ALLAHABAD HIGH COURT

Mehar Chand

Vs.

State (Allahabad)

Criminal Revn. No. 1589 of 1958 (connected with Criminal Appeal No. 1174 of 1956), against order of Addl. S.J. Saharanpur,

(A.P. Srivastava and S.K. Verma, JJ.)

26.08.1958. 16.2.1959

JUDGMENT

Srivastava, J.

1. We have before us an application in revision on behalf of Meharchand and a reference made by Oak, J. in an appeal on behalf of Sarupa.

2. The applicant Meharchand was convicted by the Railway Magistrate of Saharanpur under Section 19(f) of the Indian Arms Act and was sentenced to undergo rigorous imprisonment for six months. It was found against him that on 26-1-1956 at about 1-30 p.m. while he was at platform No. 5 of the railway station at Saharanpur he had in his possession a loaded country made pistol and four 12 bore live cartridges for which he did not possess any license. As the offence had been committed in the district of Saharanpur no sanction was obtained for his prosecution as required by Section 29 of the Indian; Arms Act. Against his conviction the applicant went up in appeal to the Sessions Judge but the findings recorded by the Magistrate against him were confirmed and his conviction and sentence were both upheld.

3. The appellant in the other case. Sarupa, has also been convicted under Section 19(f) of the Arms Act but by the Sessions Judge of Bijnor. It has been found against him that in the night between the 26th and 27th October 1955 Sarupa was found in the possession of an unlicensed gun along with three live cartridges in respect of which he had no license.

4. When the appeal of Sarupa came up before Mr. Justice Oak it was contended that his conviction stood vitiated because no sanction had been obtained for his prosecution from the District Magistrate. The learned counsel for the State, however, relied on Section 29 of the Indian Arms Act and contended that no sanction was necessary in the case of Sarupa because he had

committed the offence in the district of Bijnor which was situated north of the river Ganges. Mr. Justice Oak was of opinion that Section 29 of the Indian Arms Act, though it may have been valid before 1950, had become void after the coming into force of the Constitution. A decision of

Mr. Justice Dayal in *Jai Prakash v. State*[1], was, however, cited before him in which an opinion had been expressed that Section 29 of the Arms Act did not contravene Article 14 of the Constitution. Mr. Justice Oak felt it desirable that the question should be considered by a Division Bench. He therefore referred the following question for being decided by a Division Bench :

> "Whether that part of Section 29, Indian Arms Act, which does not extend the protection of the section to certain parts of Uttar Pradesh is void under Article 13 read with Article 14 of the Constitution."

5. This very point has been raised by the learned counsel for Meharchand in his application for revision. He too contends that the conviction of Meharchand is bad because in his case too sanction was not obtained from the District Magistrate and meets the States contention that no sanction was necessary in view of the provisions of Section 29 of the Indian Arms Act by urging that that provision being discriminatory is constitutionally invalid.

6. Section 29 of the Indian Arms Act reads as follows :

> "Where an offence punishable under Section 19", clause (f), has been committed within three months from the date on which this Act comes into force in any province, district or place to which Section 32, clause 2, of Act XXXI of 1860 applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the District or, in a presidency town, of the Commissioner of Police."

7. Under this section the necessity for obtaining a sanction for the prosecution of a person under Section 19(f) of the Arms Act depends on whether Section 32, clause 2, of Act XXXI of 1860 was in force at the place where the offence was committed in the year 1878 when the Indian Arms Act was enacted. If the offence is committed in that area where Section 32, clause 2 of Act XXXI of 1860 was in force in the year 1878 sanction was required only during the first three months after the coming into force of the Arms Act. No sanction was required in respect of offences committed in that area after the expiry of the period of three months. If, however, Section 32, clause 2, of Act XXXI of 1860 was not in force in that area in 1878 for offences committed under Section 19(f) of the Arms Act in that area no prosecution could be launched at any time without the sanction of the Magistrate of the district. As was pointed out by Daniels, J. in *Amir Ahmad v. Emperor*[2] of Section 32 of Act XXXI of 1860 was in force, (1) in every

province, district or place which had been ordered to be disarmed, and (2) in every district, province or place where an order of general search for arms under Act XXVIII of 1857 had been issued and was still in operation. By a notification No. 5336 dated 21-12-1858 Sections 1, 2 and 5 of Act XXVIII of 1857 had been extended to the whole of the then North Western Provinces and a general search and seizure of arms had been authorized in those parts of the province which

[1] Criminal Revn. No. 942 of 1954, D/-5-7-1954 (All)

[2] AIR 1926 All 143, clause 2

lay to the north of the rivers Jamuna and Ganges.

