State Vs. Pingal Ramde and ors.

State Vs. Pingal Ramde and ors.

SooperKanoon Citation : sooperkanoon.com/739816

Court : Gujarat

Decided On : Jul-13-1961

Reported in : (1962)3GLR90

Judge : J.M. Shelat and; R.B. Mehta, JJ.

Appellant : State

Respondent : Pingal Ramde and ors.

Judgement :

J.M. Shelat, J.

1. This is an appeal filed by the State of Gujarat challenging the order of acquittal passed by the learned Judicial Magistrate First Class Patan in Criminal Case No. 1010/1960. The respondent was running a hotel and used to sell and serve tea and coffee there from 1st October 1959 to 31st March 1960 without a licence though he was bound to take out a licence under rule 5 of the Rules framed by the Patan Municipality. The omission to take out the licence as required by rule 5 is made punishable under rule 18 of these Rules. The defence of the respondent was that these Rules were not in force and that therefore he was not liable to pay the licence fee nor was he liable to be prosecuted under rules 5 and 18 of these Rules. These rules were framed by the Patan Municipality in 1921 under the Baroda Municipal Act when Patan was part of the former Baroda State territories. On the 1st of August 1948 the State of Baroda merged with the State of Bombay

and by virtue of the Bombay Merged States (Laws) Act 1950 the Bombay District Municipal Act 1901 became applicable to the limits of the Patan Municipality. On the 1st October 1958 the Municipality framed rules under Section 46 and 48 of the Bombay District Municipal Act. It would appear that after these Rules came into force the Patan Municipality prosecuted a hotel-keeper for having omitted to take out a licence under the new Rules. The learned trial Magistrate in that case held that the new Rules framed in 1958 were invalid. The Patan Municipality thereafter filed an appeal against the said judgment in the High Court of Bombay and by an order dated the 16th November 1959 that appeal was summarily dismissed.

2. Since the respondent also had not taken out any licence nor paid the licence fees the Municipality served a notice upon him dated the 8th of January 1960 intimating to him that though he had been running a hotel he had failed to pay the licence fee of Rs. 50/- warning the respondent that if he failed to take out the licence within 15 days of the notice steps would be taken against him. Since the respondent failed to take out the licence or to pay the prescribed licence fees the Municipality filed a complaint against him through its clerk witness Narmadashanker Purushottamdas Pandya.

3. In Para 1 of that complaint it was stated that the accused was runnin His hotel without a licence within the municipal limits of Patan for the period 1st October 1959 to 31st March 1960. In para 2 of that complaint it was expressly stated that the new Rules framed by the Municipality in October 1958 had teen declared illegal and invalid by the Court of the learned Judicial Magistrate First Class Patan and that by that reason the old Rules had come into force automatically and the respondent was liable to pay the licence fees under those old Rules. It is clear from the complaint of the Municipality that the view of the Municipality was that as the new Rules including rule 8 which purported to repeal the old Rules were held to be invalid by a competent Court the old Rules which had been validly made still prevailed. It was therefore that a demand for the licence fees was made and the complaint was filed on the ground that the respondent had committed breach of rule 5 of the old rules and was therefore punishable under rule 18 of those Rules.

4. In the trial Court the Municipality produced a certified copy of the order dated the 16th of November 1959 dismissing the appeal passed by the High Court of Bombay but a certified copy of the judgment of the trial Court was not produced. The learned Government Pleader in order to explain the grounds on which the new Rules were declared invalid in that judgment produced a certified copy of the trial Courts judgment before us. But Mr. Patel for the respondent contended (1) that we were not entitled to look at that judgment and (2) that the order passed in that case was not binding upon him as he was not a party to that prosecution. We may however observe that it was nobodys case before us that the new Rules which were the subject-matter of consideration in that case were not held to be invalid. It was also not the case of the respondent that the new Rules were in force either during the period 1st October 1959 to 31 March 1960 or at the date of the prosecution It was also not his case that he was liable to pay the licence fees under the new Rules but not under the old Rules of that therefore the prosecution by the Municipality was not sustainable. In any case the decision in that complaint whereby the new Rules were declared to be invalid was valid and binding upon the Municipality. The Municipality consequently could not have recovered the licence fees under the new Rules as the new Rules were held as aforesaid invalid.

