

Baldeo Singh Vs. the State

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Court : Madhya Pradesh

Decided On : Jul-30-1951

Reported in : 1951CriLJ1467

Judge : Shinde, ;Dixit and ;Chaturvedi, JJ.

Appellant : Baldeo Singh

Respondent : The State

Judgement :

Dixit, J.

1. This is a second appeal by an accused who has been found guilty by the Additional Ses. J. of Indore under Section 302, I. P.C. & sentenced to death. The sentence of death was confirmed & an appeal preferred by the accused against the conviction & sentence was rejected on 16-5-51 by a Division Bench of this Court consisting of My Lord the Chief Justice & my brother Mehta. This appeal is against the decision of the Division Bench. It is purported to have been filed under Section 25, High Court of Judicature Act, (Act No. 8 of 1949).

2. A preliminary objection has been taken by Mr. Shiv Dayal on behalf of the State that the appeal is incompetent. The objection is that Section 25, High Court Act, was amended on 25-1-60 by Ordinance No. I of 1950 & that the amendment took away the right of appeal from any judgment, decree, order & sentence passed or

made after the promulgation of that Ordinance by a Division Bench & deprived this Court of the jurisdiction to hear & determine any such appeal. It was said that even after the expiry of the period of the Ordinance there is no right of appeal against the decisions of any Division Bench of this Court given after 25-1-50 & this Court has no jurisdiction to hear & determine any such appeal. The learned Deputy Govt. Advocate also referred to Article 225 of the Constitution of India & said that as under that Article the jurisdiction of the High Court is the same as that existed immediately before the commencement of the Constitution & as on that date this Court had no jurisdiction to hear & determine any appeal against the decisions of any Division Bench given after 25-1-50, it has no jurisdiction to entertain, hear & determine this appeal.

3. Mr. Kak, on behalf of the appellant contended that Ordinance No. 1 of 50 did not repeal Section 25, High Court Act, but merely suspended during the time that the Ordinance was to remain in force the jurisdiction of this Court to hear & determine any appeal from the decisions given after 25.1.50 by any Division Bench; that this jurisdiction is revived after the termination of the six months period of the Ordinance & further that the Ordinance cannot be construed so as to take away for all time the jurisdiction of this Court to hear & determine appeals from the decisions referred to above, for, to do so would be to give to the raj Pramukh legislative power of permanently altering or repealing or amending any law passed or made by the Legislature a power which he did not possess under Article 8 & 10 of the Covenant entered into by Rulers of Gwalior & Indore & other States of the Central India for the formation of the Madhya Bharat Union.

4. On giving the matter my careful consideration I think the preliminary objection raised by the Deputy Govt Advocate must be upheld. By Section 25, High Court Act, which came into force on 18-1-49 the decisions of any Division Bench in civil & criminal cases were made appealable under certain conditions to a Full Bench. On 25-1-50 the Raj Pramukh made & promulgated Ordinance No. 1 of 1960 amending in certain respects the High Court of Judicature Act. This amending Ordinance inserted in the Act a new section, namely Section 25 (a) which provided that:

Notwithstanding anything contained in Section 25, the High Court shall have no jurisdiction to hear & determine any appeal from any judgment, decree, order & sentence passed or made after the promulgation of this Ordinance by any Divisional Court of the High Court whether on its original or appellate side.

5. It will be observed that this new section did not affect the appeals already filed under Section 25, & pending in this Court on 26-1-50, It also did not affect the jurisdiction of this Court to hear & determine any appeal filed under Section 25 of the Act after 25-1-SO from any decision of the Division Bench given prior to B5-1-50. It took away the jurisdiction of this Court to hear & determine any appeal from a decision of a Division Bench given after the promulgation of the Ordinance; & on 26-1-1950 when the Constitution of India came into force, this Court had no jurisdiction to hear & determine appeals from the decisions of a Division Bench given after S5 1.50. I am unable to accede to the submission made by the learned Counsel for the appellant that the new Section 25 (A) only suspended for the duration of the Ordinance the exercise of the appellate jurisdiction conferred on this Court by Section 25, High Court Act, in relation to appeals from decisions of any Division Bench given after 25-1-50, leaving intact the jurisdiction itself. The language of Section 25 (A) which was inserted in the Act by the Ordinance does not support the contention. That section nowhere speaks of the exercise or non exercise of jurisdiction. It says that though Section 25, provides for an appeal from a decision of any Division Bench, the High Court shall not have appellate jurisdiction in respect of decisions of any Division Bench given after '25-1.50. Learned Counsel for the appellant attempted to draw the inference that Section 25 (a) merely suspended the exercise of the appellate jurisdiction conferred under 9. 25. of the Act for the period of the operation of the Ordinance from the fact that the Ordinance was a temporary measure. To my mind, therein, lies the fallacy in his arguments. When Section 25 (a) in clear & unambiguous words says that the High Court shall have no jurisdiction, it would not be legitimate to confuse the words as suspending the exercise of the jurisdiction on the sole consideration that the law which introduced Section 25 (a) in the Act was of a limited duration. A temporary law may express its intention in clear & unmistakable language to amend a statute permanently. If the temporary law is not replaced by a permanent Act & is allowed to lapse, it may be contended that the intention is defeated. But if would

