

## APPELLATE CIVIL.

*Before M. C. Ghose and Mukherjea JJ.*

### JESSORE DISTRICT BOARD

*v.*

### SURENDRA NATH HALDAR.\*

1936

Nov. 20, 25.

*Corporation—District Board—Ultra vires—Powers, implied and expressed—Sanction of expenditure of District Fund by District Board for propaganda works, when ultra vires—Bengal Local Self-Government Act (Ben. III of 1885), ss. 5, 53, 53A, 100.*

Apart from the powers expressly given to a corporation by the Act creating it, it has implied powers to do what are necessary and properly required for carrying into effect the undertakings and works sanctioned by the Act.

*Attorney General v. Great Eastern Railway Co. (1); Deuchar v. Gas Light and Coke Co. (2); Attorney-General v. Leeds Corporation (3) and Wimbledon and Putney Commons Conservators v. Tuelly (4) referred to.*

A resolution of a District Board sanctioning expenditure of money by its chairman out of the District Board Fund for propaganda work in favour of Union Boards for the purpose of educating public opinion is illegal and *ultra vires* of the District Board, such work not coming within the powers and duties, express or implied, of the District Board within the meaning of the Bengal Local Self-Government Act of 1885.

Section 53 of the Bengal Local Self-Government Act of 1885 lays down exhaustively the objects and purposes for which the District Fund can be spent by the District Board authorities, and it also indicates the order of priority of these payments.

APPEAL FROM APPELLATE DECREE by the defendants.

The material facts and the arguments in the appeal appear in the judgment.

*Atul Chandra Gupta and Amiruddin Ahmad* for the appellants.

*Bankim Chandra Mukherji and Jateendra Mohan Chaudhuri and Nirode Bandhu Ray* for the respondents.

*Cur. adv. vult.*

\*Appeal from Appellate Decree, No. 1175 of 1934, against the decree of K. C. Das Gupta, District Judge of Jessore, dated Jan. 29, 1934, affirming the decree of Nagendra Nath Basu, Subordinate Judge of Jessore, dated Mar. 29, 1932.

(1) (1880) 5 App. Cas. 473.

(2) [1925] A. C. 691.

(3) [1929] 2 Ch. 291.

(4) [1931] 1 Ch. 190.

MUKHERJEA J. This is an appeal on behalf of the Jessore District Board, which figured as defendant No. 1 in a suit commenced by the plaintiff for a declaration that a certain resolution of the finance committee and adopted by the District Board was illegal and *ultra vires* of the latter. The resolution was passed on January 18, 1930, and sanctioned a sum of Rs. 3,000 for purposes of a propaganda work to be carried on for the welfare of Union Committees wherever necessary, the Chairman being authorised to spend the money by appointing workers or in such other way as he deemed proper. The propaganda was necessary in the opinion of the District Board in view of an anti-union propaganda started at Bandabila and other places, and the plaintiff's case was that the District Board had absolutely no authority to spend any money for this purpose. He prayed for a perpetual injunction restraining the defendant No. 1 from spending any money in pursuance of the said resolution, and there was a prayer for also refund to the District Fund of any amount that might have been already spent. The defence, *inter alia* was that the District Board was perfectly entitled under the law to sanction the amount for the purpose alleged, and, out of the amount voted, only Rs. 400 was actually spent at the date when temporary injunction was issued. The other questions raised are not material to the present appeal. The plaintiff's suit was decreed in substance by both the Courts below. The resolution was held to be *ultra vires* and the injunction prayed for was granted. The prayer for refund of the money already spent was, however, negatived.

It is against this decision of the District Judge, Jessore, confirming the decision of the Subordinate Judge that the present appeal has been preferred, and Mr. Gupta, who has appeared for the appellant District Board, has raised a two-fold contention.

His first contention is that the lower Courts were wrong in the view that they had taken, *viz.*, that

1936

Jessore District  
Board  
v.  
Surendra Nath  
Haldar.

1936  
 Jessore District  
 Board  
 v.  
 Surendra Nath  
 Haldar.  
 Mukherjea J.

money could not be spent for any purpose other than those specified in s. 53 of the Local Self-Government Act. He argues that a corporate body has not only the powers which are expressly conferred upon it by statute but can also exercise the powers which are regarded as incidental to or consequential upon those things which the legislature has authorised. Expenditure of money for a propaganda work to maintain the existence of the Union Boards is, according to Mr. Gupta, a justifiable expenditure, though it is not specifically mentioned in s. 53 of the Local Self-Government Act, which should not be taken as exhaustive. Mr. Gupta would read s. 53 as not laying down the purposes for which alone the District Board can spend the District Fund. It simply enumerates the compulsory expenses, and does not limit or restrict the powers of the District Board to spend money, for purposes coming expressly or impliedly within the scope of its duties. The second contention of Mr. Gupta is that, even if there is any deviation from the Act, it is cured by the provision of s. 53A, Local Self-Government Act. Now, on the first point, we agree with Mr. Gupta that the powers of a body corporate are not confined to what is expressly stated in the Act, but extend to what is necessary and properly required for carrying into effect the undertakings and works which the Act has expressly sanctioned. As Brice puts it:—

A corporation has all the capacities for engaging in transactions which are impliedly given it by reasonable implication from the language of the constating instruments.

Brice, 2nd ed., Chap. V, p. 66.

The proposition is well settled by a series of decisions of the English Courts, the leading case being *Attorney-General v. Great Eastern Railway Co.* (1), where Lord Selborne L.C. observed as follows:—

I agree with Lord Justice James that this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequent upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction to be *ultra vires*.

(1) (1880) 5 App. Cas. 473, 478.

