

The State Vs. Amir Chand

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Court : Punjab and Haryana

Decided On : Jul-07-1952

Reported in : AIR1953P& H1

Judge : Bhandari and; Soni, JJ.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 3 and 4;
[Constitution of India](#) - Article 246

Appeal No. : Criminal Appeal No. 335 of 1951

Appellant : The State

Respondent : Amir Chand

Advocate for Def. : Hem Raj Mahajan and; C.L. Aggarwal, Advs.

Advocate for Pet/Ap. : Har Pershad, Asst. Adv. General

Disposition : Appeal dismissed

Judgement :

Bhandari, J.

1. The short point for decision in the present case is whether it was within the competence of the Rationing Controller of Ambala to make an order requiring certain persons to submit certain returns. The order passed by him on the 31st

December, 1948, was in the following terms:--

'Under Clause 3 of the East Punjab Hoarding of Foodgrains Order, 1947, promulgated with East Punjab Notification No. 1114. M-7/3603, dated the 5th November 1947, and as authorised under Clause 2 (a) of the said Order by the Director-General, Food and Civil Supplies, East Punjab, vide his letter No, RG-48/38661, dated the 28th December, 1948, I, H. B. Lall, I.A.S., Rationing Controller, Ambala, hereby direct all owners of establishments, traders (including millers) and each householder (who holds more than 2 maunds of rationed foodgrains at the commencement of rationing) in the rationed area of Ambala City and Ambala Cantt., to submit a return in the enclosed form, showing stocks of rationed foodgrains held by them on 1-1-49, to my office at Ambala City by the 10th January 1948, at the latest.'

2. On the 11th May 1950 the Rationing Controller paid a visit to the depot of Amir Chand respondent and found him in possession of sixteen maunds and twelve seers of superior rice without having declared the same as required by the Rationing Control Order reproduced above. The respondent was accused of having contravened the provisions of this Order and was prosecuted under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946. The trial Court convicted the respondent but the learned Sessions Judge ordered his acquittal on the ground that the Rationing Controller had no power to pass the order in question. The State is dissatisfied with the order of the learned Sessions Judge and has come to this Court in appeal.

3. Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, as originally enacted, empowered the Central Government by notified order to provide for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. Section 4 empowered the Central Government by notified order to direct that the power to make orders under Section 3 shall, in relation to such matters and subject to such conditions, as may be specified in the direction, be exercisable also by:

(a) such officer or authority subordinate to the Central Government, or

(b) such Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.

4. On the 21st October 1946, the Central Government issued a notification under Section 4 of the Ordinance of 1946 directing that the powers conferred on it by Sub-section (1) of Section 3 of the said Ordinance to provide for the matters specified in Sub-section (3) thereof shall, in relation to certain foodstuffs, be exercisable also by the Provincial Government, subject to certain conditions which are not relevant to the decision of this case.

5. On the 5th November, 1947 the Punjab Government issued the East Punjab Hoarding of Foodgrains Order, 1947, in exercise of the powers delegated to it by the Central Government. Section 3 of the said Order empowered the District Magistrate at any time by general or special order, in writing, to direct any producer, firm, bank or other person to declare his stocks of foodgrains in such form as may be prescribed by the District Magistrate, and within such period as may be specified in the order. The expression 'District Magistrate' was defined by Section 2 (a) to mean the District Magistrate of the district, and to include the Director-General of Food and Civil Supplies, the Director of Food Purchases, and any gazetted officer authorised by the District Magistrate or the Director-General of Food and Civil Supplies for all or any of the purposes of the said order.

6. On the 28th December 1948 the Director-General of Food and Civil Supplies, Punjab, addressed a communication to the District Organizer, Civil Supplies and Rationing at Ambala, in which he authorised the, Rationing Controller to obtain declarations of stocks of rationed articles. It was in pursuance of this order that the Rationing Controller of Ambala passed his order of the 31st December 1948 to which a reference has already been made.

7. The only point for decision in the present case is whether the Central Government had delegated to the Rationing Controller of Ambala the legislative powers which were exercised by him on the 31st December 1948.

8. As pointed out in an earlier paragraph, Section 3 of the Act of 1946 empowered the Central Government alone to make certain orders under Section 3 of the said

Act. These powers could, however, be delegated by the Central Government either to an officer or authority subordinate to the Central Government, or to a Provincial Government or to an officer or authority subordinate to a Provincial Government. It is abundantly clear from Central Government Notification No. PY. 603 (2) I dated the 21st October 1946 that the Central Government delegated its powers under Section 3 to the Provincial Government. No delegation was, however, made either to the District Magistrate or the Director-General of Food and Civil Supplies or the Rationing Controller, Ambala.

9. Mr. Har Parshad, who appears for the State, contends that the order issued by the Rationing Controller, Ambala, was not a legislative order of the nature contemplated by Section 3 of the Act of 1948 but that it was really an executive order issued by him in exercise of the powers conferred by the Provincial Government by virtue of the East Punjab Hoarding of Foodgrains Order, 1947.

10. After listening carefully to the arguments which have been addressed to us I entertain, no doubt whatever that the Rationing Controller of Ambala had no power to pass an order of the nature made by him on the 31st December 1948. It is true that by virtue of the notification of the 21st October 1946 the power to make an order of this kind was delegated to the Provincial Government but the Provincial Government had no authority to redelegate this power either to the District Magistrate or to the Director-General of Food and Civil Supplies or to any Rationing Controller.

Indeed, the Central Government appears to have discovered the lacuna in the statute, for on the 16th August 1950 it enacted a measure, known as the Essential Supplies (Temporary Powers) Amendment Act, 1950, by which the following sub-section replaced Sub-section (3) of Section 3 of the Act of 1946:

'(3) An order made under Sub-section (1) may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central or State Government and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.'