5. The contention of the learned Government Pleader was that as the new Rules were held invalid the old Rules which were validly passed held the field all along. On the other hand the contention of Mr. Patel was that rule 8 of the new Rule which in terms repealed the old Rules was still valid even though the new Rules were declared to be invalid. Rule 8 according to him was severable and therefore though the entire set of new Rules was declared to be invalid rule 8 was saved. The consequence of that contention would be that there was a vacuum after the new Rules were declared to be invalid in the sense that whereas the old Rules were repealed by rule 8 of the new Rules there were no Rules replaced in their place as the new Rules in their turn were declared to be invalid by a competent Court. Mr. Patel also contended that the new Rules would become invalid only from the date of the judgment in that case wherehx they were declared invalid and therefore the new Rules were valid and enforceable until they were declared invalid.

6. As regards the view of the learned Magistrate that as the prosecution had not produced a certified copy of the judgment of the learned trial Magistrate by which the new Rules were declared to be invalid there was no evidence before him to establish that those new Rules were in fact held to be invalid that obviously was incorrect. In para 2 of the complaint it was expressly stated that the new Rules framed by the Municipality in 1958 were declared to be invalid. That statement in the complaint was testified by witness Narmadashanker in his evidence to be correct, and therefore, that part of the complaint became substantive evidence. The original judgment in fact was passed by the same Court presided over by the learned Magistrate. It was extremely easy for him to have called for the record of that case and ascertained whether the new Rules were in fact declared invalid in the previous case. In any event the learned Magistrate was not right in observing that there was no evidence before him that the new Rules had been declared to be invalid in that case after the averments in Para 2 of the complaint were brought on record through the evidence of witness Narmadashanker.

7. The learned Magistrate was also of the view that the mere fact that those Rules had been declared to be illegal and invalid did not help the prosecution as the new Rules were actually brought into force and it was thereafter that the new Rules had been declared invalid. He appears to be of the view that because the new Rules were acted upon by the Municipality the old Rules must be deemed to have been repealed by rule 8 of the new Rules and they could not be revived merely because the new Rules were at a latter date declared to be invalid even though while framing the new Rules the intention of the Municipality was not to create a vacuum by repealing the old Rules. Such a position was created by the Municipality by having incorporated rule 8 in the new Rules and the new Rules having been subsequently declared to be invalid. The result of the decision of the learned Magistrate therefore was that after the new Rules were declared to be invalid there were no Rules in force and that being so the respondent was not liable to pay the licence fees and was therefore entitled to be acquitted.

8. In our view the reasons given by the learned Magistrate in his Judgment are not sustainable. It is clear that the new Rules as a whole including rule 8 which purported to repeal the old Rules were held to be invalid. It was nobodys case in

the trial Court that rule 8 was then held to be severable and not invalid. The question then is what is the effect of the new Rules having been held to be invalid so far as the Municipality is concerned. As we have observed the contention of the learned Government Pleader was that on the new Rules having been held to be invalid the old Rules automatically held the field. Reliance was placed by him on Section 3 of the Bombay Merged States (Laws) Act 1950 which provides:

3. (1) All the Acts and Regulations specified in the First Schedule and so much of the Acts and Ordinance specified in the Second Schedule as relates to matters with respect to which the State Legislature has power to make laws are hereby extended 10 and shall be in force in the merged States.

(2) The Acts specified in the first column of the Third Schedule shall be amended in their application to the merged States specified in the second column in the manner set forth in the third column of that Schedule.

By the amended Section 180-A of the Bombay District Municipal Act 1901 which by virtue of the aforesaid provisions became applicable to the municipal limits of Patan it was provided as follows:

Notwithstanding anything contained in the foregoing provisions of this Act such rules by-laws orders made issued or sanctioned by or in respect of any of the Municipalities whether constituted under the A Class Municipalities Act (Baroda No. XII of 1949) or the B Class Municipalities Act (Baroda No. XIV of 1949) of the former Baroda States were in force immediately before the 30th day of July 1949 under the said Baroda Municipalities Acts shall in so far as they are consistent with the provisions of the Bombay District Municipal Act 1901...shall be deemed to have been made issued or sanctioned by or in respect of the said Municipalities under the appropriate provisions of the said Act on the said date and continue in force until altered repealed or amended by a competent authority.

