

The State of Madhya Pradesh Vs. Ramcharan

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Court : Madhya Pradesh

Decided On : Oct-19-1976

Reported in : AIR1977MP68

Judge : Shiv Dayal, C.J., ;G.P. Singh and ;C.P. Sen, JJ.

Acts : [Evidence Act, 1872](#) - Sections 57 and 78; Telegraph Wires (Unlawful Possession) Act, 1950 - Sections 7(1); [Constitution of India](#) - Article 13

Appeal No. : Criminal Appeal No. 667 of 1975

Appellant : The State of Madhya Pradesh

Respondent : Ramcharan

Advocate for Def. : B.P. Athya, Adv.

Advocate for Pet/Ap. : M.V. Thamaskar, Adv.

Judgement :

Singh, J.

1. Ramcharan, the respondent in this appeal, was prosecuted under Section 5 of the Telegraph Wires (Unlawful Possession) Act, 1950, on a complaint made by the Station Officer Rehli, District Sagar. The Magistrate First Class, Rehli, by his order dated April 19, 1974 convicted the respondent and sentenced him to pay a fine of

Rs. 600/- or, in default, to undergo simple imprisonment for four months. On an appeal preferred by the respondent, the First Additional Sessions Judge, Sagar, by his order passed on March, 8, 1975 acquitted the respondent mainly on the ground that the Station Officer Rehli was not empowered under Section 7(1) of the Act to make the complaint. The State preferred the present appeal against the order of acquittal passed by the Additional Sessions Judge. At the time of admission of the appeal before a Division Bench, the learned Government Advocate produced a copy of Notification No. G. S. R. 1512 of December 24, 1960 under which the Station Officer, Rehli, and many other Officers of similar rank were specially empowered by the Central Government under Section 7(1) to make complaints in respect of offences punishable under the Act. The Division Bench was inclined to take judicial notice of the notification, but it felt that it could not do so if the view taken in *Mathuradas v. State*, AIR 1954 Nag 296 = ILR (1954) Nag 578 was correct. As in the opinion of the Division Bench *Mathuradas'* case was wrongly decided, it referred the appeal to a larger Bench for a reconsideration of the view taken in that case. This is how this appeal has come up before us.

2. In *Mathuradas'* case (AIR 1954 Nag 296) a Division Bench of this Court held that a notification fixing the retail price of yarn under the Cotton Textiles (Control) Order, 1948, was not a part of law of the land and judicial notice could not be taken thereof under Section 57(1) of the [Evidence Act, 1872](#). There are also some general observations in the case that a notification is not included within the term 'law', It was, however, accepted that if a notification is published in the Gazette, production of the Gazette printed under the authority of the Government will be sufficient proof of the notification under Section 78 of the Evidence Act. In the instant case, we are concerned with a notification issued under Section 7(1) of the Telegraph Wires Act and we will, therefore, have to consider whether such a notification has the force of law of which judicial notice can be taken. It is in this context that we have to see whether *Mathuradas'* case was correctly decided.

3. Section 7 of the Telegraph Wires Act deals with cognizance of offences under that Act. Sub-section (1) of this section provides that 'no Court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the Central Government or by any officer specially

empowered in this behalf by that Government'. The special empowering of officers under this provision has been done by Notification No G. S. R. 1412 to which reference has been made earlier. The notification reads as follows :

'G. S. R. 1512, dated the 24th December, 1960.-- In exercise of the powers conferred by Sub-section (1) of Section 7 of the Telegraph Wires (Unlawful Possession) Act, 1950 (74 of 1950) and in supersession of all previous notifications on the subject, the Central Government specially empowers each of the Officers specified in the Schedule below to make complaints in respect of offences punishable under the said Act.

THE SCHEDULE

Officers of the State Government. Name of State and designation of Officer.

Headquarters of the Officers.

District (Police Sagar Station)

Station Officer.

Rehli.

Rehli.'

4. Statutory provision regarding matters which may be taken judicial notice of is made in Section 57 of the Evidence Act which in so far as relevant reads as follows :

'The Court shall take judicial notice of the following facts :--

(1) All laws in force in the territory of India;

* * * * * In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so until and unless such person produces any such book or document as it may consider necessary to enable it to do so.'

