

(1980) 02 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Appeal No's. 277 to 279, 214, 218, 504, 328 and 329 of 1974

Municipal Committee

APPELLANT

Vs

Kalu Lal and Others

RESPONDENT

Date of Decision : 11-02-1980

Acts Referred:

General Clauses Act, 1897 — Section 24, 31, 6

Citation : (1980) RLW 102 : (1980) WLN 79

Hon'ble Judges : P.D. Kudal, J;Mahendra Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.D. Kudal, J.—These eight appeals are directed against the judgment of the learned Addl. Sessions Judge, Bundi. As common questions of law are involved in all these appeals they are being disposed of by this single judgement.

2. The brief facts of the cases, which are relevant for the disposal of these appeals are that the non-petitioners were running four mills. The non-petitioners did not get their respective licenses renewed after the expiry of the period. The contention of the Municipal Committee is that the respondents have, thus violated bye-laws Nos. 1 and 13 of 1947. On a complaint filed on behalf of the Municipal Committee, Bundi the Assistant Collector and Magistrate First Class, Bundi sentenced the respondents to pay fine and in default of payment of fine to suffer simple imprisonment for violating the bye-laws Nos. 1 and 13 of 1947. The respondents feeling aggrieved against the orders Bundi filed appeals of the learned Asstt. Collector and Magistrate First Class, Bundi filed appeals before the learned Addl. Sessions Judge, Bundi praying that their conviction was against law and that it should be set aside. The contention of the respondents was that bye laws of 1947 have been repealed and the learned Magistrate erred in law in holding that these bye-laws were saved by Section 2(b) of the Rajasthan Municipalities Act, 1959.

3. The learned Addl. Sessions Judge allowed the appeals and held that the bye-laws of 1947, were not saved, and they stood repealed and as such, the conviction and Sentence of the respondents was illegal and was accordingly set aside.

4. The respective contentions of the learned Counsel for the parties have been considered and the record of the cases carefully perused. The U.P. Municipalities Act, 1916 was made applicable to the erstwhile State of Bundi in 1947. This position is not disputed by any of the parties. The impugned bye-laws were framed u/s 298(3) of the U P. Municipalities Act, 1916 (thereinafter mentioned as the Act of 1916) These bye-laws were brought into force by issuing a notification Bye-law No. 1 provides a compulsory licence for running a flour mill by power, and bye-law No. 13 provides a licence fee of Rs. 40/- per year, and also makes provision for its renewal. The Government of the United States of Rajasthan issued Ordinance No. 4 of 1949, which became operative from February 16, 1949. Section 4 of this Ordinance reads as under:

All laws and orders, rules, notifications, and other instruments having the force of law, which relate to Municipalities or to any particular Municipality which are in force in the whole or any part of the area of any covenanting State are hereby repealed;

Provided that (a) this repeal shall not affect the validity of any appointment, of any grant or appropriation of money or property, or any tax or impost, made or imposed under any such law, order, rules, notifications or instruments;

(b) nothing in this repeal shall affect the terms of remuneration or right to pension of any officer appointed before the commencement of this Ordinance;

(c) the Government of the United States of Rajasthan may by notification in the official Gazette make such provisions, general or special as they may think necessary or proper in consequence to this appeals and

(d) nothing in this section shall repeal the Udaipur City Municipalities Act, 1945.

5. In consequence of the promulgation of this Ordinance all law bye-laws, and orders relating to the Municipalities which were in force in any part of the areas of covenanting states were repealed. But the U.P. Municipalities Act, 1916 was adopted and made applicable to the areas to which the Ordinance applied The U.P. Municipalities Act, 1916, was made applicable with certain adaptations and changes The position which crystallizes is that the UP Municipalities Act, 1916 was already in force in the erstwhile State of Bundi by Ordinance No. 4 of 1949, the U.P. Municipalities Act, 1916, was again made applicable to the erstwhile State of Bundi with certain changes and adaptations. In the year 1951, the Rajasthan Town Municipalities Acts, 1951, came into force This Act was repealed by the Rajasthan Municipalities Act 1959.

6. The basic point for the consideration is, whether the bye-laws which were framed in the year 1947 under the UP Municipalities Act, 1916, continued to be

operative in the year 1970; whether these bye-laws of the year 1947 still survived despite the Ordinance No. 4 of 1949; and whether they were further saved by the repeal & saving Clause in 1961 and 1959 Acts" whether by virtue of Section 6 and 27 of the Rajasthan General Clauses Act, these bye-laws were saved. Section 6 of the Rajasthan General Clauses Act is para materia with Section 6 of the General Clauses Act, similarly Section 27 of the Rajasthan General Clauses Act is para materia with Section 24 of the General Clauses Act.

