

## APPELLATE CRIMINAL

Before Mr. Justice Dixit and Mr. Justice Chainani.

STATE v. N. A. RAHIMBHOY.\*

1955  
March, 14

*Bombay Municipal Corporation Act (III of 1888), ss. 56, 56 B, 68, 274, 471—Delegation of Powers by Commissioner—Deputy Commissioner (Improvements).*

The Commissioner of the Bombay Municipal Corporation can delegate to the Deputy Commissioner (Improvements) his power of issuing notice under s. 274 of the Bombay Municipal Corporation Act.

The Commissioner can delegate to the Deputy Commissioner (Improvements) under ss. 56 and 56 B such of the powers conferred and duties imposed on him by the Act including even those specified in sections not referred to in s. 68 (2), as he may deem proper.

*Queen v. Bishop of Oxford*,<sup>(1)</sup> referred to.

CRIMINAL Appeal against the order of acquittal passed by V. M. Gehani, Esquire, Presidency Magistrate, 16th Court, Esplanade, Bombay.

Charge under s. 471 of the Bombay Municipal Act for not complying with a notice issued by the Deputy Municipal Commissioner (Improvements), Bombay.

The facts are fully set forth in the Judgment.

H. M. Choksi, Government Pleader for the State.

T. N. Walawalkar, for the Accused.

*Chainani J.*—This is an appeal by the State against the acquittal of the respondent, who was prosecuted for committing an offence under s. 471 of the Bombay Municipal Corporation Act for not complying with a notice issued to him by the Deputy Municipal Commissioner, (Improvements), Bombay on April 28, 1953. This notice was issued under s. 274 (1) of the Act, which empowers the Commissioner by a written notice to require the owner of any premises furnished with a private water supply to provide such premises with cisterns and fittings of such size, material, quality and description as the Commissioner may think fit. It was urged before the learned Magistrate that under s. 274, a notice can be issued only by the Commissioner, that the Commissioner's powers under this section could not be delegated to the Deputy Municipal Commissioner, (Improvements) under s. 68 of the Act and that consequently, the Dy. Municipal Commissioner (Improvements) had no power to issue notice to the respondent on April 20, 1955.

\* Criminal Appeal No. 1470 of 1955.

1. (1879) 4 Q. B. D. 245-251.

On the other hand, on behalf of the prosecution, it was contended before the learned Magistrate that the necessary powers had been delegated to the Dy. Municipal Commissioner (Improvements) under s. 56B of the Act and that the notice issued to the respondent was, therefore, valid. The learned Magistrate however, took the view that as the powers under s. 274 had not been and could not be delegated under s. 68 to the Dy. Municipal Commissioner (Improvements), he was not competent to issue notice to the respondent under s. 274. He, therefore, acquitted the respondent.

The answer to the question, which has to be determined in this appeal depends upon an interpretation of ss. 56, 56B and 68 of the Act. Sub-s. (1) of s. 56 provides that a Deputy Commissioner shall be subordinate to the Commissioner and shall exercise such of the powers and perform such of the duties of the Commissioner as the Commissioner shall from time to time depute to him. Sub-section (3) of this section states that all acts and things performed and done by a Deputy Commissioner during his tenure of the said office and in virtue thereof, shall for all purposes be deemed to have been performed and done by the Commissioner. Sub-s. (1) of s. 56B states that

“the Deputy Municipal Commissioner (Improvements) shall be subordinate to the Commissioner—and, subject to his orders, shall exercise such of the powers and perform such of the duties of the Commissioner in connection with the improvement of the city and such other duties of a Deputy Municipal Commissioner as the Commissioner may from time to time direct; Provided that the Commissioner shall inform the corporation of the powers and duties which he from time to time deputes to the Deputy Municipal Commissioner (Improvements).”

Sub-section (2) of s. 56B is similar to sub-s. (3) of s. 56 and states that all acts and things performed and done by the Deputy Municipal Commissioner (Improvements), during his tenure of the said office and in virtue thereof, shall for all purposes be deemed to have been performed and done by the Commissioner. Sub-section (1) of s. 68 states that any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner by any of the sections, sub-sections or clauses mentioned in sub-s. (2).....may be exercised, performed or discharged by any Municipal Officer whom the Commissioner generally or specially empowers in writing in this behalf. Under s. 68, therefore, the Commissioner can empower a Municipal Officer to exercise, perform or discharge only such of his powers, duties or functions as are specified in the sections, sub-sections or clauses mentioned in sub-s. (2) of this section.

A Deputy Municipal Commissioner is a Municipal officer and the question for consideration, therefore, is whether he can exercise and perform only those powers and duties as can be assigned to him under s. 68 or whether the powers and duties

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of the Commissioner specified in the Act but not mentioned in sub-s. (2) of s. 68, can also be delegated to him under s. 56 or s. 56B, as the case may be. If the view that a Deputy Municipal Commissioner can exercise and perform only those powers and duties as he could be empowered to exercise and perform under s. 68, was correct, the provisions in s. 56 and s. 56B for delegating or assigning powers and duties to a Deputy Municipal Commissioner would become unnecessary and superfluous. An act ought to be so construed that no part of it becomes superfluous, void or insignificant *Queen v. Bishop of Oxford*<sup>(2)</sup>. Next to the Commissioner, the other principal executive officers of the Corporation are the Deputy Municipal Commissioners and the Legislature evidently intended that they should exercise and perform all the powers and duties of the Commissioner, which the Commissioner considers it necessary or proper to delegate to them and not merely those which he could assign to them under s. 68. This is evidently the reason why special provisions in this regard have been inserted in s. 56 and s. 56B. The ordinary rule of interpretation is that where there is a general provision and a special provision in regard to any matter, the special provision will prevail, in case there is a conflict between the two provisions. There are also no words in s. 56 and s. 56B, which suggest that these sections are to be read subject to the provisions of s. 68. They do not say that a Deputy Municipal Commissioner shall exercise such powers and perform such duties as the Commissioner may depute or direct under s. 68. In our opinion, they are independent provisions, which are not controlled by s. 68.

We are accordingly of the opinion that it is competent for a Commissioner to direct under ss. 56 and 56B that a Deputy Municipal Commissioner shall exercise such of his powers and perform such of his duties conferred or imposed by him by the Act, including those specified in sections not referred to in sub-s. (2) of s. 68, as he, the Commissioner, may deem proper. Of course under the proviso to sub-s. (1) of s. 56B, the Commissioner has to inform the Corporation of the powers and the duties assigned by him to the Deputy Municipal Commissioner (Improvements). That has been done in the present case.

The Deputy Municipal Commissioner (Improvements) was, therefore, competent to issue notice to the respondent under s. 274 of the Act.

The order passed by the learned Magistrate acquitting the respondent is, consequently, set aside and he will be directed to hear the case on merits and then dispose of it in accordance with law.

*Appeal allowed*

G. N. V.