Another provision of the Evidence Act which has a bearing in this case is Section 78 which in so far as material is as under :

'78. The following public documents may be proved as follows :-- (1) Acts, orders or notifications of the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government, by the records of the departments, certified by the heads of those departments-respectively, or by any document purporting to be printed by order of any such Government or, as the case may be, of the Crown Representative.'

5. A comparison of Sections 57 and 78 of the Evidence Act goes to show that acts, orders or notifications of the Central or any State Government require proof in the manner prescribed by Section 78, unless they amount to law in force and can be taken judicial notice of under Section 57. The Act, however, does not contain any definition of 'law.' The Act also does not provide as to when an order or a notification amounts to law and this question has, therefore, to be solved on general principles. Many definitions of law have been formulated at various times by philosophers and jurists, but there is yet no sign of a universally acceptable definition. That task still awaits its master. Paton in his work on Jurisprudence, after a critical examination of the various definitions, observes that law may shortly be described in terms of a legal order tacitly or formally accepted by a community. It consists of the body of rules which are seen to operate as binding rules in that community backed by some mechanism accepted by the community by means of which sufficient compliance with the rules may be secured to enable the system or set of rules to continue to be seen as binding in nature.'

(Paton, Jurisprudence, 4th Edition, p. 97).

This may be accepted as a good working definition. Our legal order is based on the Constitution which is the organic law of the country. The legislative, executive and judicial powers of the State are respectively conferred by the Constitution on the

Legislature, Executive and Judiciary of the Union and the States, and there is separation of powers to a large extent. Thus although Parliament and State Legislatures have power to enact retrospective Acts and thereby nullify the effect of a judicial decision, they have no power to pass a bill of attainder or to make a law which in substance is akin to a judicial verdict. Indeed, quite recently, even a Constitution amendment Act enacted by Parliament failed to stand the test of validity on the ground that it was nothing but a legislative judgment disposing of an election petition. The Constitution, however, does not provide for an absolute separation of powers. Though the legislative power is primarily conferred on Parliament and State Legislatures, the Executive, and even the Judiciary, exercise some measure of legislative power. For example the President and Governors can make rules under Article 309 of the Constitution regulating the recruitment and conditions of service of persons appointed to Central and State Services until provision in that behalf is made by an Act of the appropriate Legislature. Similarly, the Supreme Court and High Courts can make rules of Court under Articles 145 and 225 of the Constitution. These rules though not made by the Legislature are plainly legislative in nature and have the force of law. Further, having regard to the complexity of problems which a modern State has to face, it is now well accepted that Parliament and State Legislatures have implied authority under the Constitution to delegate subordinate legislative functions to the Executive. As compared to statutes, the volume of delegated legislation, both in England and India, has immensely increased and it has been well said that 'in mere bulk, the child now dwarfs the parent'. (Alien, *Law in the Making*, 7th Edn., p. 540)

Delegated legislation by the Executive under statutory powers conferred by the Legislature appears under various names such as rules, regulations, orders, notifications, directions, schemes, circulars, bye-laws etc. (Delegated Legislation in India, Indian Law Institute, p. 1). The Committee on Ministers' Powers in England in 1932 noticed the confusion in the nomenclature of delegated legislation and deprecated the indiscriminate use of these expressions. The Committee recommended that 'the expression 'regulation' should be used to describe the instrument by which power to make substantive law is exercised, and the expression 'rule' to describe the instrument by which the power to make law about procedure is exercised.' The Committee further recommended that 'the expression

'order' should be used to describe the instrument of the exercise of (A) executive power, (B) the power to take judicial and quasi-judicial decisions'. This classification has so far not been adopted either in England or in India (See Alien, Law and Orders, 2nd Edn., p. 112, Delegated Legislation in India, ILI, pp. 1 to 3). Delegated legislation, whatever may be its nomenclature, though made by the Executive, qualifies for the description 'law' for the obvious reason that it is made in the exercise of subordinative legislative power conferred by the Legislature. We have here used the expression 'delegated legislation' to include even the so-called 'conditional legislation' for it has also a content, however small and restricted of the law making power itself: *Lachmi Narain v. Union of India*, AIR 1976 SC 714 at pages 722, 723. In view of the confusion of nomenclature, rules, regulations, orders, notifications etc. made or issued in the exercise of delegated legislative power must be distinguished from instruments bearing similar names but made in the exercise of executive power. A power conferred by a statute may be purely executive in nature. If an order or a notification is made or issued in the exercise of a non-statutory power or in the exercise of a statutory power which is purely executive in nature, it will have no legislative content and will not amount to law,

