

1918.

Present: De Sampayo J.

SUB-INSPECTOR OF POLICE v. PERIA CARPEN *et al.*

185—P. C. Balapitiya, 44,866.

*Quarantine and Prevention of Diseases Ordinance, No. 3 of 1897—Regulations made under s. 4—Ultra vires—Ordinance No 11 of 1865.*

The accused, who were coolies on an estate declared to be an area infected with anchylostomiasis, were charged with refusing to submit to medical treatment under regulation No. 103 (f) made under the Quarantine and Prevention of Diseases Ordinance, 1897.

*Held*, (1) that there was no conflict between regulation 103 (g) (which requires a person to remain within an infected area until the completion of any treatment which may be prescribed) and Ordinance No. 11 of 1865 (which gives the labourer the right to quit service after a month's notice.)

(2) Regulation No. 103 (f) compelling a person to submit to any medical treatment is not *ultra vires*.

(3) Regulation No. 104, which gives power to the Principal Civil Medical Officer to make a declaration by notification in the *Government Gazette* that an area is an infected area, cannot be said to be *ultra vires* on the ground that the Governor has delegated his powers to the Principal Civil Medical Officer.

THE facts appear from the judgment.

Regulations Nos. 101 to 105 are as follows (*Government Gazette*, September 7, 1917):—

1. In the definition of "disease" in rule 1 of the said regulations, after the word "trypanosomiasis," there shall be inserted the word "anchylostomiasis."

2. The following new part shall be added to the said regulations:—

PART V.

*Anchylostomiasis.*

101. *Interpretation of Terms.*—For the purpose of the application of this chapter and of any of these rules and regulations to the prevention, observation, diagnosis, or treatment of anchylostomiasis, the proper authority shall be the Principal Civil Medical Officer, the Provincial Surgeon of the Province, the District Medical Officer and Assistant Medical Officer of the District, any officer of the Medical Department specially charged with duties in connection with anchylostomiasis, the Senior Sanitary Officer, and also any persons of medical or scientific qualifications appointed by the Governor as officers for the purpose of any campaign against the disease.

102. In any case in which the Principal Civil Medical Officer is satisfied that anchylostomiasis is prevalent within any estate, he may, by notification in the *Government Gazette*, declare such estate to be an "area infected with anchylostomiasis" for the purposes of this chapter.

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103. The proper authority may, in the case of any estate declared an "area infected with anchylostomiasis" under this chapter—

- (a) By notice in writing, require the superintendent or other person in charge of the labourers on the estate to summon for examination or treatment in such manner to such place or places and at such time or times, as may be specified in the notice, any persons or class of persons employed on the estate or residing or being on or in the immediate vicinity of the estate.
- (b) By the said or any separate or further notice, require the said superintendent or person to provide and afford, either generally or specifically, all facilities in his power for the purpose of such examination or treatment, or for the purpose of any other measure or operation undertaken by the proper authority in connection with such examination or treatment.
- (c) Require such superintendent or person to issue to any persons or class of persons employed on the estate, or resident or being thereon or in the immediate vicinity thereof, all such directions as the proper authority may deem necessary for the purposes aforesaid.
- (d) Require any person employed on the estate or resident or being thereon or in the immediate vicinity thereof to submit to any examination ordered by the proper authority.
- (e) Require any such person to furnish from time to time to the proper authority or to any person acting under his directions such specimens of the faeces of such person in such quantity as may be directed, and in such receptacle as may be provided by the proper authority.
- (f) Require any such person to submit to any medical treatment in such manner and during such period and at such times and places as may be directed by the proper authority.
- (g) Require any such person to remain within the infected area or within any place in the said area until the completion of any treatment which may be prescribed for such person by the proper authority, unless he shall receive permission in writing to quit the said area or place from the proper authority, or from any person to whom the proper authority may delegate power to give such permission.

