SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The State Vs. Baboo Lal and ors.

The State Vs. Baboo Lal and ors.

SooperKanoon Citation : sooperkanoon.com/465103

Court : Allahabad

Decided On : May-10-1956

Reported in : AIR1956All571; 1956CriLJ1143

Judge : H.S. Chaturvedi and ;Mulla, JJ.

Acts : Dramatic Performances Act, 1876 - Sections 3, 4 and 10; Constitution of India - Article 19 and 19(1)

Appeal No. : Criminal Ref. No. 10 of 1954

Appellant : The State

Respondent : Baboo Lal and ors.

Advocate for Def. : S.N. Trivedi, Adv. (for Nos. 1 to 4) and ;Tej Narain, Adv. (for No. 1)

Advocate for Pet/Ap. : Addl. Govt. Adv.

Judgement :

Mulla, J.

1. This is a reference made by the Additional City Magistrate, Lucknow, under Section 432, Cr. P. C. for a decision on a point of law whether the Dramatic Performances Act (Act 19 of 1876) has become void or not in view of Article 13,

Constitution of India.

2. It was contended before the Magistrate that the above mentioned enactment had become inconsistent with the fundamental rights regarding freedom of speech and expression guaranteed to every citizen under Article 19, Constitution of India. The learned Magistrate in his reference observed :

"..... it is debatable that the Dramatic Performances Act, 1876 is inconsistent with the provisions of Part III of the Constitution of India and I consider that the said Act is invalid. The question of the validity of the Dramatic Performances Act is necessary to be determined for the disposal of this case.'

3. The reference came up for hearing before one of us and as the question to be decided was whether an existing enactment had become void or not, it was referred to a divisional Bench of this Court.

4. We will now give the facts of the case which led to the reference.

5. The late Munshi Prem Chand was one of the most outstanding writers of novels, stories and plays. One of his shorter pieces is a story entitled 'Idgah'. The accused who were the organisers of the Lucknow Branch of the Indian Peoples Theatres Association arranged to stage 'Idgah' on 16-6-1953 at the Refah-i-Am Club, Lucknow. The Secretary of the Association by a letter dated 15-G-53 informed the City Magistrate, Lucknow about the date, time and place of the intended performance and the City Magistrate granted permission to stage the play.

On the same date the Additional District Magistrate (E) served a notice on the organisers prohibiting them to stage the play as they had not obtained his permission under Section 10, Dramatic Per formances Act. The City Magistrate also cancelled the permission which he had given earlier and this order of cancellation was passed on 16-6-1953 the date on which the performance was to be held. This order was served in the middle of the performance, but the accused did not obey it and continued the performance.

We have given these facts from the statement made before us by the counsel for the accused and these facts were not challenged by the counsel for the State. On

account of this disobedience the accused were prosecuted under Sections 4 and 10, Dramatic Performances Act. A complaint was filed by the District Magistrate, Lucknow some time in August, 1953 and the following allegations were made in the complaint ;

'Whereas Razia Sajjad Zahir, Sarvasri Babu Lal Verma, Gokul Chand Rastogi, Amrit Lal Nagar organisers of the Lucknow Branch of the Indian Peoples Theatres Association arranged to stage a drama on 16-6-53 in Refah-i-Am Club Lucknow, and 'Idgah' one Act Play -- an adaptation of a drama of the same name written by late Munshi Prem Chand, was announced, and which drama contained distorted version of Munshi Prem Chand's novel to suit their political ideology; and whereas no licence for staging the drama was obtained by the aforesaid organisers from me as provided under the provisions of the Dramatic Performances Act, 1876.

The aforesaid accused persons staged the said drama 'Idgah' on 13-6-53 at Rafah-i-Am Club, Luck-now, at about 9 P. M. without having obtained a licence from me. The said accused persons also failed to furnish a copy of the said play 'Idgah' which they were going to stage three days before performance as required under the Dramatic Performances Act. The A. D. M. (E) had also issued notices to the aforesaid accused organisers restraining them from staging a drama without obtaining the required licence under the provisions of the Dramatic Performances Act but notwithstanding the orders of A. D. M. (E) the aforesaid accused persons staged the said drama 'Idgah' in Rcfah-i-Am Club Hall, Lucknow, on 16-6-1953.'

6. At this stage we must accept the correctness of these allegations. A reading of the extract quoted above shows that four illegal acts or omissions were charged against the accused :

1. They distorted, the script of the story to suit their political ideology and thus committed an offence under Section 4, Dramatic Performances Act.

