

Naraln Das Vs. Rex

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Court : Allahabad

Decided On : Sep-07-1949

Reported in : AIR1950All99

Judge : Harish Chandra, J.

Acts : Uttar Pradesh Oil Seeds and Oil Seeds' Products Control Order, 1945; Defence of India Act - Sections 2 and 2(4); Defence of India Rules - Rule 81(2); Government of India Act - 297(1)

Appeal No. : Criminal Revn. No. 126 of 1949

Appellant : Naraln Das

Respondent : Rex

Advocate for Def. : D.P. Uniyal, Assistant Govt. Advocate

Advocate for Pet/Ap. : B.S. Darbari and ;A.P. Dube, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

Harish Chandra, J.

1. The applicant Narain Das was in this revision as well as the other connected revisions numbered 925, 926, 927 and 951 convicted under para. 8, U. P. Oil Seeds and Oilseeds' Products Control Order, 1945 issued under Notification No. A-7584/C. S. dated 1st September 1945, read with Sub-rule 4 of Rule 81, Defence of India Rules and sentenced to thirty days' rigorous imprisonment in the case out of which this revision arises and to various amounts of fines in the other cases, by Shri Brij Behari Lal, Magistrate of the First Class, Allahabad. His appeals were dismissed by the learned Sessions Judge of Allahabad. He has come up in revision to this Court against his convictions and sentences. The offences alleged to have been committed in all these cases occurred between 1st December 1945 and 26th January 1946. The Control Order was issued by the U. P. Government in exercise of the power conferred by Sub-rule 2 of Rule 81, Defence of India Rules. The Defence of India Rules were framed under Section 2, Defence of India Act, 1939 (XXXV [35] of 1939). This Act followed the promulgation of a 'Proclamation of Emergency' by the Governor-General under Section 102, Government of India Act, 1935 on 3rd September 1939. After the issue of such a proclamation, the Central Government had the power to make laws for the Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List also. There can be no doubt that the wide powers that were given to the Central Government under the Defence of India Act were perfectly legal. Section 2 of the Act conferred upon the Central Government the power to make such rules as appeared to it

'to be necessary or expedient for securing the defence of British India, the public safety, the maintenance oil public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.'

2. Under Sub-section (4) of that section the Central Government was authorised to direct that

'any power or duty which by rule under Sub-section (1) is conferred or imposed upon the Central Government shall in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged.

.....

(b) whether or not the power or duty relates to a matter with respect to which a Provincial legislature has power to make laws, by any Provincial Government or by any officer or authority subordinate to such Government.'

The Central Government under Sub-rule (2) of Rule 81, Defence of India Rules authorised Provincial Governments to issue orders under that rule and it was in the exercise of this power that the Provincial Government promulgated the Order in question. It will thus be seen that the Order was not issued by the Provincial Government in exercise of its power to pass any law in accordance with the provisions of the Government of India Act or by way of executive action. The order was passed under the Defence of India Rules in exercise of the power conferred upon it by those rules in accordance with the provisions of the Defence of India Act. The Defence of India Rules and the Act ceased to have effect on 30th September 1946 six months after the 'Proclamation of Emergency' had been withdrawn by the Governor General. The offences in question, however, were committed several months before the Defence of India Act and the Defence of India Rules ceased to exist and if the Control Order was properly issued by the U. P. Government I cannot understand how the convictions of the applicant in the several cases in which he was tried can be regarded as illegal.

3. It is pointed out that the Control Order is contrary to the provisions of para. (a), of Sub-section (1) of Section 297, Government of India Act and as such illegal. The sub-section runs as follows:

'No Provincial Legislature or Government shall (a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply and distribution of commodities have power to pass any law or take any executive action prohibiting or restraining the entry into or export from the province of goods of any class or description '

4. As has been stated above, the Control Order in question was not passed by the Provincial Government in exercise of its power to pass any law or by way of executive action. Therefore the provisions of Section 297, Government of India Act do not apply and para. 8 of the Control Order prohibiting the export of oilseeds or

their products outside the United Provinces except under a permit is quite in order.

5. It is, however, pointed out that the section of the Government of India Act providing for the conferment of powers upon the Provincial Government to pass orders of this nature is not *intra vires* inasmuch as it confers upon the Provincial Government a power which is legislative in its character. The delegation of legislative power of this nature by an Act is, it is pointed out, *ultra vires* the powers of the Central Legislature and my attention has been drawn to the recent Federal Court case of *Jitendranath Gupta v. The Province of Bihar*, decided on . But I cannot understand how the power given to the Central Government under Sub-section (4) of Section 2, Defence of India Act to delegate any power or duty which by rule under Sub-section (1) is conferred or imposed upon it, to the Provincial Government, can be regarded as *ultra vires*. The object of the Control Order was to regulate trade in and the transport of oilseeds and their products and this comes under Clause (a) of Sub-rule (2) of Rule 81, Defence of India Rules which provided for the passing of orders

'for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever. . . .'

in case the Central Government or the Provincial Government considered it necessary or expedient to pass such an order for securing the defence of British India, etc. This rule is made under Section 2, Defence of India Act which empowers the Central Government to make such rules as may appear to it to be necessary or expedient for various purposes including that of maintaining supplies and services essential to the life of the community. The Control Order in question does not go beyond the provisions of Section 2, Defence of India Act or Clause (a) of Sub-rule (2) of Rule 81, Defence of India Rules and merely seeks to carry out the purpose for which the Defence of India Act and the Defence of India Rules had been framed. In my view Clause (a) of Sub-section (1) of Section 297, Government of India Act does not apply.

6. My attention has been drawn to the case of *Ram Charan v. Rex*, decided by a Bench of this Court : AIR1949 All463 . In this case the question was whether the

provisions of the U. P. Control of Supplies (Temporary Powers) Act (II [2] of 1947) were or were not intra vires the Provincial Legislature in view of the provisions of Section 297, Government of India Act. This was an Act passed by the Provincial Legislature and if any provisions of this Act contravened the provisions of Section 297 of the Government of India Act, they would undoubtedly be ultra vires the Provincial Legislature. But in the present case we are not dealing with any such law and this ruling has no application to the present case.

7. In my view the convictions of the applicant are in accordance with law. I cannot regard the sentences that have been passed upon him as too severe and dismiss the applications. At one stage during the course of his argument Shri A. P. Dube, counsel for the applicant, had said that in case I was unable to accept his contention a certificate may be given under Sub-section (1) of Section 205, Government of India Act. But I am not prepared to say that the case involves a substantial question of law as to the interpretation of the Government of India Act. The point is a clear one and I decline to give such a certificate.

8. The applicant will surrender to his bail and undergo the remaining portion of his sentence of imprisonment.

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