

(1878) 06 CAL CK 0024

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

The Municipal
Corporation of the
town of Calcutta

RESPONDENT

Date of Decision: June 5, 1878

Acts Referred:

- Penal Code, 1860 (IPC) - Section 11, 21
- Presidency Magistrates (Court- Fees) Act, 1877 - Section 39

Citation: (1878) ILR (Cal) 758

Hon'ble Judges: White, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

The question referred by the Presidency Magistrate is, whether the protection extended by Section 39 of Act IV of 1877 to certain individual public servants extends equally to a Municipal Corporation prosecuted under the Indian Penal Code for being guilty of a public nuisance.

2. By Section 11 of the Penal Code, the word "person" is defined to include a body of persons whether incorporated or not; and therefore the word "person" in Section 21 may be read as a body of persons incorporated, The words "public servants" in that section may consequently denote a body of persons incorporated falling under any of the descriptions given therein. It is not necessary to refer to any except the tenth. The illustration in the tenth description says that a Municipal Commissioner is a public servant; but it does not therefore follow that a Corporation such as that created by Act IV of 1876 (B.C.) is also a public servant within the meaning of that section.

3. The words "every officer" in the 10th Clause seem rather to point to an individual than to an incorporated body; but assuming, for the purposes of this reference, that the Municipal Corporation of Calcutta is a public servant within the meaning of Section 21 of the Penal Code, still it seems to me that it does not come within the provision of Section 39 of the Presidency Magistrates' Act. By that Act no such Judge or public servant as is described in that section shall, unless with the previous sanction of Government, be prosecuted for any act purporting to be done by him in the discharge of his duty. The class of public servants referred to consists of those who are "not removable from office without the sanction of Government." It appears to me that this description must be read in its entirety, and that the words "not removable from office" cannot be separated from the following words "without the sanction of Government."

4. But if the whole be read as describing the class exempted from prosecution except with the previous sanction of Government, the description can only be applied to a class not removable from office at all by dropping the words "without the sanction of Government," which have no meaning as applied to such public servants.

5. The right to prosecute any person, or body of persons, by whom one may have been injured, is a common right which can only be limited by special legislation; and in considering whether the right has been taken away, we must see that it is taken away by express words, or by necessary implication. It does not seem to me that it must necessarily be implied that, by the words "not removable from office without the sanction of Government," it was the intention of the Legislature to include those who are not removable from office under any circumstance at all.

6. I see no reason to suppose that the Government must have meant to extend the same protection to a body, such as the Municipal Corporation of Calcutta, which cannot be taken under a warrant, or sentenced to imprisonment, which it thought fit to extend to certain individuals in the service of that Corporation, who no doubt are protected by Section 32 of the Calcutta Municipal Act and Section 39 of the Presidency Magistrates' Act.

7. The answer which I would therefore give to the question referred to us by the Magistrate is, that the protection does not extend to a Municipal Corporation prosecuted under the Indian Penal Code.

White, J.

8. I am of the same opinion. The question submitted to us by the Presidency Magistrate turns entirely upon the meaning and true construction of Section 39 of the Presidency Magistrates' Act.

9. It is not disputed, nor could it be disputed, that unless that section applies to the Corporation of the Town of Calcutta, it is liable under the Penal Code to be

prosecuted for a nuisance in the same way as if the offence had been committed by an ordinary individual, A Corporation may be proceeded against criminally, as well for a misfeasance as for a non-feasance--Reg. v. The Birmingham and Gloucester Railway Co. 3 Q.B. Rep. 223, Reg. v. Scott 3 Q.B. Rep. 547, and Reg v. The Great North of England Railway Co. 9 Q.B. Rep. 315.

10. Section 39, as regards a Judge or any public servant not removable from office without the sanction of the Government, exempts them from prosecution for an offence except with the previous sanction of the Government. The word "Government," as used in the section, means the Government acting in its executive capacity. It is contended that the Calcutta Corporation falls within the category of a public servant not removable without the sanction of the Government. I think it is open to much doubt whether the Corporation, as distinct from its individual members, is a public servant at all, as these words are defined by the 21st Section of the Penal Code, which is incorporated with the 39th Section of the Act under consideration. Assuming, however, for the purpose of the argument, that that point is decided in favour of the defendants' contention, it seems to me clear that the Calcutta Corporation does not come within the description of a public servant irremovable from office without the sanction of Government.

11. The Corporation is created by Act IV of 1876 (B.C). By the 4th Section, of that Act certain persons, to the number of 72, who are styled Commissioners, and of whom 48 are elected by the rate-payers and 24 appointed by the Government, are incorporated by the name of the Corporation of the Town of Calcutta. The Corporation is to have perpetual succession, a common seal, and by its corporate name to sue and be sued.

12. There is no provision in the Act for putting an end to the Corporation, or for removing or dismissing it, either with or without the sanction of Government, which means, as I have said, the Executive Government.

13. It can only cease to exist by an Act of the Legislature, and until and unless the Legislature interferes, its corporate life must continue. The words "public servant not removable without the sanction of Government" are wholly inappropriate to describe the legal position of such a corporation.

14. Again, if it were necessary to go beyond the Corporation and consider the position of the 72 members comprising it, they appear to be equally without the particular description of public servant mentioned in Section 39 of the Presidency Magistrates' Act.

15. By Section 22 they are elected for a term of three years, and continue in office during that term. Section 23 enumerates the circumstances under which, and the only circumstances under which, they cease to be members of the Corporation. Those circumstances are death, resignation, or disqualification; the disqualification being that which may arise from their becoming bankrupt or interested in a contract

with the Corporation, or being absent from Calcutta for six consecutive months, or being sentenced to a term of imprisonment; so that looking behind the Corporation, if I may so say, to the members who constitute it, it cannot be said of them, any more than of the Corporation, that they are persons who are not removable without the sanction of Government.

16. Mr. Piffard has argued that the words in Section 39, which we are now considering, are intended to embrace two classes of public servants,--(1) those who are not removable from office at all, and (2) those who are removable only with the sanction of Government. But I am unable to agree with him that that is the true construction of the words in question.

17. They appear to me to point to one class, and one class only, of public servants, viz., that class which is removable only with the sanction of Government. The words are satisfied by applying them to that class, and whereas, here a privilege is created in favour of certain persons, the meaning of the words creating the privilege should not be extended beyond their plain and natural sense. Mr. Piffard's contention would require us to construe the section as if its language had been "any public servant not removable from his office, or if removable, not removable without the sanction of Government."

18. In fact, to warrant the construction contended for, some additional words would have to be introduced, and this circumstance, I think, is fatal to the argument.

19. I agree with my brother Ainslie, that if we look to the reason of the privilege conferred by the 39th Section, there is a marked distinction between the case of a public servant whose removal required the sanction of Government, and that of a Corporation in the position of the Calcutta Municipality. The Government may have an interest in protecting the former from prosecution without their previous sanction, but no interest in protecting the latter from the consequences of their own acts; moreover, the Corporation if convicted cannot be punished by imprisonment, but only by fine. The Legislature must have thought it a matter of importance that no public servant whose removal requires the sanction of Government should be subjected to imprisonment without its sanction, but the same reasons for requiring Government sanction do not apply when the result would be merely the infliction of a fine, which must ultimately be paid by the rate-payers of the Town of Calcutta.

20. I concur, therefore, in the opinion that the question which has been submitted to us by the Presidency Magistrate must be answered in the negative.