

Ishwar Das Malhotra

Vs

Union of India and Others

Criminal Appeal No. 93 of 1971

(CJI S. M. Sikri, D. G. Palekar, A. N. Grover, M. H. Beg, A. N. Ray JJ)

08.02.1972

JUDGMENT

SIKRI, C.J. -

1. This appeal, by special leave, is directed against the judgment of the Jammu and Kashmir High Court holding that the Delhi Special Police Establishment Act, 1946 (25 of 1946) was validly extended to the State of Jammu and Kashmir by the Jammu and Kashmir (Extension of Laws) Act, 1956 - hereinafter referred to as the Extension Act. The High Court decided this question on a reference made by the Special Magistrate, under Section 432 of the Code of Criminal Procedure, before whom the challan had been filed under the Ranbir Penal Code on November 29, 1967. The only question involved in this appeal before us is as to the validity of the aforesaid extension.

2. In order to appreciate the contentions of the learned counsel in this respect, it is necessary to give an account of the constitutional provisions applicable to the State of Jammu and Kashmir. On January 26, 1950, the Constitution of India came into force. In exercise of the powers conferred by Clause (1) of Article 370 of the Constitution of India, the President, in consultation with the Government of the State of Jammu and Kashmir, made the Constitution (Application to Jammu and Kashmir) Order, 1950. This order was superseded by another order in 1954. By that order, one of the entries on which Parliament could make laws was Entry 80 of List I of the Seventh Schedule of the Constitution. This entry reads as follows :

"Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside the State."

3. By the Extension Act, which received the assent of the President on September 25, 1956, the Delhi Special Police Establishment Act, 1946, was extended to the State of Jammu and Kashmir in the following manner. Section 1(2) of the Extension Act provided that "it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint." Section 2 provided as follows :

"(1) The Acts and Ordinance mentioned in the Schedule and all rules, orders and regulations made thereunder are hereby extended to and shall be in force in, the State of Jammu and Kashmir.

(2) With effect from the commencement of this Act, the Acts and Ordinance mentioned in the Schedule shall be amended as specified therein."

4. The Schedule which contained the Delhi Special Police Establishment Act, 1946, amended it by omitting the words "except the State of Jammu and Kashmir" from Section 1.

5. A notification was issued appointing November 1, 1956, as the date for the coming into force of the Extension Act in the State of Jammu and Kashmir. The effect of the notification and Section 2 mentioned above was that the Delhi Special Police Establishment Act, 1946, came into force in the State of Jammu and Kashmir from November 1, 1956.

6. The Constitution (Seventh Amendment) Act, 1956, also came into force on November 1, 1956. The State of Delhi, which was a part 'C' State immediately before the Seventh Amendment became a Union Territory. A new article, Article 372-A, was also inserted in the Constitution enabling the President to adapt laws in force immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956.

7. This article has no application to the State of Jammu and Kashmir and, therefore, any adaptations made by the President in exercise of the powers under Article 372-A can have no application to the State of Jammu and Kashmir.

8. In view of these constitutional changes, it is contended on behalf of the appellant, that under Entry 80 Parliament could only extend the powers and jurisdiction of members of the Police Force belonging to any State, and as Delhi became a Union Territory and ceased to be a State on November 1, 1956, Parliament had no jurisdiction to extend the Delhi Special Police Establishment Act, 1946 to the State of Jammu and Kashmir.

9. It seems to us that the impugned Act was validly extended and our reasons for coming to this conclusion are as follows. When the Extension Act was passed, Parliament had the competence to extend the impugned Act to the State of Jammu and Kashmir because the Delhi Special Police Establishment was a police force belonging to a Part 'C' State. The contention of the learned counsel that because Parliament could not extend the powers and jurisdiction of members of the Delhi Special Police Force after November 1, 1956, assuming it to be correct, does not invalidate the powers exercised earlier. When the Extension Act was passed there is no doubt that the Parliament had the power. The fact that the Parliament ceased to have power, as from November 1, 1956, does not make any difference.

10. This court had occasion to deal with a similar question in *State of Assam v. Ka Brhvien Kurkalang*. [AIR 1972 SC 223 : (1972) 1 SCC 148]. In that case, Para 19(b) of Schedule 6, Constitution of India, authorised the Governor to make regulations for the peace and good Government of a district. This power was vested in the Governor till the setting up of a District Council for an autonomous district. It was contended that because a District Council had been set up, the Governor could not exercise the power under the Regulation and apply laws. The High Court had accepted the contention but this Court reversed the judgment of the High Court, and after referring to *J. K. Gas Plant Manufacturing Co. Ltd. v. King Emperor* [(1947) FCR 141]; *Ram Kirpal v. State of Bihar* [(1970) 3 SCR 233 : (1969) 3 SCC 471]; and *Cajee v. U. Jormanik Siem* [(1961) 1 SCR 750 : AIR 1961 SC 276 : (1961) 1 Lab LJ 652 : 1961 (2) FLR 304], held that although the power of the Governor to legislate ended when the District Council was constituted, the power conferred under the regulation on the Governor to bring into force the laws set out in the Schedule

continued and would continue so long as the regulation remained on the statute book. The same principle applies here. The Central Government could validly issue a notification under sub-section (2) of Section 1 appointing the date from which the Act would come into force, and as soon as this notification was made, by virtue of Section 2, the impugned Act came into force in the State. The Constitution (Seventh Amendment) Act did not destroy the efficacy of sub-section (2) of Section 1.

11. The learned counsel contended that this principle conflicts with the general principle that executive power corresponds to legislative power and it could not have been intended that the extended law should operate when there was no corresponding legislative power. In this connection he referred to Article 73. The general principle is subject to exceptions. Article 73 itself opens with the words "subject to the provisions of this Constitution." This is one of the exceptions envisaged by the Constitution. Other such exceptions are in Article 277 and Article 372. Although legislative power may not exist to legislate on the subject of existing laws executive power would be exercised under the laws saved by Article 277 and Article 372. No authority has been cited in support of the contention that executive power to execute a valid law ceases to exist if power to make that law has been transferred to another authority or ceases to exist.

12. It was next contended that the impugned Act was repugnant to and inconsistent with the Jammu and Kashmir Code of Criminal Procedure and Jammu and Kashmir Police Act, which were already in existence before the Delhi Special Police Act, 1946 came into force.

13. But in so far as the impugned legislation is a law with respect to Entry 80, even if there is repugnancy it must override any laws repugnant thereto in Jammu and Kashmir. Article 246, as applicable to Jammu and Kashmir, reads thus :

"246. (1) Notwithstanding anything in Clause (2), Parliament has the exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List");

(2) Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List')."

When the impugned Act was extended Parliament had no power to make laws with respect to any items in the Concurrent List, but the impugned law is fully covered by Entry 80 and there is no need to rely on the concurrent list. Therefore, Article 254 can have no application to the present case.

14. It was also contended that the impugned Act could not have been validly extended by a notification, dated October 10, 1956, issued under the Extension Act which itself came into force only from November 1, 1956. There is nothing in sub-section (2) of Section 1 which makes it obligatory that the notification should issue simultaneously with the date of the coming into force of the Act. On the contrary, notification must ordinarily issue earlier than the date of the coming into force of the Law. It seems to us clear that the notification could have been issued any time after the President had given his assent, and as soon as the notification was issued Section 2 came into effect and all the Acts and Ordinance mentioned in the Schedule, stood automatically extended and came into force.

15. The learned counsel did not press the point regarding Article 14 of the Constitution.

16. In the result the appeal fails and is dismissed.

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