
AIR 1952 Bom 194 : (1952) 54 BOMLR 143 : (1952) ILR (Bom) 639

Bombay High Court

Case No: Criminal Appeal No. 731 of 1951

Bombay Municipality

APPELLANT

Vs

Mohamedbhai I. Ravji

RESPONDENT

Date of Decision: Sept. 24, 1951

Acts Referred:

City of Bombay Municipal Council Act, 1888 " Section 141, 271, 271(1), 271(2), 272(4)

Citation: AIR 1952 Bom 194 : (1952) 54 BOMLR 143 : (1952) ILR (Bom) 639

Hon'ble Judges: Vyas, J; Bhagwati, J

Bench: Division Bench

Advocate: Purshottam Tricumdas and B.G. Thakore, Additional Assist. Government Pleader, for the Appellant; K.R. Bhende and A.A. Adarkar, for the Respondent

Judgement

Bhagwati, J.

This is an appeal by the Government of Bombay against the acquittal of the accused Mohamedbhai I. Ravji by the learned

Presidency Magistrate. 18th Court. Bombay Central, on a charge u/s 171 read with Sections 271 (2) and 274 (1), City of Bombay Municipal Act,

1888 (Bom. III [3] of 1888). The accused is the landlord of certain premises, which are situated at Girgaum Road consisting of a ground and three

upper floors. On 21-6-1926, the Municipal Corporation gave a public notice u/s 141(b) of the Act, intimating that sufficient water was available

from the Municipal Water Works for furnishing a reasonable supply to all premises within the locality and that u/s 141 (b) of the Act water tax

would be levied in respect of all such promises. It appears that the accused applied for, and obtained, a water supply to his said premises from the

Municipality and paid and continued to pay, the water tax in connection with the same. By 1941 the tenants of the premises came to undergo

difficulties in the matter of getting sufficient water on the second and third floors and accordingly complained to the landlord about the in-adequacy

of the water supply. On 30-10-1941, the accused therefore wrote to the Hydraulic Engineer of the Bombay Municipality asking him to get the

premises inspected and show him ways and means to get sufficient water. The Hydraulic Engineer replied on 29-11-1911, suggesting certain

changes in the water connection and also suggesting that domestic storage tanks of 1400 gallons with electric pumping arrangements should be

provided to meet the demand during low pressure hours. The accused wrote to the Hydraulic Engineer on 5-12-1941, intimating that he was

neither prepared to take new connection nor to provide a storage tank according to his whims, unless the Municipality was prepared to pay the

cost. He was one of the big landlords in Bombay and also had been the Ex-Mayor of the Municipal Corporation, and he wanted to vindicate his

rights, and he therefore, wrote to say that it was really regrettable that the Municipal Corporation had reduced the pressure and had started a

campaign to penalize the landlords of Bombay by their whims and that therefore he had no alternative but to refer the matter in due course to the

High Court and get a decision of the question whether the Municipality was bound to supply sufficient water or not. On 12th December 1941, he

again wrote to the Hydraulic Engineer stating that he did not want to put up any storage tank or electric pump as his building was old and he did

not wish to incur unnecessary expenditure, but asking him whether he would give a fresh 3/4" connection for the second and third floors of the

premises. The Hydraulic Engineer replied on 16th January 1942, stating that under the circumstances the requisition of 1½" putting up a storage tank

with electric pump was waived and a 3/4" connection for the use of the second and third floors would be allowed. If the matters had rested there,

very probably a 3/4" connection for the use of the second and third floors of the premises would have been put up by the accused. The Hydraulic

Engineer, however, went on to observe in that letter that if there were short supply complaints even if a 3/4" connection for the use of the second

and third floors was allowed a separate 3/4" connection for each of the ground, first and third floor- might have to be taken. This appears to have

decided the accused not to do anything of the type and the matters rested there. It speaks volumes for the concern of the Municipal Corporation

for the grievances of the tenants that after 16th January 1942 nothing happened at all until we come to 23rd February 1948. As many as six years

elapsed before the Municipal Corporation insisted upon the accused doing anything whatever to redress these grievances of the tenants which to all

appearances were certainly considered legitimate by them, if the correspondence which took place in 1941 had any significance whatever. The

accused was certainly not interested in providing facilities for his tenants. The tenants seemed to have slept over their rights possibly because they

thought that once a complaint had been registered with the Municipality, the accused would do the needful, and the Municipal Corporation went

into a state of lethargy and required to be prodded effectively by either the tenants or their association before they would act any further in the

matter. That prod came in some time in November 1947 when the Honorary Secretary of the Bombay Tenants Association wrote to the Hydraulic

