

(1969) 09 GUJ CK 0005
In the Gujarat High Court

Shantilal Nanabhai

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 17-09-1969

Acts Referred:

BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948 — Section 52, 60, 63
GUJARAT MUNICIPALITIES ACT, 1963 — Section 60, 68

Citation : (1970) 2 LLJ 343

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Judgement

N.G. Shelat, J.—The facts giving rise to this reference, broadly stated are that the accused has been running a shop in the name of C.N. Brothers & Co. within the municipal limits of Surat. On 15.5.1968 Mr. T.A. Vaziri, the Inspector under the Bombay Shops and Establishments Act for Surat Municipal Corporation, visited that shop, and found that the accused had not got the registration of his shop renewed for the year 1968 though required u/s 52 of the said Act. He, therefore, made an application for obtaining sanction to prosecute the accused from the Municipal Commissioner. After obtaining the same, he lodged the complaint on 2.8.68 against the accused for an offence u/s 52 read with Section 7(6) of the Bombay Shops and Establishments Act, hereinafter to be referred to as the "Act". The learned Magistrate after considering the effect of the evidence adduced convicted and sentenced him to pay a fine of Rs. 25 or, in default, to suffer simple imprisonment for one day for the same. Feeling dissatisfied with that order, he preferred Criminal Revision Application No. 17 of 1969 in the Court of the Sessions Judge at Surat. That application was heard by the learned Additional Sessions Judge, Surat. In his view, since the Commissioner of the Corporation was not duly authorised to give sanction for prosecuting the accused as required u/s 60(1) of the Act, the complaint was not tenable and the accused was entitled to be acquitted. He, therefore, made a reference to this Court u/s 438 of the Criminal Procedure Code with a recommendation that the order of conviction passed against the accused by the learned Special Judicial Magistrate,

First Class (Muni) on 9.12.1968 in B.M.C. Summary Case No. 2911 of 1968 be set aside.

2. The short point that arises to be determined in this reference is whether the sanction accorded for filing the complaint by the Municipal Commissioner was valid without his being delegated with the power to so sanction as required u/s 60(1) of the Act.

Section 60(1) of the Act runs thus:

60. (1) No prosecution under this Act or the rules or orders made thereunder shall be instituted except by an Inspector and except with the previous sanction of the District Magistrate or the local authority, as the case may be.

Then comes the proviso which reads thus:

Provided that any local authority may direct that the powers conferred on it by this Sub-section shall, in such circumstances and subject to such conditions, if any, as may be specified in the direction, be exercised by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation by its Municipal Commissioner or Deputy Municipal Commissioner.

Now it is common ground that the sanction for the prosecution is necessary and that can be granted by the local authority as contemplated in Section 60(1) of the Act. The local authority being the Municipal Corporation in the present case, by reason of proviso to this Sub-section, can, if it so chooses, empower or delegate its powers to its Municipal Commissioner of Surat who has sanctioned this prosecution has not been so delegated with any such power by the local authority such as the Municipal Corporation of Surat u/s 60(1) of the Act. The contention, however, made out by Mr. Shethna, the learned Advocate appearing for the Municipal Corporation of Surat, is that the proviso to Section 60(1) of the Act is of an enabling nature and it does not take away any of the powers given to the Municipal Commissioner under the provisions of the Bombay Provincial Municipal Corporations Act, 1949. According to him, by reason of this proviso, the local authority may direct that the powers conferred on it by this Sub-section be exercised by its standing committee or by any committee appointed by it in this behalf, or in case the local authority be a Municipal Corporation, by its Municipal Commissioner or Deputy Municipal Commissioner. It does not, therefore, take away the authority of the Municipal Commissioner if otherwise given to him under the provisions of the Bombay Provincial Municipal Corporations Act, 1949. Therefore, for showing that the Municipal Commissioner had such powers, he invited a reference to certain provisions of that Act. He referred to Section 63 in Chapter VI of the Act which refers to the duties and powers of the Corporation and its officers. Sub-section (24) thereof refers to its fulfilment of any obligation imposed by or under this Act or any other law for the time being in force. Then Section 68(1) was referred to and it runs thus:

68. (1) Any power, duties and functions conferred or imposed upon or vested in the Corporation by any other law for the time being in force shall, subject to the provisions of such law and to such restrictions, limitations and conditions as the Corporation may impose, be exercised, performed or discharged by the Commissioner.

On a plain reading of this provision, it appears clear that whenever the Corporation had to exercise any powers etc. under any other law, i.e., other than the Municipal Corporations Act, it could also do so through the agency of the Commissioner of the Corporation. But those powers, duties and functions have to be exercised or performed "subject to the provisions of such law" as stated therein. Mr. Shethna, however, urged that no limitations or restrictions are imposed in the Shops Act so as to say that he cannot exercise the powers of the local authority such as the Corporation which he had u/s 68(1) of the Municipal Act. That contention has no substance for the simple reason that Section 60(1) of the Act clearly empowers the local authority to exercise that power and if it wanted to delegate that power to its Commissioner, it could do so under the proviso. In other words, the Municipal Commissioner has to act subject to this provision and if it does not specifically empower him to exercise any such power, he cannot do so. It is only the local authority, i.e., the Municipal Corporation of Surat, which can do so u/s 60(1) of the Act. His general powers u/s 68(1) of the Municipal Act cannot help him while they are to be exercised under any other law, and not under the Municipal law, and it is that law which prevails. He must get that authority under the provisions of that law. The provisions of Shops Act do not recognise him as an authority to sanction the prosecution under that Act and he would be recognised if he is so authorised by the Corporation which otherwise had alone that power. The fact that such powers can be delegated to even the Deputy Commissioner of the Corporation shows that the Legislature contemplated delegation of such powers to its officers, and did not intend to allow any such powers to be used by the Municipal Commissioner unless authorised to do so by passing any resolution or making any rule to that effect. No such power or authority is delegated to him and therefore the sanction awarded by him is invalid and cannot be effective in law. The complaint would thus be without any valid sanction and thus it cannot be entertained u/s 60(1) of the Act. The learned Additional Sessions Judge was, therefore, right in so holding and I, therefore, accept the reference and pass the order proposed by him in the case.

3. In the result, therefore, the reference is accepted and the order of conviction and sentence passed by the learned Magistrate in the case is set aside. The fine, if paid, is directed to be refunded to the accused.