Kathi Raning Rawat

Vs

The State of Saurashtra

(CJI M. Patanjali Sastri, Vivian Bose, Chandrashekar Aiyar, B. K. Mukherjea, Saiyid Fazal Ali, N. Chandrshekar Aiyar JJ)

27.02.1952

JUDGMENT

DAS J. -

The appellant before as was tried by a Special Court constituted under the Saurashtra Public Safety Measures (Third Amendment) Ordinance No. LXVI of 1949 for offences alleged to have been committed by him under section 302, 307 and 392 of the Indian Penal Code. On December 20, 1950, he was found guilty of the offences charged against him and was convicted and sentenced to death under section 302, Indian Penal Code, and to seven years' rigorous imprisonment under each of the charges under sections 307 and 392, Indian Penal Code, the sentences of imprisonment running concurrently. He appealed to the High Court of Saurashtra but the High Court, by its judgment pronounced on February 28, 1951, rejected his appeal and confirmed his conviction and the sentences passed by the Special Court. By its order made on March 21, 1951, however the High Court granted him a certificate for appeal to this Court both under article 132 and article 134 (1) (c) of the Constitution. This appeal has accordingly been filed in this Court.

A preliminary point has been raised by learned counsel for the appellant, namely, that the Special Court had no jurisdiction to try this case and the whole trial and conviction have been illegal and void ab initio and should be quashed in limine. It is necessary, for the disposal of the preliminary objection, to refer to the provisions of the Ordinance and the circumstances in which the Special Court came to be constituted.

In the beginning of 1948 the different States in Kathiawar were integrated into what is now the State of Saurashtra. About that time different dacoits indulged in lawless activities in Kathiawar and in particular in the area now known as the districts of Gohilwad and Madhya Saurashtra and on the outskirts of Sorath that was formerly a district in Junagadh State. Their activities gathered such strength and virulence that the security of the State and the maintenance of public peace became seriously endangered. In order to check their nefarious activities the Rajpramukh of the State of Saurashtra on April 2, 1948, promulgated Ordinance No. IX of 1948. The preamble of the Ordinance recited that it was "expedient to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra." That Ordinance gave power to the State Government to make orders, amongst other things, for detaining or restricting the movements or action of persons and impose collective fines. The Rajpramukh on April 5, 1948 which extended to the State of Saurashtra the provisions of the Code of Criminal Procedure (Act V of 1898) subject to certain adaptations and modifications mentioned in the Schedule thereto. It appears from the affidavit of Ramnikrai Bhagwandas Vesavada, Assistant Secretary in the Home Department, Government of Saurashtra that the Ordinance was not sufficient to cope with the activities of the gangs of dacoits and that cases of looting, dacoity, robbery, nose-cutting and murder

continued as before and indeed increased in number, frequency and vehemence and it became impossible to deal with the offences at different places in separate Courts of law expeditiously. In view of the serious situation prevailing in those districts the State of Saurashtra considered it necessary to constitute. Special Courts and to provide for a special procedure of trials so as to expedite the disposal of cases in which offences of certain specified kinds had been committed. The Rajpramukh of Saurashtra accordingly, an November 2, 1949, promulgated Ordinance No. LXVI of 1949 called "The Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949", whereby it amended the Saurashtra State Public Safety Measures Ordinance No. LXVI of 1949 several sections were added to Ordinance No. IX of 1948. Three of the sections thus added, which are material for our present purposes, were sections 9, 10 and 11 which run as follows :-

> "9. Special Courts. - The Government of the United State of the Saurashtra may by notification in the Official Gazette constitute Special Courts of Criminal Jurisdiction for such area as may be specified in the notification.
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> 10. Special Judges, - The Government of the united State of Saurashtra may appoint a Special Judge to preside over a Special Court constituted under section 9 for any area any person who has been a Sessions Judge for a period of not less than 2 years under the Code of Criminal Procedure, 1898, as applied to the united State of Saurashtra.
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> 11. Jurisdiction of Special Judges - A Special Judge shall try such offences or classes of offences or such cases or classes of cases as the Government of the United State of Saurashtra may, by general or special order in writing, direct."

