

SUPREME COURT OF INDIA

Joyal Agarwala

Vs.

The State. Union of India - Intervener. Bichan Chand Motha

(H.J.Kania,CJI., M.Patanjali Sastri, B.K.Mukherjea, JJ., S.R.Dass and N.Chandrashkar Aiyar JJ)

04.10.1951

JUDGMENT

Chandrasekhara Aiyar,J.,

1. These two criminal appeal are from convictions of the appellants by the High Court at Calcutta. In the first case, leave to appeal to this court was granted by the High Court under article 134 (1) (c) of the Constitution of India. In the second case, special leave to appeal was granted by this court under article 136 (1) of the Constitution. The appeals were heard together, but as they are by different parties and the facts are different, it is desirable to have two separated judgments.

2. The appellant, Joyal Agarwala, who was a salesman in a retail shop in Pulbazar in the district of Darjeeling in the State of West Bengal, was charged with having sold a piece of textile cloth at a price in excess of the controlled price. Fro this contravention of the provisions of clause 24 (1), of the Cotton Textiles Control Order, 1948, he was convicted by the Sub-Divisional Magistrate of Darjeeling under section 7 of the Essential Supplies (Temporary Powers) Act (Act XXIV) of 1946 (hereinafter referred to as the Essential Supplies Act), and sentenced to six months rigorous imprisonment. On appeal to the Sessions Judge, the appellant was acquitted on two grounds, viz., (1) that no sanction was previously obtained for the prosecutions required by clause 36 of the Cotton Textiles Control Order, and (2) that the Essential Supplies Act was not in force in the district of Darjeeling on the date of the occurrence. On appeal to the High Court by the State of West Bengal, the point about the absence of sanction under clause 36 of the Control Order was given up by the present appellant as its necessity had been abolished by a later Notification learned Judges of the High Court held that the Act was validly extended to the district of Darjeeling and was in force in that area on the date of the occurrence, viz. 14-10-1949. The acquittal of the appellant was set aside, the order of conviction passed by the Magistrate was restored, and the appellant was sentenced to four month's rigorous imprisonments.

3. To understand the main legal argument as to whether the Essential Supplies Act 1946 was in force at the time of the alleged commission of the offence, it is necessary to set out the

relevant provisions of a few Acts and Orders and their dates. The Essential Supplies Act Came into force on 19-11-1946. Section 92 (1) of the Government of India Act, 1935, provided as follows :-

".... no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or partially excluded are, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area,..... have effect subject to such exceptions or modifications as he thinks fit."

4. In exercise of the powers conferred on him by this section, the Governor of Bengal by a notification published on the 14th December, 1946, directed that the Essential Supplies Act shall apply to the district of Darjeeling, which was an excluded area.

Section 1 (3) of the Essential supplies Act provides that it shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946 (9&10 Geo. 6, Ch. 39). Section 4 of the latter Act provides as follows :-

" The period mentioned... is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceases to operate or, if the Governor-General by public notification so directs, the period of two years beginning with that date :

Provided that if and so often as a resolution approving the extention of the said period is passed by both Houses of Parliament, the said period shall be extended for a further period of twelve months from the date on which it would otherwise expire so, however, that it does not in any case continue for more than five years from the date on which proclamation of Emergency ceases to operate."

5. The Proclamation of Emergency referred to in this section ceases to operate on 31-3-1946. In the absence of a notification by the Governor-General under the second part of the section, the Essential Supplies Act remained operative only till 31-3-1947, under the first part. The Governor-General, however, issued a notification on 3-3-1947 continuing its force for a period of 2 years from the date of cessation of emergency. By virtue of this notification, therefore, the Essential Supplies Act would remain in force till 31-3-1948. On 18-7- 1947, the Indian Independence Act was passed, and India became a Dominion on 15-8-1947. Under section 9 read with section 1947, which substituted the words "Dominion Legislature" for "both Houses of Parliament" in the proviso to section 4A by way of adaptation, providing that the powers of the Dominion Legislature shall be exercised by the Constituent Assembly. On 25-2-1948, the Constituent Assembly passed its first resolution extending the operation of the Essential Supplies Act by one year up to 31-3-1950.

