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Dr. Vimla
v.
Delhi Administration

Subba Rao, J.

ss. 467 and 468 of the Indian Penal Code. The conviction and sentence passed on her are set aside. Fine, if paid, is directed to be refunded to the appellant.

Appeal allowed.

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November, 29.

CITY OF NAGPUR CORPORATION

v.

JOHN SERVAGE PHILLIP & ANR.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Corporation—Power of sending delegation—Jurisdiction of civil court—Power of corporation to provide for expenses of delegation—The city of Nagpur Corporation Act, 1948, (C.P. and Berar II of 1950), ss. 58 (s), 88.

The appellant Corporation passed a resolution deciding to send two of its members to a health conference at Harrogate in U.K. On the application of the respondent, the High Court of Bombay issued a write restraining the appellant from carrying out the resolution.

Held, that s. 58 (s) of the Nagpur Corporation Act, 1948, which gave power to the appellant Corporation to provide for any matter likely to promote public health authorised the resolution and it was for the appellant Corporation to decide how a thing which it had the power to do was to be done. It was not a case where it could be said that the delegation would have been of no benefit to the appellant Corporation at all and that was enough to prevent an interference by the Courts in the method of the exercise of its undoubted power by the appellant Corporation.

Mayor etc. of Westminster v. *London & North Western Railway Company*, [1905 A.C. 426] relied upon.

The resolution could not be challenged on the ground that the budget did not provide for the expenses of the delegation. The budget in fact did so and even if it did not, there was power under s. 88 of the Act to alter the budget to make the necessary provision.

Statutes cannot be confined only to thoughts prevalent at the time when they are enacted. They are put in general terms to embrace innovations. Even if in 1948 delegation by Corporation were not in contemplation, s. 58 (s) may be interpreted as including in "matters likely to promote a public health", the sending of the delegations.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 508 of 1960. Appeal by special leave from the judgment and order dated April 23, 1959 of the Bombay High Court at Nagpur in Special Civil Application No. 110 of 1959.

S.T. Desai, J.B. Dadachanji, O.C. Mathur and *Ravinder Narain,* for the appellant.

W. S. Barlingay, R. Mahalingier and *Ganpat Rai,* for respondent No. 1.

M. S. K. Sastri and *R. N. Sachthey,* for respondent No. 2.

1962. November 29. The Judgment of the Court was delivered by

SARKAR, J.—This appeal is against an order of the High Court of Bombay issuing a writ whereby the Municipal Corporation of Nagpur, the appellant before us, was restrained from carrying out a resolution proposing to send two of its members as delegates to a Health Congress at Harrogate in U.K. and sanctioning certain expenses in connection with the delegation. *Sarkar, J.*

There is no doubt that if what a Corporation proposes to do is what it had been authorised by its incorporating statute to do, it is not the business of

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a court to interfere with the mode in which the Corporation decides to act : see *Mayor, etc. of Westminster* v. *London and North Western Railway Company* (1). If, therefore, the appellant Corporation had power under its incorporating statute, the City of Nagpur Corporation Act, 1948, to send delegates to the Congress at Harrogate, it would appear *prima facie* that writ was erroneously issued by the High Court. Now, s. 58 (s) of the Act provides,

> "The Corporation may in its discretion provides from time to time either wholly or partly for all or any of the following matters, namely :—
>
> .....
>
> .....
>
> (s) any other matter likely to promote the public health, safety and convenience of the public."

The question is whether the action of the appellant Corporation is within this section.

It appears that the convenors of the Congress at Harrogate had sent an invitation to the appellant Corporation to send delegates to the Congress. The following facts appear from the invitation: delegates representing all aspects of public health would discuss at the Congress subjects of common interest ; there would be a health exhibition where latest equipment and products of leading manufacturers and trade and research organisations would be put on show; and the delegates might visit water supply undertaking, sewage disposal works, housing schemes, hospitals, health service contres, food factories and canteens and similar organisations. We think it beyond question that a delegate attending the congress would certainly

(1) [1905] A.C. 426.

have acquired much useful knowledge of matters concerning public health and become acquainted with the modern equipment and appliances used in, and organisations suited for and the latest trend of thoughts regarding, matters concerning public health. It appears to us plain that by sending delegates to the Congress, the appellant Corporation would have acquired useful knowledge connected with public health which it could utilise later to promote public health at Nagpur. The sending of delegates, therefore, was something which the appellant Corporation was authorised by section 58 (s) of its incorporating statute to do.

