

State Vs. Gopal Singh

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Court : Madhya Pradesh

Decided On : Sep-21-1955

Reported in : 1956CriLJ621

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

Appellant : State

Respondent : Gopal Singh

Judgement :

Dixit, J.

1. The question referred to this Full Bench for decision is whether judicial notice of Government notifications can be taken under Section 57, Evidence Act and, if so, of what notifications. It is necessary to state the facts of the case to understand the implications of the question.

The respondent Gopal Singh was tried by the Sub-Divisional Magistrate of Mhow on a charge under Section 33(a), 'Madhya Bharat Madak Dravya Vidhan' for being in possession, without a permit, of liquor in excess of the maximum quantity prescribed by a notification issued under the Act. In the trial the notification was neither produced nor exhibited.

The trial Magistrate, therefore, relying on -- State v. Bachchulal', Madh-B LJ 1952 HCR 119 (A) held that the prosecution by its omission to prove the notification had failed to establish the essential fact that it was an offence to possess liquor in excess of a certain quantity and that no judicial notice could be taken of any such notification. Accordingly he acquitted the respondent. The State had now preferred this appeal against the acquittal of the respondent Gopal Singh.

The appeal first came up for hearing before a Division Bench consisting of our learned brothers Nevaskar and Samvatsar JJ., whose attention was drawn to two decisions of this Court, namely:

The State v. Gendalal AIR 1950 Madh-B 89 (B) where judicial notice of a notification fixing the maximum price of cloth under Cloth and Yarn Control Order was taken; and - 'Madh-B LJ 1952 HCR 119 (A)', where it was held that no judicial notice could be taken of a notification issued by the Textile Commissioner fixing the maximum price of cloth or yarn under Clause 13, Madhya Bharat Textile (Control) Order, 1948.

Each is a decision of a Division Bench and they are, considered to be in conflict. It was in consequence of the considered conflict that this appeal has been posted before a Full Bench.

2. Before proceeding to state the arguments of the learned Advocate-General and to discuss the conflicting decisions on the question, I shall refer to the statutory provisions which have a bearing on the question. Under Section 57, Evidence Act, the Court is required to take judicial notice* of the facts specified in Clauses (1) to (13). Clause (1) of Section 57 as adapted by the Adaptation of Laws Order 1950, reads as follows:

All laws in force in the territory of India.

The last paragraph of Section 57 says:

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

The expression 'all laws in force in the territory of India' has not been defined in the Evidence Act or in the General Clauses Act, 1897. Section 3(29), General Clauses Act, 1897, however, defines 'Indian Law' as follows:

'Indian Law shall mean any Act, Ordinance, Regulation, Rule, Order or Bye-law, which before the commencement of the Constitution had the force of law in any Provinces of India or part thereof, and thereafter 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.

The above definition is not of much assistance in determining the meaning of 'law in force' in a Part B State. But the following definitions of the terms 'law' and 'existing laws' given in the Constitution, though for the purposes of the Constitution, have great relevancy here. Article 13(1)(a) of the Constitution defines 'law' as including 'any Ordinance, Order, Bye-law, Rule, Regulation, Notification, custom or usage having in the territory of India the force of law'.

The term 'existing law' has been defined in Article 366(10) of the Constitution thus: 'Existing law' means 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.' It is pertinent to note that Article 372 of the Constitution speaks of the continuance of 'all the laws in force in the territory of India'.

The Supreme Court has pointed out in - 'Edward Mills Co. Ltd. v. State of Ajmer' (S) : (1954) IILLJ686SC , that there is no material difference between an 'existing law' as defined in Article 366(10) and 'a law in force'; that the words 'law in force' as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation Or order which has the force of law; that an order must be a legislative and not an executive order before it can come within the definition of law.

3 Now, it has never been doubted that a public or general Act falling within tin definition of law must be noticed judicially by Courts and ex officio, although not

formally set forth by a party relying on it; and they require no proof. The question is whether a notification issued by Government or by other competent authority is within the definition of law, Article 366(10) of the Constitution makes no mention of a notification.

But there can be no doubt that if a notification is a part of any Act, Ordinance, or Order, it would be within the definition of law or 'existing law'. In his arguments, the learned Advocate-General drew a distinction between notification issued by Government or by competent authority in the exercise of the powers delegated by the Legislature under an Act or Ordinance, and notifications issued by such authority in the exercise of its executive functions and powers.

It was said that whereas the former class of notifications could be regarded as part 'of the law' and as such could be judicially noticed under Section 57, Evidence Act, the latter category of notifications was not a part of the law and required to be tendered in evidence and proved according to the provisions of the Evidence Act.

