

(1981) 04 GUJ CK 0032
In the Gujarat High Court

Ashok Jesang

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-04-1981

Acts Referred:

Bombay Children Act, 1948 — Section 2
Saurashtra Children Act, 1954 — Section 2, 4(d), 4(d)
State Reorganisation Act, 1956 — Section 8(1)(d)

Citation : (1982) 1 GLR 49

Hon'ble Judges : S.L. Talati, J

Bench : Single Bench

Judgement

S.L. Talati, J.—The petitioner was the accused in Sessions Case No. 43 of 1980. He had submitted an application-Exh.6 which was decided on 7th October, 1980 and the Judicial Magistrate First Class, Okhamandal-Dwarka was directed to determine the age of the accused. The learned Magistrate was also directed to decide as to whether the Saurashtra Children Act was applicable to the accused or not. The Learned Magistrate by his order, dated 31-12-1980 came to the conclusion that the age of the accused was between 17 and 18 years. However, he came to the conclusion that as the offence was committed in Dwarka, the Saurashtra Children Act would not be applicable and the accused would be governed by the Bombay Children Act.

2. It may here be stated that the Learned Magistrate examined as many as five witnesses and on facts he came to the conclusion that the age of the accused was between 17 and 18 years.

3. We have gone through the evidence and it clearly appears that the view taken by the Learned Judicial Magistrate First Class is correct. The reason is that the Learned Judicial Magistrate came to the conclusion that Narain, the brother of the accused was born on 3-9-1960 and the accused was younger by about two years and, therefore, he must have been in the year 1962. The offence was committed on 27-6-1979 and, therefore, on that date the accused was above 16

years of age. Therefore, the finding of fact that the accused was between 17 and 18 on the date of the offence, cannot be challenged by this Criminal Revision Application. That finding is, therefore, required to be maintained.

4. The next question which is a pure question of law is required to be decided and that question is whether the accused would be governed by the Saurashtra Children Act, 1954 or the Bombay Children Act, 1948. The question is of considerable importance. The reason is that the definition of child according to the Bombay Children Act 1948 as appearing in Section 4 (e) is as under:

4(e) "Child" means a boy or a girl who has not attained the age of sixteen years.

While definition of "child" appearing in the Saurashtra Children Act, 1954 in Section 4 (d) is as under:

4(d) "child" means a boy or girl who has not attained the age of eighteen years.

Now, therefore, as the accused is between the age of 17 and 18 years, if he is governed by the Saurashtra Children Act, he would be a "child"; if he is not governed by the Saurashtra Children Act but he is governed by the Bombay Children Act, he would not be a "child". This is an admitted position. Now, therefore, the question of law which arises in this case assumes importance. The Saurashtra Children Act, 1954 extended to the whole of the State of Saurashtra. Now in the year 1954 when the Saurashtra Children Act was enacted, Dwarka was part of Bombay State because originally Dwarka was part of Baroda State and Baroda State merged with Bombay State in the year 1948. Therefore, Amreli District and Dwarka which were formerly part of Baroda State became part of Bombay State and, therefore, when the Saurashtra Children Act, 1954 came to be passed, Dwarka was not part of Saurashtra and it was part of Bombay State. This was the position in the year 1954. However, Saurashtra State became part of Bombay State when Bigger Bilingual Bombay State came to be formed in the year 1956. Therefore, when Bigger Bilingual Bombay State was formed in the year 1956, Bombay State got power to implement not only the Bombay Children Act, 1948 but also the Saurashtra Children Act, 1954. Therefore, in exercise of powers conferred by Section 2 of the Saurashtra Children Act, the Government of Bombay issued a notification on 12-5-1958 which is as under:

Labour and Social Welfare Department Old Secretariat Building, Bombay I, 12th May, 1958.

Saurashtra Children Act, 1956 No. BUD. 1057-In exercise of the powers conferred by Section 2 of the Saurashtra Children Act, 1956 (Sau. XIX of 1956), the Government of Bombay hereby specifies that 1st June 1958 to be the date on and from which Part II of that Act shall come into force in the areas comprised in Halar, Zaiawad, Gohilwad and Sorath Districts.