As a result, in the areas that were formerly parts of the North-Western Provinces and in the area situated on the north of the rivers Jamuna and Ganges sanction for the prosecution for an offence under Section 19(f) of the Arms Act was needed only during the first three months after the coming into operation of the Indian Arms Act. In the remaining part of the country, e.g. the area situated south of the Jamuna no prosecution could be started for that offence at any time without obtaining previous sanction. The curious consequence which follows is that if a person commits an offence under Section 19(f) of the Arms Act say in the district of Allahabad in an area south of the river Jamuna, he cannot be prosecuted without previous sanction of the District Magistrate but if the person commits the same offence in an area north of the Jamuna no sanction will be required for starting his prosecution. It is urged on behalf of the applicant that previous sanction is a sort of protection against indiscriminate and unjustified prosecution and cones fluent harassment. That protection is available to all persons in the country except those unfortunate ones who happen to commit the offence in a particular part of the country mentioned in Section 29. The exception, it is argued, amounts to unjustified discrimination against the persons belonging to the excepted area. It is stressed that Article 14 of the Constitution guarantees equality before the law to every person throughout the territory of India and expressly provides :

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

8. It is urged that if Section 29 of the Indian Arms Act is discriminatory as it appears to be, after the coming into force of the Constitution it became void under Article 3 because it came into conflict with Article 14 of the Constitution. It is therefore not open to the State to rely on that provision in support of the contention that sanction for the prosecution of Meharchand and Sarupa under Section 19(f) of the Indian Arms Act was not required because the offences were committed by him in an area north of the river Ganges.

9. Article 14 of the Constitution has been the subject matter of consideration by the Supreme Court in a number of cases. It does not appear to be necessary to refer to the numerous cases because very recently the views of that Court on the subject have been summarized in the case of *Ram Krishna Dalmia v. S.R. Tendolkar*[3]. in the following manner :

"In *Budhan Choudhry v. State of Bihar*[4] a Constitution Bench or seven Judges of this Court at pages 1048-49 (of SCR) : (at p. 193 of AIR) explained the true meaning and scope of Article 14 as follows :

'The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Charanjit Lal v. Union of India*[5], *State of Bombay v. F.N.*

[3] AIR 1958 SC 538 [5]1950 SCR 869: AIR 1951 SC 41

[4]1955-1 SCR 1045: AIR 1955 SC 191

Balsara[6], *State of West Bengal v. Anwar Ali Sarkar*[7] *Kathi Raning Rawat v. State of Saurashtra*[8]. *Lachmandas Kewalram v. State of Bombay*[9], *Qasim, Razvi v. State of Hyderabad*[10], and *Habeeb Mohammad v. State of Hyderabad*[11], It is, therefore not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question.

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish -

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) That there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived easting at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

[6]1951 SCR 882: AIR 1951 SC 318 [8]1952 SCR 435: AIR 1952 SC 123
[7]1952 SCR 284: AIR 1952 SC 75 [9]1952 SCR 710: AIR 1952 SC 235
[10]1953 SCR 589: AIR 1953 SC 156 [11]1953 SCR 661; AIR 1953 SC 287

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

10. It is in the light of these principles that the question whether any part of Section 29 of the Indian Arms Act is hit by Article 14 of the Constitution has to be decided.

11. As has been pointed out already. Section 29 divides persons who may commit an offence under Section 19 (f) of the Arms Act in two distinct classes : (1) Persons who commit the offence within that area of the country in which Section 32, clause 2, of Act XXXI of 1860 was in force at the time when the Indian Arms Act came into force and (2) persons committing the same kind of offence in the rest of the country. In the case of the persons falling under the former class the protection of previous sanction for prosecution was given only for the first three months after the coming into force of the Arms Act and was not to be available after the expiry of that period. In respect of the offenders falling in the latter class the protection was to be available at all times without any limitation. It is therefore obvious that among the offenders of the same kind one rule of law is to apply to some and another rule of law is to apply to others, the basis of the distinction being a geographical one, namely the place where the offence was committed.

