
(1960) 02 AHC CK 0010
In the Allahabad High Court
Case No : Special Appeal No. 232 of 1956

Rama Kant

APPELLANT

Vs

Cantonment Board, Allahabad

RESPONDENT

Date of Decision : 11-02-1960

Acts Referred:

Cantonments Act, 1924 — Section 282

Citation : AIR 1960 All 719

Hon'ble Judges : S.N. Sahai, J; A.P. Srivastava, J

Bench : Division Bench

Advocate : S.N. Kacher, for the Appellant; S.C. Khare, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Srivastava, J.—This is a petitioner's special appeal directed against an order of Mr. Justice Mehrotra dismissing a petition filed by him under Article 226 of the Constitution.

2. The appellant is the proprietor of a brick kiln situate in village Tar Bagh, Mazra Umarpur Neema, tahsil Chail, district Allahabad. The brick kiln is situate just outside the limits of the Cantonment of Allahabad. Near its north east corner starts a road of the Cantonment of Allahabad known as Meagharganj Road or Ravidas Road. That road is under the control and management of the Cantonment Board. In the exercise of the powers conferred upon it by Clause (4) of Section 282 after obtaining the approval of the Central Government u/s 283 of the Cantonments Act 1924 (Act No. II of 1924) the Cantonment Board has framed certain bye-laws for the regulation and prohibition of traffic within its area.

One of the bye-laws authorises the Board to prohibit either absolutely or during such hours as may be notified by the Cantonment Board in that behalf on any road within the Cantonment limits traffic of a particular kind mentioned in the bye-law. Another bye-law provides that if a notice prohibiting vehicular traffic is

displayed on a particular road no person shall drive or propel any vehicle along that road.

The bye-laws also provide for a penalty in the case of their breach. Acting under these bye-laws the Cantonment Board first passed a resolution bearing No. 10 on 29-9-1955 according to which the Meagharganj Road (Ravidas Road) in the Cantonment was prohibited for motor lorries with immediate effect. Later by resolution No. 23 dated 8-11-1955 the earlier resolution was slightly modified and in its modified form it provided that traffic by motor lorries or country carts would be prohibited on the Meagharganj Road (Ravidas Road) with immediate effect except when actually crossing or proceeding to a bungalow, house or shop which cannot be reached by any other road within the Cantonment area.

The appellant claimed a right to carry his bricks from his brick kiln along the Meaghafganj Road through motor lorries. As he felt that that right of his had been wrongly infringed by the bye-laws and the resolutions passed thereunder by the Cantonment Board, he filed the writ petition out of which this appeal has arisen. He prayed for a writ in the nature of mandamus to be issued commanding the Cantonment Board not to enforce resolution No. 23 dated 8-11-1955 otherwise than in accordance with law. He also prayed that resolution No. 10 dated 29-9-1955 and resolution No. 23 dated 8-11-1955 be quashed because they were in excess of the authority possessed by the Cantonment Board. Though he did not claim any specific relief in respect of the bye-laws his contention was that the resolutions were bad because the bye-laws under which they had been framed were invalid.

3. The petition was opposed on behalf of the Cantonment Board mainly on two grounds. It was contended in the first place that the appellant had no right at all to ply his motor lorries over the road in question and could not therefore maintain the petition. The other ground was that the impugned resolutions and bye-laws were quite valid and could not therefore be questioned by the petitioner.

4. The learned Judge, who heard the petition, was of opinion that as the right to pass over the Meagharganj Road, which the appellant claimed was a disputed one he was not entitled to relief under Article 226 of the Constitution. He was also of opinion that the main grounds on which the validity of the bye-laws and the resolutions were questioned were untenable. He therefore dismissed the petition.

5. The petitioner has come up in appeal and challenges the correctness of the view taken by the learned Judge.

6. We think it is not necessary to go into the question whether the appellant has a right to take his lorries over the road in question. The right is seriously disputed and writ proceedings do not appear to be appropriate for its determination. We shall therefore proceed on the assumption that the appellant has a right to take his lorries over the road in question, that the right has been affected adversely by the impugned bye-laws and resolutions and that the

petition was maintainable. The question to which we must, therefore, address ourselves is whether the bye-laws or the resolutions in question were invalid.

