
Khurshid Chik Vs Raniganj Municipality

None

Court: Calcutta High Court

Date of Decision: May 24, 1932

Acts Referred:

Bengal Municipal Act, 1932 " Section 273(2)#Evidence Act, 1872 " Section 114(e)

Citation: AIR 1932 Cal 833

Hon'ble Judges: Jack, J

Bench: Division Bench

Judgement

Jack, J.

This Rule has been issued upon the District Magistrate of Burdwan and on the complainant opposite party to show cause why the order Of conviction u/s 273 (2), Bengal Municipal Act, and of fine of Rs. 30 imposed, on the petitioner should not be set aside on the ground that

the Court below erred in law in presuming that the provisions of Sections 220 to 222 of the Act were complied with in the absence of any proof to

that effect. The prosecution was on a charge that the petitioner used his house within the Raniganj Municipality as a place for sale of meat without

License, Part 6, Municipal Act, having been extended to the Municipality. For the petitioner it is urged that in as much as it is not proved that the

order applying Part-6 of the Act to the Municipality was promulgated under the provisions of Section 222 of the Act, the conviction is bad and

should be set aside. Both the Courts have relied upon the resumption u/s 114 (e), Evidence Act, that official acts have been regularly performed.

u/s 222, Municipal Act, the order extending the provisions of Part .6 of the Act , to any Municipality should be published in the Calcutta Gazette.

and the Commissioners shall within 15 days of such publication cause a copy of the same to be posted at their office and shall cause it to be

published as required" u/s 354 of the Act, namely, by beat: of drum and otherwise. There must also be a notice of the date on which the order shall

take effect and that date must not be less than 15 days or more than 3 months after the publication of the order of the Local Government in the

Gazette. The question that arises therefore is whether under the -provisions of Section 114 (a), Evidence Act, there is a presumption that this order

was published as required by Section 222, Municipal Act. The petitioner relies upon the authority of the case of Ashanulla Khan Bahadur v.

Trilochan Bagchi [1886] 13 Cal. 197 in Which it is laid down that where under an Act certain things" are" required, to be done before any liability

attaches any person" in respect of any right or obligation it is for " the person who alleges that that "liability has been incurred to prove that the

things prescribed in the Act have been actually done. No presumption can be made of anything prescribed by the Act having been done. In the .

case of B. Walvekar and Others Vs. Emperor, it is explained that Section 114 (e) does not dispense with the necessity of proof of the

preliminary¹, conditions justifying the , issue of a warrant but if an official act is proved to have been done it will be presumed to have been

regularly done , but where pertain things are required to be done by statute before any liability attaches in respect of any right or obligation, it is or

him who alleges that it has been incurred to prove that prescribed things have been actually done and no presumption arises of their having been

don 1) think this principle must be applied in the present case.

2. This view of the law was followed in the, case of Ashanulla Khan Bahadur v. Trilochan Bagchi [1886] 13 Cal. 197 refereed to above with

reference to the failure of proof of the existence of resolution ex-tending Part 6 to the Municipality. In the present-case it is clear that for conviction

the publication must have been made and the date fixed in the manner laid down in the Act, and the fact that in the previous year the petitioner

applied for a license does not throw upon him the onus of showing that the publication was not made in accordance with the provisions of the Act.

Had it been a question of alleged irregularity in the method of publication this would have been covered by the presumption u/s 114, Evidence Act.

But where the Act specifically lays down that before the provisions of Part 6 could be enforced a certain date must be fixed within certain limits it

must be shown that that has been done before the provisions of Part 6 can be enforced so as to make any person liable for breach of these

provisions. In the circumstances of the present case it does not seem likely that in fact, the necessary preliminaries to enforcement of Part 6 of the

Act have been duly carried out though it may be that they were and that the Municipality did not think it necessary to adduce proof of this,

inasmuch as the accused had taken out a license previously without challenging the fact of due publication and notice. Still I think the circumstances

do not justify any further investigation of the matter in this case.

3. This Rule is accordingly made absolute. The conviction and sentence on the petitioner is set aside and the fine if paid must be refunded.