

Mulchand Khatar Vs. the State

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Court : Kolkata

Decided On : Jul-03-1952

Reported in : AIR1953Cal492,56CWN789

Judge : Lahiri and ;Guha, JJ.

Acts : West Bengal Cotton Cloth and Yarn Control Order, 1948; ;Essential Supplies Act, 1946 - Sections 3, 3(1), 3(2) and 4

Appeal No. : Criminal Revn. No. 225 of 1952

Appellant : Mulchand Khatar

Respondent : The State

Advocate for Def. : S.M. Bose, Adv. General, ;N.K. Sen, Deputy Legal Remembrancer and ;Harideb Chatterjee, Adv.

Advocate for Pet/Ap. : Anil Kumar Das Gupta, Adv.

Judgement :

Guha J.

1. In the present case, the petitioner has been convicted under Section 7(1), Essential Supplies Act, Act 24 of 1946 and sentenced to detention till the rising of the court and to pay a fine of Rs. 200/- in default, to rigorous imprisonment for four months. An order has also been passed for forfeiture of a part of the seized cloths.

2. Various points have been urged before us and there has been considerable argument before us in regard to the validity of certain orders and Notifications. Before I go into that question our conclusions regarding the facts of this case may be stated. Briefly, the prosecution case was that the petitioner contravened Clause 13 of the W. B. Cotton Cloth and Yarn Control Order, 1948, read with Notification No. DT/TX/52/50 dated 13-10-1950, which may be compendiously described as Notification 'C' for failure to produce certain papers and documents in support of the acquisition of cloths as per Ext. I and also contravened Clause 14, W. B. Cotton Cloth and Yarn Control Order, 1948, read with Notification No. 413/TX/P/SR/5/49 dated 1-9-1949 (compendiously described hereafter as Notification 'B') for failure to submit monthly return of stock of cloths for the month ending in July and August, 1951. The case was tried by a Presidency Magistrate, who has come to the conclusion that the petitioner contravened paragraph 13 (1), W. B. Cotton Cloth and Yarn Control Order 1948, with respect to cloths mentioned in Ext. (I) which are not covered by Ext. (II). The learned Magistrate has further held that the petitioner's firm did not submit monthly return for the months ending July and August, 1951 and accordingly the petitioner has contravened the provisions of Clause 14, W. B. Cotton Cloth and Yarn Control Order, 1948, read with Notification 'B'.

3. As regards the facts of the case, it has been contended before us by Dr. Das Gupta on behalf of the petitioner that the Cash Memos Exts. 1 series, which were produced by the petitioner, go to indicate the innocence of the petitioner. As regards this contention, however, all that need be said is that for cogent reasons the learned Magistrate did not accept the Cash Memos, Exhibits I series, at their face value. He was not inclined to accept these Cash Memos as genuine and bona fide and we do not see sufficient reason to dissent from his finding on the point.

4. Then as regards non-submission of monthly return of stocks of cloths by the petitioner for the months ending July and August 1951, it was argued that the petitioner had no stock during that period and as such it was not necessary for him to submit any return. The hollowness of this argument, however, has been pointed out by the learned Magistrate in his judgment where he has referred to the fact

that in the monthly return of stocks of cloths submitted by the petitioner for the month ending June 1951, he showed closing balance of a considerable quantity of cloth -- a fact which proves conclusively that the defence version that the petitioner had no stock of cloth in hand during the relevant period is false.