This notification was published in Bombay Government Gazette in Part IV B on June 5, 1958 on page 558.

5. The Government of Bombay issued another notification under the Bombay Land Revenue Code, 1879. That was published in Bombay Government Gazette Part IV B at page 2. That notification is as under:

Bombay Land Revenue Code, 1879

No. TLC. 3858(a)-C.-In exercise of the powers conferred by Section 7 of the Bombay Land Revenue Code, 1879 (Bon. V of 1879), and in supersession of all the notifications so far as they relate to the constitution of districts, talukas and mahals in the Saurashtra area of the State, the Government of Bombay on and from the 1st July 1959 hereby-

(a) divides the Rajkot Division formed under Government Notification in the Revenue Department, No. T.L.C 3858-C, dated 19th June, 1959 into Amreli, Junagadh (heretofore known as Sorath District), Bhavnagar (heretofore known as Gohilwad District), Surendranagar (heretofore known as Zaiawad District), Rajkot (heretofore known as Madhya Saurashtra District) and Jamnagar (heretofore known as Halar District), Districts;

(b) directs that each of the said district specified in column I of the Appendix hereto shall consist of talukas or mahals as shown against it in column 2 of that Appendix, and each such taluka and mahal shall consist of villages specified in the Schedule mentioned in column 3 of such Appendix against each such taluka or mahal; and

(c) accordingly amends Government Notification, Revenue Department, No. TLC. 3854. dated the 23rd December, 1954, as follows, namely:

In the said notification-

(i) in Schedule I, entry 4 relating to the Amreli District shall be deleted;

(ii) Schedules XXV to XII (both inclusive) shall be deleted;

(iii) in Schedule XLI the following entries shall be deleted, namely:

"72. Kharaghoda."

"106, Patdi."

Now, therefore, by issuance of that Notification Halar District came to be known as Jamnagar District and appendix to that notification provided that Jamnagar District shall comprise of the following Talukas:

Jamnagar Taluka. Dhrol Taluka, Kalawad Taluka, Lalpur Mahal, Jodiya Mahal, Khambhaliya Taluka, J-amjodhpur Taluka, Kalyanpur Mahal, Bhanwad Mahal, Okhamandal Taluka.

Schedule XIX provided that Okhamandal Taluka would comprise of 44 villages and at serial No. 15 Dwarka was mentioned.

6. The learned advocate Shri Vyas submitted that so soon as Dwarka became

part of Okhamandal Taluka and as Okhamandal Was part of Jamnagar District and as Halar District came to be renamed as Jamnagar District and as the Saurashtra Children Act was made applicable to Halar District, it should be held that the Saurashtra Children Act would apply to Dwarka and therefore, the accused would be governed by the Saurashtra Children Act. The learned advocate Shri Vyas also referred to the Bombay General Clauses Act, 1904 where Clause (6) to Section 3 read as under:

(6) Bombay area of the State of Gujarat shall mean the area of the State of Gujarat excluding the Saurashtra area, and the Kutch area, of that State.

He submitted that the Bombay Children Act, 1948 was applicable to the whole of the Bombay area of the State of Gujarat and it also extended to the Kutch area of the State of Gujarat as Section 1(2) of the said Act read as under:

1. (2) It extends to the whole of the Bombay area of the State of Gujarat and it shall also extend to the Kutch area of the State of Gujarat on the date on which the Bombay Children (Extension to Kutch area and Amendment) Act, 1965 comes into force.

The argument submitted above at the first stage appears to be attractive. But we have to bear in mind that the notification issued on 1-9-1959 (supra) was for the purpose of defining the Revenue Districts and that was, therefore, issued under the Bombay Land Revenue Code, 1879, while notification dated 12-5-1958 was issued under the Saurashtra Children Act, 1956. Therefore, that Act applied on that date to Halar District and on that date Dwarka was not part of Halar District. If Dwarka became part of Jamnagar in the year 1959 for the purpose of revenue jurisdiction, one from that notification cannot argue that Dwarka was part of Halar District in the year 1958 or that the notification issued under the Saurashtra Children Act, 1956 on 12-5-1958 should be applied to Dwarka because subsequently it became part of Jamnagar District. This will lead to a pure logical absurdity.

