

Present: Jayewardene A.J.

1926.

INSPECTOR JOSEPH v. SANDANAM MEENATCHY.

480—P. C. Trincomalee, 6,951.

*Local Boards Ordinance, No. 13 of 1898—By-laws enacted by the Legislature—Ultra vires.—Sections 56 (5) and 58 and Schedule D.*

Where by-laws are enacted by the Legislature, as a part of an Ordinance, their legality cannot be canvassed in the Courts.

**A**N appeal from an acquittal. The accused was charged with having exposed pork for sale, outside a public market, without a licence, in breach of by-law No. 2 framed under section 56 (5) of the Local Boards Ordinance. The Magistrate, being of opinion that the by-law in question was *ultra vires*, acquitted the accused.

*Mervyn Fonseka, C.C.*, for complainant, appellant.

October 8, 1926. JAYEWARDENE A.J.—

In this case the complainant appeals with the sanction of the Solicitor-General against the acquittal of the accused. The accused was charged with publicly exposing for sale pig's flesh or pork in Divisions Nos. 1 and 5 outside the public market at Trincomalee without a licence granted by the Local Board in breach of by-law No. 2 framed under section 56 (5), Chapter IV., Schedule D. of the Local Boards Ordinance, No. 13 of 1898, an offence punishable under section 107 of the Ordinance.

The learned Magistrate held that the by-law in question was *ultra vires* and acquitted the accused. In doing so, he purported to follow the decisions of this Court in *Perera v. Fernando*<sup>1</sup> and *Sanitary Inspector v. Haramanis*.<sup>2</sup>

The complainant appeals and contends that the by-law is not *ultra vires* and that the decision relied on by the Magistrate cannot govern the construction of by-laws contained in Schedule D of the Local Boards Ordinance, 1898. The by-law is as follows:—

“After any such public market shall have been established and opened, no person shall without a licence granted by the Board, publicly expose for sale any meat, poultry, fresh fish, fresh fruit, or vegetables in any place within the limits of the board other than the public market; and it shall be lawful for the secretary or an inspector of the

<sup>1</sup> (1914) 17 N. L. R. 494.

<sup>2</sup> (1917) 19 N. L. R. 339.

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Board to seize any such meat, poultry, fresh fish, fresh fruit, and vegetables exposed or hawked about for sale contrary to the provisions of this by-law, and to remove the same to the office of the Board to be disposed of as may be ordered by Chairman or the Magistrate."

The by-laws in Schedule D of the Ordinance have been enacted by the Legislature as a part of the Ordinance, and the question arises whether these by-laws can be treated and tested in the same way as by-laws made by a Board or Council vested with power to make by-laws for certain specific purposes.

The by-laws in Schedule D must be treated as an integral part of the Ordinance and as having the same force and effect as the main provisions of the Ordinance.

The by-law in question is No. 2 of Chapter IV. of the by-laws in Schedule D and is given as a by-law framed under section 56 (5) of the Ordinance and relating to "the establishment and regulation of public markets." Under section 56 "it is lawful for every Board from time to time to make such by-laws not inconsistent with the provisions of this Ordinance as it may deem expedient for any of the following purposes." And the fifth purpose is—

"For the establishment and regulation of its own markets and levy of rents and fees therein, and for supervision and control of private markets, bakeries, eating houses, tea and coffee boutiques, butchers' stalls, fish stalls, cattle galas, dairies, laundries, washing places, common lodging houses, and latrines."

By section 57 every Local Board is given the power to alter, amend, or repeal by-laws and substitute others not inconsistent with the provisions of the Ordinance, but no by-law or alteration, &c., shall have effect until it is confirmed by the Governor, with the advice of the Executive Council. The by-laws so confirmed shall be valid and effectual as if they had been enacted in the Ordinance.

Section 58, which refers to Schedule D, enacts:—

"Until by-laws are made by the Board of any town under sections 56 and 57, and so far as such by-laws do not extend to modify or alter the by-laws contained in Schedule D, the by-laws contained in that schedule shall be deemed to be and be the by-laws enacted by such Board for the purpose of this Ordinance, and shall be in force in such town."

Now under this section, (1) by-laws made by a Board which do not extend to modify or alter the by-laws in Schedule D are valid; (2) the by-laws in Schedule D are to be treated as by-laws enacted by

such Board, that is, they shall be valid and effectual as if enacted in the Ordinance; and (3) shall be in force in every Local Board town.

When the Legislature enacts as part of an Ordinance a set of by-laws and prohibits their modification or alteration and expressly enacts that the by-laws shall be in force in every Local Board town, can the Courts say that they shall not be of force as being *ultra vires*? I do not think such a question can be canvassed. The by-law has been enacted by the Legislature, and so no question can arise as to its being *ultra vires* or *intra vires*. The absolute right of the Legislature to enact whatever laws it likes whether in the form of by-laws or otherwise cannot be questioned by the Courts. Whether the by-law is authorized by sub-section (5) of section 56 of the Ordinance may be open to doubt, but as the by-law is part of a Legislative Enactment it must be given effect to and enforced whether it can be justified under that sub-section or not.

In my opinion, therefore, it was not open to the learned Magistrate to consider the question whether the by-law under which the accused was charged was *ultra vires* or not.

As regards the decision relied on by the learned Police Magistrate I need only say that they were decisions construing a by-law almost identical in terms with the by-law in question here and framed under the Small Towns Sanitary Ordinance, No. 18 of 1892. That by-law, however, did not form part of the Ordinance, and there was no provision in that Ordinance corresponding to sections 57 and 58 of the Local Boards Ordinance, 1898. In those cases the question of reasonableness and *ultra vires* were properly allowed to be raised. In view of the fundamental differences between the two Ordinances, which I have pointed out, the cases cited can have no application here.

The acquittal of the accused is set aside, and the case will go back to be proceeded with in due course.

*Set aside.*

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