7. On behalf of the Municipalities Committee, Bundi it has been contended, that the Ordinance No. 4 of 1945 could not have created a vacuum and the bye-laws which were framed in the year 1947, could not be deemed to have been repealed by Section 4 of the Ordinance, It was also contended that Section 24 of the General Clauses Act saved these bye-laws and by no stretch of imagination it could be said that these bye-laws stood repealed by promulgation of the Ordinance No. 4 of 1947. It was also contended that the licence fee for running a flour mill is an impost and is as such saved by virtue of Section 4(a) of the Ordinance No. 4 of 1919. Reliance has been placed on The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., wherein at page 848, it has been held as under:

The construction will give reasonable effect to Section 31(4) of the Mines Act, 1923 and at the same time not frustrate the very salutary object of Section 24 of the General Clauses Act, One may pause here to remember that regulations framed under an Act are of the very greatest importance Such regulations are framed for the successful operation of the Act. Without proper regulations, a statute will often be worse than useless. When an Act is repealed, but re-enacted, it is almost inevitable that there will be some time lag between the re-enacted statute coming into force, and regulations being framed under the re-enacted statute. However efficient the rule-making authority may be it is impossible to avoid some hiatus between the coming into force of the re-enacted statute and the simultaneous repeal of the old Act and the making of regulations Often, the time lag would be considerable, It is conceivable that any legislature"; in providing that regulations made under its statute will have effect as if enacted in the Act, "could have intended by those words to say that if ever the Act is repealed and re-enacted (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the re-enacted statute, and thus the re enacted statute, for some time at least, will, be in many respects the dead letter the answer will be in the negative What ever the purpose be which induced the rules and regulations that they will have effect "as if enacted in the Act." It will be strange indeed if the result of the language used, be that by becoming part of the Act, they would stand repealed, when the Act is repealed. One can be certain that could not have been the intention of the legislature It is satisfactory that the words used do not produce that result. For if we apply the rule of harmonious construction, as has been pointed out above Section 31(4) does not stand in the way of the operation of Section 24 of the General Clauses Act.

8. A similar view was taken in *Neel v. State of WB* (2) AIR 1972 SC 2366. On the other hand, the learned Counsel for the respondents has contended that neither Section 6, nor Section 24 of the General Clauses Act saves the repeal of the bye-laws of 1947. It has also been contended that Section 4 of the Ordinance No. 4 of 1949 is not *para materia* with Section 2(b) of 1959 Act. Section 4 of the Ordinance 1949 specifically repeals all laws, orders, rules, notifications and other instructions having the force of law, while Section 2(b) of the Act of 1951 and 1959 save the bye-laws which are not inconsistent with these Acts. Reliance was placed on *Municipal Council Ajmer v. Satya Narain and anr.* (3) ILR (1962) Raj. 693 wherein it has been held that if it is possible to treat a bye-law under the repealed law to be bye-law under the repealing Act, the bye-law saved shall not be treated as repealed. All bye-laws can be deemed to be made under the repealed Act only when it can be made under the provisions of the Act, and not otherwise.

9. Reliance has been placed on *Municipal Board Vs. Sooraj Mal and Others*, wherein it has been held as under:

The rules regulating the stocking of the building materials in Municipal land which were in force in the former State of Kotah stood repealed by the United States of Rajasthan Municipalities Ordinance 4 of 1949, with effect from, 16-2-1949, the date of its enforcement. These rules, therefore, could not be pressed into service by the Municipality of Baran in 1950. Since after the commencement of the ordinance i.e. from 10-2-1949, the Municipality had not made any bye-laws for charging rent in connection with the occupation of Municipal land by the residents-Section 293 did not come into play and the issue of warrant of attachment for the recovery of such rent together with penalty was beyond the limits of its due authority and, therefore, unlawful. The only provision of the Act which could apply was Section 201 under which the Municipality could request the Collector to recover the rent as arrears of land revenue.

10. Whether these bye-laws of 1947 are saved or not, has to be gathered from the provisions of Ordinance No. 4 of 1949. A proper construction and interpretation of Section 4 of ordinance No. 4 of 1949 clearly exhibits that it was intended to repeal all Acts, bye laws, rules and notifications which were in force in the erstwhile native States which were comprised in the United States of Rajasthan. The intendment is clear and specific. Where the intendment is clear and specific, the impugned bye-laws could not be saved by the assistance of Section 6 or Section 24 of the General Clauses Act. Bye-laws for the regulation and licence of flour mills could not have been framed u/s 46(1)(b)(vi) of the Rajasthan Town Municipalities Act, 1951. Similarly, such bye-laws could have been framed u/s 90(1)(iv) of the Municipalities Act 1959. But no such bye laws framed. A bye-law which stood repealed by the Ordinance of 1949 can by no stretch of imagination be revived by the saving clauses in these Acts. The effect of repealing, a statute is to obliterate it completely from the record as if it had never existed. It must be considered that as if such a law never existed.

11. Licence fee is neither a tax, nor an impost. This is a settled position of law and under such circumstances, the provisions Section 4(a) of Ordinance No. 4 of 1949, is not applicable to the facts and circumstances of the present case.

12. As the intendment of Section 4 of Ordinance No. 4 of 1949 Is explicit and clear & admits of no exception we have no hesitation in holding that, though, the U. P Municipalities Act 1916 was re applied to the erstwhile State of Bundi with certain adaptation & changes, the bye-law of 1949 were not revived or saved. Accordingly, we have no hesitation in holding that the bye-laws of 1947 have been completely repealed Ed obliterated from the statute. Under such circumstances, the view taken by the learned Addl. Sessions. Judge was correct.

13. For the reasons stated above, we do not find any force in the appeals and accordingly dismiss them.