

CHAIRMAN OF THE MUNICIPAL COM-
MISSIONERS OF HOWRAH1962
March 26

v.

SHALIMAR WOOD PRODUCTS & ANOTHER.

(J. L. KAPUR, K. C. DASS GUPTA and
RAGHUBAR DAYAL, JJ.)

Municipality—Business premises within municipal limits—Whole of premises licensed as warehouse under Fire Prevention Scheme—Power of Municipality to require a license—West Bengal Fire Services Act, 1950 (W. B. 18 of 1950)—Bengal Municipal Act, 1932 (Ben. 15 of 1932), s. 370—Calcutta Municipal Act, 1923 (Ben. III of 1923) s. 330 (1) (b), 488, 540, 541, 542.

The respondent company was prosecuted for using the premises within the Municipality of Howrah without a license as required under s. 386 of the Calcutta Municipal Act 1923, as extended to the Municipality of Howrah by Notification No. 260 M dated January 18, 1932, under ss. 540 and 541 of the Act. The Bengal Municipal Act, 1932, also stood repealed qua the municipality of Howrah under s. 542 of the Act from the date of such extinction. The defence of the respondent was that the premises had been licensed as a warehouse under the West Bengal Fire Service Act, 1950, and consequently, because of s. 38 of the Fire Services Act, s. 386 of the Act stood repealed and the respondent was not required to take out another license under the said s. 386. The respondent was however convicted under s. 488 of the Act. In appeal the Sessions Judge reduced the sentence and fine. The appellant took a revision to the High Court. The High Court held *inter-alia* that s. 38 of the Fire Service Act was applicable to the Howrah Municipality. Therefore, while it may be necessary to take out a license under s. 386 (1) of the Act, no part of the premises would be liable for any charge of fees for granting a license. The appellant came up in appeal by special leave to the Supreme Court.

Held, that the effect of extension of s. 386 of the Calcutta Municipal Act, 1923, by notification No. 260 M dated January 18, 1932, under s. 540 and s. 541 of the Act, to the Municipality of Howrah is that an amended Act with s. 386 is applicable to the Municipality of Howrah and not s. 386 of the Calcutta Municipal Act, 1923.

Although s. 38 of the West Bengal Fire Services Act extends to the whole of Bengal and to the extent there set t, it repeals s. 386 of the Calcutta Municipal Act which

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applies to the Corporation of Calcutta and s. 370 of the Bengal Municipal Act which applies to the other Municipalities of Bengal yet it does not affect the operation of s. 386 of the former Act as modified and extended to the Municipality of Howrah by the notification. The language of s. 386 has been modified to make it appropriate in its application to the Municipality of Howrah and for that purpose in place of the word 'corporation' the word 'commissioners' has been substituted. Thus modified it is not s. 386 of the Calcutta Municipal Act but a different section. Therefore what s. 38 of the West Bengal Fire Services Act repeals in s. 386 of the Calcutta Municipal Act and not s. 386 of that as modified and applied to the Municipality of Howrah.

Secretary of State for India v. Hindusthan Co-operative Insurance Society, (1931) L. R. 59 I. A. 259, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 240 of 1959.

Appeal by special leave from the judgment and order dated July 15, 1959, of the Calcutta High Court in Criminal Revision No. 135 of 1959.

S. C. Mazumdar, for the appellant.

Sukumar Ghose, for the respondent No. 1.

1962. March 26. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—This is an appeal against the judgment and order of the High Court of Calcutta passed in revision against the order of the Additional Sessions Judge, Howrah, who had modified the order of conviction of the respondents under s. 488 read with s. 386(1)(b) of the Calcutta Municipal Act (Act III of 1923) as extended to the Municipality of Howrah, hereinafter called the 'Act'. The appellant before us is the Chairman of the Municipal Committee of Howrah who is the complainant and the respondent is a company with its premises at No. 1 Swarnamoyee Road, where it was carrying on the manufacture of bobbins, card pine, shuttles etc. They were also storing their wood and timber in those premises.

The charge against the respondent was that it was using the premises within the municipality of Howrah without a license as required under s. 386 of the Act and was therefore guilty under s. 488 of the Act. The defence of the respondent was that the premises had been licensed as a warehouse under the West Bengal Fire Services Act, 1950 (Act 18 of 1950) and consequently because of s. 38 of that Act, s. 386 of the Act stood repealed and the respondent was not required to take out another license under s. 386 of the Act. The Magistrate, before whom the case was tried, was of the opinion that the effect of s. 38 of the West Bengal Fire Services Act was that the power of the Municipality to require a license under s. 386 of the Act for user as a warehouse had been taken away and therefore in respect of the rest of the premises used as a factory or for other purposes the applicability of s. 386 remains unimpaired. He found that the respondent was running a factory with workshops fitted with electric power in the premises for the manufacture of bobbins, card pins, shuttles etc. He convicted the respondent under s. 488 and sentenced him to a fine of Rs. 250. In appeal the learned Additional Sessions Judge held that s. 38 of the West Bengal Fire Services Act does not repeal all the three clauses of s. 386 of the Act but partially repeals s. 386(3) which deals with the levy of fees and therefore a license under s. 386(1) will still have to be taken but as the premises had already been licensed as a warehouse the respondent company could not be required to pay any fees under s. 386(3) of the Act. The object, according to the learned Sessions Judge, was that the levy of fees twice over in respect of the same premises was prohibited and not that the license was not required. The sentence of fine was therefore reduced from Rs. 250 to Rs. 10 only. Against this order the appellants took a revision to the High Court.

