

it might have been acquiesced in by all concerned when as in the present case, the evidence shows that the adoption did not take place. Another fact on which the appellant relied was that on October 30, 1933, Badrinarayan, his wife and his sons partitioned their family property. That is not an act of the respondent and cannot affect her rights if they are otherwise enforceable.

On the whole we are of the opinion that the judgment of the High Court is sound and that this appeal should be dismissed with costs.

Appeal dismissed.

ASA RAM

v.

THE DISTRICT BOARD, MUZAFFARNAGAR

(S. R. DAS, C. J., BHAGWATI, B. P. SINHA,
SUBBA RAO and K. N. WANCHOO, JJ.)

Conflict of Statutes—Two statutes conferring same power on two different bodies—Construction—‘Committee’ and ‘Panchayat’, if identical in meaning—Power to regulate, if includes power to require taking out of licence—U. P. District Boards Act (U. P. X of 1922), ss. 93(3), 106 and 174(1)(k)—U. P. Town Areas Act (U. P. II of 1914) as amended in 1934, s. 26(a).

The appellant was running machines with the aid of power in a locality which was admittedly within the Jalalabad Town Area. He did not take out a licence for running the machines as required by the Muzaffarnagar Factories Bye-laws framed by the respondent, the District Board Muzaffarnagar, under s. 174(1)(k) read with s. 106 of the U. P. District Boards Act, and was prosecuted by the respondent. The appellant contended that the bye-laws did not apply to the town area and it was not necessary for him to take out a licence. Section 174(1)(k) of the District Boards Act and s. 26(a) of the Town Areas Act both provided for the regulation of offensive trades and admittedly the trade carried on by the appellant was an offensive trade. The District Boards had the power under s. 174(1)(k) to frame bye-laws for rural areas which included town areas. But s. 93(3) of the District Boards Act took away the power of the District

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Boards to exercise within the limits of a town area any authority which was vested in a 'Town Panchayat'. Though the words 'Town Panchayat' were replaced by the words "Town Area Committee" in the Town Areas Act by an amendment in 1934 there was no corresponding amendment in s. 93(3) of the District Boards Act. The respondent contended that as there were no Town Panchayats as such now, s. 93(3) did not bar the District Board from framing bye-laws for town areas.

Held, that the respondent had no power to frame bye-laws for the town area and, consequently, the prosecution of the appellant was bad. As the word 'committee' was merely a translation of the word 'panchayat', the substitution of the word 'committee' for the word 'Panchayat' in the Town Areas Act did not make any substantial change and consequently the restriction under s. 93(3) of the District Boards Act continued in full force.

When there is a body dealing with a larger area and from that area is carved out a smaller area which is entrusted to another body, the law giving power to the body governing the smaller area must prevail over the law giving power to the body governing the larger area. If the Act of 1934 amending the Town Areas Act brought into existence a new body, the Town Area Committee, then it means that a smaller area was carved out from a larger area in 1934 and the powers given to the new statutory body would prevail.

Where two statutes give authority to two bodies to exercise powers which cannot co-exist, the earlier is repealed by the later statute. On this principle also the power of the Town Area Committee, if it be deemed to be a new body coming into existence in 1934, must prevail over that of the District Board.

King v. The Justices of Middlesex, (1831) 169 E. R. 1347 and *Daw v. The Metropolitan Board of Works*, (1862) 133 R.R. 311, relied upon.

The power to regulate a trade includes the power to frame bye-laws requiring the taking out of a licence.

Mohamad Yasin v. The Town Area Committee, Jalalabad, [1952] S.C.R. 572, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 119 of 1956.

Appeal from the judgment and order dated May 11, 1956, of the Allahabad High Court in Criminal Revision No. 1724 of 1955, against the Order dated July 13, 1955, of the Additional District Magistrate (J), Muzaffarnagar, in Criminal Revision No. 17/18 of 1955 upholding that of the Magistrate 1st Class, Muzaffarnagar, dated February 14, 1955, in Cr. Case No. 132 of 1955.

Rameshwar Nath and S. N. Andley, for the appellant.

