

Rajendra Kumar Vs. State of Madhya Pradesh and anr.

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Court : Madhya Pradesh

Decided On : Nov-17-1978

Reported in : AIR1979MP108; 1979MPLJ28

Judge : G.P. Singh, C.J. and ;J.S. Verma, J.

Acts : [Constitution of India](#) - Article 252 and 252(1); Urban Land (Ceiling and Regulation) Act, 1976

Appeal No. : Misc. Petn. Nos. 32, 40, 120 and 170 to 172 of 1977

Appellant : Rajendra Kumar

Respondent : State of Madhya Pradesh and anr.

Advocate for Def. : J.M. Sood, Govt. Adv.

Advocate for Pet/Ap. : S.R. Fadnis, Adv.

Disposition : Petitions dismissed

Judgement :

G.P. Singh, C.J.

1. This order shall also dispose of Miscellaneous Petitions Nos. 40, 120, 170, 171 and 172, all of 1977. The petitioners in all these petitions are owners of urban land in the city of Indore. The petitioners challenge the constitutional validity of the

Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) in its application to Madhya Pradesh. The petitioners also submit that even if the Act be valid, it has not been brought into force in Madhya Pradesh.

2. The preamble of the Act shows that the Act was passed to provide for the Imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. The legislative competence for passing the Act was derived by Parliament under Clause (1) of Article 252 of the Constitution in pursuance of resolutions passed by the Legislatures of the States of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal that the matters aforesaid be regulated in those States by Parliament by law. Section 1(2) of the Act provides that it applies in the first instance to the whole of the States which passed the resolutions under Article 252(1) prior to its enactment and to all the Union territories. Section 1(2) further provides that it shall also apply to such other States which adopt the Act by resolution passed in that behalf under Clause (1) of Article 252 of the Constitution. As provided in Section 1(3), the Act came into force at once in the States which passed the resolution under Clause (1) of Article 252 before its enactment and in the Union territories. As regards other States, Section 1(3) provides that the Act shall come into force in any other State which adopts the Act under Clause (1) of Article 252, on the date of such adoption.

3. The point relating to constitutional validity of the Act was not initially raised in these petitions. At the time of argument, however, the petitioners made applications for urging the point of constitutional validity of the Act in relation to the State of Madhya Pradesh, and we heard full arguments on that point. The contention of the learned counsel for the petitioners in this respect is that by the resolutions passed, before enactment of the Act, by the various States mentioned above, Parliament derived power to legislate for those States and that as the Legislature of the State of Madhya Pradesh had not passed any such resolution,

Parliament had no legislative competence to legislate for the State of Madhya Pradesh. In this context, the learned counsel referred to us item 8 of Schedule I to the Act which relates to Madhya Pradesh. Item 8 of the Schedule, read with Section 2(n) of the Act, demarcates the limits of urban agglomerations in respect of various cities and towns in the State of Madhya Pradesh. The Schedule also specifies the categories to which the different urban agglomerations belong. The Schedule has relevance in the applicability of Section 4 which determines the ceiling limit, Section 11 which determines the compensation and Section 29 which regulates the construction of buildings within urban agglomerations. The argument of the learned counsel for the petitioners is that the legislative competence of Parliament was limited only to those States which had passed the resolutions under Article 252(1) of the Constitution before enactment of the Act and the provisions enacted in the Act, with specific reference to Madhya Pradesh, were beyond the legislative competence of Parliament, We are unable to accept this argument,

