Sardar Inder Singh

Vs

The State of Rajasthan

Petitions Nos. 50, 145, 149, 150, 188, 243, 261, 266 and 362 of 1955 and 205 of 1956

(S. R. Dass, T. L. Venkatarama Ayyar, B. P. Sinha, S. K. Das, P. B. Gajendragadkar JJ)

08.02.1957

JUDGMENT

VENKATARAMA AYYAR J. -

These are petitions filed under Art. 32 of the Constitution by proprietors of lands in the State of Rajasthan, challenging the vires of The Rajasthan (Protection of Tenants) Ordinance, 1949, Ordinance No. IX of 1949, hereinafter referred to as the Ordinance, of notifications dated June 14, 1951 and June 20, 1953, issued thereunder and of the Rajasthan (Protection of Tenants) Amendment Act No. X of 1954.

It will be useful at the outset to state briefly the facts relating to the constitution of the legislative authority, in exercise of which the impugned Ordinance and notifications were issued. When the British were the Rulers of this Country, Rajputana, as the State was then known, consisted of 18 principalities claiming sovereign status. After independence, a movement was set afoot for the integration of all the principalities into a single State, and the process was completed on May 5, 1949, when all of them became merged in a Union called the United State of Rajasthan. The constitution of the State was settled in a Covenant, to which all the Rulers agreed. Under Art. II of the Covenant, the States agreed "to unite and integrate their territories in one State with a common executive, legislature and judiciary by the name of the United State of Rajasthan". Under Art. VI(2), the Rulers made over all their rights, authorities and jurisdiction to the new State which "shall thereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder". Article X(3) provides that,

> "Until a Constitution so framed comes into operation after receiving the assent of the Rajpramukh, the legislative authority of the United State shall vest in the Rajpramukh, who may make and promulgate Ordinances for the peace and good government of the State or any part thereof, and any Ordinance so made shall have the like force of law as an Act passed by the legislature of the United State."

Article X(3) was subsequently modified by substituting for the words "Until a Constitution so framed comes into operation after receiving the assent of the Rajpramukh", the words "Until the Legislative Assembly of Rajasthan has been duly constituted and summoned to meet for the first session under the provisions of the Constitution of India." Reference may also be made to Art. 385 of the Constitution of India, which runs as follows :

"Until the House or Houses of the Legislature of a State specified in Part B of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of the Constitution, the body or authority functioning immediately before the commencement of this Constitution as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified."

It may be mentioned that the Legislative Assembly of Rajasthan was constituted and came into being on March 29, 1952, and until then, it was the Rajpramukh in whom the Legislative authority of the State was vested.

On June 21, 1949, the Rajpramukh promulgated the impugned legislation, the Rajasthan (Protection of Tenants) Ordinance No. IX of 1949. The preamble to the Ordinance runs as follows :

"Whereas with a view to putting a check on the growing tendency of landholders to eject or dispossess tenants from their holdings, and in the wider national interest of increasing the production of foodgrains, it is expedient to make provisions for the protection of tenants in Rajasthan from ejectment or dispossession from their holdings."

Section 4 of the Ordinance provides :

"So long as the Ordinance is in force in any area of Rajasthan, no tenant shall be liable to ejectment or dispossession from the whole or a part of his holding in such area on any ground whatsoever."

Section 7 provides for reinstatement of tenants who had been in occupation on the first day of April 1948, but had been subsequently dispossessed; and by an Amendment Act No. XVII of 1952, this right was extended to tenants, who got into possession even after the first day of April.

Section 3(1) of the Ordinance, which is very material for the present petitions, runs as follows :

"It shall come into force at once, and shall remain in force for a period of two years unless this period is further extended by the Rajpramukh by notification in the Rajasthan Gazette."