be illogical to conclude that the intention was not originally present & to say that the plain meaning of the words expressing the intention should not be given effect to. In my judgment Section 25 (a) ousted the appellate jurisdiction of this Court with respect to the decisions of any Division Bench given after 25-1-50 & this appellate jurisdiction did not exist on 26-1-50 Now the jurisdiction of this Court today is as defined in Article 225 of the Constitution. This Article says :

Subject to the provisions of this Constitution & to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, & the law administered in, any existing High Court...shall be the same as immediately before the commencement of this Constitution.

6. Leaving out of consideration for the moment; the fact that the operation of the Ordinance was limited to a period of six months & taking only the fact by virtue of that Ordinance, this Court had at the commencement of the Constitution, no jurisdiction to hear & determine any appeal against the decisions of any Division Bench given after 25-1-50, it follows from the clear words of Article 225 that if this Court had no such jurisdiction on 26-1-50, it has none today.

7. It is not contended that the Constitution itself confers this jurisdiction or this jurisdiction has been conferred by any law made after 26-1-50 by the Parliament or by the State Legislature by virtue of powers conferred on them by the Constitution - which law would of course include under Article 367 an Ordinance made by the President or by the Raj Pramukh. It is, however, urged that the jurisdiction which the Ordinance took away by introducing in the High Court Act a new section, namely, Section 25 (a) is revived on the expiry of the period of the Ordinance. There was some-controversy at the Bar whether the effect of the lapse of the Ordinance after the expiry of the period is to restore to Section 25 of the Act its original force without condition. The learned Deputy Govt. Advocate said that the language of a preamble to the Ordinance & of the new S 25 (A) Suggests that the ousting of this Court's jurisdiction was intended to be permanent & that pre-existing jurisdiction is not-revived merely by the-reason of the expiry of the period of the Ordinance. The Counsel for the State observed that as the Constitution of

India provided for appeals to the Supreme Court from the decisions of this Court made after 26-1-50, it was thought unnecessary to continue the jurisdiction of this Court to entertain, hear & determine appeals from the decisions of any Division Bench after 26-1-1950 it was for this purpose & keeping in view the provision of Article 225 of the Constitution that his jurisdiction was taken away a day prior to the commencement of the Constitution. Mr. Kak or the appellant maintained that whatever might have been the intention in amending the High Court Act by an Ordinance just on the eve of the commencement of the Constitution, the Ordinance made by an authority which could pass only a temporary law under the Covenant, could not be construed as purporting to repeal or amend the provisions for all time of a permanent statute which were in no way inconsistent with the Article of the Constitution providing for a right of appeal against the decisions of this Court. I do not think it necessary to express a concluded opinion on the controversy. For, even if the view is taken that the lapse of the Ordinance has the effect of restoring the pre-existing jurisdiction, it cannot be held that this Court has today jurisdiction to hear & determine appeals against the decision given by any Division Bench after 25-1-1950. The reason is obvious. This jurisdiction did not exist on 26-1-1950 & as it did not exist on that day then under Article 225 of the Constitution it does not exist; today. Merely by reason of the expiry of the Ordinance by efflux of time it cannot be deemed that this jurisdiction existed on the 25-1-1950 & on the material date, namely 26-1-1950. It may be that the effect of the construction, which, in my view, should be put on Art 225 of the Constitution & the Ordinance is to give permanent operation to the Ordinance which was intended to be temporary & which could have been only of a temporary operation under the Covenant. But the provisions of the Constitution are overriding & by virtue of the provisions of Article 225 of the Constitution this Court has no jurisdiction to hear & determine appeals from decisions of any Division Bench given after 25-1-1950 as it did not possess that jurisdiction at the commencement of the Constitution. The jurisdiction cannot be exercised even if by reason of & on the expiry of the Ordinance it is restored. It is true that Explanation 8 to Art 872 of the Constitution lays down that:

Nothing in this Article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired

If this Constitution had not come into force.