Pursuant to the provisions of the Ordinance as amended the State of Saurashtra issued a notification, the material part of which is as follows;-

> "No. H/35.5 - C - In exercise of the powers conferred by sections 9, 10 and 11 of the Saurashtra State Public Safety Measures, Ordinance, 1948 (Ordinance No. IX of 1948) hereinafter referred to as the said Ordinance), Government is pleased to direct -
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> (i) that a Special Court of a Criminal Jurisdiction (hereinafter referred to as the said Court) shall be constituted for the areas, mentioned in the schedule hereto annexed, and that the headquarters of the said Court shall be at Rajkot.
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> (ii) that Mr. P. P. Anand shall be appointed as a Special Judge to preside over the said Court and
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> (iii) that the Special Judge hereby appointed shall try the following offences, viz. -
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> (a) offences under sections 183, 189, 190, 212, 216, 224, 302, 304, 307, 323 to 335, 341 to 344, 379 to 382, 384 to 389 and 392 to 402 of the Indian Penal Code 1860 (XLV) of 1860) as adapted and applied to the United State of Saurashtra, and
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> (b) all offences under the said Ordinance, except an offence punishable under sub-section (6) of section 2 of the said Ordinance in so far as it relates to the contravention of an order made under clause (a) of sub-section (1) of the said section."

The appellant having been charged with offences included in the Notification he was tried by the Special Court with the result I have mentioned. The preliminary objection raised on his behalf is that section 11 of the Ordinance is invalid in that (a) it offends against article 14 of our Constitution and (b) it authorises illegal delegation of legislative power to the State Government.

In support of the first ground on which the preliminary objection is founded reliance is placed by learned counsel for the appellant on the judgment of this Court in Case No. 297 of 1951 (The State of West Bengal v. Anwar Ali Sarkar). That case was concerned with the validity of the trial of the respondent therein by a Special Court constituted under the provisions of the West Bengal Special Courts Act, 1950 (West Bengal Act X of 1950). The preamble to that Act recited that it was "expedient to provide for the speedier trial of certain offences." Sections 3, 4 and 5 (1) of the west Bengal Special Courts act 1950, reproduced substantially if not verbatim the provisions of sections 9, 10 and 11 of the Saurashtra Ordinance of 1948 as subsequently amended. The notification issued by the State of West Bengal under that Act was however different from the notification issued by the State of Saurashtra in that the West Bengal notification directed certain specific "cases" to be tried by the Special Court constituted under the West Bengal Special Courts Act. That notification had obviously been issued under that part of section 5 (1) of the West Bengal Special Courts Act which authorised the State Government to direct particular "cases" to be tried by the Special Court. A majority of this court held that at any rate section 5 (1) of the West Bengal Special Courts Act in so far as it authorised the State to direct "cases" to be tried by the Special Court and the notification issued thereunder offended against the provisions of article 14 of the Constitution and as such were void under article 13. Constitution and as such were void under article 13. The Saurashtra notification however has been issued quite, obviously under that part of section 11 which authorises the State Government to direct "offences", "classes of offences" or "classes of cases" to be tried by the Special Court and the question before us on the present appeal is whether that part of section 11 under which the present notification has been issued offends against the equal protection clause of our Constitution. It is contended that the opinion expressed by the majority of this Court in the West Bengal case on the corresponding part of section 5 (1) of the West Bengal Special Courts Act was not necessary for the purposes of that appeal and requires reconsideration.

After referring to our previous decisions in Chiranjit Lal Choudhury v. The Union of India and Others and The State of Bombay v. F. N. Balsara. I summarised the meaning, scope and effect of article 14 of our Constitution as I understand it in my judgment in the West Bengal case which I need not repeat but to which is fully adhere. It is now well established that while article 14 forbids class legislation if does not forbid reasonable classification for the purposes of legislation. In order, however to pass the rest of permissible classification two conditions must be fulfilled namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary, is that there must be a nexus between the basis of classification and the object of the Act.

It will be noticed that section 11 of the Saurashtra Ordinance, like section 5 (1) of the West Bengal Special Courts Act, refers to four distinct categories, namely, "offences", "classes of offences", "cases" and "classes of cases" and empowers the State Government to direct any one or more of these categories to be tried by the Special Court constituted under the Act. The expressions "offences", "classes of offences", and "classes of cases" clearly indicate and obviously imply a process of classification of offences of cases. Prima facie those words do not contemplate any particular offender or any particular accused in any particular case. The emphasis is on "offences", "classes of offences" or "classes of cases". The classification of "offences" by itself is not calculated

to touch any individual as such, although it may, after the classification is made, affect all individuals who may commit the particular offence. In short, the classification implied in this part of the sub-section has no reference to, and is not directed towards, the singling out of any particular person as an object of hostile State action but is concerned only with the grouping of "offences", "classes of offences" and "classes of cases" for the purposes of the particular legislation as recited in its preamble.

