

ANDHRA PRADESH HIGH COURT

Pannalal Lahoti

Vs

State of Hyderabad

(Misra, C.J.)

22.03.1954

JUDGEMENT

Misra, C.J.

(1.) THE following four questions have been referred by a Full Bench of three judges to a Fuller Bench of five judges: (1) Whether the Hyderabad Defence Regulation, having regard to its preamble, language, emergency and the constitutional set up at the State then existing was operative only during the period of emergency for which it was promulgated and should be deemed to have lapsed afterwards without any express repealment; (2) whether the directions contained in the Cotton Cloth and Yarn Control Order of 1355-F. about the publication of a press-note explaining its provisions read with R. 110 at the Defence of Hyderabad Rules are man-datory; (3) whether the directions by the Textile Commissioner about the markings on the bales having regard to the definition of "Cloth". "Yarn" and other provisions of the Order of 1352-P., under which it was framed as well as the later Order are not within the scope of his delegated authority and therefore ultra vires; and (4) whether Sections 435 and 439 of the Indian Criminal Procedure Code authorise interference by this Court in a pending criminal case on grounds of illegality of procedure or harassment of the accused by such unjustified illegal procedure. THESE questions arise in a criminal case pending in the Court of the District Magistrate, Gulbarga against the petitioner Pannalal Lahoti for violation of Sub-clauses (d), (e) and (f) of Clause 7(1), Cotton Cloth and Yam Control Order, 1355-F. promulgated under R. 72(2) read with R, 72(4) of the Defence of Hyderabad Rules.

(2.) THE petitioner was the managing agent of Messrs. M. S. K. Mills, Gulbarga and in that capacity he is alleged to have ordered his staff in May and June 1949 to alter the markings on the gunny coverings of bales of cloths from "May 1949 Tex Mark" to "June 1949 Tex Mark" and to have kept the bales with the changed markings in the Mills without informing the Textile Commissioner. Section 2, Defence of Hyderabad Regulation authorised the President in Council to make such rules as appeared to him necessary or expedient for defence of the dominions, public safety, maintenance of public order or the efficient prosecution of war or for maintaining supplies and services essential to the life of the community. The Hyderabad Defence Rules followed immediately and they dealt with a variety of subjects which were arranged in 18 parts. Rule 72(2) which occurred in Chapter 12 , headed "Essential Supplies and Work" empowered the President in Council, so far as it appeared to him necessary or expedient for

securing the defence of the dominions or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community to prescribe by order for control of industries by regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal etc., of industrial articles and things for controlling the prices and rates of the commodities.

(3.) UNDER R. 72(4) any person who contravened any order made as aforesaid rendered himself liable for imprisonment for a term which might extend to 3 years or with fine or with both. Rule 110(1) occurring in Part 17 containing miscellaneous provisions lays down the method of publication, affixation and defacement of notice. It enjoins that every authority, officer or person making an order in writing in pursuance of any of the rules shall, in the case of an order of a general nature or affecting class of persons publish notice of such order in such a manner as may in the opinion of such authority, officer or person, be best adopted for informing the persons whom the order concerned and in the case of an order affecting an individual, serve or cause the order to be served on that person personally, by delivering or tendering to him the order, or by post or where the person cannot be found by leaving an authenticated copy of the order with some adult male member of his family or by affixing the copy to some conspicuous part of the premises in which he was known to have last resided or carried on business or personally worked for gain, and thereupon, the persons, or the person concerned was to be deemed to have been duly informed of the order. ;