In exercise of the power conferred by this section, the Rajpramukh issued a notification on June 14, 1951, providing that Ordinance No. IX of 1949 "shall remain in force for a further period of two years with effect from June 21, 1951". On June 20, 1953, he issued a further notification providing that the said Ordinance "shall remain in force for a term of one year with effect from June 21, 1953." Doubts would appear to have been expressed about the validity of the notification dated June 20, 1953, on the ground that as the State Legislature had come into being on March 29, 1952, the power of the Rajpramukh to legislate under Art. 385 of the Constitution had come to an end on that date. To resolve the doubt, the Rajpramukh issued on February 15, 1954, an Ordinance under Art. 238 of the Constitution, No. III of 1954, substituting for s. 3 the following :

"3. It shall come into force at once and shall remain in force for a period of five years."

That would have given operation on Ordinance No. IX of 1949 up to June 21, 1954. Then the Legislature of the State repealed Ordinance No. III of 1954, and enacted the Rajasthan (Protection of Tenants) Amendment Act No. X of 1954, and that came into force on April 17, 1954. Under this Act, s. 3 of Ordinance No. IX of 1949, was re-enacted as follows :

"It shall come into force at once and shall remain in force for a period of seven years."

The petitioners question the validity of Ordinance No. IX of 1949, of the notifications dated June 14, 1951, and June 20, 1953, and of Act. No. X of 1954. It appears that on October 15, 1955, a new enactment, the Rajasthan Tenancy Act No. III of 1955, came into force, and relationship between landlords and tenants is now governed by this Act. But as a large number of petitions filed by the tenants under Ordinance No. IX of 1949 are still undisposed of by reason of stay orders obtained by the petitioners herein, it is necessary for the purpose of granting relief to them on these petitions, to decide whether the impugned Ordinance and notifications are bad any of the grounds put forward by the petitioners. We accordingly proceed to a consideration of the present petitions on their merits.

Counsel for petitioners urged the following contentions in support of the petitions :

(1) The notifications dated June 14, 1951, and June 20, 1953, are bad, as s. 3 of the Ordinance under which they were issued is ultra vires, as constituting delegation of legislative power.

(2) The notification dated June, 20, 1953, is further bad, because the Legislature of Rajasthan had been constituted on March 29, 1952, and the authority of the Rajpramukh to legislate conferred by Art. 385 of the Constitution had, on that date, come to an end.

(3) Act No. X of 1954 is bad, as it purports to extend the life of Ordinance No. IX of 1949 after the said Ordinance had already become dead.

(4) The impugned Ordinance is bad as being repugnant to Art. 14 of the Constitution; and

(5) The Ordinance also contravenes Art. 19(1)(g) of the Constitution in that it imposes unreasonable restrictions on the right of the petitioners to hold property.

In logical sequence, it is the third contention that should first be considered, because if Act No. X of 1954 is upheld, that must validate Ordinance No. IX of 1949 for the periods covered by the impugned notifications dated June 14, 1951, and June 20, 1953, and in that event the first two contentions will not survive for determination. The argument of the petitioners in support of this contention is that even if either of the two notifications aforesaid is held to be bad, then the impugned Ordinance would have expired at least on June 21, 1953, if not earlier on June 21, 1951; and that neither Act No. X of 1954 which came into force on April 17, 1954, nor even Ordinance No. III of 1954 which was promulgated on February 15, 1954, could give life to what was already dead. It is conceded that a legislation might be retrospective; but it is contended that Act No. X of 1954 was not an independent legislation enacting a code of provisions which were to operate retroactively but an amendment of Ordinance No. IX of 1949, and as that Ordinance had expired by efflux of time on June 21, 1951, if the notifications dated June 14, 1951, and June 20, 1953, were bad, then there was, then Act No. X of 1954 was passed, no Ordinance in existence on which the amendment could operate, and that it was therefore ineffective. Some support for this contention might be found in the observations of Kania C.J. in Jatindra Nath Gupta v. The Province of Bihar [[1949] F.C.R. 595] at page 606, of Mahajan J. at pages 627-628 and of Mukherjea J. at pages 643-644. There is, however, no need to discuss the matter further, as we are of opinion that the

petitioners must fail in their contentions on the first two questions.

