

In Re: M. Rajarama Reddi

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Court : Chennai

Decided On : Feb-04-1952

Reported in : AIR1952Mad578; (1952)1MLJ468

Judge : Mack and ;Somasundaram, JJ.

Acts : [Constitution of India](#) - Article 228

Appeal No. : Criminal Misc. Petn. No. 2321 of 1950

Appellant : In Re: M. Rajarama Reddi

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : V.V. Srinivasa Aiyangar, ;M.K. Nambiar and ;V. Devarajan, Advs.

Disposition : Petition dismissed

Judgement :

1. This is a petition under Article 228 of the [Constitution of India](#) by the petitioner, who has been charged in a criminal case, with an offence under Section 3(2) of the Essential Supplies (Temporary Powers) Act, dated 19th November 1946 and subsequently renewed, read with the Madras Foodgrains (Intensive Procurement) Order, 1948. This application was admitted in 1950 and referred by one of us (Somasundaram, J.) to a Bench for determination as to the correct procedure to be adopted in such cases.

2. The first point for determination is whether the petitioner has satisfied us that a substantial question of law as to the interpretation of the Constitution is raised for determination. There is the broad allegation that the Essential Supplies (Temporary Powers) Act, 1946 is 'ultra vires.' This is sought to be founded on a defect in the order of the Taluk Supply Officer passed against the petitioner directing him to supply at fixed rate to the Government 239 1/2 bags of paddy. He is prosecuted for failure to comply. It is urged that this order has not been notified, as it should have been under Section 3 of the Essential Supplies (Temporary Powers) Act. We are unable to find any decision to support the view that such an order served on an individual requires any notification. Other types of orders under the Essential Supplies (Temporary Powers) Act involving the regulation of prices and so on are required to be notified in Section 3, though the language used there did not specifically differentiate and particularise orders to be notified. This has in view of some judicial decisions been now clarified by Act LXXII of 1950; Section 2(1-A) which specifically says:

"An order made under Sub-section (1) shall (a) in the case of an order of a general nature or affecting a class of persons, be notified in the official gazette; and (b) in the case of an order affecting an individual person be served on such person by delivering or tendering it to that person."

We do not think that any Court would have, if the matter came up for determination prior to this amendment, held that an individual order of procurement was one which had, under Section 3(1) of the Essential Supplies (Temporary Powers) Act to be notified. We find, therefore, no substance as regards this point taken to undermine the validity of either the Procurement Order or of the Essential Supplies (Temporary Powers) Act itself.

3. A preliminary point has been raised in this application on which, we think unnecessary time has been taken, viz. that the Government have not filed an affidavit in reply to this petition and that failure to do so makes it difficult for elaborate arguments to be addressed on the Constitutional issues involved. Our attention has been drawn to 'Khudi Prosad v. State of West Bengal', 55 Cal W N 45, as authority for the ruling that in a petition under Article 226 of the Constitution

the State as the respondent, must comply with the normal procedure of filing proper affidavits, particularly where the petitioner alleges 'mala fides' against Government, and raises serious questions of fact, which it would be impossible to deal with unless the State is represented in the proceedings. With great respect, we are in complete agreement with that decision which contemplates petitions under Article

226. We are here dealing with Article 228, which is entirely different and makes a specific provision for cases, in which in a Subordinate Court a substantial question of law as to the interpretation of the Constitution is raised. We have no hesitation in saying that where an entire Act is called in question as 'ultra vires' there is no obligation on the State Prosecutor on the criminal side to file an affidavit at all seeking to uphold its validity & the onus is on the petitioner to satisfy us under Article 228 that there is a substantial question of law as to the interpretation of the Constitution, in other words, that the Act can for some 'prima facie' substantial reasons be challenged in a Court of law.

4. So far as the validity of these Acts is concerned, our attention has been drawn to a recent decision in 'Cri. R. C. Nos. 989 to 991 End 1052 of 1951', by Ramaswami, J. sitting on the admission side--Malayandi Thevar In re with which we are in agreement in which he considered a similar objection to the validity of Clause 3 of the Essential Supplies (Temporary Powers) Act and found a notification by the Collector under it to be valid. So far as the procedure to be followed is concerned matters have been clarified by Act XXIV of 1951, dated 1st May 1951, which substitutes a new section, Section 432 for the old one. The legal position now is that a subordinate Court should only make a reference to the High Court when it is satisfied that a case pending before it involves a real or substantial question as to the validity of any Act or regulation. A mere plea that an Act is 'ultra vires' will not suffice. If it is not so satisfied it should go on with the trial, leaving it to the aggrieved accused to move the High Court under Article 228, and to continue the trial until such an application is admitted and the trial stayed. We find no substance in this petition, which we dismiss with a direction to the Magistrate to give this case as expeditious a disposal as possible.