The learned Advocate-General proceeded to say that if an Act, Ordinance, or Order makes it an offence to sell goods at a price higher than the maximum price specified in that behalf or to possess certain goods in quantities larger than the prescribed quantity and delegates to certain authority the power to prescribe by notification the maximum price or the maximum quantity then such a notification would be one made in the exercise of the delegated power of legislation & would be a part of the law itself; that in the case of AIR 1950 Madh-B 89 (B), judicial notice was taken of a notification issued in the exercise of delegated power of legislation; that in the case of Madh-B LJ 1952 HCR 119 (A), though the notification was one made by the Textile Commissioner in the exercise of the power delegated to him under the Cotton Cloth and Yarn Control Order, it was, however, held on the authority of - 'Collector of Kanpur v. Jugnl Kishore' AIR 1928 All 355 (D), that no judicial notice could be taken on the notification and no reference was made to AIR 1950 Madh-B 89 (B); that the Allahabad case related to a notification issued by the U.P. Government in the exercise of its executive and not delegated legislative power and that, therefore, it has no relevancy to the facts, in the case of 'State v. Bachchulal (A).

The learned Advocate-General relied on - 'Public Prosecutor v. Thippayya' AIR 1949 Mad 459 (E) as supporting his contention. He also referred us to the decisions of the Lahore High Court in - 'Bawa Samp Singh v. Emperor' AIR 1925 Lah 299 (F) and - 'Nanak Chand v. Emperor' AIR 1931 Lah 273 (G), where it was held that a notification issued by the Government in the exercise of its executive authority even if not tendered in evidence in the trial, could be produced for the first time before the High Court and its genuineness could be presumed under Section 81, Evidence Act, and to the decision of the Nagpur High Court in - 'Mathuradas' v. The State' AIR 1954 Nag 296 (H), in which it was held that no judicial notice could be taken of a notification fixing the retail price of yarn under the Cotton Textile (Control) Order, 1948. It was said that the view taken in the Lahore and Nagpur cases was not correct.

4. In my judgment, the contentions of the learned Advocate-General are sound and must be accepted. This distinction for the purposes of Section 57, Evidence Act, between an executive order and an order made in the exercise of the power of legislation was recognised by me in the case of 'Pannalal v. The State' AIR 1953 Madh-B 84 (I), where adopting the reasoning of J. in - 'Shripad v. Harsiddhbhai Divatia' AIR 1948 Bom 20 (J), I made the following observations:

Laws, Ordinance, Order, Bye-law, Rule, or Regulation, passed or made at any time by any competent legislature, authority, or person in India' mean legislative provision. The difference between Law, Ordinance, Order, Bye-law, Rule or Regulation is based on the difference between the authorities passing or making them.

In the strict sense of the word a law is made by the legislature; an Ordinance is issued by the President, the Governor or the Raj Pramuks as the case may be, an order is made by the competent authority; a bye-law is passed by a statutory authority competent in that behalf.

Again, rules and regulations have been defined in clauses 46 and 47 of Section 3, General Clauses Act. It is thus clear that the word 'order' is used in Section 3 Clause (27A), General Clauses Act, in the sense of a Legislative Order and not an executive order.

(5) The decision in AIR 1948 Bom 20 (J), was no doubt overruled in - 'Mahomed Yasim-Nurie v. Shripad' AIR 1949 Bom 19 (K), but that was on a different point; the reasoning of Bhagwat, J. in AIR 1948 Bom 20 (J), that a mere executive order is not included within the definition of Indian law as given in the General Clauses Act was not dissented from.

The learned Advocate-General had no quarrel with the above observations in 'Pannalal's case (I)'. What he said was that the conclusion in 'Pannalal's case (I)', that a notification issued by the-Textile Commissioner fixing the maximum price of cloth in the exercise of the power delegated to him under the Madhya Bharat Cotton Textile (Control) Order was an executive order, was not; right.

On further consideration, I must confess I was not right in the view I took in 'Pannalal's case (I)', that the notification issued by the Textile Commissioner fixing the maximum price of cloth was; an executive order. If an Act, Ordinance or Order makes it an offence to sell certain goods at a price higher than the maximum price that may be specified in that behalf, and delegates to an authority the power to specify by a notification the maximum price, then there is no obvious reason why-such a notification issued in the exercise of the delegated power of legislation should be regarded'-as part of the law. Indeed, if an 'order' contemplated by Article 366(10) must be, as observed in (S) : (1954) 11 ALLJ 686 SC , one in the nature of a legislative provision, and if the order is not made by the Legislature itself, it follows that it must be then necessarily be one made in the exercise of the power delegated in that behalf.

The decision as to fixing of a certain price as the maximum price is no doubt an administrative or executive act but the notification of the price-so fixed as the maximum price for which the-goods can be sold is not an executive order; it is; a legislative provision made in the exercise of delegated legislative power.

This view is fortified by the decision of the-Supreme Court in - 'State of Bombay v. F N. Balsara' Anr. 1951 SC 318 (L), where a notification issued by the Government under the Bombay Excise Act was held to be, one having the force of law and as if made by the legislature itself. Section 139, Bombay Prohibition Act, 1949, authorises the State Government by general or special order to exempt any

intoxicants or class of intoxicants from all or any of the provisions of the Act.

The Supreme Court observed at page 329' that 'an order made by the Provincial Government in the exercise of the power conferred by this section owes its legal efficacy to this section and, therefore, in the eye of the law the notification has the force of law as if made by the legislature itself.'