C. K. Daphtary, Solicitor-General of India and P. C. Aggarwal, for the respondent.

1958. December 3. The Judgment of the Court was delivered by

WANCHOO, J.—This appeal on a certificate granted by the Allahabad High Court raises a question relating to the interpretation of certain provisions of the U. P. District Boards Act, (U. P. X of 1922), and the U. P. Town Areas Act (U. P. No. II of 1914). It is necessary to state the facts on which the question has arisen. Asa Ram appellant runs certain machines with the aid of power in premises which are in a locality which is admittedly within the Jalalabad town area since the year 1953-54. He did not take out a licence for running these machines for 1953-54, as required by bye-law (7) of the Muzaffarnagar Factories Bye-laws, framed by the District Board of Muzaffarnagar, under s. 174(1) (k) read with s. 106 of the District Boards Act. Consequently, he was prosecuted for contravening the bye-laws in question. He admitted that he was running these machines with the aid of power; but his contention was that as the premises where the machines were running were in the town area of Jalalabad, the bye-laws framed by the District Board did not apply to him and it was not necessary for him to take out a licence, and his prosecution at the instance of the District Board for contravening the bye-laws was bad. The decision of this point depended upon the construction of s. 93(3) of the District Boards Act and s. 26 of the Town Areas Act.

The trial Magistrate was of the opinion, on a construction of the sections above-named, that the bye-laws framed by the District Board were not applicable to premises within the Jalalabad town area, and, therefore, Asa Ram need not have taken out a licence. He consequently acquitted Asa Ram. There was a revision application by the District Board, which was dismissed by the Additional District Magistrate (Judicial), Muzaffarnagar, who agreed with the view of the

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Magistrate. The District Board then went up in revision to the High Court of Allahabad. The revision was heard by a learned Single Judge, who framed three questions which arose for determination, namely,

(1) Is running of a flour mill, etc., an offensive trade ?

(2) Does the word 'regulation' used in s. 26(a) U. P. Town Areas Act include the power of issuing a licence ? and

(3) Does s. 93(3) of the District Boards Act amount to a divestment of authority of the District Board in favour of the Town Area Committee ?

On the first question, the learned Judge was of the opinion that the machines run by Asa Ram would come within the provisions of s. 26(a) of the Town Areas Act, though he also took the view that it was not necessary for him to decide the point. On the second question, he held that 'regulation' did not include the power of granting a licence, though this was against a Division Bench authority of that High Court reported as *Municipal Board, Hathras v. Behrey Narain Dutt* (1). He relied on a decision of this Court in *Mohamad Yasin v. The Town Area Committee, Jalalabad* (2) also in this connection. On the third question he was of the view that s. 93(3) barred the District Board from exercising any authority in a town area which is vested in the body mentioned in it. He was further of the view that the amendment of the Town Areas Act in 1934 by which the word 'Panchayat' occurring in the Town Areas Act was substituted throughout by the word 'Committee' made no difference even though s. 93(3) of the District Boards Act was not simultaneously amended by substituting the words 'Town Area Committee' for the words 'Town Panchayat' therein in conformity with the change made in the Town Areas Act. But in view of his decision on the second question, viz., that 'regulation' did not include the power of granting a licence, he held that bye-laws framed by the District Board for taking out licences applied to premises within the town areas. He, therefore, set aside the acquittal and

(1) A.I.R. 1948 All. 1.

(2) [1952] S.C.R. 572.

ordered a retrial. He also gave leave to appeal to this Court.

The three points formulated by the High Court arise for decision before us also. The learned Solicitor General appearing for the District Board does not challenge the correctness of the decision on the first point, namely, whether the running of the machines which the appellant is running would come within the relevant words of s. 26(a) of the Town Areas Act. It is enough in this connection to set out the two provisions in the two Acts to see that the decision is correct. Section 174 (1)(k) of the District Boards Act, under which the bye-laws were framed is in these terms—

“regulating slaughter houses and offensive, dangerous or obnoxious trades, callings, or practices and prescribing fees to defray the expenditure incurred by a board for this purpose.”

Section 26(a) of the Town Areas Act is in these terms—

“The Committee may by general or special order in writing provide and if so advised by the district magistrate shall provide for all or any of the following matters within the town area, namely:—

- (a) the regulation of offensive callings or trades ;
.....”

It is obvious therefore that s. 26(a) of the Town Areas Act is co-extensive with s. 174(1)(k) of the District Boards Act, so far as regulation of offensive trades or callings is concerned. As the learned Solicitor General does not contest the finding of the High Court that the trades in question carried on by Asa Ram with his machines with the aid of power are offensive trades, it follows that the Town Area Committee has power to regulate these trades as well as the District Board.