Engineer complaining that the tenants living in the premises of the accused complained for redress in the matter of the inadequate water supply on

the first and second floors as there was no separate connection. The Hydraulic Engineer was asked to remove the above mentioned grievances

and he then woke up and addressed the letter dated 23rd February 1948, to the accused. He began by stating that complaints of shortage of

water supply had been received from the tenants of those premises, and that it was the duty of the owner of the premises to obtain an adequate

water supply from the Municipal water main and provide supply and distributing pipes, cisterns, fittings, pumps, etc., necessary for that purpose. It

is interesting to observe that these were the very words which aroused in Section 271, Sub-section (2) of the City of Bombay Municipal Act. The

Hydraulic Engineer also suggested in the letter another alternative and asked the accused to adopt that alternative suggestion of his. He wound up

that letter by saying that that letter cancelled all the previous requisitions which had been made on the accused by the Municipality. He further

stated that the accused should take some decision in the matter and arrange to carry out the works in consultation with the Municipal Department

within a month and failing compliance further action would be taken to enforce the works referred to above without any further notice, as

complaints regarding shortage of water were acute and genuine and improvement in supply of water was not possible till the said works were

carried out. The accused wrote back on 19th March 1948, pointing out that the building in question was very old and had no water trouble, but as

the Municipality was reducing water pressure from time to time since 1939, all the responsibility rested on them and it was unfair for the

Municipality to make house-owners suffer for acts of omission and commission of the Municipality. Correspondence thereafter ensued between

the parties wherein the accused continued to blame the Municipality for the shortage of water supply and the Hydraulic Engineer tried to impress

upon the accused his obligations in the matter and asked him to do the needful at his earliest convenience As the accused was adamant, the

Municipal Commissioner on 17th May 1949 addressed the statutory notice under Sections 271 (2) and 274 (1) of the Act, calling upon the

accused to carry out the requisitions therein contained within a month from the date of receipt thereof, failing which he stated that the accused

would render himself liable to the penalty prescribed in that behalf u/s 471 of the Act. This notice was not complied with by the accused, with the

result that the prosecution u/s 471 of the Act was launched against the accused. The accused appeared before the learned Presidency Magistrate

and filed a statement which makes very interesting reading. He contended that the occupants of the building were getting 7-6 gallons of water more

than even the overall supply per head per day in Bombay which was liberal beyond measure; that Bombay was getting more liberal supply of water

even then than any other city in India; that under the law, he was to supply pure water from Municipal mains but the Commissioner's demand

required him to supply contaminated water from water supply stored by him; that the real trouble of the tenants was that the tenants did not co-

operate amongst themselves, that they did not adjust the time amongst themselves to collect water, that if they prescribed some hours to draw

water for each floor, then all complaints should cease and all occupants should get profuse water, but that civic sense was wanting and that he was

not responsible for that conduct of the tenants; that the 4000 gallons of water a day which were obtained from the Municipal Works were not

inadequate but the Municipal Commissioner required him to store the supply in a tank overhead, raised to it by a pump from a suction tank and

supplied to the occupants if and when they required at their pleasure, the occupants need not get up at night to collect water, they need not have

their own utensils, to collect it, all these things the landlord should do for the occupants, the occupants should turn the cock when they pleased and

get water, the Municipal Commissioner had no power to ask him to store water and supply water from the water stored by him to the tenants, his

power was limited to requiring him to supply adequate water direct from Municipal Main at the service pipe tap and the occupants should collect

water at the service water pipe tap during the hours of supply of water by the Municipality. After all these interesting statements, he wound up this

statement by the only one relevant statement which really contained his defence and it was that the notice was vague, ambiguous and indefinite and

it did not state the size, material, quality and description of the cisterns and fittings and it did not state how many down take pipes should be taken,

to which floors, of what dimensions, where they should be located, what should be done with the water stored in overhead tank, etc., and that

therefore he was not liable to comply with the same and no prosecution u/s 471 could be sustained against him.

