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opinion, is authorised to transfer to him Collectorate work which he has power to perform, though having regard to the wording of the Tenancy Act, it may well be that an enquiry under section 58 would not be transferred to him, if he were not specially authorised to perform the functions of a Collector. We think, therefore, that the action of the Subdivisional Officer was within his powers. For these reasons the present Rule is discharged.

E. H. M.

Rule discharged.

CRIMINAL REVISION,

Before Shurfuiddin and Richardson JJ.

LEAKAT HOSSEIN

v.

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Procession—Commissioner of Police—Orders prohibiting a public procession and a particular individual from joining it—Legality of such orders—Public notice of order, necessity of—Power of Indian Legislature to make police regulations regarding public processions—Calcutta Police Act (Beng. IV of 1866) ss. 62A (4), 102A—Calcutta Suburban Police Act (Beng. II of 1866) ss. 39A (4), 49A—Calcutta and Suburban Police (Amendment) Act (Beng. III of 1910) ss. 16 and 31.

Sub-section (4) of s. 62A of the Calcutta Police Act, and of s. 39A of the Suburban Police Act, must be strictly construed. It empowers the Commissioner of Police, when he considers it necessary to do so for the preservation of the public peace or public safety, to prohibit a procession or public assembly, but not a particular individual from taking part in the same.

* Criminal Revision No. 1613 of 1912 against the order of D. Swinhoe, Chief Presidency Magistrate, Calcutta, dated Sept. 24, 1912.

The sub-section does not require any public notice of an order passed thereunder to be given, within the meaning of ss. 102A of the Calcutta and 49A of the Suburban Police Acts.

Seemle: Indian Legislature is competent to make police regulations of the kind in the interests of the public peace and safety.

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THE petitioner, who professed to be a *swadeshi* preacher, was tried by the Chief Presidency Magistrate under the Calcutta Police Act (Beng. IV of 1866), s. 62A (6), as added by the Calcutta and Suburban Police Amendment Act (Beng. III of 1910), s. 16. and convicted and sentenced thereunder, on the 24th September, 1912, to a fine of Rs. 100. It appeared that, on the 3rd August 1912, the petitioner sent a copy of a printed notice to Sub-Inspector S. C. Mitter, containing an invitation to the public to take part in two meetings and processions proposed to be held on the 7th. Thereupon, on the 4th, the Commissioner of Police, purporting to act under the Calcutta and Suburban Police Acts, passed an order, in the terms set out in the judgment of the High Court, prohibiting the petitioner by name from having any concern with any procession or public assembly convened for the 7th, and a further order directing the petitioner to comply with the same. The two orders were served personally on the petitioner at his house, but he replied by a notice to Sub-Inspector N. N. Mozundar declining obedience to them. On the 5th, the Commissioner of Police issued a fresh order, under the same Acts, prohibiting any procession or public assembly on the 7th in connection with "Boycott" day. On that date the petitioner collected an assembly and was leading it in Cornwallis Street, at about 7 A. M., when Inspector N. N. Bose met it, and after questioning the petitioner as to his disobedience of the orders of the 4th, showed him the order made by the Commissioner of Police on the 5th, and asked

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him to disperse the crowd, but the petitioner refused to do so; and at his call the processionists shouted out "*Bande Mataram*." The procession was dispersed by the police, and the petitioner was arrested but released immediately on executing a bond. Shortly after, he re-formed the assembly and led it to Sukea Street where it was stopped and dispersed by the police. The petitioner was prosecuted and convicted as stated above, and he thereupon moved the High Court and obtained the present Rule.

Mr. N. C. Sen and *Babu Nurendra Nath Set*, for the petitioner.

The Standing Counsel (Mr. B. C. Mitter), for the Crown.

SHARFUDDIN AND RICHARDSON JJ. This Rule was issued upon the Chief Presidency Magistrate to show cause why the conviction of the petitioner and the sentence passed upon him should not be set aside, on the ground that the order of the Commissioner of Police, dated the 4th August, 1912, does not come within the scope of clause (4) of section 62A of the Calcutta Police Act (Beng. IV of 1866), and clause (4) of section 39A of the Calcutta Suburban Police Act (Beng. II of 1866). The two sections are in identical terms, and were inserted in the Acts referred to by the Calcutta and Suburban Police (Amendment) Act (Beng. III of 1910).

Clause (4) runs as follows:—"The Commissioner of Police may also, by order in writing, prohibit any procession or public assembly, whenever and for so long as he considers such prohibition to be necessary for the preservation of the public peace or public safety: Provided that no such prohibition shall remain in force for more than seven days without the sanction of the Lieutenant-Governor."

The facts of the case are these. The petitioner, Leakat Hossein, describes himself as a *swadeshi* preacher. He says that since some time in 1905 he has led hundreds of processions in Calcutta and elsewhere in furtherance of the *swadeshi* movement. On the 3rd August, 1912, Sub-Inspector S. C. Mitter received a printed notice from the petitioner, being a copy of a notice which he had published, or was intending to publish, inviting the public to take part in two processions and meetings on the 7th August. On the 4th August, the Commissioner of Police passed the following order:—

“Whereas it appears to the Commissioner of Police that it is necessary for the preservation of the public peace that he should prohibit any procession or public assembly in which you, Leakat Hossein, have or may have any concern whatsoever, on the 7th of August, 1912, within the Town and Suburbs of Calcutta, the Commissioner of Police, in pursuance of the provisions of section 62A, clause (4), of Act IV of 1866 (B.C.), and section 39A, clause (4), of Act II of 1866 (B.C.), as modified up to the 1st June 1910, hereby prohibits you, the said Leakat Hossein, from having any concern whatsoever with any procession or any public assembly on the 7th day of August, 1912, within the limits of the Town and Suburbs of Calcutta.”