So far as the second point is concerned, the learned Solicitor General concedes that ‘regulation’ would include the power of issuing a licence—and very rightly so. No case has been brought to our notice in which this Court held that power of ‘regulation’ does not include the power of issuing a licence and that issue of a licence amounts to prohibition and is not a

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restriction on carrying on a trade or business. It is enough to point out that the District Boards Act under which these bye-laws have been framed does not specifically provide anywhere for granting of licences. Section 174(1) (k) itself speaks only of regulating offensive trades, etc., and has not given in so many words power to issue licences. It is true that s. 106 provides that the board may charge a fee to be fixed by bye-law for any licence, sanction or permission which it is entitled or required to grant by or under the Act; but that section merely provides for levying of fee where a licence is necessary under other provisions of the Act and is not in itself an authority for issue of licences. Therefore, when the Board framed a bye-law relating to issue of licences it did so under its power of regulation. The High Court with respect seems to have misunderstood *Mohamad Yasin's case* ⁽¹⁾. That case turned on the question whether the Town Areas Committee could impose a fee and did not deal with the question whether it could issue a licence. It was in that connection that the following sentence which the High Court has picked out, appeared in that judgment—

“We have not been referred to any notification whereby s. 294 of the U. P. Municipalities Act was extended to the respondent committee.”

Section 294 of the Municipalities Act is in the same terms as s. 106 of the District Boards Act and deals with the power of levying fees. The High Court seems to have lost sight of the distinction between granting licences which depends on the power of regulation and levying of licence-fees, which can only be levied if there is specific provision to that effect in the law. *Mohamad Yasin's case* ⁽¹⁾ decided that as there was no provision authorising a Town Area Committee to levy licence-fee it could not do so. That, however, did not mean that ‘regulation’ did not include the power of issuing licences, though in the absence of a provision for charging licence-fees, licences must be issued without charge, if bye-laws require the issue of a licence in order to regulate trades or callings which a Town Area Committee can regulate under s. 26(a) of the

(1) [1952] S.C.R. 572.

Town Areas Act. The view of the learned Judge, therefore, that the Town Area Committee could not issue a licence when framing rules regulating offensive trades or callings is not correct. The Town Area Committee would thus have the power to frame bye-laws requiring taking out of licences in case it exercises its power of regulation under s. 26(a) of the Town Areas Act in the same way as a District Board has the power of framing bye-laws under s. 174(1)(k) requiring those carrying on certain trades to take out licences. This brings us to the third question, namely, what happens when two statutory bodies have concurrent power in the same field?

The power of the District Board to frame bye-laws under s. 174(1)(k) is confined to rural area as defined in s. 3(10). We understand that this section has been amended recently in 1958 and now town areas are to be excluded from the ambit of 'rural area'; but at the relevant time it ran as follows:—

“ ‘Rural area’ means the area of a district excluding every municipality as defined in the United Provinces Municipalities Act, 1916 and every cantonment as defined in the Cantonment Act, 1910.”

Therefore, at the relevant time, the District Board would have the power to frame bye-laws even for town areas. In order, however, to resolve any conflict, which may arise, s. 93 (3) was included in the District Boards Act. It is in these terms:—

“ Nothing in this Act shall entitle a board to exercise within the limits of any municipality, notified area, cantonment or town area, any authority which is vested in the municipal board, notified area committee, cantonment committee, district magistrate, or town panchayat, as the case may be.”

There are certain exceptions to this provision, but we are not concerned with them in the present case. The argument of the learned Solicitor General in this behalf is that the District Board will be divested of its power to frame bye-laws for regulating offensive trades and callings in town areas, if the same authority is vested in the town panchayat. He goes on that

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now there are no Town Panchayats having authority in town areas, for the words "Town Panchayat" appearing in the Town Areas Act have everywhere been substituted by the words "Town Area Committee". It is submitted that a corresponding amendment was not made in s. 93 (3) and, therefore, though the District Board would have no power upto 1934 to frame bye-laws for town areas relating to regulation of offensive trades or callings, which were covered by s. 26 (a) of the Town Areas Act, it would have that power after the amendment of 1934.