104. The Governor may, by notification in the *Government Gazette*, direct that the provisions of this chapter shall be applied to any area, other than an estate, which the Principal Civil Medical Officer may declare to be an area infected with anchylostomiasis, and in any such case all requirements which under this chapter may be addressed to the superintendent or other person in charge of the labourers on the estate may be addressed to such officer or person as the Governor may designate in the notice, and any requirement or direction which may under this chapter be issued or addressed to any person employed upon an estate may be issued or addressed to any person resident or being

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in the said area, and the provisions of this chapter shall, *mutatis mutandis*, be construed accordingly.

105. It shall be the duty of all persons to whom any requirement or direction may be communicated, issued, or addressed under this chapter to comply with such requirement or direction.

Garvin, S. G., for appellant.

Balasingham, for accused, respondent.

The following authorities were cited at the argument:—16 Q. B. D. 708; 10 Q. B. D. 387; (1894) 2 Q. B. 821; (1896) 1 Q. B. 290.

*Cur. adv. vult.*

March 13, 1918, DE SAMPAYO J.—

This is an appeal by the Solicitor-General from an acquittal of the accused, who were charged with a breach of regulation No. 103 (f) made by the Governor under the Quarantine and Prevention of Diseases Ordinance, 1897, and published in the *Government Gazette* of September 7, 1917. The Police Magistrate held that the regulation was *ultra vires*, and acquitted the accused.

Regulation No. 103 is to the effect that the proper authority may, in the case of any estate declared an "area infected with anchylostomiasis," *inter alia*, "(f) require any such person (*i.e.*, any person employed on an estate) to submit to any medical treatment in such manner and during such period and at such times and places as may be directed by the proper authority."

The accused were coolies employed on Ketandola estate, Elpitiya, which had been under regulation No. 102 declared by the Principal Civil Medical Officer an area infected with anchylostomiasis, and the charge against the accused was that they had refused to submit to medical treatment as directed by Dr. Winsor, who was appointed by the Governor an officer for the purpose of the anchylostomiasis campaign. Two legal objections, which will be presently noticed, were taken to the validity of the regulation and were over-ruled by the Police Magistrate, but he himself considered that the regulation No. 103 (g) was inconsistent with the provisions of the Labour Ordinance, No. 11 of 1865, which gave a labourer the right to quit service after a month's notice. There is some confusion here. The regulation in question in this case is not No. 103 (g) but No. 103 (f), and I do not see why because one regulation is invalid the other should be also. I may, however, deal with the Police Magistrate's view on its merits. Regulation No. 103 (g) authorizes the proper authority to require a person to remain within the infected area until the completion of the treatment, except on written permission to quit such area. This has been held by the Police Magistrate to be inconsistent with a servant's right to give a month's notice and leave, but a little consideration will show this view to be untenable. A notice has the effect of terminating the contract of service, and, in the ordinary case, the servant will, of course, leave the place of his

employment. But this personal movement may be prevented by the proper authority without interfering with the legal effect of his notice on the contract of service as between the master and the servant. Any possible grievance will be on the part of the master and not of the servant, because he may be obliged to tolerate the presence of a servant who has terminated his contract by notice, but here comes in regulation No. 103 (b), by which the superintendent of the estate may be compelled "to provide and afford, either generally or specifically, all facilities in his power for the purpose of such examination or treatment, or for the purpose of any other measure or operation undertaken by the proper authority in connection with such examination or treatment." I think that there is no conflict between the regulation No. 103 (g) and the provision of the Ordinance No. 11 of 1865 with regard to quitting service after notice, and that the regulation is not bad for the reason given by the Police Magistrate.