On the same day, *i.e.*, 4th August, 1912, the Commissioner of Police passed a further order requiring the said Leakat Hossein to comply with the order above set out.

The two orders were, admittedly, served on Leakat Hossein personally.

On the 5th August, the Commissioner of Police passed a third order to the following effect:—

“Whereas it appears to the Commissioner of Police, Calcutta, that it is necessary for the preservation of the public peace or the public safety that he should prohibit any procession or public assembly which has any reference to the boycott movement or the subject of the boycott of foreign or imported goods, or which has any reference to the celebration of what is known as the boycott day, the Commissioner of Police, in pursuance of the provisions of section 62A, clause (4), of Act IV of 1866 (B.C.), and

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section 39A, clause (4), of Act II of 1866 (B.C.), as modified up to the first June, 1910, hereby prohibits any procession or public assembly on the 7th day of August, 1912, within the limits of the Town and the Suburbs of Calcutta, which has any reference whatsoever to the boycott movement or the subject of the boycott of foreign or imported goods, or which has any reference whatsoever to the celebration of what is known as the boycott day, on the 7th of August, 1912."

It is not disputed that the petitioner received this order on the 7th August, when he was leading the first of the processions formed by him that day.

Previously to the 7th August, the petitioner had expressed his intention to disregard the Commissioner's orders of the 4th August, on the ground that they were illegal.

On the 7th, the petitioner was leading a procession along Cornwallis Street, at about 7 A. M., and what happened is thus described by the Magistrate :—

"Inspector N. N. Bose met the procession, and went up to accused and told him that he had been served with a notice from the Commissioner prohibiting him from taking out a procession, and asked accused why he had done so. Accused said the orders served on him were illegal, and he refused to disperse the procession. The Inspector asked him to disperse it, and showed him another order of the Commissioner, Exhibit 3, prohibiting any procession on 7th August which had any reference to the boycott movement. This document was explained to accused. Accused asked one of his followers, Upendra Nath Chowdhury, to read it to him. Upendra explained it to the accused and signed it, but the accused refused to sign it. About this time the Deputy Commissioner, Mr. Lowman, with Inspector Mulcahy, came up. The processionists shouted out "*Bande Mataram*" at the call of the accused. The accused was arrested, and the procession dispersed. The accused was immediately released on signing a bond. Shortly after, the accused again formed the procession, and led it down the street with banners flying till it reached Sukea Street, where it was stopped and dispersed by Inspector Fazal."

On these facts, the petitioner has been convicted under sub-clause (ii) of clause (6) of section 62A of the Calcutta Act, and sentenced to pay a fine of Rs. 100,

or in default to suffer rigorous imprisonment for one month.

It is contended for the petitioner that the Commissioner's orders of the 4th August were illegal, because they were addressed to the petitioner personally, and are not orders within the scope of clause (4). That clause, it is argued, enables the Commissioner of Police, when he considers it necessary for the preservation of the public peace and the public safety, to prohibit a procession or public assembly, but does not enable him to forbid individuals to join any procession or public assembly which may be formed or held. In our view, there is reason and force in that argument. A power, such as is conferred by clause (4), must be exercised strictly according to the terms of the statute. It is one thing to say that a procession will not be allowed, and quite another thing to say that, if a procession is formed, particular individuals are not to join therein. We are of opinion that the law does not give the Commissioner power to discriminate between individuals in this way. It was suggested by the learned Standing Counsel for the Crown that the Commissioner might prohibit a procession in which a certain person should take part, if he considered that the presence of such person would be dangerous to the public peace or safety. Assuming it to be so, it was not what the Commissioner did. If regard be had only to his orders of the 4th August, no member of the processions formed on the 7th August disobeyed these orders, except the petitioner. The processions were not prohibited, but the petitioner was prohibited from taking part in them.

Whatever may be said, however, as to the orders of the 4th August and the first of the two processions which took place on the 7th August, we are clearly of opinion that, in forming and leading the second

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procession the petitioner disobeyed the Commissioner's order of the 5th August, a perfectly good and valid order, and in so doing committed the offence of which he has been convicted.

As to the suggestion that public notice of the order of the 5th August should have been given, in the manner provided by section 102A of the Calcutta Act, and section 49A of the Suburban Act, these sections only lay down the procedure to be followed when public notice is required to be given by some other provision in the respective Acts. The clause now in question requires that an order made thereunder should be in writing, but does not require that public notice should be given of it. As we have mentioned, it is not disputed that the order of the 5th August was brought to the petitioner's knowledge.

It was further suggested that the clause in question is *ultra vires* of the Indian Legislatures. The Rule was not issued on this ground, which was not fully argued. We may say, however, that we see no reason to doubt that the Indian Legislatures are competent to make police regulations of this kind in the interests of the public peace and safety.

The result is, that the Rule must be discharged.

E. H. M.

Rule discharged.