4. When the Legislatures of two or more States pass resolutions that any matter with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, it becomes lawful for Parliament to pass an Act for regulating that matter accordingly. The Act so passed by Parliament applies to the States, the Legislatures of which passed the resolutions before its enactment. The Act also applies to any other State by which it is adopted afterwards by resolution passed in that behalf by the legislature of that State. The power that Parliament derives in pursuance of resolutions passed by the Legislatures of two or more States is 'for regulating that matter' which is referred to in the resolutions. The power so derived is not limited to passing an Act restricted in its applicability to the State passing the resolutions before its enactment. The power conferred by Article 252 is wide enough to make a comprehensive Act which may be applied throughout the country including those States which had not passed resolutions initially. This is clear from the provision that an Act passed by Parliament under Article 252 can be adopted afterwards in any other State which had not passed a resolution under Article 252(1) before its enactment, by a resolution of the Legislature of that State subsequent to its enactment. The manifest intention of

Article 252 that an Act passed by Parliament under that Article can be adopted by any other State the Legislature of which had not passed a resolution before its enactment, would be frustrated if it were to be held that Parliament cannot make a comprehensive legislation which could be applied throughout the country and that the legislative competence derived by Parliament from resolutions passed by the Legislatures of two or more States under Article 252(1) is limited to passing an Act restricted to the territories of those States. We are clearly of opinion that Parliament had jurisdiction under Article 252(1) of the Constitution to legislate in respect of the State of Madhya Pradesh and the provisions made in item 8 of Schedule I to the Act in relation to Madhya Pradesh are not invalid.

5. The second contention raised by the learned counsel for the petitioners is that there is no effective resolution passed by the Legislature of the State of Madhya Pradesh adopting the Act and, therefore, the Act has no application in Madhya Pradesh. The resolution passed by the Legislature of Madhya Pradesh is exhibited by the petitioner as Annexure G (Misc. Petition No. 32 of 1977). The relevant part of the resolution reads as follows:--

"That the Government of Madhya Pradesh do hereby recommend the said Act to the Government of India for its consideration and adoption."

The argument of the learned counsel is that as the words in the resolution are "do hereby recommend," the resolution is merely a recommendation for future adoption of the Act and that the resolution is ineffective to adopt the Act. The learned counsel further argues that had the intention of the House been to adopt the Act, the relevant words in the resolution would have been "do hereby adopt." In our opinion, the argument is wholly unsubstantial. Reading the resolution as a whole, it is clear that the resolution was passed in pursuance of Article 252(1) of the Constitution to adopt the Act and to apply it in M. P. The object of the resolution was not to make any recommendation. Indeed, Article 252(1) does not contemplate of any recommendation to be made by the Legislature of a State which wants to adopt an Act made by Parliament under that Article. The words "do hereby recommend" used in the resolution in the context clearly imply that the Legislature adopted the Act as required by Article 252(1) to apply it to Madhya Pradesh.

6. The learned counsel for the petitioners referred to us Rule 118 of the Madhya Pradesh Vidhan Sabha Rules made under Article 208(1) of the Constitution. This rule provides that a resolution may be in the form of a declaration of opinion, or a recommendation? or may be in the form so as to record either approval or disapproval by the House of an act or policy of Government, or convey a message or command, urge or request an action or call attention to a matter or situation for consideration by Government; or may be in such other form as the Speaker may consider appropriate. The learned counsel relied upon this rule to support his argument that the resolution of the State Legislature was merely a recommendation. We do not derive any assistance from this rule. The resolution, in our opinion, is not merely a recommendation. The resolution adopts the Act as required by Article 252(1) of the Constitution for application in the State of Madhya Pradesh.

7. The next contention of the learned counsel for the petitioners is that the Act being in English, it can have no application in Madhya Pradesh as a valid enactment, as it was not passed in Hindi-The learned counsel argues that if the Legislature of the State of Madhya Pradesh wanted by resolution to adopt the Act so that it may apply in Madhya Pradesh, it should have passed a Hindi version of the Act. In this connection, the learned counsel referred to us Section 4 of the Madhya Pradesh Official Languages Act, 1957, which was enacted under Article 345 of the Constitution. In our opinion, the contention of the learned counsel is devoid of any merit whatsoever. The Urban Land Ceiling Act is an Act passed by Parliament. Section 4 of the Madhya Pradesh Official Languages Act has no application to the Act. Section 4 of this Act applies only to all Bills introduced in, and all Acts passed by, the Madhya Pradesh State Legislature; all Ordinances promulgated by the Governor of Madhya Pradesh and all orders, rules, regulations and bye-laws issued by the State Government of Madhya Pradesh under the Constitution or under any law made by Parliament or the State Legislature. The section provides that the language to be used in all these matters shall be Hindi. In the case before us, the Urban Land Ceiling Act was passed by Parliament and only the resolution adopting the Act in Madhya Pradesh was passed by the State Legislature. The resolution adopting the Act is in Hindi and conforms to the requirements of Section 4 of the Madhya Pradesh Official Languages Act. As no