2. They omitted to obtain a licence.

3. They failed to furnish a copy of the play which they intended to stage.

4. They disobeyed the prohibitory notices issued to them by the Additional District Magistrate (E).

The conduct of the accused mentioned in 2, 3 and 4 amounted an offence under Section 10, Dramatic Performances Act.

7. So far as the charge under Section 4, Dramatic Performances Act is concerned, it is not difficult to hold that the prosecution under this section was wholly unwarranted.

8. The preamble of the Dramatic Performances Act runs as follows :

'Whereas it is expedient to empower the Government to prohibit public dramatic performances which arc scandalous, defamatory, seditious or obscene. It is hereby enacted as follows :'

9. In pursuance of the intention mentioned above Section 3 or the said Act was enacted. It reads :

'Whereas the Provincial Government is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is--

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Provincial Government or outside the Presidency-towns the Provincial Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.'

It is clear from the words, of Section 3 quoted above that prohibitory order can only be passed if the prohibiting authority finds that the performance is of a nature mentioned in Clauses (a), (b) and (c). We will accept at this stage that the Additional District Magistrate (E) was empowered to issue such a prohibitory

order.

The complaint filed by the District Magistrate clearly shows that in his opinion it is not open to a person to preach or advocate a political ideology which is different from the political ideology of the party in power, and if he did so by staging a play his conduct became an offence under Clause (b) of Section 3, Dramatic Performances Act. Nothing was mentioned in the complaint to indicate that the version of 'Idgah' which was staged was either scandalous or defamatory or was likely to deprave and corrupt the audience.

10. We need not give any reasons for holding that Sub-clause (b) of Section 3, Dramatic Performances Act had become a nullity as soon as India ceased to be British India and the law established by the British Government was displaced by the Constitution of India. The counsel for the State had to concede this position, but he contended that the play which was staged offended against Clauses (a) and (c) of Section 3.

We have incorporated the relevant extract from the complaint filed by the District Magistrate in the earlier part of this decision and we are satisfied that this contention is not maintainable. There is not even a suggestion in this complaint that the play was either scandalous or defamatory or it was likely to deprave and corrupt the audience.

11. It was contended by the counsel for the State that the accused distorted the version of the original story to suit their political ideology and if the prosecution is permitted to lead evidence in the case, it would prove that by this change the play became scandalous and was likely to affect the morals of the persons present at the performance.

We are surprised at this argument. It only shows to us the alarming tendency of the executive authorities to stifle all political opposition and characterize it as an advocacy of ideas which are likely to deprave and corrupt the people. It takes our minds back to the days when those who did not share the religion of the ruling classes were branded as heretics and disturbers of peace.

The District Magistrate either thought that as the present Government has stepped into the shoes of the British Government, therefore, Clause (b) is still in force or he grossly distorted the meaning of Clauses (a) and (c) of Section 3 in order to justify the complaint which he filed. Incidentally this prosecution demonstrates that there are no adequate and reasonable safeguards against an abuse of power by the executive authority in the Dramatic Perform-ances Act.

12. As in our opinion the accused cannot be prosecuted for offending against this provisions of Clauses (a) and (c) of Section 3 and Clause (b) has become void, the prosecution of the accused under Section 4 was absolutely misconceived.

13. We have now to consider whether the prosecution of the accused under Section 10 is maintainable or not. Since the order was unjustifiable a breach of that order cannot be held to be an offence. Still there are two questions which need decision in this case. Firstly, whether the Dramatic Performances Act is 'ultra vires' of the Constitution of India or not and secondly, even if it is held to be 'intra vires', whether the prosecution of the accused in the circumstances of the case was a bona fide prosecution or merely a victimisation of persons who have a different political ideology than the ideology of the party in power.

We have our doubts about the bona fides of the prosecution but it would not be necessary for us to decide this point as we have come to the conclusion that the Dramatic Performances Act in the absence of a reasonable procedure to enforce its substantive provisions is ultra vires of the Constitution, since in its operation it places unreasonable restrictions on the rights of a citizen guaranteed under Article 19 of the Constitution.

14. We now proceed to give our reasons for coming to this conclusion.

15. Article 19(1)(a), Constitution of India lays down that all citizens shall have the right t6 freedom of speech and expression. The only restrictions that can be placed upon this right are incorporated in Sub-clause (2) of this Article. Sub-clause (2) reads as follows :

'Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of ' the right conferred by the said sub-clause in the interests of the security of State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.'