We must say that this is a very technical argument. The Town Areas Act was passed in 1914 and in the Act as it was originally passed the authority conferred by s. 26(a) was vested in the Town Panchayat. In 1920 the U. P. Village Panchayat Act was passed creating panchayats for any village or groups of villages. It seems that it was then thought fit to change the name in the Town Areas Act to Town Area Committee to avoid confusion with the Panchayats under the Village Panchayat Act. But this in our opinion was only a formal change, for the word 'committee' in English is after all a translation more or less of the word 'panchayat' in Hindi. Therefore, when the word 'committee' was substituted in place of 'panchayat' in the Town Areas Act there was really no change of substance and the restriction on the power of the District Board under s. 93 (3) of the District Boards Act to deal with matters entrusted to the town areas continued in full force. In this connection, our attention was drawn to *Shrimati Hira Devi v. District Board, Shahjahanpur* (1). In that case, s. 71 of the U. P. District Boards Act was amended but no corresponding amendment was made in s. 90. In that connection the following observations were made at p. 1131 :—

"It was unfortunate that when the Legislature came to amend the old section 71 of the Act it forgot to amend s. 90 in conformity with the amendment of s. 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon the expression 'orders of any authority

(1) [1952] S.C.R. 1122.

whose sanction is necessary'. No doubt it is the duty of the court to try to harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act."

That case, however, related to entirely different circumstances. Here we are dealing with two statutes giving power to two statutory bodies, and if there is conflict in view of the technical submission made by the learned Solicitor General and s. 93 (3) cannot come to the aid of the Town Area Committee, we have still to see which Act will prevail in the circumstances. The U. P. District Boards Act deals with a larger area in which the area constituting the town area is also included. The Town Areas Act on the other hand deals with a smaller area and on principle when there is a body dealing with a larger area and from that area is carved out a smaller area which is entrusted to another body, the law giving power to the body governing the smaller area should prevail over the law giving power to the body governing the larger area. If the substitution of the word 'committee' for the word 'panchayat' is merely a translation, as observed earlier, it makes no difference to the application of s. 93 (3) even after 1934. But if it is not treated as a mere translation and it is said that a new body was vested with powers under the Town Areas Act by the amendment of 1934, then it means that a smaller area was carved out from a larger area in 1934 and a new statutory body was created to govern it with certain powers; in those circumstances the powers given to the new statutory body in the smaller area carved out from the larger area will prevail.

Reference in this connection may be made to two English cases, which lay down the principle how the conflict between the two statutes in similar circumstances should be resolved. In *King v. The Justices of Middlesex* (1), it was held:—

"Where two Acts of Parliament, which passed during the same session and were to come into

(1) (1831) 2 B. & AD. 818; (1831) 109 E.R. 1347, 1348.

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operation the same day, are repugnant to each other, that which last received the Royal assent must prevail and be considered pro tanto a repeal of the other."

Again in *Daw, Clerk of the Commissioner of Sewers of the City of London v. The Metropolitan Board of Works* (1), it was held—

"Where two statutes give authority to two public bodies to exercise powers which cannot consistently with the object of the Legislature co-exist, the earlier must necessarily be repealed by the later statute."

In that case the conflict was between s. 145 of the City of London Sewers Act, 1848 and s. 141 of the Metropolitan Local Management Act, 1855, and the later was held to prevail. The principle of these cases will apply to the present circumstances, and if the words "town area committee" are not held to be a translation of the words "town panchayat", the result is that a Town Area Committee being vested with power under s. 26 (a) to regulate offensive trades or callings, the power of the Town Area Committee must prevail over the power of the District Board under s. 174 (1)(k) of the District Boards Act. We, therefore, allow the appeal, set aside the order of the High Court and order the acquittal of Asa Ram appellant.

Appeal allowed.

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NARAIN AND TWO OTHERS

v.

THE STATE OF PUNJAB

(GAJENDRAGADKAR and A. K. SARKAR, JJ.)

Criminal Trial—Material witness, who is—Failure to examine—Effect of—If amounts to rejection of evidence—Indian Evidence Act, 1872 (1 of 1872), s. 167.

Several persons attacked and seriously injured one M. After assaulting him the assailants were carrying him away when M's brother R came to rescue him and in self defence shot dead one of the assailants and carried M away. For the assault on M eight persons, including the appellants, were tried for offences under

(1) (1862) C.P. 12 C.B.N.S. 161; (1862) 133 R.R. 311.