Bill was introduced in the State Legislature and as no Act was passed by the State Legislature, Section 4 of the Madhya Pradesh Official Languages Act had no application. The applicability of the Urban Land Ceiling Act in Madhya Pradesh cannot be challenged on the ground that the Act is not in Hindi. It is also not open to argument that the State Legislature should have issued a translation of the Act in Hindi before it was adopted in the State. All that the State Legislature has to do under Article 252 of the Constitution for adopting an Act passed by Parliament under that Article is to pass a resolution adopting the Act. That having been done, the Urban Land Ceiling Act became operative from the date of the resolution in the State of Madhya Pradesh,

8. The learned counsel for the petitioners submitted that the Urban Land Ceiling Act cannot be taken to be an Act of Parliament or a Central Act for the reason that Parliament had passed the Act as a delegate of the States and that the Act can only be classified as a State Act. It is impossible to agree with this submission. It is true that the matters in respect of which Parliament gets jurisdiction under Article 252 of the Constitution in pursuance of resolutions passed by the Legislatures of two or more States are matters not within the normal legislative competence of Parliament, yet when Parliament passes an Act with the consent of the States under Article 252, the Act so passed cannot be classified as a State Act. The Act is an Act passed by Parliament and it has not to conform to the requirements laid down by the State Legislature for a State Act. Clause (2) of Article 252 provides that any Act passed by Parliament under Clause (1) may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State. The words 'in like manner' used in Article 252(2) go to show that the procedure contemplated under Article 252(1) has to be followed for amending or repealing an Act of Parliament passed under that Article, The State Legislature has no power to amend or repeal an Act passed by Parliament under Article 252(1). The Legislature of the State where any such Act is in force can only recommend by passing a resolution to Parliament that the Act be amended or repealed. The power conferred on Parliament by resolutions of the State Legislatures under Article 252(1) is not strictly delegation. It is, in fact, surrender of the power in favour of Parliament and that is the reason why Parliament alone can

amend or repeal the Act passed under Article 252(1). It is true that in *In re Article 143, [Constitution of India](#)*, etc., AIR 1951 SC 332 Mahajan J. (as he then was) observed at page 388 that the legislation by Parliament under Article 252 'is a form of exercise of legislative power by Parliament as a delegate of the State as by its consent alone Parliament gets the power of legislation'. However, the decision of the Supreme Court in *R.M. D.C. (Mysore) Private Ltd. v. State of Mysore*, AIR 1962 SC 594 shows that the States passing the resolutions under Article 252(1) before enactment of the Act, or adopting the Act after its enactment, surrender the power on the matters referred to in the resolutions in favour of Parliament. Be that as it may, it is clear to us that an Act passed by Parliament under Article 252(1) in pursuance of resolutions passed by two or more States and adopted later by other States cannot, by any stretch of imagination, be classified as a State Act. Section 4 of the Madhya Pradesh Official Languages Act has absolutely no relevance on the question of the applicability of the Urban Land Ceiling Act in Madhya Pradesh.

9. The learned counsel for the petitioners further argued that the rules made by the Central Government under Section 46 of the Act are also in English and that they being not in Hindi, can have no application in Madhya Pradesh. This argument also has absolutely no substance. As the rules could not be, and have not been, made by the State Government under Section 46, Section 4 of the Madhya Pradesh Official Languages Act has no application. The argument that the rules being in English are not applicable must be rejected.

