

State Vs. Banshidhar

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SooperKanoon Citation : sooperkanoon.com/451155

Court : Allahabad

Decided On : Jul-26-1967

Reported in : AIR1969All184

Judge : D.P. Uniyal, ;Khare and ;Yashoda Nandan, JJ.

Acts : Defence of India Rules, 1962 - Rules 125(2) and 141; Essential Articles (Price Control) Order, 1963; [General Clauses Act, 1897](#) - Sections 5

Appeal No. : Govt. Appeal Nos. 2195 to 2198 of 1963

Appellant : State

Respondent : Banshidhar

Advocate for Def. : R.P. Goyal, ;S.N. Mulla and ;P.C. Chaturvedi, Advs.

Advocate for Pet/Ap. : A.G.A.

Disposition : Appeals dismissed

Judgement :

Uniyal, J.

1. These connected appeals raise a common question of law and may be disposed of by a common order.

2. The four respondents were prosecuted for contravention of Clause 4 of the Essential Articles (Price Control) Order, 1963 (hereinafter referred to as the Order) which requires every dealer to cause to be prominently displayed price-lists of articles for sale at his shop. The Magistrate recorded a conviction but in appeal the Sessions Judge passed an order of acquittal on the ground that the prosecution had failed to prove that the Order was in force on 25-3-63, the date on which the shops had been raided by the police. The State Government appealed against the acquittal of the respondents and the appeals were heard by my brothers Khare and Yashoda Nandan, JJ.

The learned Judges differed in their opinion on the principal question whether the Order had come into force in Uttar Pradesh on 25-3-63, the date on which the alleged offences were said to have been committed. Khare, J. was of the view that in the absence of any indication in the Order that it shall come into force at once or from some future date, the respondents were not liable to be convicted inasmuch as the provisions of the Order had not come into operation on the date of the alleged offence. Yashoda Nandan, J. on the other hand, came to the contrary conclusion and held that when the legislative organ has completed the act of legislation without expressing the intention that its effectiveness stands postponed to a future date, the only intention that can be attributed to it is that that law has become effective and enforceable from the date of its publication in the official gazette. In view of the difference of opinion between the two learned Judges the following question has been referred to me for opinion:

'Whether or not the Essential Articles (Price Control) Order, 1963 had come in force in Uttar Pradesh in March, 1963, the date when the offences in the four connected Government Appeals are alleged to have been committed?'

3. In exercise of the powers conferred by Section 3(1) of the Defence of India Act, 1962 (hereinafter referred to as the Act) the Central Government was empowered by Issuing a notification in the official gazette to make such rules as appeared to it necessary or expedient, inter alia, for maintaining supplies essential to the life of the community. The Central Government accordingly framed rules known as the Defence of India Rules, 1962 (hereinafter referred to as the Rules). By Rule 125 of

the Rules the Central Government, as well as the State Government, were empowered to make such orders as they might consider necessary or expedient for securing equitable distribution and availability of any article or thing at fair prices. The manner in which an Order made in pursuance of Rule 125 aforesaid was to be published is laid down in Rule 141. This Rule, so far as material, reads as follows:--

'(1) Save as otherwise expressly provided in these Rules, every authority, officer or person who makes any order in writing in pursuance of any of these rules, shall, in the case of an order of a general nature or affecting a class of persons, publish notice of such order in such manner as may, in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns

(2) If in the course of any judicial proceeding a question arises whether a person was duly informed of an order made in pursuance of these Rules, compliance with Sub-rule (1), or where the order was notified, the notification of the order, shall be conclusive proof that he was so informed; but a failure to comply with Sub-rule (1) -

(i) shall not preclude proof by other means that he had information of the order,

(ii) shall not affect the validity of the order.'

4. In pursuance of the powers conferred by Sub-rules (2) and (3) of Rule 125 the Central Government made an order called the Essential Articles (Price Control) Order, 1963 and the same was published in the Gazette of India (Extraordinary) dated 1-3-1963. Clause 3 of the Order lays down that 'no wholesale dealer or retail dealer, as the case may be, shall, with effect from the commencement of this Order, sell any essential article to any person at a price which is in excess of the control price.' Clause 3 aforesaid was later amended by the Central Government and the same was published in the Government of India Gazette dated 6th March 1963. One of the changes introduced by the amendment was that the words 'with effect from the commencement of this Order' originally appearing in Clause 3 were deleted from the Order.