An argument was raised, as in the West Bengal case that even this part of the section gave an uncontrolled and unguided power of classification which might well be exercised by the State Government capriciously or "with an evil eye and an unequal hand" so as to deliberately bring about invidious discrimination between man and man although both of them were situated in exactly the same or similar circumstances. I do not accept this arguments as sound, for the reasons I adopted in my judgment in the West Bengal case in repelling this argument apply with equal, if not with greater, force to the argument directed against the validity of the Saurashtra Ordinance. It is obvious that this part of section II of the Ordinance which, like the corresponding part of section 5 (1) of the West Bengal Special Courts Act, confers a power on the state Government to make a classification of "offences", "classes of offences" or "classes of cases", makes it the duty of the State government to make a proper classification that is to say, a classification which must fulfil both conditions, namely, that it must be based on some intelligible differentia distinguishing the offences grouped together from other offences and that that differentia must have a reasonable relation to the object of the Act as recited in the preamble. A classification on a basis which does not distinguish one offence from another offence or which has no relation to the object of the Act will be wholly arbitrary and may well be bit by the principles laid down by the Supreme Court of the United States in Jack Skinner v. Oklahoma. On the other hand, as I observed in the West Bengal case, it is easy to visualise a situation when certain offences, by reason of the frequency of their perpetration or other attending circumstances, may legitimately call for a special treatment in order to check the commission of such offences. Are we not familiar with gruesome crimes of murder, arson, loot and rape committed on a large scale during communal riots in particular localities and are they not really different from a case of stray murder, arson, loot or rape in another district which may not be affected by any communal upheaval? Does not the existence of the gangs of dacoits and the concomitant crimes committed on a large scale as mentioned in the affidavit filed on behalf of the State clay for prompt and speedier trial for the maintenance of public order and the preservation of peace and tranquillity in the State and indeed of the very safety of the community ? Do not those special circumstances add a peculiar quality to the offences or classes of offences specified in the notification so as to distinguish them from stray cases of similar crimes and is it not reasonable and even necessary to the State with power to classify them into a separate group and deal with them promptly ? I have no doubt in my mind that the surrounding circumstances and the special features mentioned in the affidavit referred to above furnish a very cogent and reasonable basis of classification, for they do clearly distinguish these offences from similar or even same species of offences committed elsewhere and under ordinary circumstances. This differentia quite clearly has a reasonable relation to the object sought to be achieved by the Act, namely, the maintenance of public order, the preservation of public safety, the peace and tranquillity of the State. Such a classification will not be repugnant to the equal protection clause of our Constitution, for there will be no discrimination for whoever may commit the specified offence in the specified area in the specified circumstance in the specified area in the specified circumstances will be treated alike and sent up before a Special Court for trial under the special procedure. Persons thus sent up for trial by a Special Court according to the special procedure cannot point their fingers to the other persons who may be charged before an ordinary Court with similar offences alleged to have been committed

by them in a different place and in different circumstances and complain of unequal treatment, for those other persons are of a different category and are not their equals. In my judgment this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore not an arbitrary power. The Legislature has left it to the State Government to classify offences or classes of offences or classes of cases for the purpose of the Ordinance for the State Government is in a better position to judge the needs and exigencies of the state and the Court will not lightly interfere with the decision of the State Government. If at any time, however the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of its power if it is purposeful, or in excess of its powers even if it is done in good faith, and in either case the resulting discrimination will encounter the challenge of the Constitution and the Court will strike down, not the law which is good, but the abuse or misuse or the unconstitutional administration of the law creating or resulting in unconstitutional discrimination. In this case, however, the facts stated in the affidavit filed on behalf of the State make it abundantly clear that the situation in certain parts of the State was sufficient to add a particularly sinister quality in certain specified offences committed within those parts and the State Government legitimately grouped them together in the notification. The criticism that the State Government included certain offences but excluded certain cognate offences has been dealt with by may learned brother Mukherjea and I have nothing more to add thereto.