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The High Court held that where the premises are licensed as a warehouse under the Fire Services Act but a portion of it is used as a workshop the Municipal Committee has no longer the power to levy any fees for granting the license in respect of the premises even though there may be a liability to take out a license i.e. while it may be necessary to take out a license under s. 386(1) of the Act no fees could be charged and as the whole of the premises in case had been licensed as a warehouse under the West Bengal Fire Services Act no part of the premises would be liable for any charge of fees for granting a license.

A further argument was also raised for the appellant in the High Court and that was that s. 38 of the West Bengal Fire Services Act did not apply to the Howrah Municipality at all because the Howrah Municipality is governed neither by the Calcutta Municipal Act nor by the Bengal Municipal Act but by the Calcutta Municipal Act as extended to Howrah i. e. as modified in accordance with the powers conferred on the Government by s. 541(2) of the Calcutta Municipal Act. But the High Court was of the opinion that s. 38 of the West Bengal Fire Services Act is applicable to the Howrah Municipality and therefore repelled this last argument. The revision was therefore dismissed, and the rule was discharged. Against that order the appellant has come in appeal by special leave.

The main argument raised by the appellant was that s. 38 of the West Bengal Fire Services Act could not affect the operation of s. 386 of the Calcutta Municipal Act as it was extended to the Howrah Municipality. Section 38 of the former Act reads as under:—

“On the application of this Act to Calcutta or any other Municipality, section

386 of the Calcutta Municipal Act, 1923, or section 370 of the Bengal Municipal Act, 1932, as the case may be, shall be deemed to be repealed in so far as they entitle the Corporation of Calcutta or the Commissioners of the Municipality to levy fees in respect of any premises or part thereof licensed as a warehouse under this Act”.

It was contended that s. 38 of that Act does not repeal s. 386 of the Act because the interpretation of that section is that it repeals s. 386 of the Calcutta Municipal Act 1923 which entitles the Corporation of Calcutta to levy fees and s. 370 of the Bengal Municipal Act, 1932 which entitles the Commissioners of other Municipalities to levy fees in respect of any premises licensed as a warehouse; in other words the argument was that in the case of Corporation of Calcutta s. 386 of the Act shall be deemed to be repealed to the extent mentioned in s. 38 and in the case of other Municipalities and the Commissioners of those Municipalities s.370 of the Bengal Municipal Act, 1932 shall be deemed to be repealed to the extent that s.38 is applicable and as Howrah Municipality is neither the Corporation of Calcutta nor is it governed by s. 370 of the Bengal Municipal Act, s. 38 is inoperative.

To test the correctness of this argument it is necessary to refer to the provisions by which the Act was extended to the Municipality of Howrah. Under ss. 540 and 541 of the Calcutta Municipal Act the Provincial Government was empowered to extend all or any of the provision of that Act to the Municipality of Howrah. Under s. 542 the effect of the extension was that the Bengal Municipal Act 1932 stood repealed qua the Municipality of Howrah from the date of such extension and sub-cl. (b) of that section provides:—

“Except as the Provincial Government may otherwise by notification in the Official

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Gazette direct, all rules, by-laws, orders, directions and powers made, issued or conferred under the portions of this Act which have been so extended and in force at the date of such extension, shall apply to the said municipality or part, in supersession of all corresponding rules, by-laws, orders, directions and powers made, issued or conferred under the said Bengal Municipal Act, 1932”

and by an explanation to that section the extension of the Act did not put the Municipality of Howrah under the authority of the Corporation of Calcutta. By a Gazette Notification No. 260M of January 18, 1932 practically the whole of the Act, excepting the provisions which are not necessary, was extended to the Municipality of Howrah. The language extending the Act was as follows:—

“Howrah.—No. 260M.—18th January 1932—In exercise of the power conferred by sub-section (2) of section 541 of the Calcutta Municipal Act, 1923 (Bengal Act III of 19-3). the Government of Bengal (Ministry of Local Self-Government) are pleased to extend to the Municipality of Howrah the following provisions of the Calcutta Municipal Act 1923, subject to the modifications and restrictions specified therein which are shown in antique type.”