8. But the construction which I have put is not on the basis that the Ordinance continues in force beyond the date fixed for its expiration. It would again appear from the wording of Article 872, that if the construction of any other article of the Constitution results in giving virtually a permanent operation to a temporary law, the construction cannot be rejected, if it is, as in the present case, otherwise justified. It must be given effect to.

9. For the above reasons I am of the opinion that this Court has no jurisdiction to hear & determine appeals from decisions of any Division Bench given after 25-1-1960. This appeal must, therefore, be rejected as being incompetent.

10. Shinde J.-I agree.

11. Chaturvedi J. -I concur in the order proposed to be passed but I wish to state my reasons in my own words.

12. The appellant has been convicted by the Sessions Court under Section 302, I. P.C. & sentenced to death. His appeal has been dismissed & the sentence of death has been confirmed by a Division Bench of this Court. This is his Special Appeal from the order & judgment of the Division Bench purporting to be under Section 25, High Court of Judicature Act, (Act No. 8 of 1949) which runs as follows :

25. Special appeal shall lie to the Full Bench of the High Court from: -

Special Appeal.

(1) a decree or an appealable order passed by the Divisional Bench of two Judges of the High Court in the exercise of extraordinary or appellate civil jurisdiction.

Provided that such appeal shall lie only in the case where the value of the suit in the Court of the first instance is Rupees ten thousand or upwards & the value of the subject-matter in dispute in appeal also is Rupees ten thousand or upwards.

Provided further that the appeals involve some question of principle pertaining to law,

(2) a judgment passed by the Divisional Bench of two judges of the High Court convicting the accused in the exercise of extra-ordinary or appellate jurisdiction.

Provided that such appeal shall lie only in the case where the sentence of death or life imprisonment for not less than fourteen years, is passed or confirmed by the Divisional Bench.

13. On 26-1-1950 the Constitution was to come into force & in Article 132, 133 & 134 provision had been made for appeals to the Supreme Court from the decisions of the High Court under certain circumstances. Presumably keeping this aspect in mind on 25.1-1950 (I. E. one day before the Constitution came into force) an Ordinance (no. 1 of 1950) was promulgated by the Rajpramukh which, inter alia, added the following Section 25 also the High Court of Judicature Act:

'25A.

Notwithstanding anything contained in Section 25 the High Court shall have no jurisdiction to hear & determine any appeal from any judgment, decree or order & sentence passed or made after the promulgation of this Ordinance by any Divisional Court of the High Court, whether on its original or appellate sides.

14. It is obvious that the Ordinance, purported to repeal, Section 25 of the High Court of Judicature Act. Section 25 A is clearly repugnant to Section 25 as it involves contradictory proposition. In *Kutner V. Phillips* (1891) 2 Q.B.267 A. L. Smith L.J. enunciated the rule as to implied repeal in the following words :

A repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provision of an earlier one that the two cannot stand together, unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be Implied, or unless there is ft necessary inconsistency in the two acts standing together.

15. The test that is suggested in the English cases is whether it is possible to obey the two laws together or whether there is such an inconsistency that it is not possible to do so. It is obvious that in the case before us it is not possible to obey both Section 25 & Section 25A; & therefore Mr. Kak's contention that Section 15A should be taken to be a mere variation of Section 25 is not tenable. It is a clear case of repeal of Section 25 by implication,

16. The Constitution then came into force on 26-1-1950 & the Interim Legislative Assembly of Madhya Bharat State was precluded from passing an Act confirming the provisions embodied in Ordinance No. 1 of 1950 as it concerns 'the Constitution & Organisation of the High Court' (vide entry No. 78 of List I (Union list) Sch. 7 & Entry No. 8 of List II).

17. The question then arises, whether Section 25A should be taken to have permanently repealed Section 25, Madhya Bharat High Court of Judicature Act?