2. The learned Presidency Magistrate Came to the conclusion that once a water connection had been applied for by the landlord and water supply

had been made available to him by the Municipality, there was no power in the Municipal Commissioner to ask the landlord either u/s 371(2) or

u/s 274(1) of the City of Bombay Municipal Act to provide cisterns, fittings, etc., which might be considered necessary by him to ensure an

adequate supply of water to the tenants. He expressed his opinion that it was not competent to the Commissioner to make there question under

head I of the notice as it meant re distributing the existing internal connections which could not be done under Sub-section (2) of Section 271. He

also held that so far as the heads, 2, and 4 to 7 in the notice were concerned, the notice given by the Municipal Commissioner in connection

therewith u/s 274 (1) was vague and indefinite and was not a good notice within the meaning of Sub-section (I) of Section 274. That being so, he

came to the conclusion that the prosecution had failed to bring home the guilt to the accused and accordingly acquitted the accused. The

Government of Bombay has filed this appeal against that order of acquittal.

3. The relevant sections which fall to be determined by us in this criminal appeal are Sections 271 (2) and 274 (1), City of Bombay Municipal Act.

Before, however, we come to them, it is necessary to refer to Section 140 of the Act which proscribes the property taxes. The property-taxes

there are inclusive of a water tax of so many per centum of the rateable value of the buildings and lands in Greater Bombay as the Corporation

shall deem reasonable. Under the terms of Section 141 of the Act the water-tax is to be levied only in respect of premises; (a) to which a private

water-supply is furnished from, or which are connected by means of communication-pipes with, any municipal water-works; or (b) which are

situated in a portion of Greater Bombay in which the Commissioner has given public notice that sufficient water is available from municipal water-

works for furnishing a reasonable supply to all the premises in the said portion. The water-tax, therefore, has got to be paid not only by the owners

of the premises to which a water-supply is already furnished from, or which are connected with, any municipal water works, but it has also got to

be paid by the owners of premises in respect of which public notice has been given by the Municipal Commissioner that sufficient water is available

from municipal water works in the particular portion of Greater Bombay where those premises are situated. So that, even if the owner of particular

premises does not think fit to apply for a water connection to his premises, the Municipality would be able to levy the water-tax on such premises

provided public notice of the nature indicated above is given by the Municipal Commissioner. It is the availability of the water-supply within that

particular locality that determines the liability of the premises to the levy of water-tax, irrespective of the fact whether the owner of the premises

deems it necessary to apply for a water connection or not. Going now to Section 271 of the Act, we find laid down therein the procedure as well

as the conditions of private water supply. Section 271, Sub-section (1), provides that:

Supply pipes for conveying to any premises a private supply of water from a municipal water work shall not be connected with such water work

except on the written application or with the written assent of the owner of the premises, or of the person primarily liable for the payment of

property-taxes on the said premises.

If any premises are not connected with the municipal water works and are not receiving any water supply from them, it would be incumbent, in the

first instance, on the owner of these premises to make an application to the Municipality for the giving of the water connection and for providing the

water supply. The application of the owner is, therefore, an essential prerequisite of the granting of the water connection by the Municipality.

Knowing, however, the lack of the sense of civic responsibility which some landlords might as well be suffering from, the Legislature provided for

cases where, in spite of the water supply being available, the landlords of certain premises did not choose to avail themselves of it and it was

therefore provided in Sub-section (2) of Section 271 in the words following:

But if it shall appear to the Commissioner that any premises situate within any portion of the city in which a public notice has been given by the

Commissioner under clause (b) of Section 141, are without a supply of pure water, adequate to the requirements of the persons usually occupying

or employed upon the said premises, the Commissioner shall, by written notice require the owner of the said premises or the person primarily liable

for the payment of property-taxes thereon, to obtain a supply adequate as aforesaid from a municipal water work and to provide supply and

distributing pipes, cisterns and fittings and do all such works as may in the opinion of the Commissioner be necessary for that purpose.

Express power was, therefore, given by the terms of Sub-section (2) of Section 271 to the Municipal Commissioner in respect of premises situate

within any portion of the city in which a public notice u/s 141 (b) was given, to call upon the owner of the premises to obtain a supply of water

adequate as therein stated from the municipal water work and to provide the necessary supply and distributing pipes, cisterns and fittings, etc. The

very use of the expression ""any premises situate within any portion of the city in which a public notice under Clause (b) of Section 141"" shows that

it was only in those cases where, in spite of water supply being available and water connections being granted by the Municipality at the instance of

the landlords applying for the same, a landlord of certain premises within the locality did not apply for such water connection that the Municipal