12. As was observed by the Supreme Court in AIR 1955 Supreme Court 191, Article 14 does not forbid classification absolutely. It permit classification by legislation provided two tests are answered : (1) That the classification is founded on an intelligible differentia and (2) that the differentia has a rational relation to the object sought to be achieved by the statute in question. It may be conceded at once that a geographical or territorial basis is an intelligible differentia which may distinguish one class of persons from another. The Supreme Court expressly stated in Budhan Choudhry's case 1951-1 SCR 1045 : AIR 1955 Supreme Court 191 (supra).

"The classification may be founded on different bases namely geographical or according to objects or occupation or the like."

13. That, however, is not enough. The other test also must be satisfied and it must be shown that this geographical or territorial basis has some connection with the object of the enactment. The object of the Indian Arms Act, as its Preamble shows, was to consolidate and amend the law

relating to arms and ammunition stores. Section 19(f) of the Arms Act was enacted to punish persons who had in their possession and control any arms, ammunition or Military stores in contravention of the provisions of Section 14 or 15 of the Act. The object of Section 29 appears to have been the prevention of indiscriminate prosecution for offences punishable under Section 19(f) of the Act. Prior sanction was made necessary to protect persons from unnecessary harassment. That being the object of the Act some nexus has to be discovered between the classification on territorial basis and the object of the Act. The presumption of constitutionality is certainly there and it can also be presumed that the Legislature when it enacted the provision had some justification for making the distinction because the conditions in one part of the country were more disturbed than in the other. The same reasons which led to the disarming and a general order of search of arms in one part of the Country may have at that time justified the withholding of the protection of prior sanction for the offender committing offence in that part of the country. But now more than three quarters of a century have elapsed since then and have brought about at definite change for the better. At least for several decades the conditions so far as law and order is concerned have been almost identical in the whole State and it cannot even be suggested that the situation in the area south of the river Jamuna has in any manner been different from that in the area on the north of the river. The question therefore is whether in the year 1956 there was any justification left for maintaining the discrimination to be found in Section 29 and whether any connection can be found to be existing at that time between the object of the enactment and the classification made in it. We failed to discover any. The learned counsel for the State also expressed his inability to point out any such connection. An opportunity was given to the State to furnish any materials on the basis of which such a connection could be held to exist. No such materials were, however, furnished. The learned counsel for the State as well as the learned Advocate-General, who very kindly agreed to assist us in this matter, both fairly conceded that, at least, at present there was no nexus between the basis of the classification and the object of the Act.

If a person committing the offence south of the river Jamuna was entitled to the protection of a prior sanction they could not suggest any reason at least at present why a person committing the same offence on the north of the river should not be entitled to the same protection. It was thus practically conceded that the classification envisaged in Section 29 cannot now be held to be justified on any reasonable basis, and the person to whom the section denied the protection of previous sanction could, therefore, contend with justification that he was being discriminated against and that the equality of law guaranteed by Article 14 of the Constitution was being denied to him.

14. It was, however, urged that if the enactment was valid and good at the time when it was made it cannot be held to be invalid now. This contention does not appear to be correct. The Constitution clearly provides that after it has come into force all previous laws which are found to be in conflict with the provisions of Part III of the Constitution which includes Article 14, shall become void to the extent of such inconsistency. So even if the provision was valid when it was enacted, if it is in contravention of Article 14 now, it must be struck down.

15. A reference to the law reports will disclose many instances of laws which were valid when enacted but became void after 1950 as they were found to be in conflict with some fundamental right guaranteed by the Constitution.

16. In the case of *Manohar Singhji v. State of Rajasthan*[12] Manohar Singhji was the Jagirdar of Bedla situated in the former State of Mewar. That State was integrated with some other states in 1948 to form what was known as the United States of Rajasthan. Certain ordinances in connection with the management of jagirdar property were enacted by that State of Rajasthan Subsequently there was a further integration of the former United States of Rajasthan with the former states of Bikaner, Jaipur, Jaisalmer and Jodhpur and a new United State of Rajasthan was formed. The result was that the ordinances in accordance with which the Jagirdari of the petitioner was being managed remained applicable to a part of the newly formed State of