9. The effect of these provisions clearly was that the old Rules made by the Patan Municipality under the appropriate Baroda Act remained and continued to remain in force until they were altered repealed or amended by a competent authority under the Bombay Municipal Act. It was therefore argued by the learned

Government Pleader that the old Rules still prevailed on the date of the prosecution because though the new Rules were framed and brought into force and rule-8 thereof purported to repeal the old Rules the new Rules were held to be invalid and therefore not enforceable. A repealing section of a statute cannot have the effect of repealing a previous enactment or rule if the repealing section has not been validly passed. If a repealing section is held to be invalid or unconstitutional it means that it was never in existence and could not therefore have the effect of repealing effectively a previous enactment or rule. In order that a repealing Act is effective it must be as a general rule constitutional and valid because a void or ineffective Act obviously cannot operate to abrogate a valid existing one. But Mr. Patel relied upon a passage from Craw fords Construction of Statutes at page 652 where it is stated that the incorporation of language in a repealing Act which reveals an intent to repeal regardless of its unconstitutionality may effect a repeal. It was contended by Mr. Patel that it was clear from the repealing rule 8 of the new Rules that the Municipality had made manifest its intent to repeal the old Rules and therefore even though the new Rules were declared to be invalid by the Court the repealing rule remained effective and repealed the old Rules and therefore the old Rules cannot be said to be any more in force and under which the Municipality could demand licence fees from the respondent. The same learned author at page 663 has however observed that where it is not clear that the legislature by a repealing clause attached to an unconstitutional Act intended to repeal the former statute upon the same subject except upon the supposition that the new Act would take the place of the former the repealing clause falls with the Act to which it is attached. He has also observed that the authorities seem generally to support the view that there will be no repeal by implication where the repealing Act is invalid even though the Act expressly states that it repeals all laws or parts of laws inconsistent therewith. It is obvious that where the repealing Act is invalid there is nothing with which an existing law can be inconsistent and thereby be repealed by implication. The genera! principle thus is that a repealing Act must be valid and constitutional in order that it may effectively repeal a previous legislation enacted validly on the same subject.

10. No question in any case can arise as to a manifest intention on the part of the Municipality to repeal the previously made Rules as the entire body of the new

Rules was declared to be invalid by a competent Court. Nothing has also been shown to us to indicate that Rule 8 was held to be either severable from the rest of the Rules or that it was saved from the unconstitutionality of the entire body of rules. It is also clear from the authority of Crawford that the mere fact that new Rules were framed which provided that the old Rules would not be in force on the new Rules being brought into operation does not mean that the repealing rule repealed the old Rules even though the new Rules were held to be invalid. This would be so though the Rules were brought into force and even acted upon for a while until they were held to be invalid. It cannot also be argued that they were valid upto the date of the decision which held them to be invalid. An invalid statute is invalid from its inception and not from the date of the decision by a Court of law that it is invalid. It is as if it was never placed on the Statute Book. In this view it cannot be said that the old Rules were abrogated by the new Rules which were held to be invalid. The old Rules held the field all throughout as they were never effectively repealed. The respondent therefore was bound to take out a licence and pay the prescribed fees therefor as provided by the old Rules.

11. In our view the learned Magistrate was not correct in his view as to the effect of the decision which held the new Rules to be invalid. There was no question of there being any period of vacuum. Even when the new Rules were framed and the Municipality included rule 8 therein purporting to repeal the old Rules it cannot be said that there was any intention on the part of the Municipality to create any vacuum. That being the position in law it is clear that the learned Magistrate was not correct in his decision. It is clear that the old Rules were not effectively repealed by the new Rules and they continued to be in operation all throughout. Therefore the respondent was liable to pay the licence fees and take out the requisite licence under the old Rules. The respondent therefore by his refusal to take out the requisite licence became liable under Rule 5 read with rule 18 of the old Rules.

12. The appeal must therefore be allowed and the order of acquittal passed by the learned Magistrate must be set aside. We convict the respondent under rule 5 read with rule 18 of the old Rules and sentence him to pay a fine of Rs. 25/- (Twenty-five).