Taking the first question as to whether s. 33 of the Ordinance is bad, in so far as it authorised the Rajpramukh to extend the life of the Act, the contention of the petitioners is that it is essentially a matter for legislative determination as to how long a statute should operate, that s. 3 having provided that the Ordinance should be in force for a period of two years, any extension of that period could only be made by the Legislature and not by an outside authority, and that accordingly the power conferred by that section on the Rajpramukh to extend the period fixed therein is an unconstitutional delegation of legislative power. Reliance is placed in support of this contention on the decision in Jatindra Nath Gupta v. The Province of Bihar [[1949] F.C.R. 595]. There, the question was to the validity of notification issued by the Government of Bihar on March 7, 1949, extending the operation of the Bihar Maintenance of Public Order Act V of 1947 to Chota Nagpur Division and the Santhal Parganas District with retrospective effect from March 16, 1948. Section 1(3) of the Act had provided that it shall remain in force for a period of one year from its commencement, but that was subject to a proviso, which ran as follows :

> "Provided that the Provincial Government may, by notification, on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that this Act shall remain in force for a further period of one year with such modifications, if any, as may be prescribed in the notification."

The notification in question was issued in exercise of the power conferred under this proviso, and it was held by the majority of the Court that the proviso was unconstitutional as it amounted to delegation of legislative authority, and that, therefore, the notification issued pursuant thereto was bad. Three of the learned Judges expressed the view that the power to extend the operation of an Act was purely a legislative function, and that it could not be delegated to an outside authority. Thus, Kania C.J. observed at pages 604-605 :

> "The power to extend the operation of the Act beyond a period mentioned in the Act prima facie is a legislative power. It is for the Legislature to state how long a particular legislation will be in operation. That cannot be left to the discretion of some other body.....Even keeping apart the power to modify the Act, I am unable to construe the proviso, worded, as it is, as conditional legislation by the Provincial Government. Section 1(3) and the proviso read together cannot be properly interpreted to mean that the Government of Bihar in the performance of its legislative functions had prescribed the life of the Act beyond one year. For its continued existence beyond the period of one year it had not exercised its volition or judgment but left the same to another authority, which was not the legislative authority of the Province."

Mahajan J. dealing with this question observed at page 623 :

> "I am further of the opinion that the power given to extend the life of the Act for another year in the context of the language of s. 1(3) also amounts to an act of legislation and does not fall under the rule laid down in The Queen v. Burah [[1878] L.R. 5 I.A. 178]. The Act in a mandatory form stated that it shall be in force for one year only. That being so, the power given in the proviso to re-enact it for another year is legislative power and does not amount to conditional legislation."

Mukherjea J. was of the opinion that if the legislation was to take effect on the determination of some fact or condition by an extraneous authority, it would be conditional legislation, and that would be valid on the authority of the decision in The Queen v. Burah [[1878] L.R. 5 I.A. 178], but that it would not be valid if it was left to an outside authority "to determine at some future date whether the Act should be extended for one year further with or without modifications." Fazl Ali J. took the contrary view. He observed at page 646 :

> "So far as the extension of the Act is concerned, I am not prepared to hold that it amounts to legislation or exercise of legislative power. From the Act, it is clear that, though it was in the first instance to remain in force for a period of one year, the Legislature did contemplate that it might have to be extended for a further period of one year. Having decided that it might have to be extended, it left the matter of the extension to the discretion of the Provincial Government. It seems to me that the Legislature having exercised its judgment as to the period for which the Act was or might have to remain in force, there was nothing wrong in its legislating conditionally and leaving it to the discretion of the executive authority whether the Act should be extended for a further period of one year or not. It would be taking a somewhat narrow view of the decision in Burah's case [[1878] L.R. 5 I.A. 178] to hold that all that the Legislature can do when legislating conditionally, is to leave merely the time and the manner of carrying its legislation into effect to the discretion of the executive authority and that it cannot leave any other matter to its discretion. The extension of the Act for a further period of one year does not amount to its re-enactment. It merely amounts to a continuance of the Act for the maximum period contemplated by the Legislature when enacting it."