18. If it had been a case of a repeal of a statute repealing another, there would have been no difficulty; for, the repeal of a statute repealing another does not revive the repealed statute. The law in India as embodied in Section 7, General Clauses Act (10 of 1897) is the same as the law in England: *Deputy Legal Remembrancer v. Ahmad Ali*, 85 Cal. 333. In Madhya Bharat State under Section 6, General Clauses Act (Act No. 84 of 1960) it is necessary for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose. In the present case however the question as to the revival of the temporarily repealed provision of the principal Act by the repeal of the repealing legislation does not arise. The counsel for the appellant contends that Ordinance no. 1 of 1950 came to an end by efflux of time; & it is well settled that the General Clauses Act has no reference to temporary or expiring statutes which automatically lapse at a certain date, or, on the happening of a certain contingency without fresh legislation (*Bansgopal v. Emperor*, 65 ALL. 961 ; *Karim Shah v. Mt. Zinatbibe A.I.B. (S8) 1941 Lab. 17s*; *Halsbury vol. 13 p. 562*).

19. Under Article 10 of the Covenant entered into by the Rulers of Gwalior, Indore & certain other states in Central India, the Rajpramukh had power to promulgate an Ordinance & the Ordinance so promulgated had the force of law as an Act

passed by the Interim Legislative Assembly, The ordinance would have lapsed after six months from its promulgation if the Constitution had not come into force, In an appeal from Ontario in *Gooderham & Worts Ltd v, Canadian Broadcasting Corporation A.I. R. (86) 1949 P. 0. 90* their Lordships of the Privy Council has casually observed at one place that when the temporary repeal expires the original legislation automatically resumes its full force.

20. In *Emperor v, Sibnath Banerji, 1941 F. L, J. 151 : A.I.B. (SO) 1948 F. 0. 75*, the Federa. Court observed at p. 160 :

That an Ordinance can for the period of its duration suspend the operation of the whole or any portion of preexisting statute appears to us to admit of no doubt In such a ease, the pre-existing law would come into operation again on the expiry of the period of the Ordinance, Bat suppose the Ordinance purported to repeal a pre-existing statute or part thereof, One of the counsel for the Grown thought that the pre-existing law would be in that case also be revived on the expiry o: the terra of the Ordinance, but another contended that this would be a matter of construction & that if there was nothing in the language of the Ordinance to suggest that the repeal was intended to be temporary, that the pre-existing law might not be revived merely by reason of the expiry of the period of the Ordinance. In support of this contention, he drew our attention to the discussion in *Craies Statute Law (Edn. 4 pp, 357 et seq)*. This will no doubt be the position when Parliament, which is competent to pass either a temporary law or a permanent law, chooses to pass a temporary measure, & by such measure repeals a pre-existing law. Can the position be the same when an authority which can pass only a tfmporary law purports to repeal a pre-existing permanent statute

21. It was explained in the above case that the legislature can at any time enact a measure & such measure can remain in force without any limit of time ; but the exercise of the Ordinance. making power is limited in two ways, (I) by the limitation as to the circumstances in which it can be exercised & (II) by the limitation as to the time during which any measure so enacted can remain in operation. Considering these two limitations, I feel, that the Ordinance-making authority can declare its own intention as to what the law Should be during the period that the

Ordinance remains in force, but it cannot adopt a course which would attribute to the Legislature an intention different from what it had declared in its own enactment. In other words, an Ordinance cannot declare that even after the expiry of the period of the Ordinance the law shall remain what it is declared to be by the Ordinance, & not what it would be according to preexisting legislation. If an Ordinance declares that even after termination of the period of the Ordinance, a provision of statute law would be different from what the legislature had enacted, I would take it as bad law, for it would amount to empower an Ordinance-making authority to do indirectly what it could not do directly.

22. If, then, it had been the only point for consideration I would have been disposed to hold that the Ordinance did not permanently repeal Section 25. But the learned Deputy Govt, Advocate urges that even if it may be so he is entitled to place reliance on Article 225 of the Constitution. He argues that the jurisdiction of any High Court can be the same as immediately before the commencement of the Constitution; & if the High Court had no jurisdiction to entertain this Special Appeal on 26-1-60, it cannot have now. After reading the said Article, I feel that the argument) a formidable & it is difficult to repel it. In this I have also carefully gone through Part 21 of the Constitution which deals with Temporary & Transitional Provisions. Article 372(1) provides that:

Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

23. Explanation 4 concern Ordinance promulgated by the Governor of a Province under Section 88, Govt. of India Act, 1935 & does not apply to Part B, States; but explanation 3 is significant. It says.

Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

24. I do not think 'temporary law' in this explanation, is confined to laws made by legislature alone. It is of wide import & includes an 'Ordinance' promulgated by a Rajpramukh in part B States. According to this 'Explanation' Ordinance No. 1 of 1950 could not have remained alive after 25-7-1950. It may be noted that Section 292, Govt. of India Act, 1935 is in identical terms; & Section 135, Union of South Africa Act, 1909, in similar terms runs as follows :

Subject to the provisions of this Act, all laws in force in the several colonies at the establishment of the Union shall continue in the respective provinces until repealed or amended by Parliament, or by the Provincial Councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several colonies at the establishment of the Union shall continue as if the Union had not been established.

25. In *United Provinces v. Mt. Atiqa Begum* A.I. R. (18) 1941 F. C. 16 Sir Maurice Gwyer O. J. at page 24 had observed :

The purpose of S 282 was clearly to negative the possibility of any existing Indian law being held to be no longer in force by reason of the repeal of the law which authorised its enactment; & it is a safeguard usually inserted by draftsmen in similar circumstances.

Neither in S. 292, Govt. of India Act, 1935, nor in S. 135, Union of South Africa Act, 1909 any 'explanation' was added to clarify that temporary laws would not continue after the date fixed for their expiration. The obvious departure from the phraseology of the old Section 292 makes me feel that this deliberate change was not without a special significance. The same 'explanation' was however not added to Art 225. The possibility of curtailing or modifying the jurisdiction of a High Court in Part B States by means of an Ordinance does not seem to have been in the mind of the Constituent Assembly.

26. The curious & anomalous result is, then, that Ordinance No. 1 of 1960, under Article 372, or, according to the general principles of law, expired on 25-7-1960. A Bench of 8, 26 of the Madhya Bharat High Court revived on that date, but under Article 225 the jurisdiction of the High Court in hearing & deciding Special Appeal under

Section 25, Madhya Bharat High Court of Judicature Act, was permanently taken away. We are here confronted with apparent conflict between the provisions of the two articles of the Constitution so far as this particular ease is concerned. In such circumstances, it is the duty of a Court to so construe the two articles' as to give effect to all the provisions so as to avoid repugnancy. It is, no doubt, a difficult task, but as the remark goes, 'nothing is so difficult as to construct an Act of Parliament & nothing so easy as to pull it to pieces'. We also cannot; import into Art, 225 & read into it any explanation (like explanation in to Article 372) when it is not there. I have therefore to see the wording of the two Articles more closely. It may be noticed here that Article 225 is an Article not dealing with laws in general. It confines itself to the law relating only to the jurisdiction of a High Court & the material portion runs as follows :

Subject to the provisions of this Constitution & to the provisions of any law of the appropriate Legislature , the jurisdiction of, & the law administered in, any existing High Court, & the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court & to regulate the sitting of the Court & of merman thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

27. The words 'the jurisdiction of, & the law administered in the High Court & the respective powers of the Judges in relation to administration of justice in the Court' are full of significance. It is not disputed that a Special Appeal from a Division Bench to a Full Bench of the High Court will be governed not by general laws like the Civil & Criminal Procedure Code but by the Charters, or the Letters Patent or the High Courts Acts; & I am quite clear in my mind that the proper Article to govern the continuance of the existing jurisdiction of a High Court is Article 225 & not Article 372 which governs the continuance in force generally of all existing laws i. e. 'all the law in force in the territory of India', Where there are two sections in a Statute, one dealing specially with any particular subject which is also included in some of the provisions of another section, which is couched in general terms, the provisions of this latter section should not, in my opinion, affect the provisions of the former section unless there is a specific provision to the contrary

in the statute itself. The same rule should be applicable to the interpretation of: the sections of the Constitution. Applying this rule to the present case, I am of opinion that the question before us must be determined on the wording of Article 225 alone & Article 372 should be held not to be applicable to the facts of the present case, & as the wordings of Article 225 are, I cannot but uphold the preliminary objection, I therefore concur in the conclusions arrived at by my learned brother Dikshit J. & I agree that the Special Appeal be rejected as incompetent.

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