[12] AIR 1953 Raj 22

Rajasthan but were not in force in the rest of it. The ordinances were therefore challenged on tire ground that they had become void after the coming into force of the Constitution as Article 14 was contravened. The contention was upheld and the decision of the Division Bench of the Rajasthan Court was confirmed by the Supreme Court in *State of Rajasthan v. Manohar Singhji*[13]

17. The case of ***Shiv Kalyan Singh v. Bhur Singh AIR 1954 Rajasthan 182*** is another instance of a law which was valid at the time of its enactment but became void after the coming into force of the Constitution because it was found to be in conflict with the guarantee of equality of laws. In that case certain rules framed in 1945 were applicable only to the State of Jaipur. After Jaipur State integrated with the other States, and the United States of Rajasthan was formed, the validity of the rules, was challenged on the ground that special legislation could apply to a particular geographical area only if there was some basis for singling out that area for the application of that legislation. As there was no such basis to justify the application of the rules to a part of the State only, it was held that the rules were hit by Article 14 and were therefore ultra vires.

18. The principle that a law which was valid when passed can become invalid on account of subsequent events was also recognised in the case of *Chastleton Corporation v. A. Leftwich Sinclair*[14] where Holmes, J. declared :

> "And still more obviously, so far as this declaration looks to the future, it can be no mere than prophecy, and is liable to be controlled by events. A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed."

19. It is therefore not correct to say that because the provision was not invalid at the time when it was enacted it cannot be challenged now. After the enforcement of the Constitution every piece

of earlier legislation must be tested on the touch stone of Part III of it, and can survive only if it is not found to be in conflict with any of the Articles of that part. Article 13 clearly makes it void to the extent of the inconsistency, if any.

20. An argument which found favour with Dayal, J. in Criminal Revision No. 942 of 1954, D/-5-7-1954 (All) was also advanced on behalf of the State. It was urged that the only thing which Section 29 does is to lay down that one rule shall operate in one part of the country and another shall apply to the rest of it.

21. No discrimination is made, it is pointed out, between one person and another whoever may be the person if he commits the offence in a particular territory he can be prosecuted without previous sanction. Similarly all persons committing the offence in the other part can be prosecuted only after sanction has been obtained. Article 14, it is contended, prohibits discrimination between one person and another. It does not provide that different areas in the country cannot have different laws. This argument

[13] AIR 1954 SC 297

[14] (1923) 68 Law. Ed. 841

of the learned counsel for the State does not appear to be sound and the Advocate General very fairly conceded that he was unable to endorse it.

While it puts undue emphasis on the words "any person" used in Article 14 it ignores altogether its concluding words "within the territory of India." The argument overlooks another important aspect of the matter. Legislation for an area essentially means legislation for the people of the area. Laws have to be obeyed or disobeyed. That can be done only by persons and not by territories. For the purpose of Article 14 therefore one cannot think of territories apart from the person, who belong to them. It is consequently not possible to say that though discrimination has been made between territories, it have not been made between persons.

22. It is true that Article 14 does not require that all laws must be of universal application. Conditions and circumstances differ from area to area and the Legislature has to legislate keeping all of them in mind. Laws can, therefore, from the very nature of things, different respect of different territories. That is why classification on geographical or territorial basis is permissible. Such classification must however answer the test of having a reasonable connection with the object of the legislation, and if that is absent, the classification becomes unjustified discrimination and vitiates the legislation. In that case it cannot be upheld on the ground that discrimination has been made between territories only and not between persons.

23. The discrimination made in Section 29 of the Arms Act between two classes of offenders therefore contravenes Article 14 of the Constitution. The protection of prior sanction, if it was to be available at all, must have, been available, at least after the coming into force of the Constitution to all persons without any distinction on territorial basis. That part of Section 29 therefore which debars one part of the State from claiming the advantage must consequently be

held to have become void after the enforcement of the Constitution under Article 13 of it.

24. Irrespective of the area in which Meharchand and Sarupa committed the offences which they were alleged to have committed, they could not have been prosecuted without prior sanction being taken, and if no sanction was obtained in their cases their prosecutions stood vitiated.

25. We therefore agree with the view taken by Oak, J., in his order of reference and answer the question referred to us by him in the affirmative. The record of the appeal of Sarupa will now be sent back to him with this answer. The application in revision on behalf of Meharchand is allowed. His conviction and sentence are set aside. He is on bail. Pie need not surrender. His bail bonds shall stand cancelled.
Order accordingly.