

Sisir Kumar Dutta

Vs

State of West Bengal Union of India - Intervener

Case No. 275 of 1951

(CJI M. Patanjali Sastri, B.K. Mukherjea, N. Chandrashekar Aiyar, Vivian Bose, Gulam Hasan JJ)

05.12.1952

JUDGMENT

BOSE J. -

This is an appeal under article 132(1) of the Constitution. Leave of appeal was granted by the High Court at Calcutta.

The appellant was convicted under section 7(1) of the Essential Supplies (Temporary Powers) Act of 1946 for an offence said to have been committed on the 24th of October, 1950. The conviction was on two counts : (1) for selling cloth above the controlled rate and (2) for not issuing a cash memo. The sentence was rigorous imprisonment for three months and a fine of Rs. 200 with another three months in default. The trial was before the 8th Presidency Magistrate at Calcutta who adopted a summary procedure.

There was an application for revision before the High Court but it was dismissed. An application for leave to appeal to this Court was then filed. It was granted on a ground which was not taken either in the original court or in the revision before the High Court, namely that the Essential Supplies Act of 1946 under which the appellant was convicted was not in force on the 24th of October, 1950, and so here could be no conviction under it.

The validity of this Act was challenged in *Joylal Agarwala v. The State* [[1952] S.C.R. 127] but this Court held that the Act was valid up to the 31st of March, 1950, that being the life of the Act at the date relevant to that case. It is necessary to explain that the Act is a temporary Act and that its life has been extended from time to time after the date of its first expiry for a year at a time. The latest extension at the date of the previous case was up to the 31st March, 1950. We therefore start with the position that the Act was a good Act up till that date.

The Act was further extended up till the 31st of March, 1951, by a resolution dated the 20th of December, 1949. This is the extension with which we are concerned and which is now challenged, the argument being that there was no legislative body in existence on that date competent to extend the life of the Act for another year.

The Gazette notification setting out the resolution is in the following terms :

"New Delhi, the 22nd December, 1949.

No. F. - 7 WL (1) 47. - The following resolution which was passed by the Constituent Assembly (Legislative) its meeting was held on the 20th of December, 1949, is hereby published for general information :

In pursuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, as adapted by the India (Provisional Constitution) Order, 1947, his Assembly hereby approves the extension of the period mentioned in sections 2 and 3 of the said Act for a further period of twelve months commencing on the first day of April, 1950."

It has to be seen whether the body which passed that resolution had the power to extend the Act.

It can be accepted, because of the decision in *Joylal Agarwala v. The State* [[1952] S.C.R. 127 at 131], that the Constituent Assembly had authority on 25th of February, 1948, and again on 23rd of March, 1949, to make two successive extensions of the Essential Supplies Act of a year each. The only question, therefore, is whether any body continued to have that power on the dates material here.

The extensions just referred to were brought about as follows. The Constituent Assembly derived its authority to pass the above resolution from section 4-A of the India (Central Government and Legislature) Act of 1946. This was an Act of the British Parliament which originally conferred on the British Houses of Parliament the power of approving by resolution the extension of the period fixed by section 4. Later, the Indian Independence Act of 1947 was passed by the British Parliament and in exercise of the powers conferred by sections 9 and 19 of that Act the Governor-General by an Adaptation Order substituted the words "Dominion Legislature" for the "Houses of Parliament" and thus enabled the Dominion Legislature to exercise the powers of Parliament in this behalf. At the same time, the Governor-General introduced section 4-A into the British Act of 1946, the India (Central Government and Legislature) Act, 1946, by way of adaptation and conferred on the Constituent Assembly the powers of the Dominion Legislature. Thus the Constituent Assembly became empowered to extend the period fixed in section 4 by the passing of a resolution and that in its turn had the effect of extending the life of the Essential Supplies Act of 1946, because section 1(3) of that Act says 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 of 1946.

Now section 4-A provides that the Constituent Assembly shall have the powers of the Dominion Legislature under the British Act "until other provision is made by or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947."

Turning to sub-section (1) of section 8 we find that British Parliament invested the Constituent Assembly with all the powers of the Dominion Legislature "for the purpose of making provision as to the constitution of the Dominion."

That power it exercised and drew up the Indian Constitution, but in doing so it decided to bring the Constitution into being in two instalments and it did that by enacting article 394 and enacting in it that article and certain others, including article 379, should come into force "at once" - at once being the 26th of November, 1949 - while the remaining articles were to come into force on the 26th of January, 1950.