Commissioner could step in as above and direct the landlord to make the necessary application, obtain the water connection and provide the

supply and distributing pipes, cisterns, fittings etc. in connection there with. Sub-section (2) of Section 271 was, in our opinion, designed for the

purpose of providing for such recalcitrant landlords, and not for investing the Municipal Commissioner with general powers whenever he thought

that any premises connected with the water supply or unconnected therewith had not got provision for the supply of adequate water for the

purposes therein mentioned. This power u/s 271, Sub-section (2), was only given to the Municipal Commissioner in those limited classes of cases

where the landlord of the premises, in spite of the notice u/s 141 (b), failed and neglected to apply for water connection. Reading Sub-section (a)

along with Sub-section (1) of Section 271, we cannot come to any other conclusion except this, that it applied only in the cases where the landlord

had failed and neglected to apply for water connection in spite of the notice u/s 141 (b) of the Act. When the water connection was applied for,

the powers u/s 272 (4) and Section 272 (5) would come to be exercised by the Municipal Commissioner and a distinction was there made

between the communication pipes and the fittings thereon on the one hand and the supply and distributing pipes, cisterns, fittings, etc., on the other

hand, the former of which were to vest in the Corporation and were to be maintained at the charge of the Municipal fund as a Municipal water

work and the latter of which were to belong to the landlord but in respect of which certain supervisory powers were given to the Municipal officer

appointed by the Commissioner as therein prescribed. Section 273 gave the Commissioner the power to take charge of private connections by

agreement with the consumer. Section 273A gave the power to the Commissioner to alter the position of the connections if at any time he deemed

it expedient to do so. Then came Section 274 which contained provisions in regard to cisterns and other fittings, etc., to be used for connections

with water works Section 271 (1) gave the Municipal Commissioner powers, whenever it appeared to him to be necessary, by written notice, to

require the owner of any premises furnished with a private water supply from any Municipal water-work to provide such premises within a

reasonable period which should be prescribed in the said notice, with cisterns and fittings of such size, material, quality and description and placed

in such position and with such safe and easy means of access as he thought fit. This is a very important provision and it has a bearing on the present

prosecution before us. The sub-section talks of the premises which are furnished with a private water supply from any Municipal water work, as

distinct from the premises situate in any portion of the city in respect of which a public notice has been given by the Commissioner u/s 141 (b) (vide

Section 271 (1) of the Act). In cases of premises which are already furnished with a private water supply from any Municipal water work,

circumstances may arise under which it may appear to the Commissioner to be necessary to require the owner to provide those premises with

cisterns and fittings of such size, material, quality and description and placed in such position and with such safe and easy means of access as he

thinks fit. This situation may arise due to a variety of causes. The water supply from the main water work of the Municipality may be inadequate.

The pressure may have to be reduced by reason of the inadequacy of the general supply. Difficulties may be encountered in regard to the supply

and distribution of the water, actually made available by the Municipality to the owner, between the various occupants of the premises. By reason

of the large influx of tenants, the arrangements for the supply and distribution of water within the premises which were at one time considered

adequate may prove to be inadequate. All these circumstances might make it incumbent on the Municipal Commissioner to see that the premises,

which are already furnished with a private water supply from the Municipal water work should be provided with cisterns and fittings of such size,

material quality and description and placed in such position and with such safe and easy means of access as he thinks fit and therefore under the

terms of Sub-section (1) of Section 274 the necessary power is given to the Municipal Commissioner to call upon the landlord of the premises to

fulfil those requirements. In so far, however, as this was a very wide and even drastic power, though conceived in the best interests of the

occupants of the premises and also the health and sanitation of the inhabitants of the city, limitations were equally laid down on the exercise of this

power in so far as it was made incumbent on the Municipal Commissioner to specify the size, material, quality and description of the cisterns and

fittings as also the position in which the same had to be placed, with such safe and easy means of access as he thought fit. The Municipal

Commissioner was constituted the arbiter of what were the requirements which had to be satisfied by the landlords of the premise?, and if he was

to be the sole judge of the necessity as well as the sufficiency of these requirements, it was equally incumbent upon him to give these particulars and

specifications, so that in spite of the landlord having tried to meet the requirements of the Municipal Commissioner to the best of his ability, he

might not be then told that what he had done did not meet with the approval of the Municipal Commissioner. If the size, material, duality and

description of the cisterns and fittings were not particularized in this manner by the Municipal Commissioner in the notice which he gave under Sub-

section (1) of Section 274 to the landlord, the landlord could not be laid under the obligation of shifting for himself as best as he might and trying to

comply with the requirements of the Municipal Commissioner, because whatever the landlord might do might conceivably not meet with the

approval of the Municipal Commissioner if the latter was minded to quarrel with the landlord in the matter of what he had done. The drastic power

which was thus given to the Municipal Commissioner was circumscribed in this manner that he must give these particulars and specifications, and

then and then only he could expect the landlord to comply with these requisitions. If, therefore, these particulars were not given and the notice

which was given by the Municipal Commissioner to the landlord was vague and indefinite, such a vague and indefinite notice could not afford the

basis of any action to be taken against the landlord u/s 471 of the Act.