A reading of the clause quoted above makes it clear that the restrictions imposed must be reasonable. This reasonableness is necessary not only in the substantive provisions of the impugned law, but also in its procedural provisions. The observations of Mukerji J. in 'Dr. N.B. Khare v. The State of Delhi : [1950]1SCR519 , sums up the law on the point. Mukherji J. observed :

'That does not mean that in deciding the reasonableness or otherwise of the restrictions, the Courts have to confine themselves to an examination of the restrictions in the abstract.....and that it is beyond their province to look up to the circumstances under which or the manner in which the restrictions have been imposed. It is not possible to formulate an effective test which would enable the courts to pronounce any particular restriction to be reasonable or unreasonable per se.

All the attendant circumstances must be taken into consideration and one cannot disassociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. The question of reasonableness of the restrictions imposed by a law may arise as much from the substantive part of the law as from its procedural portion.'

The test provided for interpreting the word 'reasonable' in the extract quoted above has been followed in a large number of decisions and it is not necessary to refer to them. It emerges from these observations that the restrictions imposed by a law may be reasonable in their substantive provisions but the operation of the law may amount to an unreasonable restriction because no adequate provision has been made in the procedural part of the law to safeguard the rights guaranteed under the Constitution.

16. Applying this test to the Dramatic Performances Act, 1876, we find that no objection can be taken to its substantive provisions. It was contended by the counsel for the accused that even these substantive provisions amount to an 'unreasonable restriction'. It was argued that if a performance offended against the provisions of Sub-clause (a) or (c) of Section 3 the offenders could be subsequently prosecuted, but their freedom of speech and expression cannot be taken away from them and they cannot be prohibited from staging the play.

It was contended that if a person cannot be prohibited from publishing a book and can only be subsequently prosecuted if the book is found to be objectionable in some manner why should an invidious distinction be made in the case of a person who puts a play on the stage. In our opinion this argument is misconceived as it does not take into account the difference between the 'written word' and the 'spoken word'. The written word takes a long time to reach its readers, but the spoken word is conveyed to the audience immediately. The written word can be confiscated before it has done much damage, but the spoken word achieves its object as soon as it is uttered. The spoken word is also far more inflammable and can engender heat and excite passions in a far quicker manner and thus can become a such greater danger to the security of the community.

There is also a finality about the written word, but the spoken word can be disputed and denied. These and other differences make it necessary that in the interests of public order and security, the State should have some power to deal in an emergent manner with the spoken word. The Dramatic Performances Act, 1876 is such a preventive measure.

Under Section 3 it has specified the object for which such an emergent action can be taken. Under Section 10 it has mentioned the procedure and the restrictions which can be imposed to achieve this object. It cannot be disputed that to prohibit the performance of such plays which are scandalous or defamatory or which are likely to deprave or corrupt the audience is a reasonable restriction.

Any restriction which is for the good of the community at large cannot be an unreasonable restriction. The rights guaranteed to the citizens under Article 19 are not absolute rights, but every one of them is subject to the over-all consideration

that the good of the community comes first and then the right of the individual.

We are, therefore, of the opinion that the substantive provisions of the Dramatic Performances Act do not infringe Article 19, Constitution of India, as the restrictions imposed are reasonable within the meaning of Sub-clause (2) of the said Article.

17. We now come to the procedure laid down for the enforcement of these restrictions. We will only reproduce Section 10 of this Act for it contains the procedure adopted in this case. Section 10 reads:

'Whenever it appears to the Provincial Government that the provisions of this section are required in any local area, it may declare, by notification in the official Gazette that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Provincial Government may order that no Dramatic performance shall take place in any place of public entertainment within such area, except under a licence to be granted by such Provincial Government or such officer as it may specially empower in this behalf.

The Provincial Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Provincial Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment; and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a terra which may extend to three months or with fine or with both.'

18. It would be seen from the above quoted section that an officer specially empowered, who in this case was the Additional District Magistrate (E) is made

the final authority to determine the question whether a particular play offends against any of the clauses of Section 3 or not. The Act has made no provision for appointing any higher authority (judicial or otherwise) who can review or reconsider the order passed by the District Magistrate or the Additional District Magistrate.

The order of such an officer may be absolutely arbitrary and unreasonable, but the aggrieved party cannot question it. It is left entirely to the sweet will and understanding of this executive officer whether he imposes such a restriction or not. The way the District Magistrates are likely to impose these restrictions is fully illustrated by the manner in which the prohibitory order was issued in this case. It may be that the abuse of power by the executive authority is irrelevant for the true interpretation of the law, but it cannot be completely ignored in considering the reasonableness of the procedural part of the law.

19. Even an opportunity to make a representation against the prohibitory order passed by the executive authority under Section 3 is not provided under the Act. Again as there would be a different District Magistrate in every district the clauses of Section 3 may be interpreted differently in different districts.