It will be noticed that the authority conferred on the Bihar Government by the proviso to s. 3 was one not merely to extend the life of the Act as in the present case, but also to extend it with such modification as might be specified in the notification,. It is this latter clause that came in principally for attack in the judgments of the majority, and the decision that the proviso as a whole was bad was based primarily on the view that that clause was ultra vires. Kania C.J. no doubt observed that the power to extend the operation of the Act was, even apart from the power to modify it, a legislative function. But he also added that the power conferred by the proviso was a single one and that the power to extend the life of the Act could not to be severed from the power to modify it. The matter was made even more plain by Mukherjea J. in his judgment in State of Bombay v. Narothamdas Jethabai [[1951] S.C.R. 51]. There, the Bombay High Court had held, relying on the decision in Jathindra Nath Gupta v. The Province of Bihar [[1949] F.C.R. 595], that s. 4 of the Bombay City Civil Courts Act, 1948 which conferred authority on the State to invest Civil Courts by notification with jurisdiction to try suits not exceeding Rs. 25,000 was bad. In disagreeing with this conclusion, Mukherjea J. observed :

> "The learned Judges of the Bombay High Court in coming to their decision on the point seem to have been influenced to some extent by the pronouncement of the Federal Court in Jatindranath Gupta v. Province of Bihar [[1949] F.C.R. 595], and the learned Counsel for the respondents naturally placed reliance upon it..... Mr. Seervai would have been probably right in invoking the decision in that case as an authority in his favour if the proviso simply empowered the Provincial Government, upon compliance with the conditions prescribed therein, to extend the duration of the Act for a further period of one year, the maximum period being fixed by the Legislature itself. The proviso, however, went further and authorised the Provincial

> Government to decide at the end of the year not merely whether the Act should be continued for another year but whether the Act itself was to be modified in any way or not. It was conceded by the learned Counsel appearing for the Province of Bihar that to authorise another body to modify a statute amounts to investing that body with legislative powers. What the learned Counsel contended for was that the power of modification was severable from the power of extending the duration of the Statute and the invalidity of one part of the proviso should not affect its other part. To this contention my answer was that the two provisions were inter-related in such manner in the statute that one could not be served from the other."

The decision in Jatindra Nath Gupta v. The Province of Bihar [[1949] F.C.R. 595] cannot therefore be regarded as a clear and direct pronouncement that a statutory provision authorising an outside authority to extend the life of a statute is per se bad.

We must now refer to the decision in In re The Delhi Laws Act, 1912 [[1951] S.C.R. 747], wherein the law relating to delegated legislation was exhaustively reviewed by this Court. That was a reference under Art. 143 of the Constitution stating a number of questions for the opinion of this Court. Due to considerable divergence of views expressed in the several judgments as to the limits of permissible delegation, no unanimity could be reached in the answers to the questions referred. But it can be said of certain propositions of law that they had the support of the majority of the learned Judges, and one such propositions that when an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation, and that such legislation is valid. In our opinion, s. 3 of the Ordinance in so far as it authorises the Rajpramukh to extend the life of the Act falls within the category of conditional legislation, and is, in consequence, intra vires. The leading authority on the question is the decision of the Privy Council in The Queen v. Burah [[1878] 5 I.A. 178]. There, the question was as to the validity of a notification is issued by the Lieutenant-Governor of Bengal on October 14, 1871, extending the provisions of the Act No. XXII of 1869 to a territory known as the Jaintia and Khasi Hills in exercise of a power conferred by s. 9 of that Act, which was as follows :

> "The said Lieutenant-Governor may from time to time, by notification in the Calcutta Gazette extend mutatis mutandis all or any of the provisions contained in the other sections of this Act to the Jaintia Hills, the Naga Hills, and to such portion of the Khasi Hills as for the time being forms part of British India."

