Laljee Vs. Emperor

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Court : Allahabad

Decided On : Jul-08-1947

Reported in : AIR1948All38

Appellant : Laljee

Respondent : Emperor

Judgement :

Malik, J.

1. The applicant, Laljee, is the proprietor of a firm, Messrs. Laljee Kanhaiya Lal, who are retail dealers in cloth and have a shop in the city of Allahabad. On 24-1-1945, a Piece Goods Inspector went to the shop of the applicant and found cloth which, under the Government of India Cotton Cloth and Yarn (Control) Order, 1943, the applicant, it is said, was not entitled to be in possession of after 81-12-1944. The Inspector reported the matter to the Collector who gave his sanction, by an order dated 14-2-1945, for the prosecution of the applicant under Rule 81(4), Defence of India Rules.

2. Mr. M.A. Qureshi, Magistrate, First Class, Allahabad, held a summary trial, and on 28-6-1945, convicted the applicant under Rule 81(4), Defence of India Rules, for breach of Clause 14, Government of India Cotton Cloth and Yarn (Control) Order, 1943, and sentenced him to pay a fine of Rs. 101 and in default to undergo two months' rigorous imprisonment. The cloth, excepting one 'tex-marked' saree,

was forfeited.

3. The applicant filed a revision in the Court of the learned Sessions Judge of Allahabad who rejected the same on 18-10-1945., The applicant has now come up to this Court in revision.

4. In this revision the main point that has been urged on behalf of the applicant is that Clause 15-A of the Government of India Cotton Cloth and Yarn (Control) Order, 1943, (hereinafter called the Order) overrides Clause 14 of the Order, and that cloth dealers are, therefore, not bound by the, restriction that they cannot sell or have in their possession after 31-12-1944, cloth manufactured before 1-8-1943, if the Textile Commissioner has not notified any conditions under Clause 15-A of the Order.

5. The Government of India Cotton Cloth and Yarn (Control) Order was first promulgated on 17-6-1943. The relevant portion of Clause 14 of the Order then provided that:

No cloth manufactured before 1-8-1943, shall remain in full bales after 31-8-1943, and all such cloth shall be finally disposed of by retail sale not later than 31-10-1943.

Clause 13 of the Order provided for the marking of all cloth manufactured after 31-7-1943. Sub-clause (2), Clause 14 provided that no person shall after 31-10-1943, offer for sale cloth or yarn which had not been marked under Sub-clause (1) of Clause 13. The Textile Commissioner was, however, given the power to extend in any particular case 'the provisions specified in the sub-clause.' Under Sub-clause (4) of Clause 13 all cloth and yarn marked in accordance with the directions of the Textile Commissioner had to be finally disposed of by retail sale within six months of the date of packing.

6. The object behind these provisions is clear. There was great scarcity of cloth and it was believed that dealers were trying to hoard cloth with the object of making better profits later on. 'The idea was that all cloth manufactured before 1-8-1943, should be sold by 31-10-1943, as the Government had no means at its

disposal of getting a complete list made thereof. AH cloth manufactured after 31-7-1948, had to bear the 'tex-mark', as it is commonly called, prescribed the Textile Commissioner under the various clauses of the Order and had then to be disposed off within the time fixed.

7. This Order was amended from time to time by various amending Orders. It is not necessary to set out all the amendments, but it may be noted that the words 'unless otherwise authorised by the Textile Commissioner' were added in Sub-clause (1) of Clause 14 of the Order by an amendment dated 14-8-1943, which made it dear that the Textile Commissioner had the authority to allow cloth manufactured before 1-8-1943, to remain in full bales after 31st August, and was authorised to extend the period for retail sale of any cloth or yarn after 31-10-1943.

8. On 24-11-1943, Clause 14 was substantially amended and after the amendment, it read as follows:

(1) No cloth (other than handloom cloth) or yarn manufactured before 1-8-1943, shall, unless expressly authorized by the Textile Commissioner:

(a) be kept by any person in unopened bales or cases after 31-8-1943;

(b) be kept undisposed of by any dealer, or by any person holding on behalf of a dealer, after 31-12-1943.

