

(1967) 12 AHC CK 0027
In the Allahabad High Court
Case No : Criminal Reference No. 213 of 1967

Shiv Narain Chaudhri

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-12-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 432(1)
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 239(E)(a)
(iv)

Citation : (1968) 38 AWR 352

Hon'ble Judges : D. Singh, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.D. Singh, J.—Sri Shiv Narain Chaudhry, the Appellant before the Sessions Judge, Allahabad, was found guilty u/s 240 of the UP Kshettra Samitis and Zila Parishad Adhiniyam (XXXIII of 1961), to be referred to hereafter as the Zila Parishad Act and fined a sum of Rs. 200/- for running a brick kiln with two chimneys without having obtained a licence therefor from the Zila Parishad. Sri Shiv Narain Chaudhary went up in appeal to the Sessions Judge before whom it was contended that the bye-laws which require the obtaining of licence and the payment of licence fee were invalid as the fee was levied without there being any rendition of service by the Zila Parishad in respect of the brick kilns and consequently amounted to a tax and not a fee. The Sessions Judge appears to be of opinion that it was so; but since he thought that in view of Section 432 of the Code of Criminal Procedure he could not declare the bye-laws levying the (fee) invalid or ultra vires, he has made this reference under the aforesaid section for decision of this Court.

2. It appears to me, however, as was conceded by the Learned Counsel appearing for Sri Shiv Narain Chaudhry that the reference is incompetent. A reference u/s 432(1) of the Code of Criminal Procedure can be made only when

the case before a court "involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case and is of the opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative...."

3. It is, therefore, only when "an Act, Ordinance or Regulation" or any provision therein is in the opinion of the Court invalid or inoperative that a reference is to be made Under Sub-section (1) of Section 432 of the Code of Criminal Procedure. The levy of licence fee for running a brick kiln is made under certain bye laws which have been framed by the Allahabad Zila Parishad u/s 239(2), Clause (E)(a)(iv) of the Zila Parishad Act. These bye laws have to be confirmed by the State Government and were so confirmed Under Sub-section (1) of Section 242, but even so they remain bye-laws framed by the Zila Parishad. It is obvious that these bye-laws are neither an Act nor an Ordinance. The only thing which remains to be considered is whether they can be treated as a "Regulation", but the expression "Regulation" is defined in the section itself in the explanation which follows Sub-section (1) of Section 432. This explanation reads:

Explanation--In this section "Regulation" means any regulation of the Bengal, Bombay or Madras Code, or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

4. The bye-laws which have, now been framed by the Zila Parishad are definitely not a Regulation of the Bengal, Bombay or Madras Code. The Regulation as defined in Section 3(50) of the General Clauses Act X of 1897 means:

a Regulation made; by the President Under Article 240 of the Constitution and shall include a Regulation made by the President Under Article 243 thereof and a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935.

A Regulation is defined in Section 4, Clause (36) of the UP General Clauses Act I of 1904 as:

"regulation" shall mean a regulation made under the Government of India Act, 1870.

5. It is clear, therefore, that the bye laws framed by the Allahabad Zila Parishad are not even a regulation, with, in the meaning of the General Clauses Act, 1897 or the UP General Clauses Act, 1904.

6. A view has been taken in Akharbhai Nazarali Vs. Md. Hussain Bhai, that the rules framed by the Central Government u/s 5 of the Employees Provident Fund Act XIX of 1952 are a regulation within the meaning of Section 432 aforesaid. It is pointed out by H.R. Krishnan, J. in the aforesaid case:

The word "regulation" in that section is used in a very general sense equivalent

to any secondary legislation in other words, any rule or what amounts to a rule, made by the Government in exercise of powers given by an enactment and itself having the force of law; law itself is separately mentioned.

I find it difficult, however, to agree with the view that the word "regulation" has been used in a general sense, much less could it be said to have been used in a very general sense. As a matter of fact the expression "regulation" has been defined in the Explanation contained in Sub-section (1) of Section 432 itself and its definition is not as "including" such and such thing, but as "meaning" what is described in the explanation thereof. The word "regulation" has, therefore, been used in a very restricted and technical sense as meaning those regulations only which are regulations, of the Bengal, Bombay or Madras Code or regulations as defined u/s 3(50) of the General Clauses Act, X of 1897, or Section 4(36) of the UP General Clauses Act, I of 1904. It appears that the explanation Under Sub-section (1) of Section 432 of the Code of Criminal Procedure was not brought to the notice of the Court in Akharbhai Nazarali Vs. Md. Hussain Bhai, . The bye-laws framed by the Allahabad Zila Parishad not being an Act, Ordinance or a Regulation within the meaning of Section 432(1) of the Code of Criminal Procedure, this reference was clearly incompetent and is consequently rejected. The Sessions Judge will himself decide the question which is involved in the hearing of the appeal and dispose it of on merits thereafter.