

Keshabdeo Vs. Emperor

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Court : Kolkata

Decided On : Jan-14-1944

Reported in : AIR1944Cal317

Appellant : Keshabdeo

Respondent : Emperor

Judgement :

Derbyshire, C.J.

1. On 8th June 1943, Keshabdeo Harlalka was convicted by Mr. J. Ahmad, Additional Chief Presidency Magistrate of Calcutta of an offence under Rule 81 (4) of the Defence of India Rules and seconded to undergo rigorous imprisonment for six months. The offence, the facts of which are not denied, consisted of selling to Messrs. A. Firpo, Ltd. of Calcutta, 200 bags of sugar at the rate of Rs. 25 per maund instead of Rs. 13-8-0 per maund. Rs. 13-8-0 per maund was the price fixed by Mr. M. K. Kirpalani, Chief Controller of Prices, Bengal, under the powers given him by Rule 81 (2) (b) of the Defence of India Rules, the date of the Price Control Order being 15th June 1942. Messrs. A. Firpo, Ltd. who were confectioners, required the sugar and were quoted the rate charged, and after getting in touch with the police agreed to pay the price demanded. The price was paid in the following way. A cheque for Rs. 7425 representing the sum payable at the controlled rate for the sugar and currency notes amounting to Rs. 6325 representing the excess over the controlled price. When the sale was completed

and the money handed over, the police who were in waiting arrested Harlalka and he was charged with this offence and convicted as stated. On 21st June 1943, this Court issued a Rule on the Chief Presidency Magistrate to show cause why the conviction and sentence complained of should not be set aside. Before us the facts are not disputed, but a point is taken that the conviction is invalid because the rules made under the Defence of India Act are themselves invalid. The argument which has been put forward is that the rules are made by the Central Government under powers given to them by the Legislature under the Defence of India Act and those powers have been given in such a way that the Legislature has divested itself of its legislative powers and left them to be exercised by the Central Government, and that that handing over of legislative powers is contrary to the Government of India Act, 1935.

2. The Central Government after the outbreak of war and the proclamation of an emergency had power to make laws which dealt with not only matters usually dealt with by the Central Legislature but by the Provincial Legislatures. It must be remembered that on the outbreak of the war a Defence of India Ordinance was passed and that later on 29th September 1939 the Defence of India Act (Act 35 of 1939) was passed in supersession of the Ordinance. Section 2, Defence of India Act provides: '(1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public Order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community. (2) Without prejudice to the generality of the powers conferred by Sub-section (1), the rules may provide for, or may empower any authority to make orders providing for all or any of the following matters,' and amongst them in particular: '(xx) The control of agriculture, trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to, articles or things of any description whatsoever which can be used in connexion with the conduct of war or for maintaining supplies and services essential to the life of the community.' Section 3 provides: 'Any Rule made under Section 2 and any Order made under any such rules, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other

than this Act.'

3. Under those rules the Central Government, that is to say the Governor-General in Council, made Rule 81 (2) which provides: 'The Central Government or the Provincial Government, so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by Order provide (b) for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired and for relaxing any maximum or minimum limits otherwise imposed on such prices or rates.' As I have said it is under Rule 81 (2) (b) that the Order in question limiting the price of sugar to Rs. 13-8-0 per maund was made. It is not contended that Mr. Kirpalani, Chief Controller of Prices, Bengal, in making that Order had not the due authority for making it as a person or official. It is not contended that the Rule under which the Order was made went beyond the powers given by the Defence of India Act. It is contended that the Legislature in enacting Sub-section (2), Defence of India Act and in giving powers to the Governor-General in Council to make rules dealing with the matters mentioned was abdicating its authority and handing over legislative functions given to it by the Government of India Act to someone else. It is now more than four years since the Act was passed and the rules in question made. Many orders have been made under the rules, but as far as I am aware this is the first occasion on which it has been contended that the Act itself is not binding or valid.