(2) No cloth or yarn marked with the date of packing under the provisions of this Order shall unless expressly authorised by the Textile Commissioner:

(a) be kept by any person in unopened bales or cases for more than six months after that date;

(b) be kept undisposed of by any dealer, or by any person holding on behalf of a dealer, for more than twelve months after that date.

It will be noticed that by this amendment the time for retail sale was extended from the 31st October to 31st December 1943. The time was again extended to 30-6-1944 by a subsequent notification of the Government of India.

9. Clause 14 was again amended on 4-11-1944, and since then it has not been further amended. The relevant portion of the present Clause 14 is as follows:

(1) No dealer shall, after the 31-12-1944, buy or sell or have in his possession-

(a)any cloth or yarn manufactured in India before the 1-8-1943;

(b)any cloth or yarn manufactured in India and packed after the 31-7-1943, and before the 1-1-1944.

(2) No manufacturer or dealer shall buy or sell or have in his possession any cloth or yarn, whether manufactured in India or elsewhere other than that referred to in Sub-clause (1) after the expiration of twelve months from the last day....

By this amendment the time was extended to 51-12-1944.

10. It will be noticed that in Clause 14 of the Order, as originally published, there was' prohibition against keeping cloth manufactured before 1-8-1943, in full bales after 31st August, ' and there was a direction that all such cloth should be finally disposed of by retail sale not later than 31-10-1943. It was not mentioned what would happen if any portion of the cloth remained undisposed of, but the order was clear that it must be disposed of before 31-10-1943, which implied that the dealer was not to have any such cloth in his possession undisposed of after that date. This stringent rule may have been passed as it was thought that if the dealers offered the cloth for sale there was such a demand for it that there was no possibility of its remaining undisposed of after that period. When it was probably realised that there might be some cloth which could not be sold in spite of the dealer's best efforts within the period fixed, i.e., upto 31-10-1943, the time was extended to 31-12-1943, then to 80-6-1944 and ultimately to 31-12-1944 a total period of fifteen months. In the meantime, by an amendment of 22-1-1944 Clause 15-A had been added. Clause 15 had also undergone a change. It is not necessary to discuss Clause 15, and so I shall confine myself to Clause 15A. Clause 15A, when it was introduced on 22-1-1944, read as follows:

Notwithstanding anything contained in Clause 14 (1)(b) and 14 (2)(b) cloth or yarn not disposed of within the period specified in those clauses may be kept and sold

by a dealer subject to the conditions notified in this behalf by the Textile Commissioner prescribing the special markings to be made on such cloth or yarn, the agency by which the markings shall be made and the fee payable for such marking:

Provided, however, that no such cloth or yarn shall be kept undisposed of by any dealer, or by any person holding on behalf of a dealer, for more than six months after the date of such marking.

Clause 14 had been amended on 4-11-1944, and, the sub-clauses had been renumbered, but the consequential amendments in Clause 15A were overlooked till 13-1-1945, when a notification was issued as follows:

In Clause 15A for the figures and the words '14(1)(b) and 14(2)(b)' read '14(1) and 14(2)'.

From the proviso to Clause 15A it would appear that if cloth had been marked according to the notification issued by the Textile Commissioner, then it had to be disposed of within six months after the date of such marking. There is no exception to this rule and, therefore, if the Textile Commissioner had notified conditions, prescribing special marking to be made on such cloth or yarn which had to be sold by 31-12-1944, and which had not been sold, then the dealer had to sell it within six months from the date of the marking. The argument that is advanced in support of Clause 14 being unreasonable would, therefore, also, apply to the proviso to Clause 15A even if it is held that Clause ISA overrides the provisions of Clause 14. The position would still remain that, even though the sale of cloth may depend on many factors over which a dealer has no control, there is a liability laid on him by law to sell all the cloth in his possession by a particular date.