The High Court had held by a majority that that section was ultra vires, as amounting to delegation of legislative authority. But that decision was reversed on appeal to the Privy Council, which held that it was conditional legislation and was valid. Lord Selborne stated the law thus :

> "Their Lordships agree that the Governor-General in Council could not, by any form of enactment, create in India and arm with general legislative authority, a new legislative power, not created or authorised by the Councils' Act. Nothing of that kind has, in their Lordships' opinion, been done or attempted in the present case. What has been done attempted in the present case. What has been done is this. The Governor-General in Council has determined, in the due and ordinary course of legislation, to remove a particular district from the jurisdiction of the ordinary Courts and offices, and to place it under new Courts and offices, to be appointed by and responsible to the Lieutenant-Governor of Bengal; leaving it to the Lieutenant-

> Governor to say at what time that change shall take place.....The Legislature determined that, so far, a certain change should take place; but that it was expedient to leave the time, and the manner, of carrying it into effect to the discretion of the Lieutenant-Governor.....The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred."

This is clear authority that a provision in a statute conferring a power on an outside authority to bring it into force at such time as it might, in its own discretion, determine, is conditional and not delegated legislation, and that it will be valid, unless there is in the Constitution Act any limitation on its power to enact such a legislation.

The petitioners do not dispute this. What they contend is that while it may be competent to the Legislature to leave it to an outside authority to decide when an enactment might be brought into force, it is not competent to it to authorise that authority to extend the life of the Act beyond the period fixed therein. On principle, it is difficult to see why if the one is competent, the other is not. The reason for upholding a legislative provision authorising an outside authority to bring an Act into force at such time as it may determine is that it must depend on the facts as they may exist at a given point of time whether the law should then be made to operate, and that the decision of such an issue is best left to an executive authority. Such legislation is termed conditional, because the Legislature has itself made the law in all its completeness as regards "place, person, laws, powers", leaving nothing for an outside authority to legislate on, the only function assigned to it being to bring the law into operation at such time as it might decide. And it can make no difference in the character of a legislation as a conditional one that the legislature, after itself enacting the law and fixing, on a consideration of the facts as they might have then existed, the period of its duration, confers a power on an outside authority to extend its operation for a further period if it is satisfied that the state of facts which called forth the legislation continues to subsist.

In the present case, the preamble to the Ordinance clearly recites the state of facts which necessitated the enactment of the law in question, and s. 3 fixed the duration of the Act as two years, on an understanding of the situation as it then existed. At the same time, it conferred a power on the Rajpramukh to extend the life of the Ordinance beyond that period, if the state of affairs then should require it. When such extension is decided by the Rajpramukh and notified, the law that will operate is the law which was enacted by the legislative authority in respect of "place, person, laws, powers", and it is clearly conditional and not delegated legislation as laid down in The Queen v. Burah [[1878] 5 I.A. 178], and must, in consequence, he held to be valid. It follows that we are unable to agree with the statement of the law in Jatindra Nath Gupta v. The State of Bihar [[1949] F.C.R. 595] that a power to extend the life of an enactment cannot validly be conferred on an outside authority. In this view, the question as to the permissible limits of delegation of legislative authority on which

the judgments in In re The Delhi Laws Act, 1912 [[1951] S.C.R. 747], reveal a sharp conflict of opinion does not arise for consideration, and we reserve our opinion thereon.

(2) It is next contended that the notification dated June 20, 1953, is bad, because after the Constitution name into force, the Rajpramukh derived his authority to legislate from Art. 385, and that under that Article his authority ceased when the Legislature of the State was constituted, which was in the present case, on March, 29, 1952. This argument proceeds on a misconception as to the true character of a notification issued under s. 3 of the Ordinance. It was not an independent piece of legislation such as could be enacted only by then competent legislative authority of State, but merely an exercise of power conferred by a statute which had been previously enacted by the appropriate legislative authority. The exercise of such a power is referable not to the legislative competence of the Rajpramukh but to Ordinance No. IX of 1949, and provided s. 3 is valid, the validity of the notification is co-extensive with that of the Ordinance. If the Ordinance did not come to an end by reason of the fact that the authority of the Rajpramukh to legislate came to an end - and that is not and cannot be disputed - neither did the powder to issue a notification which is conferred therein. The true position is that it is in his character as the authority on whom power was conferred under s. 3 of the Ordinance that the Rajpramukh issued the impugned notification, and not as the legislative authority of the State. This objection should accordingly be overruled.