4. It is clear on a discussion of the above provisions of the City of Bombay Municipal Act that what was done by the Municipal Commissioner in

the circumstances of the present case was not justified u/s 271 (2) of the Act. The water connection having been taken by the landlord soon after

the public notice of 21-6--1926, it was not the case of a default having been committed by the landlord in taking the water connection and the

Municipal Commissioner being therefore entitled to call upon him to obtain a water supply under the terms of Section 271 (2) of the Act. A water

supply had already been obtained. It was considered adequate according to the situation as it obtained at the time when the water supply was

obtained. It was only by reason of the subsequent developments in 1941 and particularly in 1948 that the water supply was found to be

inadequate. When the water supply was thus found to be inadequate, the occasion did arise for the exercise of the powers of the Municipal

Commissioner u/s 374 (I) of the Act and it was certainly within his powers then to order the landlord to provide cisterns and fittings of such size,

material, quality and description and placed in such position and with such safe and easy means of access as he thought fit. This is what he had

purported to do when he gave the notice dated 17-5-1949, to the accused. Unfortunately however, even though the heads 1, 3, 5, 6 and 7 in the

notice could not strictly be said to be vague and indefinite, heads 3 and 4 were certainly vague and indefinite. The accused was asked to provide

under head 2 for domestic purposes overhead storage of a total capacity of 1500 gallons. No doubt the words ""overhead storage"" were used there,

but they did not specify how many storage tanks and of what particular containing capacity and also of what material, quality and description had

to be constructed by the accused in order to satisfy this requirement of the Municipal Commissioner. Similar was the position in regard to head 4

which was to provide suction tank at the ground level of 1500 gallons capacity. Here also, even though it could be said that there might have been

one suction tank thought of in this manner, we have not got anything to show of what size, material, quality and description the particular provision

had got to be made and in the case of the suction tank as also in the case of the over-head storage the Municipal Commissioner did not specify in

what positions they had to be placed. In our opinion, the words ""overhead storage"" and ""at the ground level"" were not enough by themselves to

particularize the position in which these tanks had got to be placed by the accused. In our opinion, therefore, the heads 1 and 4 in the notice were

not as clear and specific as they should have been having regard to the provisions of Section 274. Sub-section (1) of the Act. When Mr.

Purshottam for the Government was confronted with this position, he pointed out that there were seven severable heads or requirements in this

notice and even though these heads Nos. 2 and 4 were vague and indefinite, the others were at least clear and categorical and the accused could

certainly be held liable for non-compliance with the requisitions contained in heads 1, 3, 5, 6 and 7 of this notice. We are afraid we cannot accept

this argument of Mr. Purshottam. The notice is a composite one, The provision for an overhead storage as also a suction tank at the ground level

cannot be divorced from the other requirements of the notice, because if the accused had chosen to carry out the other requirements excluding the

requirements in heads 2 and 4, it is not as if the grievance of the tenants could have been redressed and the water supply which was inadequate

would have become adequate. The overhead storage as well as the suction tank at the ground level were calculated to redress this inadequacy of

the water supply taken along with the other requirements contained in heads 1, 3, 5, 6 and 7 and it would not be legitimate to treat these

requirements as falling in distinct categories, so that one category could be satisfied without having regard to the other. Having regard to these

considerations, therefore, we have come to the conclusion that the heads 3 and 4 being vague and indefinite vitiated the notice as a whole, and

non-compliance therewith could not be made the basis of the prosecution u/s 471 of the Act. It is not possible to treat the non compliance with the

requirements of heads 1, 3, 6, 6 and 7, therefore, as distinct from the non compliance with the requirements of heads B and 4 and we therefore see

no justification for a prosecution of the accused only for non-compliance with the requirements of heads 1, 3, 5, 6 and 7. Having regard to the

above, we have come to the conclusion that the order made by the learned Presidency Magistrate acquitting the accused was right, though we do

not agree with all the grounds which commended themselves to him in coming to the conclusion that he did. The result, therefore, is that this appeal

will stand dismissed and the order of acquittal will stand confirmed,