After this authoritative pronouncement of the Supreme Court the question whether a notification issued by the Government or any competent authority in the exercise of delegated power of legislation can be judicially noticed, can admit of no argument and it must be held that such a notification is a part of the law itself and, therefore, judicial notice of the notification can be taken under Section 57, Evidence Act.

6. In 'Pannalal's case (I)', I based my conclusion, namely that judicial notice could not be taken of a notification issued by the Textile Commissioner under Clause (13), Cotton Textile Order, specifying the maximum price of cloth, on a Division Bench decision of this Court in Madh-B LJ 1952 HCR 119

A), I was a party to the judgment in 'Bachchulal's

case (A)'; it followed the decision of the Allahabad High Court in AIR 1928 All 355 (D).

In both these cases the aspect of a notification issued in the exercise of delegated power of legislation being a part of the law itself was not put forward before the Court and was, I am ready to admit by some mischance overlooked by me. The observation of Sulaiman J., in AIR 1928 All 355 (D), that judicial notice of a Government notification under Section 57, Evidence Act, could not be taken by the Court was in relation to a notification issued by the Government in the exercise of its executive authority.

That was a case where the question was whether judicial notice could be taken of a notification issued under U.P. Court of Wards Act taking over superintendence of the property of a certain person and declaring him as a ward under the Act. Clearly such a notification is not in the nature of a legislative provision made in the

exercise of any delegated power of legislation. It is nothing but an executive order.

The Allahabad case cannot, therefore, be treated as lending support to the conclusion arrived at in 'Bachchulal's case' that no judicial notice could be taken of a notification issued by the Textile Commissioner in the exercise of delegated power of legislation. The conclusion in Madh-B LJ 1952 HCR 119 (A), formed the foundation for the decisions in -- 'State v. Nandlal' Madh-B LJ 1952 HCR 271 (M) and in -- 'Purshottamdas v. The State' Cri. Revn. No. 190 of 1931 (MB) (N).

The view taken in those cases cannot, in the light of the Supreme Court's decision in 'State of Bombay v. F N. Balsara (L)', be regarded as correct. I think it was rightly held in AIR 1950 Madh-B 89 (B), that judicial notice could be taken of a notification issued by the Textile Commissioner specifying the maximum price of cloth.

I must, however, add that in the case of --State v. Bachchulal (A)', 'Pannalal v. The State (I)', and the 'State v. Nandlal (M)', one of the considerations which weighed with the Court in refusing to take judicial notice of the notification issued by the Textile Commissioner was the utter inability on the part of those in charge of the prosecution in those cases even to point out to the Court the number and the date of the publication of the notification, with the aid of which it could be traced.

In those cases the prosecution expected the 'Court to take judicial notice of a notification of which they themselves were not aware. In such circumstances the Court would be justified in refusing to take judicial notice of a supposed notification. The last para to Section 57, Evidence Act, provides that if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces, any such book or document as it may consider necessary to enable it to do so.

In fact in Pannalal's case (I) I relied on this paragraph as an additional reason in support of my conclusion that the trial Magistrate was not justified in taking it for granted the maximum price of the Dhotis when the relevant notification of the Textile Commissioner had not been produced before him.

I must, therefore, make it very dear that although judicial notice of a notification issued by an authority in the exercise of its delegated power of legislation can be taken, the Court is at liberty to refuse to do so if after directing any person, who wishes that judicial notice should be taken of the notification to produce the notification that person fails to produce the same,

7. What I have said above renders it unnecessary for me to say that the view taken in 'AIR 1954 Nag 296 (H)', that no judicial notice can be taken of a notification fixing the retail price of yarn under the Cotton Textiles (Control) Order 1948, cannot be supported. So also the decisions of the Lahore High Court cited by the learned Advocate-General to the effect that a notification made by the Government in the exercise of its executive authority need not be tendered in evidence cannot be regarded as laying down good law.

The decision in 'AIR 1949 Mad 459 (E)'. did not deal with notifications. It held that certain orders issued under Section 3(1), Essential Supplies (Temporary Powers) Act, 1946, were Indian Law as defined by the General Clauses Act. But in principle there can be no difference between an order made in the exercise of the power delegated by the legislature and a notification issued under such powers.

I may here notice the decision of Wanchoo J., (as he then was) in -- 'Moolchand v. Emperor' AIR 1948 All 281 (O), where the learned Judge said, that the word 'order' in Section 3(29), General Clauses Act, refers to what may be called a 'species of delegated legislation'.

8. For the foregoing reasons, my answers to the questions referred to the Full Bench are that judicial notice can be taken of a notification issued by the Government or any competent authority in the exercise of delegated power of legislation; that judicial notice cannot be taken of a notification issued by any authority in the exercise of its executive functions; that (under the last paragraph of Section 57, Evidence Act, a Court has a discretion to refuse to take judicial notice of a notification made in the exercise of delegated power of legislation, unless the notification is produced.).

Nevaskar, J.

9. I agree.

Chaturvedi, J.

10. I agree.

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