5. The next argument advanced before us by Mr. Das Gupta turns upon the use of the phrase a 'competent officer' in Notification C. According to that Notification, however, licensed dealer shall preserve and produce on demand by a competent officer, cash Memo., Challan, invoice or other documents by virtue of which he acquired the textile goods that are in stock with him. Paragraph 22, W. B. Cotton Cloth and Yarn Control Order, 1948, lays down that the Director or the Deputy Commissioner or any Superintendent of Enforcement or the Controller or any officer authorised in writing by any of them in this behalf by general or special order may do certain things. It has been argued that there is no such order in writing. Our attention has, however, been drawn by the learned Advocate General to certain Notifications by the Deputy Commissioner of Police, Enforcement Branch which were published in the Calcutta Police Gazette dated 11-10-1949 giving authority to a Sub-Inspector of Police and other Police officers to do certain things. In the present case, the seizure of cloths as per Ext. I was by a Sub-Inspector of Police attached to the Enforcement Branch of the Calcutta Police. He was accordingly a competent officer within the meaning of Notification 'C'. Even apart from that fact and even assuming that the seizure of cloths was made by an officer who was not an officer competent within the meaning of Notification 'C' that fact alone cannot have any bearing when the validity of the conviction of the petitioner is concerned.

The cloths might have been seized Illegally but that does not affect the question regarding the guilt of the petitioner in the present case when he has been convicted for contravention of certain provisions regarding the submission of monthly returns of his stock of cloths.

6. So far, therefore, as the merits of the case go, apart from the validity or otherwise of certain Notifications and orders, we have reached the conclusion that the petitioner has been rightly convicted.

7. This brings me to the main questions which have been canvassed before us at a considerable length. The questions are, no doubt, of some importance affecting, as they do, the validity or otherwise of certain provisions of the Essential Supplies Act, namely, Act 24 of 1940 and certain Notifications and Orders issued in connection therewith.

8. On behalf of the petitioner, Mr. Das Gupta has argued this branch of the case from different stand points. At one stage in his argument he contended that Sub-section (1) of Section 3 of Act 24 of 1946, amounted to invalid delegation of legislative power and as such any action done by the Central Government in pursuance of the power purported to have been conferred upon it by that Sub-section was bad as such delegated legislation was bad. It may be observed, however, that this point was not stressed by Mr. Das Gupta later on in the course of his argument.

9. Secondly, it has been argued by Mr. Das Gupta and on this aspect of the argument he has laid considerable stress that Section 4 of the Act constituted invalid, sub-delegation of legislative power.

10. Thirdly, it has been contended by Mr. Das Gupta that though the relevant Notifications, that is, Notifications 'B' and 'C' were issued by the Director in purported compliance with paragraphs 13 and 14, W. B. Cotton Cloth and Yarn Control Order, 1948, those paragraphs could not and did not confer any legal authority to the Director of Textiles, West Bengal, to issue those Notifications. The authority of the Governor of West Bengal in issuing Notification No. 10097D C. S. dated 13-8-1948 on the basis of which the W. B. Cotton Cloth and Yarn Control Order, 1948, was passed was also called in question by Mr. Das Gupta.

11. As Mr. Das Gupta's arguments obviously raised points of considerable importance, it is necessary to examine the validity of his contentions. Both, Mr. Das Gupta on behalf of the petitioner and the learned Advocate General on behalf of the State, laid considerable stress upon the very important pronouncement of the Supreme Court in the case of -- 'In re Article 143, Constitution of India Delhi Laws Act, 1912', reported in 1951 S C R at pages 747 to 1125 (A). I shall have occasion to refer to certain passages of that judgment.

12. It has been mentioned already that Mr. Das Gupta has, in directing his attack against the provisions of the Essential Supplies Act and the Notifications issued in connection therewith, relied upon the validity or otherwise of delegation or sub-delegation of legislative powers. He has drawn our attention to certain passages in the judgment referred to above. The answer of the learned Advocate General is broadly that the impugned legislation does not amount really to delegation or sub-delegation of essential legislative power. It amounts, according to him, to really to the exercise of ancillary powers attaching to the essential legislative power. He has contended that neither Section 3 nor Section 4 of the impugned Act -- as a matter of fact it was those provisions of that Act which were selected by Mr. Das Gupta for attack -- amounts to delegation or sub-delegation at all in the strict sense of those terms. According to the learned Advocate General delegation in the present context means legislation outside the scope of the Act. In this connection, he has drawn our attention to the observations of Kania C. J. at pages 767 and 768 of the Delhi Laws Act, 1912 case (A) referred to before as regards the true meaning of the term 'delegation'.