(4) We shall next consider the contention that the provisions of the Ordinance are repugnant to Art. 14 of the Constitution, and that it must therefore be held to have become void. In the argument before us, the attack was mainly directed against ss. 7(1) and 15 of the Ordinance. The contention with reference to s. 7(1) is that under that section landlords who had tenants on their lands on April 1, 1948, were subjected to various restrictions in the enjoyment of their rights as owners, while other landlords were free from similar restrictions. There is no substance in this contention. The preamble to the Ordinance recites that there was a growing tendency on the part of the landholders to eject tenants, and that it was therefore expedient to enact a law for giving them protection; and for granting relief to them, Legislature had necessarily to decide from what date the law should be given operation, and it decided that it should be from April 1, 1948. That is a matter exclusively for the Legislature to determine, and the propriety of that determination is not open to question in Courts. We should add that the petitioners sought to dispute the correctness of the recitals in the preamble. This they clearly cannot do. Vide the observations of Holmes J. in Block v. Hirsh [[1920] 256 U.S. 135 : 65 L. Ed. 865].

A more substantial contention is the one based on s. 15 which authorises the Government to exempt any person or class of persons from the operation of the Act. It is argued that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Art. 14. It is true that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs s. 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided. Vide Harishanker Bagla v. The State of Madhya Pradesh [[1955] 1 S.C.R. 380, 388]. But even if s. 15 were to be held to be bad, that does not affect the rest of the legislation, as the matter dealt with in that section is clearly severable. In fact, s. 15 was not in the Ordinance as it was originally enacted, and was only introduced later by Ordinance No. XII of 1949. We must accordingly hold that the impugned Ordinance cannot be held to be bad under Art. 14.

It is finally contended that the provisions of the Act are repugnant to Art. 19(1)(f) in that they oblige the land-owners to keep tenants on their lands, thereby preventing them from themselves cultivating

the same. The object of the Ordinance, as set out in the preamble, is clearly not to put a restriction on the right of an owner to himself cultivate the lands, but to prevent him when he had inducted a tenant on the land from getting rid of him without sufficient cause. A law which requires that an owner who is not himself a tiller of the soil should assure to the actual tiller some fixity of tenure, cannot on that ground alone be said to be unreasonable. Legislation of this character has been upheld in America as not infringing any Constitutional guarantee. Thus, in Block v. Hirsh [[1920] 256 U.S. 135; L. Ed. 865], as statute which gave a right to tenants to continue in possession even after the expiry of the lease, was held to be valid, Holmes J. observing.

> "The main point against the law is the tenants are allowed to remain in possession at the same rent that they have been paying, unless modified by the commission established by the Act, and that thus the use of the land and the right of the owner to do what he will with his own and to make what contracts he pleases are cut down. But if the publics interest be established, the regulation of rates is one of the first forms in which it is asserted, and the validity of such regulation has been settled since. Munn v. People of Illinois [[1877] 94 U.S. 113 : 24 L. Ed. 77].... The preference given to the tenant in possession is an almost necessary ingredient of the policy, and is traditional in English law. If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail."

It should also be remembered in this connection that the impugned Ordinance is an emergency legislation of a temporary character, and, as observed in Dr. N.B. Khare v. The State of Delhi [[1950] S.C.R. 519, 526], that is a factor to be taken into account in judging of its reasonableness. As already stated, the Ordinance has since come to an end, and has been replaced by a comprehensive tenancy law. In the circumstances, we are unable to hold that the impugned Ordinance is void as being in contravention of Art 19(1)(f).

All the contentions raised by the petitioners have failed, and the petitions should accordingly be dismissed, but in the circumstances, without costs.

Petitions dismissed.

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