

1950

May 19

RASHID AHMED

v.

THE MUNICIPAL BOARD, KAIRANA.

THE UNION OF INDIA and THE STATE OF
UTTAR PRADESH : INTERVENERS.[SHRI HARILAL KANIA C. J., SAIYID FAZL ALI,
PATANJALI SASTRI MEHR CHAND MAHAJAN
MUKHERJEA and DAS J J.]

Constitution of India, Arts. 19 (1), 19 (6), 32—Fundamental right to carry on trade—Reasonableness of restrictions imposed—U. P. Municipalities Act, 1916, s. 241 (2) (a)—Municipal byelaw prohibiting carrying on wholesale trade without permission—Absence of provisions for issuing license to old traders—Provisions permitting grant of monopoly—Legality of byelaw.

Byelaw No. 2 of the byelaws of a municipal board, which came into force on the 1st January, 1950, provided that "no person shall establish any new market or place for wholesale transactions without obtaining the previous permission of the board, and no person shall sell or expose for sale any vegetable, fruit, etc. at any place other than that fixed by the board for the purpose"; and byelaw No. 4 permitted the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. In anticipation of these byelaws the monopoly right to do wholesale business in vegetable for three years was auctioned by the municipal board and granted to the highest bidder and a place was also fixed as the market where such business could be carried on. The petitioner who had been carrying on wholesale business in vegetables at a rented shop within the municipality for two years before the byelaws came into force applied for a license to carry on his business at his shop but this was rejected on the ground that there was no provision in the byelaws authorising the grant of any such license, and he was prosecuted for contravention of the byelaws. He applied under Art. 32 of the Constitution for the enforcement of his fundamental right as a citizen to carry on his business which was guaranteed by Art. 19 (1) of the Constitution.

Held (i) that the prohibition in byelaw No. 2 became absolute in the absence of provision authorising the issue of a license, and inasmuch as the municipal board had, further, put it out of its power to grant a license to the petitioner by granting a monopoly, the restrictions imposed were not reasonable within

the meaning of Art. 19 (6) of the Constitution, and the byelaws were accordingly void and the prosecution of the petitioner illegal, (ii) that the fact that the Constitution came into force only after the byelaws had come into force did not affect the petitioner's right to carry on his business.

Held also, that an appeal under section 318 of the U. P. Municipalities Act was not in the circumstances an adequate legal remedy the existence of which would disentitle the petitioner from maintaining this application.

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ORIGINAL JURISDICTION: Petition No. X of 1950

This was an application under article 32 (1) of the Constitution for the enforcement of the applicant's fundamental right to carry on his business which was guaranteed by article 19 (1) of the Constitution. The facts of the case appear in the judgment.

Nur-ud-din, for the petitioner.

Radhelal Agarwala, for the opposite party.

M. C. Setalvad, Attorney-General for India, (S. M. Sikri, with him), for the Union of India.

Pearylal Banerji, Advocate-General of U. P. (*Shri Ram*, with him), for the State of Uttar Pradesh.

1950. May 19. The Judgment of the Court was delivered by

DAS J.—I am reading the judgment of the Court.

Das J.

This is an application under article 32 of the Constitution of India made by Rashid Ahmed for enforcement of his fundamental right to carry on his business which is said to have been completely stopped by the respondent, the Municipal Board of Kairana. The facts shortly are as follows:

The petitioner is an Aratia (commission agent) carrying on wholesale business in vegetables and fruits at Kairana in the District of Muzaffarnagar in the

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State of Uttar Pradesh. He has been carrying on this business for the last two years at a rented shop in Bazar Jama Masjid in the town of Kairana. Until recently there were no bye-laws of the respondent Board regulating the sale of vegetables and fruit within the limits of the municipality. In March, 1949, the respondent Board published certain proposed bye-laws made under section 298 of the U.P. Municipalities Act, 1916. These bye-laws were passed by the respondent Board on the 19th April, 1949. After confirmation by the Commissioner these bye-laws came into operation on and from 1st January 1950. In anticipation of these new bye-laws coming into effect the respondent Board on the 21st May, 1949, auctioned "the contract for wholesale of vegetables", presumably meaning thereby the monopoly right to do wholesale business in vegetables. The contract was given to one Habib Ahmad, who was the highest bidder for three years at and for Rs. 72,750 payable in equal quarterly instalments in advance. On the 31st December, 1949, respondent Board notified a place near Police Post Imam as the market for wholesale purchase and sale of vegetables and fruits. The petitioner applied for a license to carry on his wholesale Aratia business at his shop. On or about the 22nd December, 1949, the respondent Board by resolution No. 188 rejected the petitioner's application. This decision was communicated to the petitioner on the 9th February 1950. The order of the Chairman of the respondent Board was in these terms : "According to resolution No. 188 dated 22-12-49 the application of Mr. Rashid Ahmed is rejected and he be informed accordingly". No reason was assigned by the respondent Board's resolution for the rejection of the petitioner's application. We are now informed by the learned Advocate for the respondent Board that the application was rejected as there was no bye-law for entertaining such application or granting such license as was prayed for. The fact that the respondent Board had already auctioned the contract to Habib Ahmad might conceivably have had some bearing on this refusal to grant a license to the petitioner. In the meantime on the 28th

January, 1950. a notice was served on the petitioner in the following terms :

"You are hereby informed that the Municipal Board, Kairana, have given the contract of wholesale purchase and sale of the vegetables, which is in force from the 1st day of January, 1950. It has been repeatedly promulgated, in the city by the beat of drum, through a Khakrob (sweeper) that excepting the contractor of vegetables the Municipal Board, Kairana, nobody shall deal in wholesale purchase and sale of vegetables at a place other than the one approved by the Municipal Board aforesaid (*i.e.* the place near Police Post Imam). As against this, you in the first place kept selling vegetables by wholesale, at the house near Jama Masjid otherwise known as Qaziwala, despite occasional verbal warnings requiring you to desist therefrom, which were conveyed through an employee of the Board. On your failure to comply, you were warned by a notice in writing, dated the 3rd January, 1950. That notice was duly served on you. But still you paid no heed. Accordingly a complaint was lodged against you, under the bye-laws, quoted above, in the Court of Pargana Officer, Tahsil Kairana. The complaint is still pending. Now you are selling wholesale by auction, vegetable at another place in Jama Masjid Bazar, which is a thoroughfare.

