

Amir Chand Vs. the State

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Court : Allahabad

Decided On : Apr-26-1956

Reported in : AIR1956All562; 1956CriLJ1141

Judge : Roy, J.

Acts : [Constitution of India](#) - Article 19(1); Cotton Textiles (control) Order, 1948; Uttar Pradesh Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948

Appeal No. : Criminal Revn. No. 1619 of 1954

Appellant : Amir Chand

Respondent : The State

Advocate for Def. : A.G.A., Adv.

Advocate for Pet/Ap. : S.N. Dwivedi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Roy, J.

1. This is an application in revision by Amir Chand who has been convicted under Section 7 of the Essential Supplies (Temporary Powers) Act,. 1946 (No. XXIV of

1946) for contravention of Clause 6(A) of the Cotton Textiles (Control) Order 1948 and Clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 and sentenced to three months' rigorous imprisonment and to a fine of Rs. 2007/- or in default to rigorous imprisonment for further one month.

2. The facts giving rise to this application are these: The applicant held a temporary licence in Form P tenable upto 21st of June, 1951 to carry on business for storing cloth. The license had expired before the 10th of July, 1951 on which date he was found selling a sari to one Sukhan for a sum of Rs. 11/8/-. The prosecution alleged that the sale without a licence was a contravention of Clause 6 (A) of the Cotton Textiles (Control) Order, 1948 and Clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948.

The only ground on which this revision application was founded is the unconstitutionality of these clauses of the Control Orders. It has been contended that the provisions of Clause 11 of the Cotton Textiles (Control) Order, 1948 which give unrestricted power to the Textile Commissioner to refuse to grant a licence without assigning any reason and which further provides that his decision shall be final, and the provisions of Clause 9 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, which lay down that the Licensing Authority may for reasons to be recorded in writing refuse to grant a licence are in violation of the provisions of Article 19(1)(g), of the Constitution and since these provisions cannot be dissociated with the provisions of Clause 6(A) of the Cotton Textiles (Control) Order, 1948 and Clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, the penalties provided in those sections in violation of the Constitutional right cannot be imposed.

3. In order to examine this question it would be necessary to lay down Clauses 6(A) and 11 of the Cotton Textiles (Control) Order, 1948 and Clauses 4 and 9 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, Clause 6 (a) of the Cotton Textiles (Control) Order, 1948 is as follows:

'6. No person shall sell or dispose of any scheduled article except under and in accordance with- (a) a seller's licence granted to him by the Textile Commissioner;'

Clause 11 of that Control Order is as follows:

'11. (1) Applications for licences under this Order shall be made in such form as the Textile Commissioner may prescribe.

(2) The Textile Commissioner may without assigning any reason, refuse to grant a license to any person and his decision shall be final.' Clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 provides:

'4. Subject to the provisions of Clause 16 no person other than a dealer shall.....sell.....toany person controlled cotton cloth..... except under and in accordance with the conditions of a licence in the appropriate form granted under this order: Provided that no licence shall be necessary for the possession and storage for sale of cotton yarn not exceeding 10 lb. in weight.'

Clause 9 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, says:

'9. The Licensing Authority may for reasons to be recorded in writing refuse to grant a licence in which case the fees deposited by the applicant shall be refunded.'

In this connection Clause 12 of this Control Order may also be reproduced. It says:

'12. A Licensing Authority may, without prejudice to any other action that he may take, cancel or suspend the licence of a licensee who is found to have supplied incorrect information in Mis application for the grant or renewal of a licence or who contravenes any of the conditions of his license or of the provisions of this or anyif the following control orders or for such other reason to be recorded in writing as the Licensing Authority may deem adequate.'

4. In order to sustain his argument that these provisions for the grant, or for the refusal, of the licence which are unrestricted must be held to be void as imposing unreasonable restriction upon the freedom of trade and business guaranteed in Article 19(1)(g) of the Constitution and not coming within the protection afforded by Clauses (6) of the Article, learned counsel has relied upon the decision of the

Supreme Court in Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh, : [1954]1SCR803 . In that case the Supreme Court Mad under consideration the provisions of Clause 4(3) of the U. P. Coal Control Order, 1953, which was in the following terms:

'4. (3) The Licensing Authority may grant, refuse to grant, renew or refuse to renew a licence and may suspend, cancel, revoke or modify any licence or any term thereof granted by him under the Order for reasons to be recorded.'

5. Under the U. P. Coal Control Order, 1953, no person can sell coal for burning bricks or otherwise dispose of the coal in the State except under a licence in Form 'A' or 'B' granted under that Control Order. The provisions of Clause 4(3) of the Coal Control Order, 1953 were held by the Supreme Court to be void as imposing unreasonablerestriction upon freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by Clauses (6) of the Article.

It was observed that the licensing authority had been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he had to do was to record reasons for the action he took; that no rules had been framed and no directions given on those matters to regulate or guide the discretion of the Licensing Officer; that practically the Order committed to the unrestrained will of a single individual the power to grant, withhold or cancel licenses in any way he chose and there was nothing in the order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper 'execution of the same.

