

## IN THE SUPREME COURT OF FIJI

## Appellate Jurisdiction

Criminal Appeal No. 53 of 1960

Between:

JAMES MADHAVAN

Appellant

v.

REGINAM

Respondent

Public Safety Ordinance (Cap. 58)—power of Governor in Council to make regulation for the requisitioning of vehicles—exercise of general discretion.

The question in this case was whether the Governor in Council could lawfully make a regulation providing for the requisitioning of vehicles under the powers conferred by section 2 of the Public Safety Ordinance (Cap. 58). These provided (at the material time) as follows:—

“Whenever the Governor in Council is satisfied that a state of civil commotion which threatens the public safety exists or is likely to arise in the Colony or in any part thereof, he may, by order under his hand, make regulations for all or any of the following matters that is to say—

- (a) the regulation, restriction or prohibition of the entry of all or certain persons or certain classes of persons into, the movement of such persons within, and the exit of such persons from, such area or areas as may from time to time be prescribed by the Governor in Council;
- (b) the regulation or restriction of the movement of means of transport and the supply of animals or articles which give motive power to the means of transport;
- (c) the regulation or restriction of the supply or possession of intoxicating liquor and the prohibition or restriction of the opening or closing of premises or any part of premises in which intoxicating liquor is sold or supplied or of the opening or closing of any kava saloon, hop beer saloon or restaurant licensed under the Licence Ordinance;
- (d) the regulation of the storage, possession or use by all persons or by certain classes of persons or by persons in particular areas or by persons following particular occupations of firearms, ammunition or explosives and all or any offensive weapons or instruments of whatsoever description and the seizure and forfeiture thereof and the limitation or variation of the conditions of any licence, certificate or permit possessed by any persons under any law relating to arms, ammunition or explosives;
- (e) the regulation, restriction or prohibition of gatherings of persons in any place whatsoever and the prohibition of the holding of meetings in any place whatsoever without the permission of

- the Commissioner of Police, and any gathering of persons or meeting held in contravention of any of the provisions of any regulations made under this subsection shall be deemed to be an unlawful assembly and may be dealt with accordingly;
- (f) the prohibition and prevention of any description of intimidation or acts or threats of violence or any other disorderly conduct of whatsoever description; and
- (g) generally for all such matters as in the opinion of the Governor in Council will better provide for the public safety."

The appellant argued that since no power to requisition was provided for in (a) to (f), no such regulation could be made under subsection (g) (above) because of the *ejusdem generis* rule.

*Held.*—(1) Since there was no particular category to be extracted from subsections (a) to (f) of section 2 of the Ordinance, there was no distinct *genus* to which the general words of subsection (g) should be restricted. The *ejusdem generis* principle had therefore no application.

(2) The paramount rule of construction that every statute is to be expounded according to its manifest intention must be applied. The Legislature had here set out in subsections (a) to (f) of section 2 (*supra*) a number of specific matters which would be likely to require legislation in times of threatened civil commotion. This list could not be expected to be exhaustive. Therefore the Legislature had vested by subsection (g) a general discretion in the Governor in Council to make regulations for all such other matters as in the opinion of the Governor in Council would better provide for the public safety.

Appeal dismissed.

Cases cited:

*Melbourne Corporation v. Barry*, 31 C.L.R. 174.

*Attorney-General for Canada v. Hallet & Carey Ltd.* (1952) A.C. 427.

*Rex v. Halliday* (1917) A.C. 260.

*Liversidge v. Anderson* (1942) A.C. 206.

*A. M. Raman* for the Appellant.

*A. M. Greenwood*, Q.C., Attorney-General, for the Crown.

KNOX-MAWER, Ag. J. (11th November, 1960).

The appellant was charged before the Magistrate's Court of the First Class, Ba, with obstruction of officers, contrary to Regulation 33 of the Public Safety Regulations, 1959, and section 3 of the Public Safety Ordinance (Cap. 58). The particulars of the offence charged were:—

James Madhavan, s/o Dorai Sami alias Vasudewan, on the 7th day of September, 1960, at Ba in the Western Division, obstructed the District Officer, Ba, in the performance of his duty, by wilfully refusing to hand over, Land Rover No. 7457, when properly requisitioned under the Public Safety Ordinance (Cap. 58).

The appellant was convicted and fined £20.

Against this conviction he has now appealed upon the following four grounds:—

- (a) That the learned Magistrate erred in law in holding that the Public Safety Regulations 1959 Legal Notice No. 39 of 1960 were in accordance with the powers vested in the Governor-in-Council by the Public Safety Ordinance (Cap. 58) section 2.
- (b) That the learned Magistrate erred in law in holding that the Regulations requisitioning land is severable from that which relates to means of transport.
- (c) That the learned Magistrate erred in law in holding the officer purporting to have power to requisition did not have to exhibit the authority to requisition.
- (d) That the delegation of powers to the Commerce and Industries Officer or any person authorized by him is bad in law.

