

**Mathuradas Vs. the State**

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**Court :** Mumbai

**Decided On :** Jan-25-1954

**Reported in :** 1954CriLJ1479

**Judge :** Mudholkar and ;Choudhuri, JJ.

**Appellant :** Mathuradas

**Respondent :** The State

**Judgement :**

ORDER

1. This case has been referred to a Division Bench by one of us (Mudholkar J.) for consideration of the question as to whether a Court is entitled to take judicial notice of a notification fixing the retail price of yarn under the Cotton Textiles (Control) Order, 1948, published in the Madhya Pradesh Gazette,

2. It is argued on behalf of the State that a notification published in a Gazette is a part of the law of the land and that under Section 57(1), Evidence Act, a Court is bound to take judicial notice thereof.

3. The term 'law' has been defined thus in Article 13(1)(a) of the Constitution :

'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

but that definition is only for the purpose of Article 13(1)(a) of the Constitution. Again the term 'existing law' has been defined thus in Article 366(10) of the Constitution :

'existing law' means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation.

but that definition is for the purpose of the Constitution only. The term 'Indian law' is defined thus in Section 3(29), General Clauses Act, 10 of 1897 :

'Indian law' shall mean any Act, Ordinance, Regulation, rule, order or bye-law, which before, the commencement of the Constitution had the force of law in any Province of India or part thereof, and thereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act.

It would not be right to deduce the meaning of the term 'law' from this term. However, one thing is clear that even if the definition of 'Indian law' in the General Clauses Act is accepted as the definition of 'law' in force in the territory of India a notification cannot be said to be Included within it. We are in respectful agreement with the view taken by Sulaiman J. in - Collector of Cawnpore v. Jugal Kishore : AIR1928 All355 to the effect that judicial notice of a Government notification cannot be taken by the Court under Section 57, Evidence Act, but the production of the Gazette printed under the authority of the Government will be sufficient proof of the notification under Section 78, Evidence Act. The same matter has been considered though from a slightly different angle by Subba Rao J. in - Public Prosecutor v. Thippayya AIR 1949 Mad 459 (B). The learned Judge in that case observed as follows :

Though a Court should take judicial notice of the facts mentioned in Section 57, it could only take such notice if unimpeachable books or documents are put before it or otherwise accessible for its reference. Under the last paragraph of the section,

the Court is given the discretion to refuse to take judicial notice of any fact unless such person calling upon the Court to take any judicial notice of such fact produces any such book or document as it may be necessary to enable it to do so.

Thus, according to the learned Judge, even where a Court is required to take judicial notice it can refuse to do so unless the document essential for taking notice thereof is produced. That is to say, in a case like this, the State Gazette.

4. In the circumstances, therefore, we are of opinion that a Court is not entitled to take judicial notice of a notification published in the Gazette and that the fact of the publication of the notification has to be proved in the manner provided for in Section 78, Evidence Act.

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