Your above conduct is unlawful and in contravention of the Municipal Board's Bye-law 2 pertaining to vegetable contract. Moreover, highly prejudicial as it is to the interests of both the contractor and the Board, you are warned that after this notice has been served on you, you should cease to sell any more vegetable in breach of the bye-laws above mentioned. Herein fail not."

This notice is rather disingenuous in that while it suggests that everybody can deal in wholesale purchase and sale of vegetables at the place approved by the Board, *i.e.*, at the place near Police Post Imam, the fact, as we are now told by the learned Advocate for the respondent Board, is entirely contrary for it is

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only the contractor Habib Ahmad who can carry on wholesale business at that place. The position, therefore, is that the petitioner cannot do any wholesale business either at the appointed market or at his own shop where he had admittedly been doing wholesale business for two years prior to the bye-laws coming into force. In short, the petitioner's business has been wholly stopped and he is being prosecuted for alleged breach of the bye-laws. The above notice was headed as "Notice under bye-law 2 of the bye-laws pertaining to contract of vegetables." Bye-law 2 runs thus :

"No person shall establish any new market or place for wholesale transaction without obtaining the previous permission of the Board and no person shall sell or expose for sale any vegetable, fruit, etc., at any place other than that fixed by the Board for the purpose."

The second part of this bye-law clearly contemplates that everybody will be entitled to do business at the place fixed by the respondent Board, but as a result of a monopoly in favour of the contractor Habib Ahmad having been created, nobody else can do business at that place as conceded by the learned Advocate for the respondent Board. Under the first part of this bye-law no person can establish a new market or place for wholesale transaction without obtaining the permission of the respondent Board. This part of the bye-law clearly contemplates that the Board may permit the establishment of a new market for wholesale dealings in vegetables. The petitioner applied for this permission but it was refused. Bye-law 2 is still in force. If it requires a license then under section 241 (2) (a) the respondent Board cannot refuse such license except on the ground that the place where the market or shop is established fails to comply with any condition prescribed by, or under, the Act. It is conceded that the rejection of the petitioner's application was not based on any such ground but that it was because there was no bye-law authorising the issue of any license. The Constitution by article 19 (1) guarantees

to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause (6) of that article. The position, however, under bye-law 2 is that while it provided that no person shall establish a market for wholesale transactions in vegetables except with the permission of the Board, there is no bye-law authorising the respondent Board to issue the license. The nett result is that the prohibition of this bye-law, in the absence of any provision for issuing license, becomes absolute. Further, bye-law 4 contemplates the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. Acting upon that provision, the respondent Board has granted monopoly to Habib Ahmad and has put it out of its power to grant a license to the petitioner to carry on wholesale business in vegetables either at the fixed market place or at any other place within the municipal limits of Kairana. This certainly is much more than reasonable restrictions on the petitioner as are contemplated by clause (6) of article 19. This being the position, the bye-laws would be void under article 13 (1) of the Constitution. On the other hand, if there is no bye-law requiring the petitioner to take out license, then there can be no justification for the respondent Board to stop the petitioner's business or to prosecute him.

Learned counsel for the respondent Board faintly contended that the bye-laws having come into force on 1st January, 1950, *i.e.*, before the Constitution came into force, the petitioner no longer had any right to continue the business and, therefore, his case is not governed by article 19(1) (g). There is no substance in this argument for, if it were sound, article 19 (1) (g) would only protect persons who were carrying on business before the Constitution came into force.

Learned Advocate-General of Uttar Pradesh appearing for the intervener drew our attention to section 318 of the U.P. Municipalities Act, 1916, and submitted that the petitioner having adequate remedy by way of appeal, this Court should not grant any writ in the nature of the prerogative writ of *mandamus*

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or *certiorari*. There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this Court under article 32 are much wider and are not confined to issuing prerogative writs only. The respondent Board having admittedly put it out of its power to grant a license and having regard to the fact that there is no specific bye-law authorising the issue of a license, we do not consider that the appeal under section 318 to the local Government which sanctioned the bye-laws is, in the circumstances of this case, an adequate legal remedy.

We are satisfied that in this case the petitioner's fundamental rights have been infringed and he is entitled to have his grievance redressed. The proper order in such circumstances would be to direct the respondent Board not to prohibit the petitioner from carrying on the trade of wholesale dealer and commission agent of vegetables and fruits within the limits of the Municipal Board of Kairana, except in accordance with the bye-laws as and when framed in future according to law and further to direct the respondent Municipal Board to withdraw the pending prosecution of the petitioner and we order accordingly. The respondents to pay the costs of the petitioner.

Petition allowed.

Agent for the petitioner : *Naunilal.*

Agent for the opposite party : *Tarachand Brijmohanlal.*

Agent for the Union of India : *P. A. Mehta.*

Agent for Uttar Pradesh : *Tarachand Brijmohanlal.*