11. These Control Orders were passed with the object of protecting the public from dishonest dealers who were trying to take advantage of the uncertain market due to war conditions and hoarding goods with the object of being able to sell them later at a better price. That being the object, even if there were a few cases where an honest dealer, who made every effort to sell the cloth but was not able to dispose of it within the period fixed by law, suffered in consequence through no

fault of his, the Courts have to enforce the law, though in awarding sentence the Courts can consider that circumstance and award a lighter sentence. It is the duty of the Courts to administer the law. If Courts of law did not hold themselves bound to subordinate their own ideas of what is reasonable to an assumed superior reasonableness in the law, though that assumption may not always be well-founded, the law could never perform its function of being a controlling force in society.

12. Keeping aside, therefore, the questions of special hardship or reasonableness, we have to confine ourselves to the language of the Order to decide what is its true meaning. As I read the Order, it appears to me that the relevant portion of Clause 14 contains a prohibition that no dealer shall, after 81-12 1944 have in his possession any cloth manufactured in India before 1-8-1943. A duty was cast upon him to dispose of the cloth before that date and the law, in its wisdom, assumed that he would be able to do so if he wanted to. In Clause 15 the Textile Commissioner was given the power by general or special order to exempt any cloth, or yarn, or any class of cloth or yarn, from all or any of the provisions of Clause 13 and 14. Clause 15A was in the nature of a proviso to Clause 14, and if the Textile Commissioner had notified the conditions prescribing the special markings to be made on such cloth or yarn, the agency by which the marking should be made and the fee payable for such marking, the dealer would be entitled to keep the cloth for a maximum period of six months after the date of such marking. If a dealer in spite of the notifications issued by the Textile Commissioner had failed to get his cloth or yarn marked under Clause 15A, he would be held guilty of the breach of Clause 14 and it could not, therefore, be said that Clause 14 was revoked by Clause 15A.

13. Learned Counsel has argued that the opening words of Clause 15A 'Notwithstanding anything contained in Clause 14(1) and 14(2)' make it clear that the remainder of Clause 15A overrides the provisions of Clause 14(1) and 14(2). It is urged that under Clause 15A the Textile Commissioner is not directed to issue any notification about the right to sell or retain possession of cloth manufactured before 1-8-1943; he was only to prescribe the special markings. The rights therefore, to sell or keep such cloth after 81-12-1943, is not subject to any

conditions notified by the Textile Commissioner. That right is absolute. All that the Textile Commissioner does is to' notify the markings.

14. It is true that the right to sell or to be in possession of such cloth is not given by the Textile Commissioner by his notification. But in my opinion the prohibition in Clause 14 is absolute and is subject only to the condition that if the Textile Commissioner has issued a notification under Clause 15A about the special markings etc. the dealer may retain the cloth for a further period of six months from the date of the marking in accordance with the notification; and if the Textile Commissioner has issued no such notification, the Legislature did not intend that the dealers should have the right to keep the cloth indefinitely and defeat the very object of the Order.

15. The learned Deputy Government Advocate has placed much reliance on the fact that the Government was anxious that the cloth manufactured before 1-8-1943, should be disposed of so that the Government would maintain a. complete record of all cloth manufactured after 1-8-1943 and control its distribution. The Order at originally promulgated fixed 31-10-1948, and then the Government realise that it might not be possible for all dealers to dispose of the entire stock it gave the Textile Commissioner the power to grant exemptions and extended the date of disposal from time to time. The Government had, however, to fix some ultimate date and they fixed, the same as 31-12-1944.

16. The learned Deputy Government Advocate has further urged that if it is held that Clause 15A overrides Clause 14, then Clause 14 and 15 both become redundant. In that case if there were notifications by the Textile Commissioner for marking, the dealer could retain the cloth for a period of six months after the marking, otherwise there would be no restrictions on his right to sell or keep the cloth and it would not be necessary to have any penalty under Clause 14, nor would it be necessary to give the Textile Commissioner the power to grant exemptions about certain classes of cloth under Clause 15. In this connection he has pointed out that though Clause 15A was first enacted on 22-1-1944, Clause 14 was re-enacted on 4-11-1944, practically in the same terms and with the same provisions. Clause 15A, it is argued for the Crown, is only an enabling clause

which gives a dealer an. extended period during which he can keep or sell his cloth, provided he can have it marked in accordance with the directions issued by the Textile Commissioner, and in case he cannot have it marked, he has no right to keep or sell it.

