

In Re: Natarajan and ors.

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Court : Chennai

Decided On : Feb-26-1952

Reported in : AIR1953Mad371; (1952)2MLJ673

Judge : Ramaswami, J.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 3(2)

Appeal No. : Criminal Revn. Case No. 607 and Cri. Revn. Petn. No. 602 of 1951

Appellant : In Re: Natarajan and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : R. Thirumalaiswami Naidu, Adv.

Judgement :

ORDER

Ramaswami, J.

1. This is a criminal revision case filed against the order made by the Second Additional First Class Magistrate of Trichinopoly in C. C. No. 47 of 1951 and confirmed in C. A. No. 124 of 1951 by the Sessions Judge of Trichinopoly.

2. The facts of this case have been fully set out in the judgments of the lower Courts and need not be recapitulated, because there is no dispute concerning the

facts before me and two points of law only are taken before me which I shall deal with in the succeeding two paragraphs.

3. The first point taken is that in regard to this prohibition of transport of foodgrains by night G. O. No. 550 (Food) dated 18th June 1948 has superseded all the previous orders including G. O. No. 393 (Food) dated 3rd April 1947 and that therefore this accused has not committed any offence. But this contention is based upon an imperfect reading of the G. Os. referred to above. Paragraph 2 of G. O. No. 550 (Food) dated 18th June 1948 lays down that,

'no person shall, with effect from, the date of this order transport cholamby road, rail, river.... from any place within the limits of any District in the Province except under a permit.'

and paragraph 9 says that,

'all orders including orders delegating powers, made in pursuance..... shall notwithstanding the supersession of the said order, continue in force, so far as they are consistent with the provisions of this Order, and shall be deemed to have been made under the appropriate provisions of this Order.'

In other words as pointed out by the learned Sessions Judge, G. O. No. 393 (Food) dated 3-4-1947 is only an additional restriction on the transport of millets and this restriction is not inconsistent with the restriction in para, 2 of G. O. No. 550 which mentions only some restrictions. The G. O. does not say there should be no restriction on the transport of cholam. In other words the restriction regarding transport of cholam and other foodgrains at night in order to prevent the running-in of contraband articles under cover of night, remained in effect unsuperseded. Therefore, this point taken is without any substance.

4. The second point taken is one with which we have all become familiar, namely, that there has been a delegation of the powers by the State Government of the powers delegated to them by the Central Government and that consequently the prohibition, by the District Magistrate is 'ultra vires'. Section 4, Essential Supplies (Temporary Powers) Act provides that;

'The Central Government may by notified order direct that the power to make orders under Section 3 shall be exercisable also bysuch Provincial Government or such officer or authority subordinate to a Provincial Government as may be specified in the direction.'

G. O. No. 393 (Food) dated 3-4-1947 prohibits any driver or owner or other person in charge of a motor vehicle to drive it with a consignment of foodstuffs between 7 p. m. and 6 a. m. on any road or land situated in a District which is notified by the District Magistrate in the District Gazette. Subsequently the District Magistrate has notified the roads and published the notification along with the roads in the District Gazette. The contention is that in allowing the District Magistrate to specify the roads the Provincial Government re-delegated its powers to an officer and that this re-delegation is illegal and, therefore, the notification has no valid effect. This contention is undoubtedly due to a confusion of thought because in this case the State Government has not delegated its powers to the Collectors and the District Magistrate was not allowed to pass any order by himself but as a servant of Provincial Government was authorised to specify the roads in the District Gazette. I may incidentally point out that G. O. No. 393 (Food) dated 3-4-1947 specifically says that it was passed 'with the concurrence of the Government of India' and in effect the delegation' to the officer, namely, the District Magistrate was in effect a delegation by the Central Government. But apart from this, as pointed out by me, just now, the Collector was not empowered to lay down the principles of regulating or controlling but only to carry out the working of the principles. Therefore this is not a case of delegation of delegated powers or a case of abdication or effacement of the State Government in the matter of carrying out the powers delegated by the Central Government but a mode of exercising these powers through their subordinates retaining full control of the powers vested in them. The responsibility entrusted to the State Government under this delegation remains intact and there is no abdication of its own delegated powers. It follows from the above considerations that the contention based on the maxim 'delegatus non potest delegare' is not applicable to this case and the second point also must fail.

5. In view, however, of the confiscation of the cholam and the time, expense and trouble of these petitioners who had to undergo the ordeals of trial, appeal and

revision, the period of imprisonment is reduced to the period already undergone; and fine of Rs. 50 each (Rs. 150 in all) and in default to rigorous imprisonment of one month. Time for payment 15 days from the date of the receipt of this order by the lower court.

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