'When a legislative body passes an Act it has exercised its legislative function. The essentials of such function are the determination of the legislative policy and its formulation as a rule of conduct. * * * *

'While the so-called delegation, which empowers the making of rules and regulations, has been recognised as ancillary to the power to define, legislative policy and formulate the rule of conduct.'

13. In this connection the learned Advocate General has also relied upon the following passage from Halsbury's Laws of England: 'A duty imposed or a power granted by Parliament carries with it the power necessary for its performance or execution. Similarly an authority given by Statute to do certain work authorises the doing not only all things absolutely necessary for its execution but of all things reasonably necessary.'

The learned Advocate General has urged further that all the learned Supreme Court Judges who decided the -- 'Delhi Laws Act case', (A) referred to above are unanimous, at least, on the point that giving power to another body to carry out the

policy laid down by the Legislature does not amount to delegation of essential legislative power which means a determination of the Legislative policy and the formulation of the same as a rule of conduct. In order to establish his proposition that the learned Supreme Court Judges are unanimous on that particular point, he has drawn our attention to various passages in the different judgments in the -- 'Delhi Laws Act case' (A). It is not necessary for our present purposes to refer to all the passages. It will suffice if we refer to only a passage or two. The paragraph in the judgment of Kania C. J. at the bottom of page 798 beginning with 'As a result of considering all these decisions.....' and ending with 'to have subordinate legislative powers' at p. 799 may be looked at.

Similarly, reference may be made to the observations of Mahajan J., at page 939 of the Report where he states:

'Delegation is permissible in cases where there is a legal or physical necessity to do so because without trusting some person or persons it would be impossible efficiently to discharge the duties.'

Then again, reference may also be made to the last paragraph in the judgment of Mukherjea J. at page 973 of the Report. In that paragraph, the learned Judge observes inter alia that

'delegation of legislative authority could be permissible taut only as ancillary to, or in aid of, the exercise of law-making powers. by the proper legislature..... The primary or essential duty of law-making has got to be discharged by the legislature itself; delegations may be resorted to only as a secondary or ancillary measure.'

It is unnecessary to multiply instances. The proposition, contended for by the learned Advocate General may, therefore be held to have been accepted in the Delhi Laws Act case.

14. The next point is whether that proposition is applicable to our present case. The learned Advocate-General contends that Sub-section (1) of, Section 3 of the impugned Act does not amount to delegation at all in the strict sense of the term. The power which has been conferred on the Central Government by that sub-

section is only an ancillary power. The essential function has been discharged by the legislature itself when it laid down its policy, in however wide terms it may be, regarding the control of production etc. But legislative policy has been declared in the preamble of the Act and the primary legislative standard has been laid down in Sub-section (2) of Section 3 of the Act and it is only powers ancillary to essential legislative power that have been conferred on the Central Government by Section 3 and on the State Government by Section 4 of the Act, though the latter can exercise the powers conferred upon it, that is, make orders under Section 3 only when directed to do so by the Central Government. The impugned sections, therefore, in the submission of the learned Advocate General, do not amount to delegation or sub-delegation or double delegation at all, in spite of the inartistic expression 'delegation of powers' used as a marginal note to Section 4. That marginal note cannot be utilised to control the plain words of Section 4, according to which the State Government is acting simply to carry out the policy of the legislature or the powers which it derives directly from the legislature after having received directions from the Central Government.

