meet and deliberate and pass resolutions in every case before any complaint could be instituted. The meetings of the Board are subject to regulations as regards convening, notices to be sent to the members, and as to quorum, and so pre-suppose a machinery which often means considerable delay, and which could not possibly be applied as a preliminary to each and every

prosecution for a municipal offence. That is precisely the consideration which induced the Legislature to enact the concluding words of Section 69. I can see no a priori improbability, no considerations of public policy which would make it unlikely that the Legislature should entrust to a Municipal Board power to confer on other persons not only a specific authority to file a particular complaint, but a general authority to prosecute for municipal offences, including authority to determine whether a prosecution is desirable. Such a power might, it is said, be abused. If it were abused, a remedy might be found in Chapter V of the Act. That the Legislature itself regards such a power as one which may properly be given to a Municipal Board may be inferred from Section 186 of the Punjab Municipal Act, 1891, which is in terms practically identical with Section 69 of Act XV of 1883, but to which an "Explanation" is appended providing that "the committee may authorize persons to prosecute either generally in regard to all offences under this Act and the rules thereunder, or particularly in regard only to specified offences or offences of a specified class." The Burma Municipal Act, 1898, Section 195, contains a similar explanation. These provisions cannot, of course, be used for the purpose of construing Act XV of 1883, but they appear to me to support the view that there is no reason of public policy or convenience why a general authority should not have been included within the words which Section 69 uses. For these reasons I have come to the conclusion that the complaint in the present case was made by a person authorized by the Board within the meaning of Section 69, and that the first ground for the present petition therefore fails. This is my answer to the reference.

Knox, J.

2. I concur in the answer given and in the reasons therefor.

Blair, J.

3. I find myself constrained to give the same answer to the question propounded as has been given by the Chief Justice, and I find myself constrained to that conclusion by the consideration that another construction would impose on Municipal Boards burdens absolutely intolerable. The section appears to me to be unfortunately drawn, and there are points of view from which I should have been inclined to adopt another interpretation, but I cannot believe that the Legislature intended by that section to make Municipal institutions unworkable.

Banerji, J.

4. I would make the same answer to the reference as the learned Chief Justice. I find nothing in Section 69 of Act No. XV of 1883 to justify the contention that there cannot be a general delegation of authority by a Municipal Board in the matter of initiating and instituting complaints. The language of the section is wide and flexible enough to authorize a general delegation of the Board's discretion, and as the limitation of its provisions for which the petitioner contends will lead to great practical inconvenience, I see no reason for so construing those provisions as to give rise to such inconvenience.

Burkitt, J.

5. In this matter the argument *ab inconvenienti* is, in my, opinion, overwhelmingly strong. It is clear from the arguments which we have heard to-day that unless the construction put on Section 69 by the learned Chief Justice be adopted, it will be impossible for any but the smallest Municipalities in these Provinces to cope with the absolutely necessary work of prosecuting persons who have been guilty of breaches of Municipal bye-laws. For that reason, though I cannot wholly adopt the views of the learned Chief Justice, I am not prepared to record a dissentient judgment.

Aikman, J.

6. I concur in the answer proposed to be given to the reference by the learned Chief Justice and my brother Judges. The language of Section 69 of the N.-W.P. and Oudh Municipalities Act, 1883, is, in my opinion, susceptible of the interpretation for which the learned Government Advocate contends. That interpretation is, to my mind, the most natural construction of the section, as it is undoubtedly the most convenient, and it is the construction which has all along been placed on the section by the Boards which have had occasion to act under it.