

Present : Jayewardene A.J.

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JAYASURIYA v. RUPESINGHE.

494—P. C. Avissawella, 7,735.

Small Towns Sanitary Ordinance, No. 18 of 1892—Quarrying for cabook—Personal use—Dangerous and offensive trades—Powers of Sanitary Board.

A person, who quarried for cabook on his land for his own use, without a licence, cannot be convicted of the breach of a by-law framed under section 9 E (2) (f) of Ordinance No. 18 of 1892 for the regulation of dangerous or offensive trades.

The "term" trade means a business or manufacture carried on for profit.

The section does not enable a Sanitary Board to classify trades which are neither dangerous nor offensive as such and to frame rules for their control.

Quære, whether the by-laws are valid in respect of the provisions dealing with quarrying.

A PPEAL by the Solicitor-General against the acquittal of the accused who was charged with keeping a cabook quarry within the limits of a Sanitary Board town without a licence from the Chairman of the Board, in breach of rule 2 of chapter XIII. of the by-laws framed under section 9E (2) (f) of the Small Towns Sanitary Ordinance, No. 18 of 1892, and punishable under section 9 (k) of the Ordinance. It appeared that the accused cut cabook on his land for use in building a house, and not for the purpose of sale. The learned Police Magistrate acquitted the accused.

Illangakoon, C.C., for appellant.

N. E. Weerasuriya, for accused, respondent.

October 15, 1924. JAYEWARDENE A.J.—

In this case the Solicitor-General appeals against the acquittal of the accused who was charged with keeping a cabook quarry at premises No. 233, Puwakpitiya, a Sanitary Board town, without a licence from the Chairman of the Board in breach of rule 2 of chapter XIII. of the by-laws framed under section 9 E (2) (f) of the Small Towns Sanitary Ordinance, No. 18 of 1892, and punishable under section 9 (k) of the same Ordinance.

The facts showed that the accused had been cutting cabook on his land for the purpose of building a house and not for the purpose of sale. The learned Police Magistrate after hearing the

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evidence of the Sanitary Inspector acquitted the accused. The Solicitor-General appeals. Now section 9 E (2) of the Ordinance empowers Boards established under the Ordinance to frame by-laws, subject to the approval of the Governor in Executive Council, for the following, among other purposes:—“(f) The regulation of dangerous or offensive trades.”

Under this sub-section the following by-laws (I give only those material for the purpose of this case) have been framed:—

- “(1) Dangerous and offensive trades shall for the purpose of these rules mean and include any of the following:—
- “ Storage or manufacture of artificial manure, boiling of blood or offal, drying blood or offal, tanning, fat melting, fat extracting, soap making, soaking of coconut husks, fibre dyeing, coconut oil manufacture (where machinery is employed), manufacture or storing of fibre, storing of hides, bones, artificial manures, or any materials for the manufacture of artificial manure, storing of Maldivé fish in quantity over 5 cwt. in weight, *quarrying for metal, cabook, or gravel*, the manufacture of bricks and tiles, the burning of lime, the manufacture of aerated waters, storing or curing of plumbago.
- “(2) No owner or occupier of any land or premises within the limits of any Sanitary Board or other person shall carry on or suffer to be carried on upon such land or premises any *offensive or dangerous trade or manufacture* without a licence from the Chairman of the Sanitary Board, who is further empowered to refuse such licence to any person failing to comply with any of these or other already existing Sanitary Board rules.
- “ Such licence shall be subject to such fees as the Sanitary Board from time to time may determine with the sanction of the Governor in Council.
- “(12) The owner or occupier of any land from which clay, earth, stone, gravel, cabook, or other material is cut for the manufacture of bricks or tiles, or for building, or for any other purpose shall be responsible for seeing that proper drainage is provided, and that the pits or trenches cut are afterwards filled, so that water cannot stagnate therein.”

The learned Police Magistrate doubted whether quarrying for cabook was a “*dangerous trade or manufacture*,” but, assuming it to be “*dangerous*” he held it was not a “*trade*,” as the cabook was cut for the accused’s own use, and it was not a manufacture as contemplated by the rules as it was not for the purpose of trade—reading the by-law in the spirit of the section of the Ordinance under which it is framed. Counsel for the accused also

questioned the validity of this by-law, so far as it affects quarrying, which he contended was *ultra vires*. I do not think it is necessary in the present instance to discuss the larger question whether the by-laws in question are *ultra vires*, but I may say that I share the doubt of the learned Magistrate as to their validity in respect of the provisions dealing with quarrying.

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In my opinion section 9 E (2) (f) empowers the Board to frame rules to regulate trades which are generally considered or can be proved to be "dangerous or offensive," but it does not enable the Board to classify trades which are neither dangerous nor offensive as such and to frame rules for their regulation. Further rule 2 appears not to be certain and positive. It empowers the Chairman of the Board to refuse a licence to any person who fails to comply, not only with any of the rules contained in chapter XIII., but also with "other already existing Sanitary Board rules." What these "other already existing" rules are, the by-law does not state, nor whether they have been approved by the Governor in Executive Council and published in the *Government Gazette*. A by-law so uncertain in its terms cannot be treated as valid. A by-law, to be valid, must "contain adequate information as to what it requires or forbids to be done, so that the persons affected may be in no doubt as to what they are required to do or abstain from doing and as to the penalty for non-compliance." *Craies' "Statute Law," 2nd ed., p. 293*. Assuming that the by-laws are valid, I agree with the Magistrate that the accused has not committed a breach of the second rule, and that that rule has no application to a case where a person quarries for cabook for his own use. The subsection in question empowers the Board to frame rules to regulate dangerous or offensive trades. Now the term "trade" means buying and selling. It also sometimes includes any business or manufacture carried on for profit. The word "manufacture" in rule 2, in my opinion, means the making or working up of any thing with the object of selling it—that is, with a view to "trade." The rule must be read as the Magistrate says in connection with the authority conferred on the Board to make it. If it is so read, it seems to me clear that the rule only applies to cases where cabook is quarried or manufactured for the purpose of sale or trade. It would not apply to persons who quarry for cabook for their own use and not for "trade." Under schedule A to the by-laws the fee for a licence to quarry for cabook is Rs. 50. This is a large sum, and I do not think such a high fee would have been imposed if the quarrying was not regarded as being for the purpose of sale. I may here mention that there is a special Ordinance regulating the working of quarries within Municipal and Local Board towns—the Quarries Ordinance, No. 8 of 1899. This Ordinance deals with quarries irrespective of whether they are worked with a view to profit or for one's own use. No quarry in such a

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town can be worked or opened without a licence from the Chairman of the Council or Board as the case may be. Conditions may be attached to such licences, and security may be taken for the fulfilment of the conditions. I suppose fees may also be charged for the issue of these licences. This Ordinance applies only to towns where a Municipal Council or a Local Board or since 1923 an Urban District Council has been established. If Sanitary Boards constituted under Ordinance No. 18 of 1892 desire to bring quarries under their supervision and control, and this seems to be highly desirable, the Quarries Ordinance of 1889 ought to be amended by making it applicable to Sanitary Board towns also. The attempt to control quarries through the instrumentality of rules framed under a power to regulate dangerous or offensive trade is, in my opinion, hardly likely to meet with much success.

I affirm the judgment and dismiss the appeal.

Appeal dismissed.