This seems to be a legitimate construction of Sections 3 and 4 and looked at from this stand-point no question of invalidity arises. Then, after having derived its authority practically from the Central legislature the State Government has made an Order, namely, the W. B. Cotton Cloth and Yarn Control Order, 1948. The terms used in the appropriate Notification by the Government, namely, Notification No. 10097 D.C.S. dated 13-8-1948 are significant. The Governor purports to make the order, namely, the W. B. Cotton Cloth and Yarn Control Order, 1948 in exercise of the powers conferred by Sub-section (1) of Section 3 of the Essential Supplies Act read with certain sub-clause of Sub-section (2) of Section 3 and also with Notification No. 173/1/TA/46 issued by the Central Government on 28-12-1946 under Sub-section (4) of the Act. Then by virtue of the power conferred upon him by paragraphs 13 and 14 of the former Notification, that is, Notification No. 10097 D.C.S. dated 13-8-1948, the Director of Textiles, West Bengal, who is a controller within the meaning of paragraph 3 (e), W. B. Cotton Cloth and Yarn Control Order, 1948, has given certain directions by Notifications B and 'C', referred to before. There is nothing in these Notifications going beyond the scope of the legislative policy as laid down in the relevant statute that is Act 24 of 1946.

They seek simply to carry out that policy and on the ultimate analysis they derived their authority from the Central Statute. They are, therefore, quite valid and the petitioner, who, it is pertinent to point out, has been convicted under Section 7 of the Central Statute cannot be permitted to challenge successfully the authority under which he has been convicted.

15. The matter may be looked at from a different standpoint specially in view of the challenge offered by Mr. Das Gupta to the validity of what he has called sub-delegation or double delegation under Section 4, Essential Supplies Act. The general words describing the scope of Central Government's powers to legislate by means of notified orders is so wide as to authorise what has been done. Reference may in this connection be made to Section 3(1), Section 3(3) and Section 5. Section 3(1) specifically provides that notified orders may be passed by the Central Government to provide for regulation or prohibition of production etc., in other words, for carrying out the purposes of the Act as contained in Section 3(2). Therefore, even if the direction given by the Central Government to the State Government under Section 4, as contained in Notification No. 73/1-TA-46 dated 28-12-1948 be held to be an instance of sub-delegated legislation, it is not invalid on the simple ground that such delegation is unlawful. In the present case sub-delegation, if any, was authorised by the Act itself, and as such it is not invalid.

16. That such sub-delegation is permissible is clear from the case of -- 'Shannon v. Lower Mainland Dairy Products Board', AIR 1939 PC 36 (B). In that case, the validity of the relevant Act which permitted even sub-delegation of legislative power was questioned on the ground of delegation of legislative power to the Lieutenant Governor in Council and by the latter to the Marketing Boards. In delivering the judgment of the Privy Council Lord Atkins observed that the objection was 'subversive of the rights which the Provincial Legislature enjoys.' As pointed out by Das J. in the case of -- 'In re: The Delhi Laws Act, 1912' (A), the Privy Council not only upheld the validity of a single delegation but also upheld the validity of a sub-delegation of power. (See page 1060 of the report). As pointed out by him further, the objection against delegation or sub-delegation was regarded by Lord Atkins in -- 'Shannon's case' (B) 'as subversive of the rights' of the Provincial Legislature (page 1070). Reference may also be made to the following passage in

the judgment of the learned Judge at p. 1063: 'We have seen that in -- 'Shannon's case' (B) the power given to the Lieutenant Governor in Council expressly included a power of further delegation. And yet the Privy Council upheld the enactment. If power of legislation contains within itself the power of delegation then logically the donee of the legislative power must also have the power of delegation as part of the content of the power delegated to him. The reasoning adopted by the learned Judges in the last Canadian case appears to me to be perfectly logical'.

Even assuming that the authority given to the State Government by Section 4 of Act 24 of 1946 upon direction from the Central Government to make order under Section 3, amounted to delegation or sub-delegation of legislative power such power or authority is ancillary to legislation and as pointed out in the case of -- *Hodge v. The Queen*, (1883) 9 AC 117 (C) without such an authority an attempt to provide for varying details and machinery to carry them out might become oppressive or absolutely fail. Again, as pointed out in an Australian case, namely, -- *Baxter v. Ah Way*, (1909) 8. CLR 626 (D), 'The Federal Parliament has, within its ambit, full power to frame its laws in any fashion using any agent, any agency, any machinery that it thinks fit.'