A play which was prohibited in the district may be staged in another district and even in the same district, the next year because in the meanwhile the District Magistrate has been transferred. The fundamental rights guaranteed to the citizens under Article 19 cannot be restricted in such an unreasonable manner. One can accept that a prohibitory order under Section 3 may be passed as an emergent measure, but there is no reasonable justification for making this order final.

Where the restriction imposed by means of a prohibitory order passed as a measure of emergency is amenable to objective determination by a court of law or some other body, but no such provision is made in the procedural part of the impugned law, it cannot be held to be a reasonable restriction. The final order cannot be left to the mere subjective determination of an executive officer whose decision is not open to review or reconsideration.

20. In Tozammal v. Joint Secy. to Govt. of West Bengal : AIR1951 Cal322 , the learned Judges observed: --

'On an examination of the relevant provisions of the impugned Act it is patent that the legislature has merely made provisions authorising certain officials to restrict the movement of the person concerned. There is no provision or indication as to how and if at all the person affected may take necessary steps for having the order passed on his reviewed. The fact that an aggrieved person may move the court under Article 223 of the Constitution will not in our opinion be sufficient to regard provisions restricting fund-mental rights being reasonable. The restrictive provision itself should prima facie indicate whether such restriction is reasonable or not.'

Further on in the same decision they observed: --

'The right of hearing before condemnation is admitted to be a component of the rights which taken together constitute rights of natural justice, though that does not mean that an interim ex parte order cannot be passed restricting the movements of a person. But unless he is given an opportunity of being heard by a properly constituted body even after such an interim order, the order restricting the fundamental rights must be declared to be unreasonable.'

21. In the State of Madras v. V.G. Row : 1952 CriLJ966 Patanjali Sastri C.J. observed : --

'.... no summary and what is bound to be largely one sided review by an Advisory Board, even where its verdict is binding on the executive Government, can be a substitute for a judicial enquiry. The formula of subjective satisfaction of the Govt. or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights.'

It would be seen that in that case the prohibitory order was subject to a review by an Advisory Board and yet such a limited power of review was considered

insufficient to make the restriction reasonable. Under the Dramatic Performances Act, there is no provision even for such a one-sided review. It confers an absolute discretion to an executive officer to grant or refuse permission for staging a play. He is not required to give any reasons for his order and no judicial review is provided.

Similar powers were given to the District Magistrates under the Indian Press (Emergency Powers) Act, 1931 and a Bench of this Court held these provisions to be void as they infringed the right conferred upon citizens under Article 19(1)(a) of the Constitution. In Rama Shanker Tewari V. State : AIR1954 All562 , it was held that the absence of a provision for review was certainly a factor to be taken into consideration in deciding whether a restriction is reasonable or not.

22. Similarly in Madanlal Kapur v. State of Rajasthan the learned Judges held that the Rajasthan Dramatic Performances and Entertainments Ordinance (29 of 1949) contravened the provisions of Article 19 of the Constitution. The provisions of that ordinance were almost similar to the provisions of the Dramatic Performances Act, 1876. Clauses (a) and (c) of Section 3 of that Ordinance and the Dramatic Performances Act are word for word the same. The learned Judges observed: --

'The conclusion is that so long as no procedure is prescribed by rules under Section 11 of the Ordinance regarding issue of notice, an opportunity of making a representation to an authority or a tribunal to consider it, the provisions of Sections 3, 4, 6 and 8 of the Ordinance cannot be regarded as enforceable, because they do not come within the limits or reasonableness of Clause (6) of Article 19 of the Constitution.

Sections 3, 4, 6, 8 of the Ordinance therefore, without the provision of such procedure, become inconsistent with Article 19 of the Constitution. Section 3 of the Ordinance as it now stands, imposes an unreasonable restriction on the right of a citizen guaranteed by Article 19(g) of the Constitution, not because it suffers with any unreasonableness relating to its substantive provisions, but because no reasonable procedure has yet been made by the Government under its rule-making powers.'

23. We agree with the rule of law laid down in the above mentioned decisions. In our opinion the Dramatic Performances Act is ultra Yires of the Constitution of India, because its procedural part imposes such restrictions on the right of freedom of speech and expression which cannot be covered by the saving clause in Article 19(2).

By leaving the matter entirely to the subjective determination of the District Magistrate, it has denied the essential minimum requirements of natural justice, namely the right to be heard before final condemnation and the right to have the order reviewed and objectively determined by a higher tribunal judicial or otherwise.

24. We are, therefore, of the opinion that the prosecution of the accused was entirely misconceived and exercising our inherent powers we quash these proceedings.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com