Had this sub-section been in existence when the Rationing Controller passed his order of the 31st December 1948 there can be no doubt that that order would have been perfectly legal in the eye of law.

11. The Amending Act of 1950 was followed by the Central Government, Ministry of Food, Notification No. S. R. O. 100 dated the 22nd January 1951, by which the Central Government directed that with immediate effect the powers conferred on it by Section 3 of the Act of 1946 to provide for the matters specified in Clauses (c), (f), (h), (i) and (j) of Sub-section 2 thereof, shall, in relation to foodstuffs, excluding gram, pulses, edible oils and edible-oilseeds be exercisable also by all District Magistrates and District Food Controllers in the State of Punjab within their respective jurisdictions subject to such directions, general or special, as the Government of Punjab may issue in this behalf.

12. For these reasons, it seems to me that although an order of the nature passed by the Rationing Controller on the 31st December 1948 would be perfectly valid today (in view of the legislative changes which were brought about by Act No. LII of 1950 and by the notification of 1951) this order was completely void in the year 1948. This order is clearly of a legislative character. It requires the persons mentioned in the order to submit returns showing stocks of rationed foodgrains held by them and declares that legal action would be taken against persons who fail to comply with the provisions thereof. An order of this kind could obviously have been made by the Provincial Government to which alone the Central Government had delegated its powers under Section 4 of the statute. The Provincial Government could not delegate its functions to any officer as it is a well known principle that a delegated authority cannot be redelegated.

13. For those reasons, I am of the opinion that there is no substance in the appeal. The order of the learned Sessions Judge must be affirmed and the appeal dismissed.

Soni, J.

14. This case illustrates the well-known principle of 'delegatus non potest delegare'. This principle was applied in the case of -- 'Allingham v. Minister of

Agriculture and Fisheries' (1948) 1 All E R 780. In that case under Regulation 62(1) of the Defence (General) Regulations, 1939, the Minister of Agriculture and Fisheries was given powers to give such directions with respect to the cultivation, management or use of land for agricultural purposes as he thought necessary for certain purposes. The direction was to be given by notice relating to the land specified therein served on the person by whom the direction shall be complied with. The words of the Regulation were that the notice was to relate to the land specified in the notice. In that case the War Agricultural Executive Committee were made the agents or delegates of the Minister who delegated his powers to them, as he was entitled to do under Regulation 66(1) which said:

'The Minister of Agriculture and Fisheries may by order provide for delegating, to such extent and subject to such restrictions as may be specified in the order, to any person or body of persons appointed or approved by him all or any of his functions under (any 6f the following regulations.....)'

Amongst those regulations was regulation 62. The war agricultural executive committee came to the conclusion that eight acres of sugar beet should be grown by the appellants for the 1947 season, and it therefore became necessary that a notice to that effect relating to the land specified in the notice should be served on the appellants. Lord Goddard, C. J., said that it was not enough to give a farmer a general notice saying 'You grow eight acres of sugar beet'. The notice must say 'You grow eight acres of sugar beet on land which we specify in the notice'. Having come to that conclusion the committee said that this sugar beet was to be grown on a field to be named by their executive officer. In other words, they delegated to the executive officer the task of deciding the land which was to be the subject of the notice to be served.

Lord Goddard said that he could find no provision in any order having statutory effect or any regulation which gave the executive committee power to delegate that which the Minister had to decide and which he had power to delegate to the committee to decide for him. If the Minister had delegated, as he had, his power of making decisions to the executive committee, it was the executive committee that must make, the decision, and on the ordinary principle of 'delegates non potest

delegare' they could not delegate their power to some other person or body.

15. The judgment continues as follows:

'The executive officer, having been told by the committee to perform the functions which the committee ought to have performed for themselves, took the opinion of a sub-committee for the Biggleswade district. That sub-committee was set up under the provisions of the Cultivation of Lands Order, 1939, Article 5, which provided: 'A (war agricultural executive) committee may, subject to any directions given by the Minister, appoint such sub-committees for such purposes as the committee think fit. A sub-committee may consist either wholly or partly of persons not being members of the committee.

The case finds that the war agricultural committee for the county did appoint this Biggleswade district committee as a sub-committee to act under the instructions of the executive committee and to make recommendations to the executive committee. Apparently, they made some recommendations to the executive officer and the executive officer accordingly made the order. I can find nothing in the regulations or the statute which enabled the executive officer to make the order. The real contention of the appellants is that they are entitled to have the decision of the executive committee and of no one else on this matter, and, subject to the power which it may be the committee possess. I say no more about that to delegate to a committee, which they did not do in this case, I think that contention is right. It may be that if the executive officer had gone back to the executive committee and said that the Biggleswade district committee recommended them to make the order in respect of field No. 412, they would have acted on that recommendation, but in those days, when various bodies and various persons get wide powers given to them by a variety of regulations and orders which are issued so frequently that it is very difficult for anybody to know whether they are obeying the law or not, it is extremely important that the bodies which are given these wide powers should act strictly in accordance with them and it is the duty of this court to see that they do so. In this case, it seems to me that the committee left to some one the duty of deciding that which the regulation, which has the force of a statute, requires them to decide for themselves.

In these circumstances, it seems to me that the point taken by the appellants is a good one. They were not bound to obey this order which was not the result of a decision of the county executive committee, but was given to them by the county executive officer acting on his own responsibility. In my opinion, this appeal should succeed.'

Humphreys, J., in a short judgment agreed with ord Goddard, C. J. Pritchard, J., also agreed. he conviction by the justices was set aside y the Court.

16. I agree with my learned brother Bhandari,J., that in this case the Rationing Controller, Ambala, had no power to issue his order on 31stDecember 1948, and that this appeal should bedismissed.

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