17. I have already indicated in the earlier part of this judgment that, in my opinion, Clause 15A is in the nature of a proviso and an enabling clause and it cannot, therefore, override the provisions of Clause 14 which are mandatory.

18. Learned Counsel for the petitioner has made a faint effort to urge that the marking must necessarily be done after 31-12-1944, and that it cannot, therefore, be said that the right of the dealer to remain in possession of the cloth manufactured before 1-8-1943, depends upon the marking, specially as there is no provision fixing the time limit within which the marking is to be done, nor is the Textile Commissioner directed under Clause 15A to fix a time within which the cloth is to be marked. The provisions of Clause 14 being mandatory, the right to retain possession, to my mind, comes to an end on 31-12-1944. If there is a notification issued by the Textile Commissioner, the dealer may, if the Textile Commissioner has not fixed any period within which the application for marking is to be made, apply for marking within a reasonable time. A statute which creates offences, ought always to be clear and precise in meaning, I do not think that this order, and many other such orders, which the Courts have to interpret, have been properly drafted. If there is a notification by the Textile Commissioner and a person is found in possession of cloth soon after 31-12-1944, without having applied for its marking in accordance with the notification, a difficult question may arise if the accused pleads in defence that he had the intention of applying for such marking within a reasonable time and he was still taking stock of what was left and was getting ready with his application.

19. The learned Deputy Government Advocate has pointed out that there was a notification issued by the Textile Commissioner prescribing special markings, etc., on 27-1-1944. The notification was in these words:

'No. T. Clause (6)2-44. In exercise of the powers conferred on me by Clauses 10 and 15-A, Cotton Cloth and Yam (Control) Order, 1943, and in supersession of my

notification No. 34-Tex. A 15-43, dated 30-11-1943 I hereby notify the following conditions subject to which cloth or yarn not disposed of within the period specified in Clauses 14(1)(b) and 14 (2)(b) of the said Order may be kept and sold by a dealer namely : (1) such cloth or yarn as aforesaid shall not be kept or sold unless it bears the special marking stamped or impressed upon it by the Provincial Government, which has t seized it, to which it has been surrendered for the purpose of such marking.

This notification was issued before Clause 14 was redrafted on 4-11-1944, and there was no fresh notification after that, but the redrafted clause made no real difference to this part of the order, that cloth manufactured before 1-8-1943, had to be sold by a particular date. The date by when the cloth had to be sold was 31-12-1943, when this notification was issued, while after the amendment of Clause 14 it was changed to 31-12-1944. If in' compliance to this notification,, issued by the Textile Commissioner on 27-1-1944, all cloth manufactured before 1-8-1948, had been marked with special marking, no question of any further marking would have arisen, after 31-12-1944, and it may be that on that account the Textile Commissioner did not think it necessary to issue a fresh notification as he may have been of the opinion that sufficient time had already been given to the dealers to dispose of their stocks.

20. Learned Counsel for the petitioner has cited before us several cases and, though the view that I have taken is generally in accord with the view expressed in earlier decisions of this Court, I find that it is not in consonance with the view of some of the other High Courts. With great deference to the views expressed by the other learned Judges, I regret that I am not. able to accept their opinion.