4. In modern warfare where transport and means of communication are extraordinarily rapid the effects of the war may penetrate into localities far away from the fighting and have serious effects there in a very short time and experience has taught that legislation must be ready and available to deal with situation that may arise. The situations that may arise may be different in different parts and at different times. It was found in England in the last war and in India in the last war that legislation by Rule under an Act is the most convenient way of dealing with those situations. It was realised that in this war when events have moved much more rapidly legislation by Rule was more necessary than in the last war however many objections there might be to it. Shortly before the outbreak of

war in England there was passed on 24th August 1939, the Emergency Powers (Defence) Act, 1939, Section 1 of which provides as follows:

5. '(1) Subject to the provisions of this section, His Majesty may, by Order in Council, make such Regulations (in this Act referred to as 'Defence Regulations') as appear to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order, and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.' Under that provision a very large body of Orders in Council and orders made pursuant to Orders in Council were made for the defence of Great Britain including, in particular, orders for the control of the price and proper distribution of food. It will be noticed that Section 2, Defence of India Act, and S.I, English Emergency Powers (Defence) Act, 1939, contain words identical as far as they are relevant 'for maintaining supplies and services essential to the life of the community.' Section 2, Defence of India Act, provides for the Governor-General in Council to make such orders as to him may be necessary or expedient.

6. Section 2 (2) goes into a little more detail and says that 'without prejudice to the generality of the powers conferred by Sub-section (1), the rules may provide for and empower any authority to make orders' dealing with amongst others 'the control.... or maintaining supplies and services, essential to the life of the community.' Rule 81 (2) of the orders in question carries out the purposes of that. It is said that it was never intended that the Indian Legislature should act in the way it has acted. That argument is a little difficult to follow when it is remembered that its powers were derived from an Act of Parliament which name Parliament has acted in the way described which M; exactly similar to the way in which the Indian Legislature has acted. It is then said 'yes, but the Imperial Parliament does not act under a special instrument which gives it powers and that makes the difference; it is not within the powers of the Indian Legislature to do what the British Parliament did, namely, to delegate its legislative powers to someone else to carry out.' The answer to that is contained in a judgment of Lord Atkin in the Privy Council case in *Shannon v. Lower Manland Dairy Products Board* ('39) 26 A.I.R. 1939 P.C. There an Act of the State of British Columbia called the Natural Products Marketing

(British Columbia) Act, 1936, was passed. The scheme of the Act was to enable the Lieutenant-Governor in Council to set up a Central British Columbia Marketing Board to establish or approve schemes for the control and regulation within the Province of the transportation, packing, storage and marketing of any natural products, to constitute Marketing Boards to administer such schemes, and to vest in those Boards any powers considered necessary or advisable to exercise those functions. It was contended that it was not within the powers of the Legislature of British Columbia to invest the Lieutenant-Governor in Council with those powers. The matter eventually went before the Privy Council on that and other matters. At p. 722 Lord Atkin deals with this matter and says:

7. 'The third objection is that it is not within the powers of UK: Provincial Legislature to delegate so-called legislative powers to the Lieutenant-Governor in Council, or to give him powers of further delegation. This objection appears to the Lordships subversive of the rights which the provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the constitution 'has granted legislative powers. Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislature, Provincial, Dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act. Martin C. J. appears to have disposed of this objection very satisfactorily in his judgment on the reference, and their Lordships find no occasion to add to what he there said.' In the case in question Martin C.J. relied on an earlier case in the Privy Council *Hodge v. The Queen* (1883) 9 A.C. 117 and cited the passages from that judgment in favour of the view that he took, and their Lordships of the Privy Council as late as 1938 by affirming the judgment of Martin C. J. reaffirmed their own earlier judgment of 1883. Whatever may be the objections to the practice of delegating legislation, and legislating by rule, the practice is too firmly established and has received judicial recognition too often to be upset now, provided always that the legislation is within the powers given.

8. It was said further in argument that Rule 81 (4), Defence of India Rules by prescribing penalties was going beyond the powers that the Act had given to the

Governor-General in Council. The answer to that argument is contained in *Hodge v. The Queen* (1883) 9 A.C. 117 where their Lordships said 'their Lordships do not think it necessary to pursue this subject further, save to add that, if by-laws or resolutions are warranted, power to enforce them seems necessary and equally lawful.' In my opinion, there is no substance in the contentions that have been put forward in this matter. They have all been dealt with in other cases previously. They have come rather late in the day and have come only when some persons attempting to make a big profit out of the needs of the community has found himself within the grip of the law. He then contends that the Legislature is wrong. That argument has no substance and must fail. In my view this Rule must be discharged. The applicant must surrender to his bail forthwith and serve out the sentence. Certificate under Section 205, Government of India Act, is refused.

Lodge, J.

9. I agree.

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