10. The last contention raised by the learned counsel for the petitioners is that the resolution of the State Legislature adopting the Act in Madhya Pradesh was not published in the official gazette or in any newspaper; and that in the absence of publication, the resolution cannot be given effect to and the Act cannot be said to be applicable in Madhya Pradesh. The fact that the resolution of the State Legislature adopting the Act has not so far been published in the official gazette or in any newspaper is not disputed in the return. The question, therefore, is whether the non-publication of the resolution of the State Legislature lends infirmity to the applicability of the Act in the State of Madhya Pradesh.

11. Article 252(2) of the Constitution does not lay down that a resolution adopting an Act passed by Parliament under Article 252(1) must be published or that it can be effective only after its publication. The requirement of publishing the resolution is not contained in Article 252. The question is whether such a requirement can be inferred on general principles. In our opinion, there is no such general principle under which the requirement of publication of the resolution may be implicit in Article 252(1) for adopting an Act passed by Parliament under that Article. The Constitution does not provide that an Act passed by Parliament or by Legislature of a State can be effective only on publication. Acts made by Parliament become effective, unless otherwise provided in them, on receiving the assent of the President. Similarly, in the absence of any general provision contained in any enactment, Acts passed by State Legislatures become effective on receiving the assent of the Governor or the President, as the case may be. Section 3 of the Madhya Pradesh General Clauses Act, 1957, provides that where any Madhya Pradesh Act is not expressed to come into operation on a particular day, then it shall come into force on the day on which the assent thereto of the Governor, or the President, as the case may be is first published in the official gazette, If a Madhya Pradesh Act, however, provides that it shall come into force at once, it will come into force immediately it receives the assent of the Governor, or the President, as the case may be, and publication in the gazette would not be necessary for bringing the Act into force.

12. The learned counsel for the petitioner heavily relied upon the case of *Harla v. State of Rajasthan*, AIR 1951 SC 467 for the proposition that the resolution passed by the State Legislature cannot be given effect to as it was not published in the official gazette or in any newspaper. In that case, the question related to the Jaipur Opium Act which was passed by a resolution of the Council of Ministers of Jaipur who derived their authority to make laws during the minority of the Maharaja of Jaipur from a notification issued by the Crown representative which did not expressly require the publication of the laws made by the Council. The Act passed by the resolution of the Council of Ministers was not promulgated or published. The Supreme Court held that the Act was ineffective for want of promulgation or publication. Bose, J. in delivering the judgment of the Court, said (at p. 468):--

'Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence.'

The principle laid down in Harla's case is applicable only to delegated legislation, and not to an Act passed by Parliament or State Legislatures. The Supreme Court in Harla's case relied upon *Johnson v. Sargant and Sons*, (1918) 1 KB 101. In that case, a statutory Order of the Food Controller called under the Beans, Peas and Pulse (Requisition) Order, 1917, was made on 16th May 1917, but was in effect published or made known to the trade on the morning of 17th May 1917. It was held by Bailhache J. that the Order did not take effect until the morning of 17th and, therefore, could not be contravened on 16th. A distinction was made in that case between Statutes of Parliament and delegated legislation on the ground that in case of Statutes of Parliament there is an element of antecedent publicity before they come into operation which is absent in case of delegated legislation. This distinction was affirmed by the Supreme Court in Harla's case. It was pointed out that Acts of Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be entrusted to see that their constituents know what has been done. All this is absent in the case of delegated legislation.