21. The first reported decision on the point is of Sen and Hemeon JJ. in Provincial Government C.P. & Berar v. Shamsherali 32 A.I.R. 1945 Nag. 249. The facts of that case were very peculiar. The Civil Supplies Inspector had seized the cloth on 1-1-1945. The dealers had after the midnight of 31-12-1944, sorted out the cloth and kept them in separate bundles. The defence was that there was no intention to hoard the cloth, that the dealers had not been able to sell it in spite of their best efforts, and that the official agency was not able to enlighten them or give any

instructions as to what to do with this cloth which had remained unsold on 31-12-1944. It, was found that the dealers, as a matter of fact, had even reduced the price and were trying to sell it at a rate lower than the cost price, but still they were not able to get rid of their entire stock. The questions for decision enumerated by the learned Judges were:

(i) whether Clause 14, Cotton Cloth and Yarn (Control) Order, 1943, is incomplete, unworkable or, otherwise invalid in so far as it prohibits possession of cloth after 31-12-1944;

(ii) whether Clause 14 is modified by Clause 15-A of the Order and whether a dealer is entitled to keep the cloth, which remained undisposed of after the period specified in Clause 14;

(iii) whethere the dealers had lawful exeuse for noncompliance with Clause 14; of the Order;

(iv) whether the respondents had contravened Clause 14, Cotton Cloth and Yarn (Control) Order, 1943; whether they are punishable under Rule 81(4) of the Rules, and

(v) whether an order for the forfeiture of property valued at Rs. 5331-5-0 should be passed in case contravention is established.

22. The learned Judges pointed out that the Order did not provide what was to happen if the cloth was left undisposed of after the date fixed, as the sale of cloth depended on many factors which were beyond the control of a dealer and that it might not be possible for him to sell all the cloth in his possession by a particular date. They further pointed out that the Central Government had not prescribed any machinery for the disposal of cloth left unsold with dealers after 31-12-1944, or for the surrender of the cloth in their possession, nor had it specified the person to whom it was to be surrendered, and they came to the following conclusions:

(i) Clause 15-A, Cotton Cloth and Yarn (Control) Order, 1943, overrides Clause 14 thereof, (ii) The possession of cloth by the dealers after 31-12-1944 was permitted under Clause 15-A of the Order, (iii) Clause 14 is incomplete and unworkable in so

far as no provision has been made for the disposal of cloth lying unsold with the dealers after 31-12-1944. (iv) The accused persons had lawful excuse for possession of the cloth after 31-12-1944. (v) The dealers had not contravened Clause 14 of the Order and are not punishable under Rule 81(4), Defence of India Rules.

The order does not provide for the disposal of cloth lying unsold with the dealer after 31-12-1944, but similarly it does not provide for the disposel of cloth lying unsold after six months of the date of marking under Clause 15-A. The order may be, to that extent, defective, but the defect, if any, may be due to the circumstance that the Legislature thought that there would be no such cloth left unsold if the cloth was placed on the market. In any 'case, that would hardly be a ground for saying that Clause 15-A overrides the provisions of Clause 14. I have already said that, to my mind, Clause 15-A is merely a proviso to Clause 14.

23. The question of the accused persons having a lawful excuse for possession of the cloth after 31-12-1944, does not arise in the case before us. It was urged at one stage that the 1'43 cloth could not be disposed of by 31-12-1944, but no such point seems to have been raised at the trial and no such ground was made out either in the Court below or in this Court. This argument is based on Rule 5, Defence of India Rules. If a person contravenes any order made under the Defence of India Rules he is punishable under Rule 81(4). It is said that he can only Toe deemed, to have contravened a provision if he fails without lawful authority or excuse' to comply with such provision or order. I have already said that the point does not arise in this case and it is, therefore, not necessary to express any opinion, but I am inclined to the view that the words 'lawful excuse' mean any excuse which is recognised as a good excuse in law. The words are not 'any reasonable excuse' but 'lawful excuse'; the excuse may be good in fact, though not tenable in law.

24. In Supdt. and Remembrancer of Legal Affairs, Bengal v. Fate Chand Baid : AIR1948 Cal39 their Lordships agreed with the view expressed by the Nagpur High Court referred to above, and held that clause 15-A must be deemed to override the earlier clause and that until the Textile Commissioner chose to make

conditions, cloth or yarn could be kept or sold for an indefinite period,

25. Learned Counsel has referred us to the cases in Gokuldas Nensi v. Emperor ('47) 34 A.I.R. 1947, Murlidhar v. Emperor ('46) 33 A.I.R. 1946 and Sagarmal Poddar v. Emperor ('47) 34 A.I.R. 1947 Pat. 181 but the decision in these cases turned upon the question whether the accused had lawful exeuse within the meaning of Rule 5, Defence of India Rules, and they are not therefore relevant to the point now under consideration.

