

(1937) 09 MAD CK 0038
In the Madras High Court

President, District Board, Kistna, Masulipatam

APPELLANT

Vs

Keneru Lakshmayya

RESPONDENT

Date of Decision : 13-09-1937

Acts Referred:

Citation : AIR 1938 Mad 227

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The District Board of Kistna has brought these suits against the defendants who are motor bus proprietors for a permanent injunction restraining them from plying their motor cars on the roads of the District Board of Kistna without a license, and for recovery of license fees or damages from the defendants for running their respective motor vehicles without licenses. The District Munsif of Masulipatam discussed the various points of law that arose in a very elaborate judgment and came to the conclusion that the District Board was not entitled to an injunction, that they were not entitled to the recovery of license fees as such; but that there was nothing in law to prevent the District Board from recovering damages for damage to their roads; and he has assessed the damages on the basis of the license fees which the defendants did not pay. The District Judge, while agreeing with the trial Judge that the suit was maintainable, held that the action of the District Board in granting temporary licenses was ultra vires and that the defendants, although in fact they only received licenses for two months, must be deemed to have obtained licenses for a full year, as the District Board was not entitled to refuse them licenses for that period. He therefore allowed the appeals and dismissed the suits.

2. The facts that gave rise to the trouble between the Kistna District Board and the various bus proprietors in the District were that certain proposals had been sent to Government for a modification of the bye-laws, so that a higher rate for license fees might be charged. There was also some question as to the legal position that would arise from a bifurcation of the District Board. While these

proposals were pending with the Government, the District Board were unwilling to grant licenses for the full period of a year and granted licenses for two months only, debiting the bus proprietors with one-sixth of the annual rate. Upon the expiry of that two months, the applicants made no application for further licenses, but continued to ply their buses without license until the end of the year. It appears from the correspondence that has been filed that other bus proprietors did apply for renewals of their licenses and were told that license would be granted for the remaining period of the year upon their paying the proportionate share for the remaining months in the year of the new rate of license sanctioned by the Government.

3. A point was raised in the Courts below whether the District Board, in view of the provisions of bye-law 4, Sub-section 1, could issue licenses for a period less than one year. The District Munsif seemed to think that they could and held that in any event the defendants were estopped from denying the right of the Board, in that they had accepted the licenses. The District Judge thought that there could be no question of estoppel, because the actions of the proprietors in applying for licenses for a year and in running their buses for a year showed that they did not accept the terms of the license, while the evidence let in on behalf of the plaintiff did not show that there was an acceptance of the license for two months. I have been taken through some of the more important evidence on this point and there can be no doubt that the motor bus proprietors in the Kistna District were well aware of the discussions that were taking place in the Council and the proposals to enhance the rates for the granting of licenses. They were also aware, of course, of the proposal to bifurcate the District Board. It is also equally clear from the evidence that the District Board intended to extend the licenses without question subject to the payment of such enhanced license fees as might be sanctioned by the Government. It has been contended that there is nothing to show that the bus owners were able to read the stipulation in the licenses granted that they were good only for two months. In view of the fact that the bus owners had been protesting to the District Board against any enhancement of license fees, the defendants cannot be heard to say that they were not aware of the stipulation of the license. Even if they did not know English, it would be their business to find out what was written in their licenses. After setting out the particulars regarding the description of the vehicle, fees paid etc., there was a note in the license to this effect:

In view of the fact that revised bye-laws which are sent up for the formal approval of Government will come into operation shortly, and in view of the fact that an elected Board will come into office ere long, this license is granted only from 1st April 1929 to 31st May 1929.

4. The defendants were therefore well aware of the fact that the District Board purported to issue this license for a period of two months only. Had the defendants refused to accept the license for such a short period, then the District Board would have had the option of either issuing a license for a year or refusing

it altogether; and it would appear from the conduct of the officers of the Board and the correspondence that took place that it is probable that the Board would have refused to issue licenses for a whole year in view of the fact that the license fees which were expected to come into force shortly were very much higher than the license fees then current. At any rate, by accepting these licenses, the defendants made it impossible for the District Board to exercise any discretion in this matter, and prima facie they would be estopped from denying that the District Board had authority to issue licenses for a period of two months only. The argument of the learned Counsel for the defendants is that even if it is true that the action of the defendants showed that they accepted the two months' license, there cannot be any question of estoppel if the contract was itself ultra vires of the Board. Considerable reliance is placed on a case, *Gobinda Ramanuj Das Mohanta Vs. Ram Charan Das and Another*, , where a portion of the judgment of the Lord Chancellor in *Duke of Leeds v. Earl of Amherst* (1846) 2 Ph 117 is referred to:

If a part having a light stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the act is in progress, he cannot afterwards complain. That is the proper sense of the word acquiescence.