Now article 379(1) provides that -

"Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall be the Provisional Parliament and shall exercise all the powers and perform all the duties conferred by the provisions of the Constitution on Parliament."

It was argued on behalf the appellant that because of this article the Constituent Assembly disappeared as a law making body on and after the 26th of November, 1949, and that its place was taken by the Provisional Parliament referred to by that article, and as the resolution of the 20th December, 1949, purports to be a resolution of the Constituent Assembly (Legislative) and not of the Provisional Parliament, it is a resolution of a body which no longer had authority to enact laws or pass a resolution of this kind affecting the laws of the land.

The learned Attorney-General argues, on the other hand, that the Constituent Assembly continued to function as such and to retain its right to exercise its dual functions of constitution making and law making right up to the last stroke of midnight on the 25th of January, 1950. The very next second, when a new day ushered in a new era for this country, it ceased to exist as a Constituent Assembly and its place was taken by the Provisional Parliament of India.

We need not decide this point, for even if the Provisional Parliament was intended to function on the 26th of November, 1949, and not from the 26th of January, 1950, it is clear that the Constituent Assembly was to continue in existence till "the commencement of the Constitution" which, by article 394, is the 26th of January, 1950. Consequently, the power conferred on it as a designated body, by the English statute, as adapted by the Governor-General, could be validly exercised on the 20th of December, 1949, and was so exercised when it passed the resolution of that date. The Provisional Parliament was not a body authorised to exercise the special power of approving the extension of the period mentioned in section 4 of the English statute as that was not one of "the powers conferred by this Constitution on Parliament," nor can bringing the Provisional Parliament into existence on the 26th of November, 1949, (assuming that to be the case) be regarded as "other provision" made by the Constituent Assembly within the meaning of section 4-A of the English Act. It follows the Constituent Assembly was not deprived of these specially designed powers on the date of the resolution.

The next question is whether the Constituent Assembly had the power to extend the life of this particular piece of legislation beyond the 26th of January, 1950. The question was posed in his way. It was conceded that the Essential Supplies Act was validly extended up to the 31st of March, 1950. The resolution which extended its life for another year beyond this was passed on the 20th of December, 1949, but it was argued that it could not take effect will after the expiry of the previous extension, that is, not until the 1st of April, 1950. But by that time the Constitution had come into being and so neither the Constituent Assembly nor the Provisional Parliament could have extended the life of the temporary Act after its expiration on the 31st of March, 1950, because of Explanation III to article 372. It follows that the Constituent Assembly which purported to effect the extension ahead of time could not do, in anticipation, what the Constitution says cannot be done after its commencement.

There is nothing in this contention. The resolution of the 20th December, 1949, took immediate

effect and its effect was to alter the date fixed for the expiration of the period mentioned in section 4 of the English statute from the 31st of March, 1950, to the 31st, of March, 1951. The Essential Supplies Act fixed the date for its own expiration as the date fixed for the expiration of the period mentioned in section 4 above. Accordingly, it was an Act which was alive immediately before the 26th of January, 1950, and which was due, at that time, to expire of its own force, not on the 31st of March, 1950, but on the 31st of March, 1951, and as this was a law in force immediately before the commencement of the Constitution it continued in force, because of article 372(1) and Explanation III, until it was due to expire.

That exhausts the constitutional points. We hold that there was a body in existence at all material times competent to extend the life of the Act up till the 31st of March, 1951, and that it did so extend its life on the 20th of December, 1949. The Act The Act continued in force until after the Constitution and therefore was a living Act at the date of the offences, namely the 24th of October, 1950.

Counsel then sought to attack the conviction on other grounds but as the leave to appeal was confined to the constitutional points he cannot, so far as that is concerned, be permitted to travel further. Of course, would have been competent for him to file a separate petition for special leave to appeal on the other points but had he done so it would have followed the usual course and he would have been obliged to obtain special leave in the usual way. We therefore treated this part of the argument as one asking for special leave to appeal. We heard him fully and are of opinion that these remaining points are not ones on which special leave to appeal should be granted. We therefore reject his irregular petition for special leave to appeal on its merits.

The appeal filed under article 132(1) is also dismissed.

Appeal dismissed.

Agent for the appellant : S. C. Banerjee.

Agent for the respondent : P. K. Bose.

Agent for the intervener : G. H. Rajadhyaksha.

</html