As we understand the judgment of the High Court, it does not seem to have felt much doubt about this. The High Court appears, however, to have taken the view that there was no reasonable and legitimate connection between the sending of the delegates to the Congress and the promotion of public health at Nagpur. It is somewhat difficult to appreciate the High Court's point of view. In the first place, the High Court seems to have been sceptical of the benefit to be derived from the delegation because the subjects to be discussed at the Congress were, in its opinion, highly technical and the delegates proposed to be sent being non-technical men, namely, lawyers, were not likely to be in a position to follow the discussion. We have no reason to think that the subjects to be discussed at the Congress were highly technical. That it would not have been so, appears to us clear from the fact that a very large gathering was expected at the Congress, over 2,600 having attended at the previous one. There is further no reason to think that the delegates proposed to be sent by the appellant Corporation would not have been able to acquire at the Congress a great deal of useful general knowledge regarding matters of public health. Lastly, it is not for this Court to decide how the delegation

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should have been constituted so that the appellant Corporation might have had the largest benefit from it. It was for the Corporation to decide how the thing which it had the power to do was to be done. It was not a case where it could be said that the delegation proposed to be sent would have been of benefit to the appellant Corporation at all, and that is enough to prevent an interference by the courts in the method of the exercise of its undoubted power by the appellant Corporation. We are unable to agree with the view of the High Court that there is no reasonable or legitimate connection between the sending of the delegation to the Congress and the provisions of s. 58 (s) which we have earlier set out.

The High Court also said that the capacity of the appellant Corporation to make use of the knowledge gained at the Congress was extremely limited. There are no materials on the record on which this observation can be justified. The appellant Corporation can no doubt increase its capacity. In any event, it would, after the delegation had returned, have been in a better position to discharge its functions concerning public health within its present capacity. It would be absurd to say that the appellant Corporation did not have the capacity to improve its public health services. There was no warrant to issue the writ on the ground of want of capacity.

The High Court also relied on certain sections dealing with the budget. It was said that there was no provision in the budget for expenses of sending a delegation abroad. Under s. 84 of the incorporating statute, no payment can be made out of the municipal funds unless the expenditure is covered by the budget. The High Court, therefore, observed that the resolution sanctioning expenses for the sending of the delegation abroad was beyond the powers of the appellant Corporation. In the first place, we are not

sure that the budget did not provide for such expenses. There was a head in it which dealt with allowances payable to the members of the Corporation. It may reasonably be contended that the expenses of the members for the visit to the Congress are such allowances. But assume, they are not. Section 88 of the Act gives the Corporation power to transfer the amount of one budget grant from one major head to another provided however a certain balance is maintained in the budget. There is nothing to show that the appellant Corporation could not have acted in this case under s. 88 and altered the provisions of the budget making express provision for the expenses of the delegation. It was not even suggested that the appellant Corporation could not do so.

We think it right also to point out that in the petition for the writ it had not been said that the resolution was bad because the expenses sanctioned by it were outside the budget. That being so, this point should not have been taken into consideration by the High Court. It is true that the Corporation at the request of the High Court placed before the High Court some of the papers in connection with the budget. That the Corporation out of respect to the High Court should have done and, therefore, actually did. From this it cannot be contended that the appellant Corporation never objected to the resolution being challenged on the ground of a want of express provision in the budget for the expenses of the delegation or would not have prejudiced in the hearing of the petition if the resolution was attacked on the ground of want of a provision in the budget. This challenge involved a question of fact and without proper pleadings, the appellant Corporation was surely at a disadvantage in meeting it. Furthermore, we are not sure that s. 84 would have made the resolution invalid. That section only prohibits an expenditure for which the budget does not provide.

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So it may be that all that s. 84 affects is the actual expenditure. It may not affect the resolution itself.

We think it right to point out that the High Court held that the appellant Corporation had acted honestly. It observed that the circumstances did not warrant the inference that the action of the Corporation was *mala fide*. That being so, and the action proposed being clearly within the statutory powers of the appellant Corporation, we think that the High Court was in error in issuing the writ.

We may now notice one or two points of minor importance argued at the bar on behalf of the respondents. It was said that the question raised in this appeal had become academic since the Congress was long over. It may be stated that the Congress was held from April 27, to May 1, 1959 and the writ was issued by the High Court on April 23, 1959. It is suggested that it is not, therefore, a fit case for decision in an appeal under Art. 136 of the Constitution. We are not at all impressed by this contention. It seems to us that it is a matter of the utmost importance for the appellant Corporation to know its rights under its incorporating statute. It will have to guide itself according to our decision in future when a similar point arises again. If we do not decide the point raised now, then on every subsequent occasion the Corporation would be bound by the judgment of the High Court under appeal and by the time the matter is brought up here the same argument that the question has become academic can always be raised to defeat the point. We think that the point raised by the appellant Corporation as to its powers under the statute and how far courts can review the exercise of its power by the appellant Corporation is of great importance and must he decided in this appeal.

It is also said that in 1948 when the City of

Nagpur Corporation Act was passed, these delegations were not in contemplation. Therefore, s. 58 (s) cannot be interpreted as including promotion of public health by sending of delegations. This is, in our view, a completely idle contention. We have no reason to think that the delegations were not sent in 1948. In any case, statutes cannot be confined only to thoughts prevalent at the time when they were enacted. They are put in general words to embrace innovations as they come along. Therefore, even if in 1948, delegations by Corporations were not in contemplation, there is nothing to prevent us interpreting s. 58 (s) as including within matters likely to promote public health, actions involving the sending of delegations where promotion of public health becomes likely as a result thereof.

We allow the appeal. In view of the order of October 19, 1959, the appellant will pay the costs of the respondent Phillip.

Appeal allowed.