5. But Page J. in the *Calcutta* case¹ adds but acquiescence cannot rehabilitate or render valid a transaction which is ultra vires and illegal". It is not contended here that a contract which is illegal can be made legal by acquiescence; and the doctrine of estoppel does not depend altogether upon the legality of a contract. Moreover Page J. in considering the facts of that case, came to the conclusion that there was no acquiescence by the parties and that neither of them was aware of the circumstances that would amount to a representation which led one party to do a certain act to his own prejudice. Other cases have also been referred to, of which a typical one is *G.N.W.O. Ry. v. Charlabois* (1899) A.C. 114

It is quite clear that a company cannot do what is beyond its legal powers by simply going into the Court and consenting to a decree which orders that the thing shall be done, If the legality of the act is one of the points substantially in dispute, that may be a fair subject of compromise in Court like any other disputed matter. But in this case both the parties, plaintiff or defendant in the original action and in the cross-action, were equally insisting on the contract. The President, who appears to have been exercising the powers of the company, had an interest to maintain it, and took a large benefit under the judgment. And as the contract on the fact of it is quite regular, and its infirmity depends on extraneous facts which nobody disclosed, there was no reason whatever why the Court should not decree that which the parties asked it to decree. Such a judgment cannot be of more validity than the invalid contract on which it was founded.

6. An extract from Halsbury has also been read somewhat to the same effect. It is clear that what has been considered in Halsbury in the passage referred to and

in all the cases above quoted is the liability of a company for an act of its agent or director. Any person dealing with a company is supposed to be acquainted with its articles and memorandum and therefore to be aware of the powers that the directors have. If therefore one enters into a contract with a company and such a contract is beyond the powers of the director, the company cannot be bound by it; and even if the company subsequently ratifies the contract without knowledge of the fact that it was a contract entered into ultra vires, the company cannot be bound by the contract. The present case does not depend upon this principle at all. The District Board entered into the contract by its agents and the District Board did not dispute the liability arising out of the contract. The act of the special officer was the act of the District Board, and therefore the ordinary laws of estoppel that arise out of the conduct of principals apply equally well to a contract of this nature entered into by the District Board through its executive officers with the defendants.

7. I may refer before leaving this point to a case which I do not think has much importance but deserves mention as the learned Counsel for the defendants has stressed it, viz. *Ellammal v. Emperor* (1928) 15 AIR Mad 164 As this was a criminal case, the learned Judges who decided it were considering primarily what the intention of the accused person, was; had the accused person who had applied for the license the right to use a private market? and the decision turned upon the facts that it was a private market and that there was no reason at all why permission to use the market should be withheld, provided that the requirements as to sanitation and so on were complied with. The important section relied on by the accused in that case was one to the effect that if orders on an application for a license are not communicated within 30 days after receipt of the application by the President, the application should be deemed to have been allowed for the year. It was held that the order of the Board was ultra vires and therefore no order at all and that it had therefore to be considered that the license had not been refused. Entirely different considerations arise in the granting of motor bus licenses; and the ultra vires nature of an order does not affect the question of estoppel.

8. The learned Counsel for the defendants has sought to uphold the decree of the lower Appellate Court by contending that She suit was not maintainable, a point on which both the lower Courts were in agreement. It is unnecessary for me to discuss in detail the considerable amount of case law that has been referred to in this case, as the learned District Munsif has discussed most of the cases very carefully and has, I think, correctly interpreted them. The line of argument of the learned Counsel for the defendants is that the owner of the bus had the Common law right to take his bus over any road he pleased and that the Legislature, by the Local Boards Act, has not taken away that right but has only compelled bus owners to comply with certain formalities one of them being the taking out of a license. If the license is not taken out, the only remedy of the Board is to take action against the bus owners for failing to comply with the terms of the Act and to ask the Court to invoke the powers given to it under the Act; for the Board

has no cause of action outside the Local Boards Act. I cannot accept the correctness of the contention that the owner of a motor bus has a common law right to take his bus over any road subject to compliance with a formality. When the common law right to use of the roads was being built up, there were of course no motor cars in existence; and it was always understood that the right to the road was one to use it in some recognized and usual manner. If in those promoter car days, some vehicle had been driven at a high speed along the roads and caused as much damage as a motor car would do to any ill-constructed road, I doubt very much whether it would have been held that the owner of such a vehicle had the common law right to do what he did and to cause unusual destruction to the road. When motor cars first came into existence, it was incumbent upon an owner to arrange that a man should walk in front of the car as a warning that a dangerous vehicle was coming. Obviously that prevented any excessive speed on the part of the motor car and the motor car could not have done any more damage than any other carriage or cart. As the speed of motor cars increased, the control of the use of these cars increased with it; and I doubt whether at any time the motor vehicle has had an unrestricted common law right to use the highway. However assuming that such a right did at one time exist or must be presumed to have existed from the mere fact that a motor bus is a vehicle that runs along roads, it seems clear to me that that right was taken away by the Local Boards Act, unless the person who wished to use the highway got permission to do so from the local body having jurisdiction. He did not in my opinion ever have a right subject only to his complying with some formality. He had no right at all to use the road unless he got permission from the local body to do so, although Courts have held that permission should not be withheld except for good reason.

