

Gandak, and that being so, and the custom having been proved, it follows, that the claim of the respondents to possession of the lands cannot be sustained.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed, with costs, the decrees of both Courts set aside, and that the suit should be dismissed with costs.

1925.  
 RAJENDRA  
 NARAIN  
 DEANJ  
 DEO  
 v.  
 GANGANANDA  
 SINGH.

Solicitors for appellant: *Barrow, Rogers, and Nevill.*

Solicitor for respondents: *H. S. L. Polak.*

## REVISIONAL CRIMINAL.

*Before Mullick and Ross, J.J.*

SITARAM DAS

v.

KING-EMPEROR.\*

1925.

*May, 14.*

*Police Act, 1861 (Act V of 1861), sections 30 and 32, scope of—"issue", meaning and significance of—Procession after application and before issue of licence, whether permissible by law.*

After an application for a licence to take out a procession is made under section 30, Police Act, 1861, the applicant is free to take out the procession whether the licence applied for is issued or not. If the licence has been "issued" the licensee is bound to obey the conditions upon which it is granted whether it has been delivered or not; if, on the other hand, it has not been issued, he is only bound to see that the general law is not broken.

Where, therefore, under the orders of the District Superintendent of Police, the petitioner applied for a licence

\* Criminal Revision Case no. 82 of 1925, from a decision of N. N. Joyce, Esq., I.C.S., Sessions Judge of Bhagalpur, dated the 19th December, 1924, modifying an order of Rai Brij Bihari Saran, Deputy Magistrate of Bhagalpur, dated the 25th October, 1924.

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to take out a religious procession, but the licence imposing certain conditions, although signed by the Superintendent, was not in fact delivered to the applicant, who, however, without waiting for delivery of licence took out the procession,

*held*, in revision, that no offence punishable under section 32, Police Act, was committed as there was neither a failure to apply for a licence nor a violation of an order "issued" under section 30;

*held*, also, that the word "issue" in that section signifies that if the District Superintendent or Assistant District Superintendent of Police signs the licence and delivers it to some one with directions that it shall in due course be delivered to the applicant, the licence has been issued within the meaning of the section.

The petitioner was fined a sum of Rs. 5 for committing an offence under section 32 of the General Police Act (Act V of 1861).

It appeared that in August 1923 the Superintendent of Police of Bhagalpur, acting under section 30 of the General Police Act (Act V of 1861) issued a general notice on the residents of certain quarters in the town of Bhagalpur requiring that all persons directing or promoting processions should apply to him for a licence. On the 21st August, 1924, the petitioner applied for a licence to take out a religious procession. On the same day a licence was prepared and signed by the Deputy Superintendent of Police, but on the back of it an endorsement was made by a police officer named Mr. Hare to the following effect:

"The petitioner must certify on the application that he understands the provisions under which the pass is issued. This licence will not be issued until this is done."

The petitioner never went for his licence nor was it sent to him; but the petitioner, on the 23rd August, took out his procession. No disturbance took place and in fact the local Sub-Inspector, having learnt that the procession would issue, deputed certain police officers to accompany it.

The Deputy Magistrate, who tried the case, sentenced the petitioner to a fine of Rs. 75; but on appeal the Sessions Judge reduced it to Rs. 5 holding that the offence was technical.

*S. N. Sahay*, for the petitioner.

*H. L. Nandkeolyar* (Assistant Government Advocate), for the Crown.

MULLICK, J. (after stating the facts as set out above, proceeded as follows): In my opinion the petitioner has committed no offence at all. Section 30 of the Police Act gives the police power to control processions. In order that this power may be exercised, the Act in certain circumstances authorizes the police to require persons to apply for licences. The object of this is that adequate arrangements for control may be made in time. Clause (3) of section 30 gives the police power to define the conditions on which a procession shall be permitted to take place. If any of these conditions are broken, the offence is punishable under section 32. Similarly, if there is a failure to apply for licence, there is a violation of an order issued under section 30 and therefore an offence punishable under section 32. But so far as I can see the police have no power to forbid the issue of a procession. The power to control does not include the power to forbid.

Section 30 does not prescribe how the conditions of a licence are to be made known to the applicant; but it is implied, I think, that the application shall be made in sufficient time to permit of the conditions being communicated to the applicant. Ordinarily a day would be fixed by the police for the applicant's appearance to take the licence or arrangements would be made by him for its delivery to him or to his agent. If the applicant chooses to take out his procession after applying for his licence and without waiting to acquaint himself with the conditions he does so at his own risk provided the licence has been issued. In the

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Act the word "issue" has not been defined; but I take it that it signifies that if the District Superintendent or Assistant District Superintendent of Police signs the licence and delivers it to some one with directions that it shall in due course be delivered to the applicant the licence has been issued within the meaning of section 30. In the present case if Mr. Hare intended that the issuing should not be complete till the licence was actually delivered to the applicant in person, then the position is that the petitioner applied in time but did not wait for the issue of the licence. In that case also it cannot be said that the petitioner has disobeyed any order passed under section 30. Section 30 required him to make an application in time and he made it. As I understand the law he was therefore free to take out his procession on the 23rd August whether the licence had by then been issued or not. If the licence had been issued, he was bound to obey the conditions whether it had been delivered or not; if on the other hand it had not been issued he was bound only to see that the general law was not broken. The power of control and dispersal given to the police by the Act was sufficient to secure the public safety.

The learned Counsel for the petitioner has also brought to our notice that the general notification in this case was issued so long ago as August 1923 and it is urged that section 30 of the Act does not contemplate that prohibitory orders of this nature should remain in force for such long periods. There is no restriction in the section itself; but it is obvious that some revision of the term is from time to time indicated with reference to local conditions.

The result is that the conviction and the sentence are set aside and it is directed that the fine, if paid, be refunded.

Ross, J.—I agree.

*Rule made absolute.*