In my opinion, for reasons given in my judgment in the West Bengal case and referred to above, section 11 of the Saurashtra Ordinance in so-far as it authorises the State Government to direct offences or classes of offences or classes of cases to be tried by the Special Court does not offend against the equal protection clause of our Constitution and the notification which has been issued under that part of the section cannot be held to be invalid or ultra vires.

On the question of delegation of legislative power the matter appears to be concluded by the decision of the Privy Council in Benoarilal's case and the section may well be regarded as an instance of conditional legislation. Further, I would be prepared to say, for reasons stated in my judgment in the President's Reference that there has been no illegal delegation of legislative power.

For reasons stated above, I agree that the preliminary point should be rejected and the appeal should be heard on its merits.

CHANDRASEKHARA AIYAR J. -

Mr. Sen tried his best to distinguish this case from our decision on the West Bengal Special Courts, Act, 1950. The State of West Bengal v. Anwari Ali Sarkar and Gajan Mali. But in my view he has not succeeded in his attempt.

Sections 9 and 11 of the Ordinance in question do not lay down any classification in themselves. The preamble to the earlier Ordinance of 1948, which is still intact as the later one is only an amending measure, merely refers to the need to provide for public safety, maintenance of public order and the preservation of peace and tranquillity in the State of Saurashtra. This by itself indicates on classification as the object is a general one, which has to be kept in view by every enlightened government or system of administration. Every law dealing with the commission and the punishment of offences is based on this need. The notification under which the Special Court

was established no doubt deals with "offences" as distinguished from "cases" or "groups of cases", but there also, there is no rational classification. Offences presenting the same characteristic features and cognate in this sense, have been separately dealt with some of them are to go before the Special Court, while others are left to be tried by the ordinary courts. The circumstances that the deviations from normal procedure prescribed in the Ordinance are not so many or vital, as in the Bengal case, does not in my humble opinion, affect the result, as the defect of the absence of a reasonable or rational classification is still there. The negation of committal proceedings is a matter of much moment to the accused, as it deprives him of the undoubted advantage of knowing the evidence for the prosecution and discrediting it by cross-examination, leading possibly to his discharge even at that early stage.

The argument for the respondent that there has been no discrimination as against the appellant vis a vis other persons charged with the same offences is unacceptable. Cognate offences have been left over for trial by the ordinary courts. It is no answer to the charge by A of discriminatory legislation to say that B & C have also been placed in the same category as himself, when he finds that D. E. & F also liable for the same or kindred offences have been left untouched and are to be tried by ordinary courts under the normal procedure. Much importance cannot be attached to the affidavit of the Assistant Secretary to the Government. It may be that all the facts stated by him as regarded the frequently and locals of the particular offences are true. But no such grounds for the classification are indicated much less stated, either in the impugned Ordinance or notification. This is certainly not a legal requirement but a wise prudence suggests the need for such incorporation as otherwise the ascertainment of the reasons for the classification from extraneous sources may involve the consideration of what may be regarded as after-thoughts by way of explanation or justification.

In my view, the West Bengal Special Courts Act decision governs this case also, and section 11 is bad.

It is unnecessary to deal with the other point raised by the learned counsel for the appellants as regards the delegation of legislative powers involved in the pro tanto repeal of some of the provisions of the Criminal Procedure Code, viz., sections 5 and 28 and the Schedule, especially as it seems concluded against him by the decision in King Emperor v. Benoari Lal Sarma and Others.

The convictions of the appellant and the sentences imposed on him are set aside, and there will be a retrial under the ordinary procedure.

BOSE J. -

I agree with my brothers Mahajan and Chandrasekhara Aiyar that the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949, offends article 14. As I explained in my judgment in The State of West Bengal v. Anwar Ali Sarkar, I prefer not to base my decision on the classification test. For the reasons given there I am of opinion that the differentiation here travels beyond bounds which are legitimate. It is true the points of differentiation are not as numerous here as in the other case but the ones which remain are, in my judgment, of a substantial character and cut deep enough to attract the equality clauses in article 14. I would hold the Ordinance invalid.

Preliminary objection overruled.

Agent for the respondent : P. A. Mehta.

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