9. In the present case there was no question of withholding permission, for no permission was sought for. Most of the cases referred to in connection with the remedy of the Board against a person who fails to take out a license are cases in which the local bodies have been given some power to regulate certain acts within their jurisdiction and it has been held that where a body has been given certain powers under a statute its remedy for disobedience of the orders of the body with regard to those acts must be sought within the Act itself. *Attorney-General v. Sharp* (1931) 1 Ch 121 is a fair example of the type of cases on which the defendants rely. There, the owners of a certain piece of land erected houses; but did not make allowance for roads through the estate of the nature required by the bye-laws of the borough. The borough thereupon brought a suit for an injunction restraining the defendants from proceeding any further with their work and for a declaration that the borough was entitled to pull down any work begun or done by the defendants in contravention of the bye-laws. It was held on the facts of the case (1) that the defendants were not laying out or intending to lay out the highways as new streets within the meaning of the bye-laws; (2) that the bye-laws could not be enforced by action for an injunction, but only by the special remedies thereby provided, or by way of information by the Attorney-

General; and (3) that no such declaration as asked for ought to be made. It is partly on account of these cases that the learned District Munsif refused to grant the declaration and injunction prayed for by the District Board. But it was not considered either in that case or in any of the cases referred to what rights the body would have had if its private property were damaged. If the running of the defendants' bus was a nuisance to the public, and the rights of the public were in some way infringed by the continual running of these buses without license, then, as was actually the case in *Attorney-General v. Sharp* (1931) 1 Ch 121 the Advocate-General could bring an action on behalf of the public. The question whether the civil rights of a local body had been infringed did not there come up for discussion. The principle that the learned Counsel for the appellants seeks to apply has been very well set out in the extract from *Bhaishankar v. Municipal Corporation of Bombay* (1907) 31 Bom 604 and *Venkata Siva Rao v. Rama Krishtnayya* (1926) 13 AIR Mad 246

10. Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of the Act, then, except so far as is otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case, there is no ouster of the jurisdiction of the ordinary Courts; for they never had any.

11. The Local Board however do not contend that there is anything in the Act which empowers them in a case like the present to oust the jurisdiction of the Civil Court. They merely rely on the fact that they, like any private person, have a right to bring a suit against any person who does damage to their property, and the damage alleged in the present case is that of the wearing out of the roads which are the property of the District Board. No doubt the District Board has no complete right of property over the roads. As was said by King J. in *Uppalapati Suryanarayaneswara Jogi Jagannadharaju Garu and Another Vs. Taluk Board and Others*, ,

The property vested is such property and such property only as in necessary for the control, projection, and maintenance of the street as a highway for public use.

12. The District Board has to spend considerable sums of money in maintaining the road; and if any person who has no authority to use the road causes damage to that road, then I can see no reason why the District Board should not bring a suit for damage caused to its road by the unauthorized use. I therefore agree with both the lower Courts that the suit as framed for damages was maintainable. The last question that arises for consideration is the quantum of damages to which the plaintiffs are entitled. The learned Munsif thought that the amount of the license fee was a very good guide to the Court in arriving at a reasonable estimate of the damages. Unfortunately, no satisfactory evidence has been let in on this head. The Report by the District Board Engineer to the Municipality recommending certain rates to be adopted in licensing buses has

been referred to; but the District Board Engineer himself has not been examined. The document, even if admissible, can have little value. One naturally presumes that in the granting of a license the local body not only allows for any injury that may result to its road by the use of the bus, but also for the pay of the staff whose time is taken up in dealing with licenses, for office expenses and so on, and for some reasonable profit to assist the general revenues of the local body. According to the report of the District Board Engineer, the license fee collected from buses and cars is insufficient for the maintenance of roads, but there is no evidence in support of this. I see therefore no ground for thinking that the actual damage caused to the road by the running of the defendants' buses for ten months was greater than the amount of license fee that they had already paid, which was that for a full year at the old rates.

13. I therefore find on this point that the plaintiffs have not proved that they are entitled by way of damages to any larger sum than what they have already been paid by way of license fees. On that ground the suit has to be dismissed; but as most of the discussion in three Courts has been taken up by a consideration of technical pleas relating to the maintainability of the suit and other issues arising out of the written statement, with regard to which the defendants have been unsuccessful, the parties will be ordered to pay each his own costs in all the Courts.