

The State of Rajasthan and Ors.

Vs

Thakur Pratap Singh

Civil Appeal No. 231 of 1956

(S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N. Rajgopala Ayyangar JJ)

18.08.1960

JUDGEMENT

RAJAGOPALA AYYANGAR, J. -

This appeal raises for consideration the constitutional validity of one paragraph of a notification issued by the State of Rajasthan under s. 15 of the Police Act, 1861 (V of 1861), under which "the Harijan" and "Muslim" inhabitants of the villages, in which an additional police force was stationed, were exempted from the obligation to bear any portion of the cost of that force.

It is stated that the inhabitants of certain villages in the district of Jhunjhunu in the State of Rajasthan, harboured dacoits and receivers of stolen property, and were besides creating trouble between landlords and tenants as a result of which there were serious riot in the locality in the course of which some persons lost their lives. The State Government therefore took action under s. 15 of the Police Act. This Section provides :

"Quartering of additional police in disturbed or dangerous districts -

(1) It shall be lawful for the State Government, by proclamation to be notified in the official Gazette, and in such other manner as the State Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector General of Police, or other officer authorised by the State Government in this behalf, with the sanction of the State Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the areas specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the State Government by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost."

Sub-section (6) is omitted as not relevant.

The notification by which these provisions were invoked and which is impugned in these proceedings was in these terms :-

"Whereas the Rajpramukh is satisfied that the area shown in the schedule annexed hereto has been found to be in a disturbed and dangerous state;

Now, therefore, in the exercise of the authority vested in him under Section 15(1) of the Police Act (V of 1861), the Rajpramukh is pleased to declare that the 24 villages included in the said schedule shall be deemed to be disturbed area for a period of six months from the date of this notification.

Under sub-section 2 of the said section 15 of the Police Act (V of 1861), the Rajpramukh is pleased to authorise the Inspector-General of Police to employ, at the cost of the inhabitants of the said area any Police force in addition to the ordinary fixed complement quartered therein.

Under sub-section 5 of section 15 of the said Act the Rajpramukh is further pleased to exempt the Harijan and Muslim inhabitants of these villages from liability to bear any portion of the cost on account of the posting of the additional Police force."

Then followed the names of the 24 villages.

The respondent - Thakur Pratap Singh being an inhabitant of Baragaon - one of these 24 villages, moved the High Court of Rajasthan for the issue of a writ or direction under Art. 226 of the Constitution impugning the validity of s. 15 of the Police Act and in particular of sub-s. 5 thereof and of the notification and praying for appropriate reliefs. The High Court repelled the wider contentions urged regarding the invalidity of s. 15 of the Police Act in general as also of the powers conferred on the State Government to order the exemption of "any person or classes or sections of such inhabitants" from liability to bear the cost of the additional police force. But the learned Judges held that para 4 of the notification which exempted "Harijan and Muslim inhabitants of the villages" from the levy, was violative of the guarantee in Art. 15(1) of the Constitution against discrimination on the ground of caste or religion etc. which reads :

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any them." and struck it down as unconstitutional.

The State of Rajasthan who felt aggrieved by this order applied to the High Court for a certificate under Art. 132(1) to enable it to file an appeal to this court and this having been granted, the appeal is now before us.

Learned Counsel for the State made a strenuous effort to show that the exemption of the Harijan & Muslim inhabitants of the villages, was, in the impugned notification, not based "only" on the ground of 'caste' or 'religion' or the other criteria set out in Art. 15(1), but on the ground that persons belonging to these two communities were found by the State not to have been guilty of the conduct which necessitated the stationing of the additional police force. It was the same argument as was

addressed to the High Court and was rejected by the learned Judges who observed :

"Now this is a very strange argument that only persons of a certain community or caste were law-abiding citizens, while the members of other communities were not. Disturbing elements may be found among members of any community or religion just as much as there may be saner elements among members of that community or religion."

The view here expressed by the learned Judges is, in our opinion, correct. Even if it be that the bulk of the members of the communities exempted or even all of them were law-abiding, it was not contended on behalf of the State that there were no peaceful and law-abiding persons in these 24 villages belonging to the other communities on whom the punitive levy had been directed to be made. In para 5(f) of the petition filed before the High Court the respondent had averred :

"That the aforesaid Notification is ultra vires of the Constitution of India as it discriminates amongst the Citizens of a village on the basis of religion, race or caste, in as much as it makes a distinction between persons professing the Mohamman religion and others and also between persons who are Muslims and Harijans by caste and the rest. It, therefore, contravenes the provisions of Article 15 of the Constitution of India."

The answer to this by the State was in these terms :

"The Harijan and Muslim inhabitants of these villages have been exempted from liability to bear any portion of the cost of the additional force not because of their religion, race or caste but because they were found to be peace-loving and law-abiding citizens, in the 24 villages additional force has been posted."

It would be seen that it is not the case of the State, even at the stage of the petition before the High Court that there were no persons belonging to the other communities who were peace-loving and law-abiding, though it might very well be, that according to the State, a great majority of these other communities were inclined the other way. If so, it follows that the notification has discriminated against the law-abiding members of the other communities and in favour of the Muslim and Harijan communities, - (assuming that every one of them was "peace-loving and law-abiding") on the basis only of "caste" or "religion". If there were other grounds they ought to have been stated in the notification. It is plain that the notification is directly contrary to the terms of Art. 15(1) and that para 4 of the notification has incurred condemnation as violating a specific constitutional prohibition. In our opinion, the learned Judges of the High Court were clearly right in striking down this paragraph of the notification.

The appeal fails and is dismissed. As the respondent has not appeared there will be no order as to costs.

Appeal dismissed.

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