6. In respect of these Acts and notifications three questions were urged on behalf of the appellants :- firstly, whether the Governor's notification of the 14th December, 1946, continued the operation of the Essential Supplies Act in the district of Darjeeling beyond the

then period of life of the Act, namely, the period of one year from the date of cessation of emergency; secondly, whether a fresh notification by the Governor under section 92 (1) of the Government of India Act was not necessary after the life of the Essential Supplies Act was extended by the Governor-General's notification of 3-3-1947; and thirdly, whether the resolutions passed by the Constituent Assembly could operate to extend the life of the Essential Supplies Act.

Now, it is clear under section 1 (3) of the Essential Supplies Act, it shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946. The period mentioned in that section is not necessarily one year from the date of cessation of emergency. It can be 2 years if the Governor General by notification so directs, and it may go up to a maximum period of 5 years in instalments of 1 year each, under the proviso. The fixation of the period of operation of the Essential Supplies Act is thus not left to any other enactment. It is provided by the Act itself. As stated already, the notification of the 14th December, 1946, issued by the Governor applied the Essential Supplies Act to the Darjeeling district, and its life was extended up to 31-3-1948 by the notification of the Governor-General. It is difficult to see why a fresh notification under section 92 (1) of the Government of India Act is required to continue the life of the Act in the district of Darjeeling. The Government's notification extended the Act to Darjeeling without specifying any particular period for its applicability to that district, and it follows therefore that the Act would remain in force in the district so long as it remained in force in the rest of India. It is only if its effect had ceased earlier than the coming into force of the Indian Independence Act and there was a re-enactment by the legislature which was sought to be applied to an excluded area, that a notification by the Governor under section 92 (1) of the Government of India Act might be necessary. Otherwise, the question of fresh notification does not arise.

6. Section 19 (4) of the Indian Independence Act, 1947, provides as follows:-

"In this Act, except so far, as the context otherwise requires -
References to the Government of India Act, 1935, include references to any enactment amending or supplementing that Act, and, in particular, references to the India (Central Government and Legislature) Act, 1946;....."

7. The adaptations made by the Governor-General under section 9 and 10 of the Indian Independence Act substituted the words "Constituent Assembly" for "both Houses of Parliament" in section 4 of the India (Central Government and Legislature) Act, and the Constituent Assembly by two resolutions of different dates has extended the life of the Essential Supplies Act till 31-3-1950. As soon as the adaptations came into force by order of the Governor-General, the Constituent Assembly required the powers conferred on both Houses of Parliament under section 4 of the India (Central Government and Legislature) Act. The validity of the adaptations is beyond question.

8. The case of Jalindra Nath Gupta v. The province of Bihar and other (1) has no application here. In the case now before us, the Legislature has itself applied its mind and has fixed the duration of the Act, but has left the machinery to reach the maximum period by instalments

to be worked out in a particular manner. There is here no question of delegation at all, much less delegation of any legislative power.

9. The appeal therefore fails and is dismissed.

10. In this case, the appellant Bichan Chand Molla was charged with loading 28 bags of millmade cloth from a truck into a specially chartered aircraft at the Dum Dum airport, on behalf of his employers, Messrs. Amarchand Pannalal, without a permit, as required under clause 4 (2) of the West Bengal Cotton Cloth and Yarn Movement Control Order, 1947. He was convicted under section 7 (1) read with section 8 of the Essential Supplies Act and sentenced to 9 months rigorous imprisonment and a fine of Rs. 1,000 by the 1st Class Magistrate of Barrackpore. The Sessions Judge of 24-Parganas dismissed the appeal preferred by the accused. A revision application filed by him in the High Court shared the same fate.

11. The legal argument urged in this appeal was the same as in the earlier appeal, and has to be repelled as untenable for the reasons already stated. A special point was sought to be argued that the element of mens rea was wanting. But the question was considered by the High Court, and it was held that there are two facts from which mens rea could be inferred. When questioned, the accused stated that he was loading handloom bales and not millmade cloth. He had no permit with him and was not able to produce any even from his employers. These facts under the circumstances warrant the inference of a criminal intent.

12. This appeal also will therefore stand dismissed.