5. The main argument advanced on behalf of the State was that the Order having been published in the Government Gazette on the 1st March 1963 it should be deemed to have come into force from that date. It was said that the principle underlying Section 5 of the General Clauses Act was applicable to the Order, even though it was not applicable in terms of Orders of this kind but only to Central Acts and Regulations. It will be noticed that neither in the Defence of India Rules nor in the impugned Order made in pursuance of Rule 125 is there anything which would suggest that an Order made by the Central Government was to come into force immediately on the publication of the said Order in the Government Gazette. Rule 141 merely provides for publication of the Order in such manner as may appear to the authority, officer or person to be best adapted for informing persons likely to be affected by the Order. It merely gives discretion to the authority making the order to publish the same in the manner best adapted for informing persons whom the Order concerns. Whether the mode adopted is by publication in the Government Gazette or by beat of drum or by effecting personal service of the notice on the individuals concerned, is a matter left to the discretion of the authority making the Order. The Rule does not say that the Order shall become effective and come into operation immediately on its publication in the gazette.

6. The only consequence of the impugned Order being published in the official gazette was that it came into being as a piece of subordinate legislation on the Statute Book. From this it would not follow that it became law with immediate effect. Indeed, there are no words express or implied in the Order itself that it was intended to enforce its provisions from the date of its publication. In India Acts of Central Legislature become law from the moment they are published. But that is because the General Clauses Act says so. The practice prevailing in England is that a statute which contains no express provision as to its commencement comes into operation on the date endorsed on it as the date on which it received the Royal assent.

The precise moment on which a statute, or a particular provision of a statute, takes effect is the moment of expiry of the day immediately preceding that on which it comes into operation; and where a statute or provision has extra-territorial effect the moment is determined for any particular territory by reference to local time.

Even in England the commencement of many modern statutes is expressly postponed, the provision in question in some cases itself fixing the date and in others empowering Her Majesty or a specified Minister of the Crown to appoint a date by order; and it is by no means unusual for different dates to be fixed for different provisions of the same statute, or for authority to be given to appoint different dates for different provisions. (Vide Halsbury's Laws of England (Simonds Edition) Volume 36, Para 638).

7. The question as to how, when and where an Order issued under the Defence of India Rules will take effect cannot be left to conjecture; it must appear clearly on the face of the Order that it is to operate with immediate effect or from some future date. Where there is no such indication in the Order itself it does not become effective and cannot come into operation. In my opinion it is not permissible to hold by analogy with regard to the construction of statutes that Orders of this kind take effect immediately on publication in the official gazette. Such a construction in my view would be nothing short of legislating by the courts. There is a fundamental difference between an Act of Parliament and an Order made under the D. I. R. Acts of Parliament are passed after a public debate in which the accredited representatives of the people have opportunity for free and full discussion of the issues involved. They are also given wide publicity in the press and over the radio. Everyone has opportunity to know or to find out what the law is to be, but not so in the case of Orders issued by the Executive or administrative authority. The decisions are made in the secret recesses of a chamber to which the public has no access and of which they can have no means of knowledge. It would be shocking to judicial conscience if Orders made in such circumstances and likely to affect the life and liberty of the subject were allowed to operate from the moment of their publication in the official gazette.

8. The argument that an Order of this kind should be placed on the same footing as an Act made by Parliament by importing the provisions of Section 5 of the General Clauses Act for construing such Orders needs to be mentioned only to be rejected. In *Harpal Singh v. State* : AIR1950 All562 it had been urged that an Order passed by the President should be deemed to be a law made by Parliament. Raghubar Dayal, J., delivering the judgment of the Court, observed that it was not

possible to consider an executive Order made by the President as law made by Parliament and that in principle the law passed by the Central Legislature should not be placed on the same footing as an Order made by a subordinate authority.

9. The difference between a statutory Order of this kind and an Act of Parliament was stressed In Johnson v. Sargent and Sons, (1918) 1 KB 101. That was a case in which an Order called the Peas, Beans and Pulses (Requisition) Order, 1917 was made on May 16, 1917 by the Food Controller under Regulation 2-F of the Defence of the Realm. It became known to the public on May 17, 1917. The Order prohibited sale of peas, beans and pulses and the said articles were required to be placed at the disposal of the Food Controller. Certain persona had sold beans on 16th May 1917 and the question arose whether the sales came within the prohibition contained in the Order, Although the facts of that case were different, the principle laid down can be applied here. The learned Judge dealing with the question of enforceability of the Order said:

'While I agree that the rule is that a statute takes effect on the earliest moment of the day on which it is passed or on which it is declared to come into operation, there is about statutes a publicity even before they come into operation which is absent in the case of many Orders such as that with which we are now dealing. In the absence of authority I am unable to hold that the Order came into operation before it was known.'