6. Although the Constitution does not contain any generic definition of law, it defines 'law' for purposes of Article 13 to include 'any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law'. Article 366(10) of the Constitution also defines the expression 'existing law' to mean 'any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation'. Another definition which is relevant here is the definition of the expression 'Indian law' in the General Clauses Act, 1897. Section 3(29) of this Act defines 'Indian Law' to mean 'any Act, Ordinance, regulation, rule, order or bye-law, which before the commencement of the Constitution had the force of law in any Province of India or part thereof and hereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act'. These definitions go to confirm that under our legal order 'law' does not include only legislative enactments but it also includes rules, orders,

notifications etc. made or issued by the Government or any subordinate authority in the exercise of delegated legislative power. In *Edward Mills Co. v. State of Ajmer*, AIR 1955 SC 25 = 1955 SCR 735, the question before the Supreme Court was whether an order made by the Governor-General under Section 94(3) of the Government of India Act, 1935, investing the Chief Commissioner with the authority to administer a Province was continued by Article 372 of the Constitution being a 'law in force' at the commencement thereof. The Supreme Court adverted to the definitions of 'existing law' and 'Indian law' mentioned earlier and observed that there was no material difference between 'existing law', 'Indian law' and 'law in force' and that these expressions were wide enough to include not merely a legislative enactment but also any regulation or order which had the force of law. But it was pointed out that an order must be a legislative and not an executive order before it can come within the definition of law. It was held in this case that the order of the Governor-General under Section 94(3) of the Government of India Act was legislative in nature and was, therefore, continued as a 'law in force' by Article 372 of the Constitution. The case of *Edward Mills* was followed in *Madhaorao v. State of M. B.*, AIR 1961 SC 298 = (1961-1 SCR 957) where it was held that *Kalambandis* of the erstwhile Gwalior State were at least in the nature of orders or regulations having the force of law and were continued by Article 372 of the Constitution. In *Kalyani Stores v. State of Orissa*, AIR 1966 SC 1686 = (1966) 1 SCR 865 a notification issued under Section 27 of the Bihar and Orissa Excise Act, 1915 imposing a countervailing duty on foreign liquor was held to be existing law within the meaning of Article 305 of the Constitution. All these cases and the expressions 'existing law', 'law in force' and 'Indian law' referred to above deal with pre-constitutional laws which project into post-constitution period, but it is clear from this that our legal system based on the constitution recognises rules, regulations, order, notifications etc. made or issued in the exercise of statutory powers as part of the law provided they are legislative in nature.

7. The question relating to a post-constitution order or notification in the context whether it amounts to law was considered by the Supreme Court in *Jayantilal Amratlal v F. N. Rana*, AIR 1964 SC 648 = 1964-5 SCR 294. The notification considered in this case was issued by the President under Article 258 of the Constitution entrusting to the Commissioners of Divisions in the State of Bombay,

the functions of the Central Government under the Land Acquisition Act, 1894. The question before the Supreme Court was whether this notification amounted to law under Section 87 read with Section 2(d) of the Bombay Reorganisation Act, 1960, and continued to be effective after the reorganisation of the State of Bombay into two States, namely the State of Maharashtra and the State of Gujarat. In holding that the notification amounted to law, the Court pointed out that the effect of the notification was that wherever the expression 'appropriate Government' occurred in the Land Acquisition Act in relation to the provisions for acquisition of land for the purposes of the Union, the words 'appropriate Government or the Commissioner of the Division having territorial jurisdiction over the area in which the land is situate' were deemed to be substituted and in other words the Act was deemed to be pro tanto amended. The Court further observed as follows:

'This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority it may not have the force of law. But where a general order is issued even by an executive authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law.' One more point which is worth noticing in Jayantilal Amratlal's case is that the Supreme Court also observed that it was open to Parliament by appropriate legislation to make an express provision in the Land Acquisition Act to provide that the powers under Sections 4 and 6 of the Act and the power to appoint the Collector be exercised by an officer to be named by the appropriate Government. It was further observed that in such a situation :

