

# ALLAHABAD HIGH COURT

Sagar Mal

Vs.

State (Allahabad)

Criminal Misc. Case No. 1188 of 1951

(Malik, C.J and Agarwala, J.)

17.05.1951

## JUDGMENT

**Malik, C. J.**

1. This application was filed on behalf of Sagar Mal, Mool Chand and Girdhar Gopal.
2. The applicants have been convicted under Section 7, Essential Supplies (Temporary Powers) Act XXIV [24] of 1946 read with Clause 3 (iii), Government of India, Cotton Textiles (Control of Movement) Order, 1946, and further read with Clause 3 (ii) and Clause (10), Cotton Textiles (Control of Movement) Order of 1948. All the three applicants were sentenced to pay a fine of Rs. 1000 and Sagar Mal was further sentenced to six months' rigorous imprisonment. The application was filed by Mr. Suraj Nath Singh, advocate, on behalf of all the three applicants Sagar Mal, Mool Chand and Girdhar Gopal. Sagar Mal has, however, not surrendered to his bail and probably he is absconding. Mr. Pathak, who had been recently briefed for the applicants, has stated that he withdraws his memo of appearance for Sagar Mal. Mr. Suraj Nath Singh has also no instructions to proceed on behalf of Sagar Mal. As Sagar Mal is not present and as no one appears on his behalf, we reject his application.
3. We are, therefore, left with the cases of Mool Chand and Girdhar Gopal.
4. Sagar Mal had a permit issued under the Essential Supplies (Temporary Powers) Act, 1946, (XXIV [24] of 1946) for exporting two bales of handloom cloth, each bale containing 1500 yards, from Mau to Delhi. Under the cover of that permit, however, the three applicants, Sagar Mal, Mool Chand and Girdhar Gopal were exporting cloth which far exceeded the quantity for which the permit was issued. The applicants were prosecuted, but on 31.12.1948, they were acquitted by a Magistrate, first class. The Government filed an appeal to this Court which came up for hearing before a Bench and was allowed on 15.11.1950. This Court held the applicants

guilty and convicted and sentenced them as mentioned above.

5. In this application for leave to appeal to the Supreme Court, Mr. Pathak has urged three points. His first point is that after 26.1.1950, when the new Constitution came into force, the applicants could no longer be convicted of an offence under an order issued under the Essential Supplies (Temporary Powers) Act, XXIV [24] of 1946. This Act was passed under Section 2, India (Central Government and Legislature) Act, 1946, (9 and 10 Geo. VI, c 39) to make laws with respect to matter described as 'essential commodities' in that section. Section 1 (3) of the Act made Section 6, General Clauses Act 1897, applicable so that even upon the expiry of the Act, for things done or omitted to be done while the Act was in force, a person could be held liable. The Essential Supplies Act, however, was an Act passed by the Indian Legislature. Under the Constitution production, supply and distribution of commodities are included in entry 27 of List II, that is, they have been made a subject with respect to which the State Legislature can now make laws. Article 372 (1) of the Constitution, the interpretation of which, according to Mr. Pathak, arises in this case, is as follows :

"Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this constitution all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."

6. It is admitted by Mr. Pathak that before 26.1.1950 the applicants could have been convicted for breach of an order issued under the Essential Supplies Act. But his contention is that after 26.1.1950 this particular Act being an Act of the Central Legislature, and the subject having been made a State subject, the Act must be deemed to be not in accordance with the provisions of the Constitution and, therefore, Article 372 (1) does not help in protecting this Act and the Act must be deemed to have expired on 26.1.1950.

7. Article S46 of the Constitution distributes the legislative powers between the Parliament of the Union and the State Legislatures. It has nothing to do with laws already made and, if those laws are not contrary to any provisions of the Constitution, it cannot be said that those laws are not valid. The words "subject to the other provisions of this Constitution," in Article 372, do not mean that laws which had been passed by the Central Legislature before 26.1.1950, automatically cease to have effect because the subject has now been made a State subject. It must be remembered that the powers of the State Legislatures have been growing and more and more subjects have gradually been transferred to them and there are many matters relating to which Acts passed by the Central Legislature are a till in force, though the subject may have now been transferred to the State and future legislation on the point may have to be made only by the State Legislature. We do not think that the point can admit of any doubt and we do not, therefore, consider that a certificate can be granted under Article 132 of the Constitution.

8. The second point urged by Mr. Pathak is that the sanction under which prosecution was started was not duly proved. He has relied on a Bench decision of the Calcutta High Court in the case of *Superintendent and Remembrancer of Legal Affairs, Bengal v. Moazzem Hossain*<sup>1</sup>, No doubt, the learned Judges appear to have said that even where the original order itself is produced, it is necessary to prove the signature of the Presiding Officer. A sanction is a public document and if a certified copy of such a document is admissible without further evidence, we see no reason why the original should not be presumed to be

<sup>1</sup> AIR 1847 Cal 318

genuine when the original itself is produced. We do not think there is any force in this argument.

9. The third point raised is that Section 6, General Clauses Act, did not apply and, therefore, the applicants could not be convicted after the period, for which the Essential Supplies Act was in force, came to an end. There is a certain amount of misapprehension, firstly, because we do not think that the Essential Supplies Act has yet expired and lost its force, and, secondly, as we have already pointed out, there is a provision Section 1 (a) of the Act making Section 6, General Clauses Act, applicable to proceedings under that Act.

10. One more point was argued by Mr. Pathak and that was that Sections 3 and 4, Essential Supplies Act, delegated legislative powers to the executive without any restraint or control and that such delegation was invalid. The recent Full Bench decision in the case of *Raja Suryopal Singh v. The Government of the State of Uttar Pradesh*<sup>2</sup>, held that such delegation was valid. We do not think that we can certify this case under Article 134 (1) (c) of the Constitution.

11. The application is dismissed.

Application dismissed.

<sup>2</sup> Writ No. 23 of 1951