10. I have not known of any Order made under the Defence of India Rules and none has been brought to my notice in which the time of its operation was not specifically mentioned. By way of example I may refer to the following orders made under the D. I. R. in which it was clearly mentioned that they were to come into force at once:

(1) Cotton Control Order, 1955.

(2) Cotton Textile Order, 1948.

(3) Cotton Textile Export Control Order, 1949.

(4) Cotton Textile Control of Movement Order, 1948.

(5) Textile Production by Handlooms Control Order. 1956.

The Order in question is perhaps a solitary instance where no date was fixed for its coming into operation,

11. I now proceed to consider another argument advanced on behalf of the State that the Order as originally published on 1-3-63 may not have become effective from that date by reason of the use of the words 'with effect from the commencement of this Order' in clause 3 thereof. But in view of the amendment deleting the words 'with effect from the commencement of this order introduced in clause 3 aforesaid by a subsequent order published in the Government of India Gazette on 6-3-63, and re-published in the U. P. Gazette on 6-4-63, it must be considered that the impugned Order was intended to come into force with immediate effect.

12. The point was considered in State of U. P. v. Mahavir Prasad, (1966 ALJ 796) by a Division Bench of this Court and the learned Judges observed -

'Mere removal of the expression 'with effect from the commencement of this Order', which took place by the notification of the 6th of March, 1963. without anything more, cannot be tantamount to enforcement of the Order which had not till then been enforced. The result was that clause 3 of the Order cannot be deemed to have come into force even on the 6th of March 1963. In our opinion, the same reasoning must, a fortiori, apply to Clause 4 of the Order with which we are concerned, inasmuch as it cannot be that, even though, with reference to Clause 3 the Order had not become operative, it had become operative in respect of Clause 4.'

I am in respectful agreement with the view expressed by the Bench in the above case.

13. An important factor which may be emphasised in construing Orders of this kind is that here we are dealing with a penal measure. Clause 5 makes punishable sales made in contravention of Clause 4 of the Order. If the impugned Order is held to operate from 1-3-63 when it was first published in the official gazette, then

dealers irrespective of whether they knew of the Order or not would render themselves liable. It is a well known rule of construction that penal laws must be strictly construed. Dealing with this aspect of the matter the Supreme Court in *Harla v. State of Rajasthan* : [1952]1SCR110 observed:

'In the absence of any special law or custom, we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural diligence requires that before a law can become operative it must be promulgated and published. It must be broadcast in some recognisable way so that all men may know what it is.'

14. It is obvious that shop-keepers and traders could not have prepared a price-list in accordance with Clause 3 of the Order as they had no knowledge that such a law was in operation on 25-3-63. The Order being silent as to the date of its operation, the respondents were not liable to be prosecuted under the impugned Order.

15. My answer to the question referred to me is that the Essential Articles (Price Control) Order, 1963 had not come into force in Uttar Pradesh on 25-3-63, the date when the offences in the four connected Government Appeals are alleged to have been committed. The above opinion shall be sent to the bench concerned with the relevant records.

Khare And Yashoda Nandan, JJ.

16. In all these four Government Appeals and also in the connected Criminal Revision No. 670 of 1965 the main point that arises for consideration is as to whether the Essential Articles (Price Control) Order, 1963, passed under Sub-rule (2) of Rule 125 of the Defence of India Rules, 1962, had come into operation on or before the 25th March, 1963.

17. All these connected Government Appeals were heard by us and there was difference of opinion. For that reason all the four connected appeals were referred

to another Hon'ble Judge for delivery of his opinion. Hon'ble Uniyal, J., to whom the four connected Government Appeals were referred, has arrived at the conclusion that the Essential Articles (Price Control) Order, 1963, had not come into force in Uttar Pradesh on 25th March, 1963, the date when the offences in the four connected Government Appeals and the connected Criminal Revision are alleged to have been committed.

18. All the four connected Government Appeals are, therefore, dismissed. The Criminal Revision is allowed and the conviction and sentence of Jai Dayal Popli are set aside. Fine, if already paid by him, shall be refunded to him.

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