'Issue of a notification by the appropriate Government designating the officer to exercise the powers would unquestionably have the force of law.' Such a notification would have the force of law because it would add to or supplement the statute. The principles applied in Jayantilal Amratlal's case were also referred to with approval in the case of Meghraj v. Delimitation Commission, AIR 1967 SC 669 = (1967) 1 SCR 400. In this case it was held that the orders relating to delimitation of constituencies made under Sections 8 and 9 of the Delimitation Commission Act, 1962 amounted to law. This case, however, is not very helpful as

the Act in Section 10 expressly provides that the orders after publication shall have the force of law. Mention may also be made of *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318 = 1951 SCR 682 and *Kailash Nath v. State of Bombay*, AIR 1957 SC 790. In *Balsara's* case it was held that a notification issued under Section 139 of the Bombay Prohibition Act, 1939 which authorises the Government to exempt any intoxicants or class of intoxicants from all or any of the provisions of the Act 'has the force of law as if made by the legislature itself'. *Kailash Nath's* case related to a notification issued under Section 4 of the U. P. Sales Tax Act, 1948 which authorises the State Government to exempt certain kinds of transactions from the payment of sales tax and it was held that 'the notification having been made in accordance with the power conferred by the statute has statutory force and validity and, therefore, the exemption is as if it is contained in the parent Act itself'. These cases show that a notification issued under statutory power exempting certain matter from the general provisions of the statute is legislative in nature and has the force of law.

8. As a result of the above discussion, it is clear that under our legal order and jurisprudence based on the Constitution, 'law' is not limited to legislative enactments. All forms of delegated legislation and conditional legislation amount to law. All orders and notifications made and issued under statutory powers and which are legislative in nature amount to law. A statutory order or notification will be legislative in nature if in substance it adds to, supplements, modifies or amends a statute or exempts certain matters from its operation.

9. We now revert to Notification No. G. S. R. 1512 issued under Section 7(1) of the Telegraph Wires Act which specially empowers the Station Officer Rehli and many other officers to make complaints in respect of offences under the Act. While enacting Section 7(1), the Central Legislature could have enumerated in the section itself the officers who would be competent to make complaints for offences under the Act. Instead of doing that the legislature has authorised the Central Government to specially empower officers for that purpose. A notification issued by the Central Government in exercise of this power supplements Section 7(1) and is legislative in nature. The notification read with Section 7(1) is part of the law of procedure that only Central Government and the officers specified in the

notification can make complaints for offences under the Act. A Criminal Court is bound to give effect to this law. It cannot refuse to take cognizance of a complaint made by an Officer mentioned in the notification and cannot take cognizance of a complaint made by an officer not mentioned in the notification. In our opinion, therefore, the notification amounts to law. The learned Government Advocate has produced before us a book published under the authority of the Central Government which contains the notification. He has also produced before us the relevant Gazette in which the notification is printed. We, therefore, find no difficulty in holding that judicial notice must be taken of the notification under Section 57(1) of the Evidence Act.

10. As regards Mathuradas' case, (AIR 1954 Nag 296) we are of opinion that the case was wrongly decided. As earlier stated, the question in that case related to a statutory notification fixing prices. Price fixation is in the nature of a legislative measure : *Saraswati Industrial Syndicate Ltd. v. Union of India*, AIR 1975 SC 460 at p. 464. The Legislature can itself fix the prices. When instead of doing that it delegates that power, the notification fixing prices supplements the legislative enactment and has the force of law. The view taken in Mathuradas' case that a statutory notification fixing prices has not the force of law is clearly erroneous. Further, the general observation made in that case that a notification cannot amount to law is also erroneous. It fails to notice the distinction between a statutory and a non-statutory notification. Mathuradas' case was rightly dissented from in *State v. Gokulchand*, AIR 1957 Madh Pra 145 and *State v. Gopal Singh* AIR 1956 Madh Bha 138 (FB).

11. The order of reference made in the instant case by the Division Bench does not formulate the questions, but it is implicit in it that we have to answer (a) whether notification No. G. S. R. 1512 issued under Section 7(1) of the Telegraph Wires Act amounts to law and should be taken judicial notice of under Section 57(1) of the Evidence Act; and (b) whether Mathuradas' case (AIR 1954 Nag 296) was wrongly decided. Our answer to both these questions is Yes.

12. The appeal shall now be placed before a Division Bench for final disposal.