7-8. Before the learned Judge the validity of the bye laws and the resolutions was questioned on two grounds :

(1) That the bye-laws could have been framed only in the exercise of the powers conferred by Clause (4) of Section 282 of the Cantonments Act. That clause authorised the Board to frame bye laws "for the regulation or prohibition of any description of traffic in streets." If the Board was framing bye-laws under that clause it should have provided in the bye-laws themselves the necessary details about the streets in respect of which the prohibition, or regulation was to apply, the kind of traffic which was to be regulated or prohibited and the hours in which the regulation or prohibition was to be enforced. It was not open to the Board to frame the bye laws in general terms and then settle these important details by resolutions.

Bye laws to be framed u/s 282 of the Act are to be subject to the scrutiny of the Central Government u/s 284 and if the necessary details were not being given in the bye-laws the Central Government could not have any opportunity of scrutinising them and of deciding whether they were to be approved and confirmed or not. (2) That u/s 283 of the Act the penalty for the breach of the bye laws must have been provided in the bye-laws themselves. In the present case the penalty was not provided by the bye-laws but was provided by a resolution which was passed by the Board.

(2) The second ground was probably taken because the petitioner was not aware of the details of the bye-laws. The notification by which the bye-laws were published is No. 23/3/G/C and L/45 dated 26-5-1945. There are 16 bye-laws published in that notification. The 16th bye-law provides for the penalty in case of any breach of any of the bye-laws. The petitioner was therefore not correct in saying that in the present case the penalty for the breach of the bye laws had been provided not in the bye-laws themselves but by a resolution. There was therefore no contravention of Section 283 of the Cantonments Act.

9. The first ground is equally untenable. There is nothing in Section 282 of the Cantonments Act which requires all kinds of details to be mentioned in the bye-laws that are framed under that provision. The section is only an authorising section. The matters in respect of which bye-laws can be framed under the section are enumerated in the 39 clauses that are appended to it. A perusal of these clauses shows that they are intended only to indicate the subjects on which the bye-laws can be framed. Thus the subject mentioned in the fourth clause is "the regulation or prohibition of any description of traffic in the streets."

That mentioned in Clause (7) is "the prevention and extinction of fire". We find nothing in any of the clauses mentioned in the section which requires that the bye-laws should contain a mention of all possible! details in respect of the situations in which they are to be enforced or the circumstances in which they

are to apply. In case of bye-laws for the prevention and extinction of fire, for instance, if a bye law was being framed empowering the Board to require all places where inflammable material was stored to instal fire extinguishers could it be expected to be provided in the bye-laws themselves as to which brand of extinguisher was to be prescribed for fuel shops and which for cinemas ?

Similarly in bye-laws relating to the prohibition and regulation of traffic the bye-laws could not themselves provide what kind of traffic was to be prohibited or controlled and in which street. All the possible situations in which such regulation or prohibition was necessary could not obviously be anticipated. In the circumstances the bye-laws could only confer general power to be utilised where occasion arose after passing the necessary resolution. There appears to be nothing in Section 282 which requires that if the Board frames bye-laws it should frame them after providing for all details or not at all. It is therefore not possible to accept the contention that bye-laws conferring general powers to be utilised on specific occasions by means of resolutions could not be framed.

10. There could be no question of delegation of power because the bye-laws as well as the resolutions were to be passed by the Board itself. The Board was not laying down general rules and leaving the details to be filled in by a subordinate authority.

11. There could also be no breach of Section 284 because in the present case the bye-laws had been approved and confirmed by the Central Government as required by that section and had been published in the Official Gazette. Had the Central Government thought that the bye-laws were vague or that they did not have the necessary details it was open to it to refuse its approval or confirmation. That, however, was not done.

12. We are therefore unable to accept the contention of the learned counsel for the appellant that the bye-laws were invalid because they themselves did not contain any provision that motor lorry traffic on the Meagharganj Road would be regulated or prohibited.

13. We think that u/s 282 the Board could frame a bye-law providing for the necessary regulation or prohibition of particular kinds of traffic in the streets of the Cantonment leaving it to be decided as occasion arose by resolutions as to in respect of which street and in respect of which kind of traffic the regulation or prohibition was to be enforced at a particular time. The bye-laws as well as the resolutions could not therefore be questioned on the ground that the provisions of Section 282 or 283 were not strictly followed.

14. The appellant could not therefore get the bye-laws or the resolutions quashed nor could he prevent the Cantonment Board from enforcing the impugned resolutions.

15. The petition of the appellant was there fore rightly rejected and the appeal must fail as with out force. It is accordingly dismissed with costs.