This principle was followed in *Deuchar v. Gas Light and Coke Co.* (1), where the defendant company, who were authorised to convert and deal with residuals arising from gas working, were held entitled to provide the proper reagent, *viz.*, caustic soda for the purpose of converting naphtheline into beta-naphthol, although caustic soda was not a residual, and was not specifically mentioned. The identical principles was applied in *Attorney-General v. Leeds Corporation* (2) and *Wimbledon and Putney Commons Conservators v. Tuely* (3). In the last named case, a corporation constituted by Act of Parliament which had power to levy rates and employ labour was held authorised to make regulations enabling it to provide pensions, annuities, *etc.*, for employees, notwithstanding that it had no such express power given to it.

We are unable, however, to agree with Mr. Gupta as regards the construction he wants to put upon s. 53 of the Local Self-Government Act. In our opinion, s. 53 of the Act was enacted with a two-fold purpose. In the first place, it enumerates exhaustively the objects and purposes for which the District Fund can be spent by the District Board authorities. In the second place, it indicates the order of priority of these payments.

The section does not militate in any way against the implied powers of a corporation which as we have held already must be deemed to exist. Section 53, cl. (5), sub-s. (a)(iii) expressly lays down that the District Fund shall be applicable to "the performance of duties imposed and the exercise of powers conferred by the Act," and sub-s. (d) of the same clause authorises payments of any sum to a Local Board or to a Union Board constituted under the Bengal Village Self-Government Act, 1919. Admittedly the payment is not suggested to be one under sub-s. (d)

1936

*Jessore District  
Board  
v.  
Surentra Nath  
Haldar.*  
*Mukherjea J.*

(1) [1925] A. C. 691.

(2) [1929] 2 Ch. 291.

(3) [1931] 1 Ch. 190.

1936  
*Jessore District  
 Board*  
 v.  
*Surendra Nath  
 Haldar.*  
*Mukherjee J.*

and the whole controversy, therefore, centres round the point as to whether it comes under sub-s. (a)(iii) of the fifth clause interpreting the words as including not only the express powers and duties but what are implied, or follow by necessary implication from the express provisions.

This leads us to consider the main question in the appeal, as to whether the spending of money for starting a propaganda in favour of Union Boards for the purpose of educating public opinion is one of the purposes which expressly or impliedly comes within the scope of the powers and duties of the District Board. The Local Self-Government Act in its preamble states the object of the Act to extend the system of self-government in the province of Bengal. The general powers and duties are specified in ss. 59 to 100, and embrace a variety of matters including education, sanitation, public works, vaccination, famine relief and others. There is a residuary provision in s. 100(4), which provides that the District Board may undertake to carry out any other local works likely to promote the health, comfort or convenience of the public and not otherwise prescribed by this Act. It is admitted that the propaganda work in favour of the Union Board does not come specifically within these provisions. It may be stated that after the resolution was passed by the District Board it was sent to the Divisional Commissioner for approval. The Commissioner entertained a doubt as to the legality of this resolution and forwarded the matter to the Local Government. The Local Government seemed to entertain the opinion that the case would come under s. 100(4), Local Self-Government Act, mentioned above, but it suggested that the amount should not exceed Rs. 1,000. We have no hesitation in holding that s. 100(4) does not contemplate the present case. In no sense can this expenditure be said to be necessary to promote the health, comfort or convenience of the public, and according to the well-established canons of construction, the

words must be construed *ejusdem generis* to mean and include those things which are of the same nature as those specifically provided for in the Act. Mr. Gupta has not pressed this line of argument before us. His contention is that, when the Local Government thinks fit to introduce Village Self-Government Act in any district or part of a district, the Union Boards become so as to say the ultimate constituents of the District Board. They become organically connected with the District Board and through them the latter exercises a good deal of its functions. Conceding all these, the contention amounts to this that the Union Boards are really parts of the District Board, but even then is the District Board entitled to spend money for propaganda work, to repel attacks made against it or its constituent parts? In our opinion the answer must clearly be in the negative. Under s. 5 of the Local Self-Government Act, it is for the Local Government to decide whether the provisions of that Act should be introduced in any particular district or part of a district. The District Board and the Local Board may be consulted by the Local Government in this matter. When the Village Self-Government Act is extended and Union Boards formed, the District Board, under s. 45 of the Village Self-Government Act, may make to the Union Boards such grants-in-aid from the District Fund as it considers proper and may in its discretion attach any condition to such grant. If certain people start a propaganda for proving the uselessness of Union Boards, it is no part of the duty of the District Board to spend money out of the District Fund for the purpose of starting a counter propaganda. If the agitation of the anti-Union Board party is unlawful, there is the Government to take adequate measures against the same, and in fact this was done at Bandabila, where this movement originated. Then again if there is any necessity of educating public opinion on the point, it is not the duty of the District Board to do so. We are, therefore, clearly of opinion,

1936

Jessore District  
Board

v.

Surendra Nath  
Haldar.

Mukherjee J.

1936  
Jessore District  
Board  
 v.  
Surendra Nath  
Haldar.  
Mukherjee J.

that the contention of Mr. Gupta must be overruled and the decision of the Courts below affirmed on the point.

The second contention of Mr. Gupta based upon s. 53A of the Local Self-Government Act is obviously without any substance. There is no declaration by the Local Government nor is the deviation one of accidental or temporary character. The sanction might cure the defect regarding the money already spent, but cannot be invoked to legalise the resolution of January 18, 1930.

The result, therefore, is that the appeal fails, and is dismissed with costs.

M. C. GHOSE J. I agree.

*Appeal dismissed.*

A. K. D.