Section 2 of the Public Safety Ordinance (Cap. 58) provided (at the material date) as follows:—

“ Whenever the Governor in Council is satisfied that a state of civil commotion which threatens the public safety exists or is likely to arise in the Colony or in any part thereof, he may, by order under his hand, make regulations for all or any of the following matters that is to say—

- (a) the regulation, restriction or prohibition of the entry of all or certain persons or certain classes of persons into, the movement of such persons within, and the exit of such persons from, such area or areas as may from time to time be prescribed by the Governor in Council;
- (b) the regulation or restriction of the movement of means of transport and the supply of animals or articles which give motive power to the means of transport;
- (c) the regulation or restriction of the supply or possession of intoxicating liquor and the prohibition or restriction of the opening or closing of premises or any part of premises in which intoxicating liquor is sold or supplied or of the opening or closing of any kava saloon, hop beer saloon or restaurant licensed under the Licence Ordinance;
- (d) the regulation of the storage, possession or use by all persons or by certain classes of persons or by persons in particular areas or by persons following particular occupations of firearms, ammunition or explosives and all or any offensive weapons or instruments of whatsoever description and the seizure and forfeiture thereof and the limitation or variation of the conditions of any licence, certificate or permit possessed by any persons under any law relating to arms, ammunition or explosives;
- (e) the regulation, restriction or prohibition of gatherings of persons in any place whatsoever and the prohibition of the holding of meetings in any place whatsoever without the permission of the Commissioner of Police, and any gathering of persons or meeting held in contravention of any of the provisions of any regulations made under this subsection shall be deemed to be an unlawful assembly and may be dealt with accordingly;

- (f) the prohibition and prevention of any description of intimidation or acts or threats of violence or any other disorderly conduct of whatsoever description; and
- (g) generally for all such matters as in the opinion of the Governor in Council will better provide for the public safety."

In purported exercise of the powers conferred upon him by this section, the Governor in Council, being satisfied that a state of civil commotion which threatened the public safety was likely to arise in the Colony, made the Public Safety Regulations 1959 (on 10th December, 1959) and the Public Safety (Amendment) Regulations, 1960 (on 11th April, 1960). The particular regulations in issue are Regulations 3 and 3A which presently read:—

"3. The Financial Secretary or the Commerce and Industries Officer or any person authorized in writing by either of them shall be a competent authority for the purpose of this Part of these Regulations.

3A. Subject to the provisions of these Regulations a competent authority is hereby empowered to enter and take possession of any land or buildings and to requisition any other property including any vessel, aircraft or vehicle and for such purposes may by himself or through his servants or agents enter any land or buildings."

In the first ground of appeal it is contended that section 2 of the Ordinance (*supra*) nowhere empowers the Governor in Council to make Regulation 3A. Both in this Court and in the court below, there has been considerable argument as to the meaning to be given to subsection (b) of section 2 of the Ordinance. In my view, however, the power to make Regulations 3 and 3A properly derives from subsection (g) of section 2 of the Ordinance. Learned Counsel for the appellant has maintained that this cannot be so because of the *ejusdem generis* doctrine of construction. He has cited in particular an Australian authority, *Melbourne Corporation v. Barry* 31 C.L.R., 174. The learned trial Magistrate concurred in this view, but I cannot, with respect, agree with him.

In the first place there is no room for the application of the *ejusdem generis* doctrine unless the particular and specific words in question make up a genus or category to which the general words should be restricted. (Maxwell on Interpretation of Statutes 9th Edn. at p. 337). Subsections (a) to (f) of section 2 of the Ordinance in question provide for various arbitrary interferences with common law rights, but there appears to be no distinct genus to be extracted.

Moreover, as was pointed out in the judgment of the Judicial Committee of the Privy Council in *Attorney-General for Canada v. Hallet and Carey Ltd.* (1952) A.C. 427 at p. 449:—

"... there is no better way of approaching the interpretation of . . . " (an Act) . . . " than to endeavour to appreciate the general object that it serves and to give its words their natural meaning in the light of that object. There are many so-called rules of construction that courts of law have resorted to in their interpretation of statutes, but the paramount rule remains that every statute is to be expounded according to its manifest or expressed intention."

Applying this paramount rule in the present case it is clear from a wider inspection of the scope of the Public Safety Ordinance that subsection (g) must be construed generally. (Maxwell (*supra*) at p. 342). As has, indeed,

been pointed out, it is manifestly apparent that the legislature has here set out in subsections (a) to (f) a number of specific matters which seemed to the legislature to be likely to require regulations in times of threatened civil commotion. Realizing, very wisely, that the list could not necessarily be expected to be exhaustive, the legislature has vested, by subsection (g), a general discretion in the Governor in Council to make regulations for all such other matters as in the opinion of the Governor in Council would better provide for the public safety. Regulations 3 and 3A were in my opinion properly made under this subsection.

The fact that there is an emergency is no justification for any relaxation of the vigilance of the courts in seeing that the law is duly observed, especially in matters so fundamental as private rights of property. The contrary is the case. Where the executive purports to interfere with such rights the courts will forbid it, unless it can be shown that such interference is in accordance with the law of the land. Here it has been conclusively shown that what was done was in accordance with the law of the land. The courts cannot question that law. The legislature makes the law which the courts must enforce. The legislature has deemed it proper to give, in times of emergency, arbitrary powers to the executive, no doubt in the belief that such powers will be reasonably exercised. If they are not reasonably exercised then the legislature can always take away those powers.

There are a number of famous English cases upon this, and I refer in particular to *Rex v. Halliday* (1917) A.C., 260, and *Liversidge v. Anderson* (1942) A.C., 206.

Having regard to my decision upon the first and main ground of appeal, it is unnecessary for this Court to consider the point raised in the second ground. As for the third ground of appeal, learned Counsel for the appellant has failed to show any authority whatsoever for his proposition. I find no substance either in this ground or in the fourth ground of appeal.

In the outcome therefore the appeal is dismissed.