Mr. Balasingham, for the accused, has, however, endeavoured to support the order of acquittal on the legal grounds put forward on the accused's behalf in the Court below and over-ruled by the Police Magistrate. The first objection is that a regulation compelling a person to submit to any medical treatment is not justified by the powers conferred on the Governor by the Ordinance, and is in itself unreasonable. The effect of the decisions cited in support of this objection is thus stated by *Maxwell on Statutes* (4th ed.) 446: "Rules and by-laws made under statutory powers enforceable by penalties are construed like other provisions encroaching on the ordinary rights of persons. They must, on pain of invalidity, be not unreasonable, nor in excess of the statutory power authorizing them, nor repugnant to the statute or to the general principles of law." At the same time, just as the consideration of by-laws made by public representative bodies is approached from a different standpoint from by-laws of companies, so courts of justice will be slow to condemn as unreasonable any rules and regulations made by such an authority as the Governor in Council, but will support them, if possible, by a "benevolent" interpretation, and credit those who have to administer them with an intention to do so in a reasonable manner. See *Maxwell* 447-448. The nature of the mischief intended to be met, and the general interests of the public as distinguished from the rights of individuals must also be taken into consideration. The declared intention of the Ordinance in question is to make regulations for preventing the introduction and the spread of infectious diseases, and accordingly section 4 provides that "the Governor, with the advice of the Executive Council, may from time to time make, and when made revoke or vary, such regulations as may seem necessary or expedient for the purpose of preventing the introduction into the Island of any disease, and also preventing the spread of any disease."

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It will be observed that the powers thus conferred are very wide. It is true that section 5 (1) specifies certain purposes for which "among other things" the regulations may provide, but sub-section (2) emphasizes the intention to make the powers as large as possible by providing "that nothing in this section contained shall in any way restrict or be construed to restrict the generality of the powers conferred on the Governor by the last preceding section, but such powers shall extend to all matters, whether similar or not to those in this section mentioned, as to which it may be expedient to make regulations for the better carrying into effect of the objects of this Ordinance."

What is "necessary" or "expedient" is a question left entirely to the discretion of the Governor. It is said that to compel a person to take any medicine to which he may object is to restrict the liberty naturally and legally belonging to him. That may be so, but in an ordered community the rights of the individual must yield to the general safety. All social legislation proceeds upon the common maxim *salus populi suprema lex*. It is more or less arbitrary, but it is often necessarily so. An Ordinance to prevent the introduction and spread of infectious diseases is an instance of that kind, and the Legislature, in the provisions above referred to, has thought it fit to confer unrestricted powers on the Governor for that purpose. The regulation in question is, in my opinion, within those powers. Even if the purposes specified in section 5 (1) are considered, it will be found that compulsory treatment is contemplated by the Ordinance itself. For paragraph (b) of that sub-section has provided for the making of regulations "for the removal of diseased persons to hospitals or other places for medical treatment, and for their detention until they can be discharged with safety to the public." The declared object of the removal of a diseased person to a hospital or other place is for medical treatment, and it is impossible to suppose that the medical treatment here contemplated is what the patient may like and not what the medical authorities may prescribe for the disease. If, then, compulsory treatment is authorized when a diseased person is removed to hospital or other place, there is nothing unreasonable or *ultra vires* in requiring him to submit to the same treatment when he is only isolated within an area declared an infected area. I am of opinion that the objection on this point is not well founded.

The regulation 103 (f) is also objected to, because the provision in the regulations for declaring an estate to be an infected area is irregular. The generality of the powers of the Governor has already been noted, and in order to regulate and restrict the application of the rules made thereunder, regulation No. 103 is confined to an estate declared by the "proper authority" to be an area infected with anchylostomiasis, and by regulation No. 102 the Principal Civil Medical Officer is constituted the proper authority for that

purpose, and is authorized to make the declaration by notification in the *Government Gazette*. It is said that the Governor has here delegated his power to the Principal Civil Medical Officer. I fail to see that any power is delegated. The Governor must necessarily depend upon the declaration of the medical authorities as to the prevalence of the disease in any estate, and there is nothing objectionable in the Principal Civil Medical Officer directly publishing the declaration in the *Government Gazette* instead of making it pass through an intermediate process.

For these reasons I think the acquittal of the accused is erroneous. The order is set aside, and sent back to be proceeded with in due course.

*Sent back.*

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