It was urged in that case that a sufficient safeguard had been provided against any abuse of power by reason of the fact that the licensing authority had got to record reasons for what he did; but that safeguard was held by the Supreme Court as hardly effective for there was no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officer.

Under the present Control Orders there is a provision under one that 'the Textile Commissioner may without assigning any reason, refuse to grant a licence to any person and his decision shall be final; and in the other Control Order the Licensing Authority may for reasons to be recorded in writing refuse to grant a licence. No distinction can be drawn between the provisions of the U. P. Coal Control Order, 1953 which was under consideration before the Supreme Court in the case of Dwarka Prasad v. State of U. P. (A) referred to above and the provisions of the Control Order which are under consideration in the present case. (6) Learned counsel for the State has relied upon the later decision of the Supreme Court in Harishankar Bagla v. State of Madhya Pradesh : 1954 CriLJ1322 , where the earlier decision in Dwarka Prasad v. State of U. P. (A) cited above was referred to. In Harishankar Bagla's case (B), the question raised was that the provisions of Section 3 of the Cotton Textiles (Control of Movement) Order, 1948 infringed the rights of a citizen guaranteed in Sub-clauses (f) and (g) of Article 19(1) of the Constitution. Section 3 of the Order was as follows:

'3. No person shall transport or cause to be transported by rail, road, air, sea or inland navigation any cloth, yarn or apparel except under and in accordance with-

- (i) a general permit notified in the Gazette of India by the Textile Commissioner, or
- (ii) a special transport permit issued by the Textile Commissioner.'

Section 8 provided that the Textile Commissioner may by notification in the Gazette of India, prescribe the manner in which any application for a special transport permit under this order shall be made, The Central Government has prescribed forms for application for obtaining permits and the conditions under which permits can be obtained under the Cotton Textiles (Control of Movement) Order, 1948.

It was argued in that case that the Textile Commissioner had been given unregulated and arbitrary discretion to refuse or to grant a permit, and that on grounds similar to those on which in : [1954]1SCR803 , the Supreme Court declared void Section 4(3) of the U. P. Coal Control Order, Section 3 of the Control Order in question should also be declared void.

The Supreme Court repelled that contention ' because, in the first place, the appellants in that case never applied for a permit and made no efforts to obtain one and if the permit had been applied for and refused arbitrarily, they might then have had a right to attack the law on the ground that it vested arbitrary and un-regulated power in the Textile Commissioner.

The second ground on which that argument was repelled was that the decision - in Dwarka 'Prasad's case (A)' was not very apposite and had no bearing on the case of 'Harishankar Bagla (B) because in the Cotton Textiles (Control of Movement) Order, 1948 there was no such provision as existed in the U P. Coal Control Order and the provisions of the U. P. Coal Control Order bear no analogy to the provisions of the Cotton Textiles (Control of Movement) Order, 1948 because the policy underlying the order was to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all, and the grant or refusal of a permit was thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate that policy, and the conferment of such a discretion cannot be called invalid and if there is an abuse of the power there was ample power in the courts to undo the mischief, and as appears from the different forms published in the Manual, there were directions and rules laid down by the Central Government for the grant or refusal of permits.

7. Having considered the two decisions of the Supreme Court cited above, I am of opinion that reference to the decision of the Supreme Court in 'Hari Shankar Bagla's case (B)' is not very apposite and has no bearing on the present case. Here the provisions of the Control Orders vest in the Licensing Authority an unrestricted power to grant or to refuse a licence and there is no higher authority prescribed in the Order who could examine the propriety of the reasons and revise or review the decision of the subordinate officer.

The reasons, therefore, which are required to be recorded under one of these Control Orders, are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the affected person.

8. As has been pointed out by their Lordships of the Privy Council In re Initiative and Referendum Act', 1919 PC 145 (AIR V6) (C), where the offending provisions are so interwoven into the scheme that they are not severable, these considerations are sufficient to establish the 'ultra vires' character of the impugned provisions of the Act.

In the present case the provisions of clause 6 (a) of the Cotton Textiles (Control) Order, 1948 are as interwoven with clause 11 of that Order, and likewise the provisions of clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 are so interwoven with clause 11 of that Order that the 'ultra vires' character of clause 11 of both the Orders would make the operation of Clause 6 (a) of the Cotton Textiles (Control) Order 1948 and Clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 practically nugatory.

This principle would be applicable where certain provisions in a Statute are invalid upon their face and an attempt is made to enforce their penalties in violation of the Constitutional rights. The provisions which are under consideration in the present case for an integral part or the entire structure of the two Control Orders and Clause 6 (a) of the one and Clause 4 of the other cannot operate properly unless the provisions of Clause 11 of the two Control Orders are brought in conformity with the Constitutional provisions indicated above. Under the circumstances, I am of opinion, that the provisions of Clause 6 (a) of the Cotton Textiles (Control) Order, 1948 read with clause 11 of that Order and clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 read with clause 11 of that Order must be held to be void as imposing an unreasonable restriction upon freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by clause 6 of the Article. The conviction of the applicant cannot, therefore, be upheld.

9. Accordingly I allow the application in revision, set aside the conviction and sentence of the applicant and direct that the fine, if paid, shall be refunded. The applicant need not surrender. His bail-bonds are hereby discharged.