As a result of this extension s. 386 was extended to the Municipality of Howrah with this modification that in place of the word “Corporation of Calcutta” the word “Commissioners” was substituted. In 1951 the Calcutta Municipal Act 1951 being West Bengal Act 33 of 1951 was enacted thus replacing Act 3 of 1923 which was therefore repealed. In the new Act corresponding provision to ss. 540, 541 and 542 are ss. 589, 590 and 591. Section 614 of the new Act provides that the provisions of Act III of 1923 as extended to the Municipality of Howrah shall continue to be in force until the provisions of the new

Act are extended to that Municipality under the new Act. Thus the effect of the extension by the Notification under ss. 540 and 541 of the Calcutta Municipal Act is that to the Municipality of Howrah an amended Act with an amended s. 386 is applicable and not s. 386 of the Act III of 1923. Keeping this in view we have then to see how far s. 38 of the West Bengal Fire Services Act 1950 (Act 18 of 1950) has affected the operation of s. 386 as it applies to the Municipality of Howrah. Section 38 provides that that section repeals s. 386 of the Act III of 1925 to the extent therein mentioned. It also repeals s. 370 of the Bengal Municipal Act as it applies to the Commissioners of Municipalities in Bengal. It does not apply to s. 386 as modified and is inapplicable to the Municipality of Howrah because in s. 386 as applicable to the Corporation of Calcutta the word used is "Corporation" and not "Commissioners" and wherever the word "Corporation" is used in s. 386 it is replaced by the word "Commissioners" in s. 386 as it applies to the Howrah Municipality. It cannot be said therefore that s. 38 repeals s. 386 of the Act III of 1923 as it applies to the Howrah Municipality.

In a somewhat similar case a similar view was taken by the Privy Council. See *Secretary of State for India v. Hindusthan Co-operative Insurance Society*(¹). In that case certain provisions of the Land Acquisition Act were incorporated by reference into the Calcutta Improvement Act 1911. By an amendment of 1921 the right of appeal to the Privy Council from the decision of the High Court was provided in matters falling under the Land Acquisition Act. It was held that the right of appeal so given was not applicable to the award of a tribunal under the Calcutta Improvement Act assessing compensation in respect of land acquired under the provisions of the Land Acquisition Act. Dealing with this matter Sir George Lowndes quoted with

(1) (1931) L.R. 58 I.A. 259.

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approval the observations of Lord Westbury in *Ex parte St. Sepulchre's* (1) and observed:—

“It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition”.

Although s. 38 of the West Bengal Fire Services Act extends to the whole of Bengal and to the extent there set out it repeals s. 386 of the Calcutta Municipal Act which applies to the Corporation of Calcutta and s. 370 which applies to the other Municipalities of Bengal yet it does not affect the operation of s. 386 of the former Act as modified and extended to the Municipality of Howrah by the notification which has been set out above. The reason for that is that the language of s. 386 has been modified to make it appropriate in its application to the Municipality of Howrah and for that purpose in place of the word ‘Corporation’ the word “Commissioners” has been substituted. Thus modified it is not s. 386 of the Calcutta Municipal Act but a different section. Therefore what s. 38 of the West Bengal Fire Services Act repeals is s. 386 of the Calcutta Municipal Act and not s. 386 of that as modified and applied to the Municipality of Howrah. It may look rather anomalous but that is what the effect of the modification of the language is. In our opinion therefore the contention of the appellant is well founded and s. 38 of the West Bengal Fire Services Act does not repeal s. 386 as modified and as applicable to the Municipality of Howrah. From the point of view of the respondent the result may be unfortunate

(1) (1863) 33 L.J. (Ch.) 372, 376.

but that is the interpretation of the language of the various sections which are relevant in the present case.

We therefore allow the appeal, set aside the order of the High Court and convict the respondent of the offences charged, but in view of the fact that the appellant succeeds on a question of interpretation we do not think it necessary to increase the sentence of fine imposed by the learned Sessions Judge. The appeal is allowed to that extent.

Appeal allowed.

BEKARU SINGH

v.

STATE OF U. P.

(J. L. KAPUR, and RAGHUBAR DAYAL, JJ.)

Criminal Procedure—Surety bond—Substituting one surety for another—Procedure—If accused must execute personal bond with every surety bond—Forfeiture of bond—Code of Criminal Procedure, 1898 (Act V of 1898), ss. 499, 500, 502, Schedule V, Form No. XLII.

One R was granted bail on his furnishing a personal bond and three sureties which he did. On July 7, one of the sureties S applied for the discharge of his bond. On July 9, R made an application that the appellants surety bond be accepted in place of S, and the same day the appellant filed his surety bond. The appellant also filed an affidavit that he had property enough to satisfy the bond and a vakil also certified to that effect. The bond was sent for verification to the Tehsil and after verification was formally accepted on August 20. Subsequently R absconded and the appellant's bond was forfeited. The appellant contended that the forfeiture was illegal and that his bond was not properly accepted as no warrant was issued for the arrest of R when S applied for the discharge of his bond, as the bond of S was not formally discharged and as R had not executed a personal bond on the reverse of the form on which the appellant had executed his bond.

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