13. The legal proposition that delegated legislation cannot come into force unless it is made known, as enunciated by Bailhache J. in *Johnson v. Sargant and Sons* (supra) has come up for some strong criticism. In the words of Sir C. K. Allen, 'It was a bold example of Judge made laws' and 'it has always been regarded as very doubtful'. [Allen, *Law and Orders*, 3rd Edn., pages 132 and 133]. The Supreme Court in *State of Maharashtra v. M. H. George*, AIR 1965 SC 722 at p. 742 found 'great force' in the comments of Sir C. K. Allen. In that case, however, no reference was made to Harla's case (AIR 1951 SC 467). All that was actually decided in that case was that the rule, if any, that delegated legislation does not take effect when made but only takes effect when made known cannot be extended to require publication in a foreign country even if foreigners are likely to

be affected. It cannot, therefore, be said that Harla's case was overruled. The divergence of opinion on this question is well discussed in an article 'Delegated Legislation and Publication' by Professor Lanham, ((1974) 37 Modern LR 510). It will appear from this article that not only Alien but many other writers on constitutional and administrative law are of the view that delegated legislation comes into operation on the date on which it is made and not on the date of its publication. The article also refers to a New Zealand case (Scott v. Bank of New South Wales (1940) NZLR 922] where a view contrary to that in Johnson v. Sargant and Sons (1918-1 KB 101) was taken. The hardship flowing from the view that delegated legislation comes into force on the date of its making and not on publication is mitigated by Section 3(2) of the Statutory Instruments Act, 1946 which provides that where any person is charged with an offence under a statutory instrument, it shall be a defence to prove that the instrument had not been issued by His Majesty's stationery office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public or of persons likely to be affected by it, or of the person charged. Further, the Privy Council in Lim Chin Aik v. The Queen, 1963 AC 160 recognised a common law defence of ignorance of law in respect of unpublished delegated legislation which also softens the rigour of the view that delegated legislation takes effect when made even before its publication. Professor Lanham, however, commends the view taken in the case of Johnson v. Sargant and Sons (1918-1 KB 101) and points out that it was expressly followed in a British Columbia case [R. v. Ross, (1945) 1 WWR 590] and in Harla v. State of Rajasthan (AIR 1951 SC 467) (supra). Whatever view may be taken as regards the coming into force of delegated legislation in general, we are of opinion, that the rule, if any, that promulgation or publication is necessary for coming into force of delegated legislation cannot be applied to the case of a resolution passed by the State Legislature. We have already seen that even in Harla's case it was pointed out that Statutes passed by Parliament or State legislatures get antecedent publicity as the debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. The same principle can be applied to a resolution passed by the State Legislature. Such a

resolution is publicly passed by the accredited representatives of the people and they can be trusted to see that their constituents know that a resolution affecting them has been passed. In our opinion, therefore, the resolution passed by the State Legislature adopting the Act under Article 252(1) of the Constitution did not require any publication in the official gazette or newspapers for bringing the Act into effect in the State. We have earlier stated that Article 252(1) does not contain any such requirement. All that is necessary under the Article for applying the Act is passing of a resolution adopting the Act by the State Legislature. The moment the resolution was passed adopting the Act, the Act came into force in the State. We have already seen that Section 1(3) of the Act provides that the Act shall come into force in the States which did not initially pass resolutions under Article 252 on the date of adoption. The date of adoption is the date when the resolution adopting the Act is passed. The Act is, therefore, in force and effective in Madhya Pradesh from the date of the resolution of the State Legislature, i.e., from 9th September 1976.

14. The learned counsel for the petitioners also submitted that the master plan of the City of Indore is vague and it does not clearly show whether any particular land used for agriculture is reserved for a purpose other than agriculture and that this will create difficulty in determination of urban land in urban agglomeration of the city of Indore. Vagueness of the master plan does not impede the operation of the Act to the City of Indore. Questions relating to the determination whether a particular land is urban land will be decided by the Competent Authority and other functionaries under the Act. Such questions cannot be considered at this stage under Article 226.

15. All the contentions raised by the learned counsel for the petitioners relating to the inapplicability of the Act thus fail. The petitions are accordingly dismissed. There shall, however, be no order as to costs. The security amount be refunded in each case.