

The State Vs. Jorawar

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Court : Himachal Pradesh

Decided On : Sep-15-1952

Reported in : AIR1953HP18

Judge : Chowdhry, J.C.

Acts : [Constitution of India](#) - Article 23; ;Chamba Paid Force Labour Act, 2004B

Appeal No. : Criminal Ref. No. 61 of 1951

Appellant : The State

Respondent : Jorawar

Advocate for Def. : Party in person

Advocate for Pet/Ap. : B. Sita Ram, Govt. Adv.

Judgement :

ORDER

Chowdhry, J.C.

1. This is a reference by the District Magistrate of Chamba under Section 438, Criminal P. C., recommending that the conviction of Jorawar under Section 2 of the Chamba Paid Forced Labour Act (III of 2004 B) by the Tahsildar of Tahsil Churah be set aside and the fine of Rs. 5/- imposed upon him refunded.

2. The preamble of the Act states that whereas 'begar' system existed from early days of the Administration, and by its abolition on 10-1-1944 it was experienced that even paid labour on standardized rates was not available for the State duties; it had become necessary to pass the Act in question. Under Section 2 of the Act any adult male tiller of the soil or malguzar, who was not by notification or by reason of ill health or otherwise exempt from rendering forced paid labour, wilfully refused to render it shall be liable to a fine not exceeding Rs. 20/-. Section 3 enabled the person whose services were requisitioned to offer his substitute to do the work. Section 4 provided for the imposition of fine by a revenue Court and for its recovery as an arrear of land revenue. Section 5 provided for an appeal from the order of the fine. Section 6 laid down the special occasions on which alone the said paid forced labour was to be requisitioned. Finally, Section 7 laid down that the payment was to be made in cash at the schedule rates current at the time. This was the entire Act.

3. As pointed out above, the Act provided for imposition of fine by a revenue Court, and it was, therefore, as an Assistant Collector second grade, and not as a second class Magistrate, as stated by the learned District Magistrate, that the Tahsildar of Churah imposed the said fine of Rs. 5/- on Jorawar on 28-5-1951. The order in question shows that the fine was imposed on Jorawar because the latter refused to carry a load of some Government property on being required to do so by the Tahsildar on 22-4-1951. The District Magistrate has made the reference on the ground that the said Act had already been repealed on 29-6-1949 by the Himachal Pradesh (Repealing) Order, 1949. That is no doubt correct. The learned Government Advocate did not oppose the reference but stated that in view of the ruling of their Lordships of the Supreme Court in -- 'In re the Delhi Laws Act (1912), Etc.', AIR 1951 SC 332, it is doubtful whether the delegation of legislative function to the Central Government whereunder the Act in question was passed, was intra vires the power of the Constituent Assembly.

It is however not necessary to go into the question for the said Chamba Act, under the provisions of which Jorawar was convicted and sentenced, was in any ease repugnant to the provisions of Article 23 of the [Constitution of India](#). That Article prohibits 'begar' and other similar forms of forced labour, except for compulsory

service for public purposes. Conscription for the defence of the country, or for social services, are possible instances of imposition of compulsory service for public purposes. That cannot however be said of imposition of compulsory service for the purpose of carrying a load of Government property by the Tahsildar or any Government servant in normal times. It is clear, therefore, that the services of Jorawar were requisitioned merely for 'begar', or forced labour.

4. The reference is accepted and the conviction and sentence of Jorawar are set aside and he is acquitted. The fine, if already realised from him, shall be refunded.

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