7. The Learned advocate and Shri Vyas thereafter drew our attention to the provisions contained in the Bombay General Clauses Act, 1904, where the following definitions are required to be considered:

Section 3(6): Bombay area of the State of Gujarat shall mean the area of the State of Gujarat excluding the Saurashtra area, and the Kutch area, of that State.

Section 3(39A)" Saurashtra area of the "State of Bombay" shall mean the territories transferred to the new State of Bombay under Clause (d) of Sub-section (1) of Section 8 of the State Re-organisation Act, 1956 and after the 1st day of May 1960 the said territories which form part of the State of Gujarat shall be known as the Saurashtra area of the State of Gujarat.

Now, therefore, one has to look to Section 8 of the States Reorganisation Act, 1956 and Section 8(1)(d) of the said Act reads as under:

8(1) As from the appointed day, there shall be formed a new Part A State to be known as the State of Bombay comprising the following territories, namely:

xxx xxx xxx xxx xxx xxx xxx

(d) the territories of the existing State of Saurashtra.

8. Therefore, reading the above definitions it would become clear that when new State of Bombay was formed in the year 1956, the State of Saurashtra merged with the Bombay State. On the date Dwarka was not part of the Saurashtra State and, therefore, Dwarka did not merge with the State of Bombay as part of Saurashtra but Amreli and Dwarka merged with the Bombay State as part of the Gujarat State. Now, therefore, when in the year 1960 Gujarat was separated all the areas which merged with Bombay State either from Saurashtra State were formed in or from Gujarat State to one State and they together with Kutch area became part of the Gujarat State. Now, therefore; it was the Gujarat State which had the burden of implementing two Acts viz. the Saurashtra Children Act and the Bombay Children Act and it was for the Gujarat State to decide as to how those two Acts would be implemented into different area of the whole State. The Saurashtra Children Act when it was enacted applied to Saurashtra area alone and the Saurashtra State on that date never included Dwarka. Therefore, there was no question of applying that Act to that particular area unless the State desired do so by amending that particular Act. That is not done. The Bombay Children Act, 1948 applied to the whole State of Bombay and when in 1956 Gujarat merged with Bombay alongwith Gujarat, Amreli and Dwarka merged with Bombay and, therefore, the Bombay Children Act was already applicable to Dwarka and Amreli. Now, therefore, when Gujarat State was formed in 1960 the position was clear that the Saurashtra Children Act remained to be applied to the area which was once-the Saurashtra State and that continues to apply till this date as the State of Gujarat never thought of any change in that particular Act. The Bombay Children Act, 1948 continues to apply to the Bombay area which is now in Gujarat and that area includes Dwarka. In order that certain parts could be made applicable to Okhamandal i.e. Dwarka, a notification, dated 20-6-1963 came to be issued by the State of Gujarat. That notification is as under:

Bombay Children Act, 1948.

No. BCA. 1663/787-D.-In exercise of the powers conferred by Section 2 of the Bombay Children Act, 1948 (Bom. LXXI of 1948), the Government of-Gujarat hereby specifies the 1st July 1963 to be the date on which the provisions contained in Parts V and VI of the said Act shall come into force in the area comprised within the Okhamandal Taluka of the Jamnagar District and to which the said act extends.

This was published in Gujarat Government Gazettee, Part IV B, dated 20-6-1963 on page 543. Under these circumstances it becomes clear that the Saurashtra Children Act applies to the area which was originally Saurashtra State which did not include Amreli and Dwarka. The Bombay Children Act applies to the rest of

Gujarat and it could be made applicable to the areas to which this Act applies by issuance of the notifications as provided by law. The position so far as this case is concerned, would be that the accused will be governed by the Bombay Children Act and not by the Saurashtra Children Act.

9. In the result the petition fails and is dismissed. Rule is discharged.