

State Vs. Bachan Singh

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Court : Delhi

Decided On : Feb-14-1968

Reported in : 4(1968)DLT426

Judge : Jagjit Singh, J.

Acts : Essential Services (Maintenance) Ordinance, 1941; [Constitution of India](#) - Article 372

Appeal No. : Criminal Revision Appeal No. 341D of 1965

Appellant : State

Respondent : Bachan Singh

Advocate for Pet/Ap. : V.D. Misra, Adv

Judgement :

Jagjit Singh, J.

(1) The main question involved in this revision petition is as to whether the Essential Services (Maintenance) Ordinance, 1941, is still in force or ceased to be operative at the expiry of six months from the date of its promulgation or from the date of publication of His Majesty's Order in Council called 'The India and Burma (Termination of Emergency) Order, 1946, in the Gazette of India. Extraordinary. This question has risen under the following circumstances'

(2) One Bachan Singh was enlisted as a constable in the Delhi Armed Police with effect from September 16, 1963. On September 28, he was found to be absent. A notice dated the 5th October, 1963, was sent to him by registered post requiring him to report for duty in the 'Lines' within five days of its receipt. The notice was received by him on October 9, 1963, and he did report himself for duty at 3.15 P. M. on October 14, 1963. He, however, again absented himself from duty, on October 14, 1963. A demiofficial letter was addressed to him requiring him to immediately report for duty. He was also informed through that letter that on his failure to immediately report for duty he will be prosecuted under section 7 of the Essential Services (Maintenance) Ordinance

(3) Bachan Singh got the letter on October 28, 1963 and even made an endorsement that he would soon be reporting for duty but failed to do so. A case was, therefore, registered against him under section 7 of the Essential Services (Maintenance) Ordinance.

(4) Shri Sukh Raj Bahadur, Sub Divisional Magistrate, Delhi, was charged the accused as in his opinion the Ordinance under which he was sought to be prosecuted ceased to be operative at the expiry of 'six weeks' from the reassembly of the Parliament'. What he actually meant by this was not made clear in his order.

(5) The State preferred a revision to the Court of Session, which came up for hearing before Shri Udiram Singh, Additional Sessions Judge, Delhi. The learned Additional Sessions Judge agreed with the view taken by the trial court and while dismissing the revision made the following observations:

'THE learned counsel (or the petitioner) could not produce any authoritative document or Act to show that the ordinance in question was not subject to any time limit. If the ordinance was to remain operative till repealed or amended, then it did not retain the shape of an ordinance and was in fact had the force of an Act. The learned pp. could not point out any section out of the above said ordinance to show that it was to remain in force in India till repealed or amended in spite of the enforcement of the Article 123 of the Constitution. After hearing the learned p.p. at length I am of the opinion that the decision of the court below is correct, because no ordinance could last more than 6 months unless granted the sanction

of the Parliament towards its enactment as an Act. Hence I find no force in this revision petition and it is hereby dismissed.' Indian Legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian Legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or superseded by any such Acts.'

(6) Section 1 (3) and Section 3 of the India and Burma (Emergency Provisions) Act, 1940, were as under:-

(3) Section seventy two of the Government of India Act (which, as set out in the Ninth Schedule to the Government of India Act, 1935, confers on the Governor General power to make Ordinances in cases of emergency; shall, as respects Ordinances made during the period specified in section three of this Act, have effect as if the words 'for the space of not more than six months from its promulgation' were admitted; and notwithstanding the provision in the said section seventy two that the power of making Ordinances there under is subject to the like restrictions as the power of the Indian Legislature to make law:- (a) Ordinances may, during the said period, be made under the Section affecting the Army Act, the Air Force Act, or the Naval Discipline Act; and (b) Section one hundred and eleven of the Government of India Act, 1935 (which exempts certain British subjects from certain Indian Laws) shall not apply to any ordinance made under the said section seventy two during that period.'

'3. The period referred to in the preceding sections is the period beginning with the date of the passing of this Act and ending with such date as His Majesty may by Order in Council declare to be the end of the emergency which was the occasion of the passing of this Act.'

(7) The India and Burma (Emergency Provisions) Act, 1940, which made emergency provisions with respect to Government of India and Burma was passed on June 27, 1940 and on April 1, 1946, was published in the Gazette of India; Extraordinary His Majesty's Order-in-Council called 'The India and Burma (termination of Emergency) Order, 1946. Thus the period referred to in section 3 of the India and Burma (Emergency Provisions) Act, 1940, extended from 27th June

1940, to 1st April 1946 and the Ordinance, in question, was beyond doubt promulgated and later on amended by other Ordinances within that period.

(8) In *Hans Raj Moolji v. State of Bombay* the question which came up for consideration was as to whether the High Denomination Bank Notes (Demonetization) Ordinance, 1946, was in operation on July 11, 1953 when an offence under section 7 read with section 4 thereof was alleged to have been committed. While dealing with this matter, their Lordships of the Supreme Court quoted with approval the observations made by the Federal Court in *J. K. Gas Plant Manufacturing Co, Rampur Limited, v. King Emperor*. While delivering the judgment of the Federal court, Spens C. J. observed :

'In our opinion, the emergency on the happening of which an Ordinance can be promulgated is separate and distinct from and must not be confused with the emergency which occasioned the Passing of the Act and the clear effect of the words of the Act on S. 72 is that Ordinances promulgated under that subsection during the period specified in S 3 of the Act are subject to no time as regards their existence and validity, unless imposed by the Ordinances themselves, or other amending or repealing legislation, whether by Ordinance or otherwise -

(9) The Supreme Court accordingly held that as the Ordinance in question was promulgated during the period between 27th, June, 1940 and 1st April, 1946 it was perpetual in operation and continued in force until it was repealed.

(10) No subsequent Ordinance or Act of the Indian Legislature has been brought to my notice by which the Essential Services (Maintenance) Ordinance may have been repealed. The result, therefore, is that the said Ordinance continued to be in force and was in operation during the period Bachan Singh accused was alleged to have without reasonable excuse abandoned the employment or absented himself from work.

(11) In the absence of any provision in the Ordinance itself limiting its life to a particular period the inference drawn by the learned Additional Sessions Judge that it could not remain in force till repealed could not be justified on any principle of interpretation. As was observed in the above referred to judgment of the

Supreme Court, a statute for which no time is limited is called a perpetual Act and continues in force unless it is repealed. The Ordinance in question having been promulgated by the Governor General in exercise of powers under section 72 of the Government of India Act, 1935, during the period specified in Section 3 of the India and Burma (Emergency Provisions) Act, 1910, was not a temporary enactment. For that period section 72 had the effect as if the words 'for the space of six months from its promulgation' had been omitted. Being an existing law the Ordinance also continued to be operative after the coming into force of the [Constitution of India](#) by virtue of the provisions of article 372 of the Constitution. Article 123 of the Constitution had no application as it was not an Ordinance promulgated by the President under clause (1) of that article. The provisions of clause (2) that an Ordinance shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of these resolutions, only apply to an Ordinance promulgated under article 123 of the Constitution.

(12) The view that the Essential Services (Maintenance) Ordinance was not operative during the relevant period was erroneous and as such the order of discharge cannot be maintained. Bachan Singh was given an opportunity of showing cause why a direction should not be made for further inquiry in the case, but did not avail of it.

(13) The revision petition is accepted and the order of discharge, dated August 12, 1964, is set aside and it is directed that the District Magistrate shall either by himself or by any of the magistrates subordinate to him make further inquiry into the case of Bachan Singh who had been discharged.