17. The fact that -- 'Shannan's case' (B) and -- 'Hodge's case' (C) were from Canada does not make any real difference so far as the applicability of the principle in the present Statute that is, Act 24 of 1946 of an Indian Legislature is concerned. Reference may in this connection be made to the words of Das J. at page 1070 of the Report in -- *'Delhi Laws, case'* (A) to the effect that 'one cannot but concede the existence of the power of delegation in the legislative power itself of the Indian. Legislature even though it was not a sovereign legislature like the British Parliament.

18. Testing the impugned provisions, namely, Sections 3 and 4 of Act 24 of 1948, therefore, in the light of the principles formulated above, even assuming that they amount to delegation and sub-delegation it is clear that they cannot be invalidated on that account.

19. It remains now to notice an argument advanced by Mr. Das Gupta on the basis of certain observations made by Ray C. J. or the Orissa High Court in the case of

-- 'Fakir Mahammad v. King', : AIR1952 Ori87 (E) --a case which it may be noted was decided before -- 'In re Delhi Laws Act, 1912 case' (A). It has been argued by Mr. Das Gupta on the strength of that decision that the Notifications B and C issued by the Director of Textiles, West Bengal, an authority or officer subordinate to the State Government was not by name or by designation specified in the direction, that is the notified order, that is Notification No. 73/1-TA/46 dated 28-12-1946, issued by the Central Government. It is argued inter alia that unless and until the Director who is obviously an officer subordinate to the State Government has been specifically directed by the Central Government, he cannot exercise any power of the kind that he has done in the present case that is, issue Notifications B and C. Even assuming that this argument receives support from the Orissa case referred to above it loses its point in consideration of the view we have taken regarding the authority for the above Notifications. In our view those Notifications were issued by an officer subordinate to the State Government and he was purporting to exercise the powers which the State Government could and did lawfully confer upon him in exercise of its own powers derived from the Statute, that is, Act 24 of 1946. In this view of the case, it does not matter that the Central Government itself did not clothe him direct with the necessary powers.

In our view, the Provincial Government for the reasons which I have explained before, derived its authority to act within the scope of the Act from the legislature itself though it did so in pursuance of a notified order issued under Section 4 by the Central Government. In order to carry out the policy of the Act, the Provincial Government could, in our view, give necessary powers to its officers and this is what the Provincial Government, thinks the Governor did by Notification No. 10097 D.C.S. dated 13-8-1948 which has been referred to before. Under paragraph 13, W. B. Cotton Cloth and Yarn Control Order, 1948 brought into existence by that Notification, the Controller was authorised to give certain directions to dealers. Similar powers are conferred upon the Controller by paragraph 14 of the W. B. Cotton Cloth and Yarn Control Order, 1948. It is in exercise of the powers conferred upon him, that the Controller has issued Notifications B and C the validity of which have been questioned before us by Mr. Das Gupta. In our view, the Controller as quite competent deriving his authority direct from the Provincial Government to give such directions ,by issuing those Notifications. Neither para-

graph 13 nor paragraph 14, W. B. Cotton Cloth and Yarn Control Order, 1948, nor the Notifications issued in pursuance thereof can, in our view, be invalidated on the ground alleged by Mr. Das Gupta. In exercise of the ancillary powers which had been conferred upon the Provincial Government, the Governor, clothed the Director with power to give certain directions in accordance with Paragraphs 13 and 14. Thus the Governor, in our view, was competent to do and the Director again, in our view, was quite competent to issue Notifications, B and C on the basis of the power that he derived from the Governor. This is one of the circumstances which distinguish the present case from the Orissa case referred to before.

20. We hold, therefore, that from, whatever (standpoint the impugned provisions, namely, Sections 3 and 4, Essential Supplies Act and the impugned Notifications referred to above are considered they are quite valid and the conviction of the petitioner on basis of these Notifications cannot be successfully challenged.

21. In the result this Rule must be discharged and the order of conviction and sentence passed by the learned Presidency Magistrate as also the order of forfeiture must stand.

Lahiri J.

22. I agree.