26. In this Court in Ram Sarup v. Emperor 34 A.I.R. 1947 All. 250 Allsop J. disagreed 'with the view expressed by the Nagpur High Court and observed:

I cannot believe that the Order intended to say in Clause 14 that a person should not be in possession of cloth of a certain kind and then in Clause 15-A that he might legally be in possession of it. It seems to me that these clauses read together clearly mean that no person is to be in possession of any kind of cloth unless the Textile Commissioner allows such person to be in possession of cloth of some kind on certain conditions. I do not think that it can be inferred if no conditions are imposed by the Textile Commissioner that a person can be in possession of cloth unconditionally in contravention of the provisions of Clause 14. I think if the Textile Commissioner imposes conditions, then anybody who complies with the conditions can be in possession of cloth but if no conditions are imposed, then nobody can be in possession of cloth at all. If Clause 15-A was intended to mean that any person could be in possession of cloth, but that the Textile Commissioner could impose conditions, then Clause 14 would be completely superfluous.

27. The same view was taken by a Bench of this Court (Mulla and Yorke JJ.) in Chhotey v. Emperor 34 A.I.R. 1947 All. 394, Learned Counsel for the applicant has urged that this judgment is incorrect as in this case their Lordships were of the opinion that on the material dates, that is, the period between January 1 and 10,1945, the consequential amendments in Clause 15-A by reason' of the renumbering of the clauses in Clause 14, had not been made. I have already pointed out that Clause 14 was amended on 4-11-1944, but the consequential amendment in Clause 15-A was not made till 13-1-1945, and on that account the

Bench held that the provisions of Clause 15-A, prior to its amendment on 13-1-1945, could not govern Clause 14 on the material dates between January 1 and 10,1945. In this respect their Lordships' attention does not appear to have been drawn to Clause 8, General Clauses Act, (Act 10 [x] of 1897) the effect of which was to make the provisions of Clause 15-A applicable to the amended Clause 14.

28. The learned Judges also gave it as their opinion that:

Clause 15-A can only be considered as a proviso to Clause 14 and an accused person, who claims the benefit of that proviso, must bring his case clearly within its purview by establishing that he had fulfilled the conditions prescribed by the Textile Commissioner under which alone possession of cloth was permissible in spite of the provisions of Clause 14.

29. In Hukumal Asoomal v. Emperor ('47) 34 A.I.R. 1947 Sind 79 the learned Judges did not follow the Nagpur decision and were of the opinion that Clause 14, Cotton Cloth and Yarn (Control) Order, 1943, was not unworkable and that keeping of cloth, manufactured before 1-8-1943, after 31-12-1944, was a, contravention of the Order and punishable under Rule 81(4), Defence of India Rules.

30. In my judgment, Clause 15-A, Cotton 'Cloth and Yarn (Control) Order, 1943, does not override the provision of Clause 14 thereof, that a dealer has no right to retain possession of cloth or offer it for sale after 31-12-1944, except by accordance with the conditions relating to marking etc, mentioned in Clause 15-A, and that in case there is no such notification by the Textile Commissioner, the dealer has no right to retain it or to offer it for sale after 31-12-1944. The Order may not be very well drafted, but I am not prepared to hold that it is unworkable and should not, therefore, be enforced.

31. For the reasons given above, I would dismiss this revision and confirm the conviction and sentence.

Verma, C.J.

32. I agree with my brother Malik and do not consider it necessary to add anything.

Mootham, J.

33. I also agree.

Per Curiam

34. The petition for revision is dismissed and the conviction of the petitioner and the sentence passed on him are confirmed.