

(1955) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Revision No. 24 of 1953

Firm Kashiram Biharilal

APPELLANT

Vs

Badrilal

RESPONDENT

Date of Decision : 22-03-1955

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 1955 MP 177

Hon'ble Judges : Dixit, J;Chaturvedi, J

Bench : Division Bench

Advocate : Patankar, for the Appellant; Motilal Gupta and K.A. Chitale, Advocate-General for the State, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—This application under Art. 227 of the Constitution of India is directed against an order dated 25-12-1952 in appeal of the District Judge Guna, whereby he modified a decision of the Rent Fixation Authority Guna and determined Rs. 27/- per month as the fair rent of certain premises rented out by the opponent Badrilal from the petitioner. The applicant contends that the Madhya Bharat Sthan Niyantran Vidhan Samvat 2009 was operative only until 30-6-1951 and that thereafter neither the Rent Fixation Authority nor the District Judge has any jurisdiction to fix any rent in respect of the tenanted premises.

2. The Madhya Bharat Sthan Niyantran Vidhan came into force on 9-2-1950. Section 1 (4) of the Act provided that the Act shall remain in force until 30-6-1951. The proviso to that section, however, laid down that the Government may, if it considered it expedient to do so, extend the duration of the Act by a further period of two years from the date on which the Act would otherwise expire. On 26-3-1951 the Government issued a notification continuing in force the Act till 30-6-1953. Mr. Patankar learned counsel for the petitioner argued that the proviso to S. 1(4) under which the Government extended the duration of the Act was not valid inasmuch as it gave to the Executive a legislative power which

the legislature could not repose in any organ or body; that the extension of the Act for a further period of two years from 30-6-1951 by Government notification amounted to exercise of delegated legislative power and as such was ultra vires and that, therefore the Act ceased to operate on 30-6-1951.

Learned counsel based his argument on -- AIR 1949 175 (Federal Court) ; -- Joylal Agarwala Vs. The State, -- In Re: Kalyanam Veerabhadrayya, -- Krishna Chandra Misra Vs. Sushila Mitra, and -- Ram Kishan Vs. State, . The learned Advocate-General in reply contended that there was not here in fact any delegation of the law-making power; the Legislature itself had applied its mind as to the maximum period upto which the Act could remain in force and what was left to the discretion of the Government was the determination of the circumstances and the manner under which the duration of the Act could be extended by two years upto 30-6-1953 and that the decisions of the Supreme Court in the case of -- "In re Delhi Laws Act, 1912", AIR 1951 SC 332 (F); -- "State of Bombay v. Narottamdas", AIR 1951 SC 09 (G); Joylal Agarwala Vs. The State, clearly showed that no exception could be taken to such legislation.

3. It seems to me that having regard to the decisions of the Supreme Court in the cases referred to at the Bar, of which the most material is Joylal Agarwala Vs. The State,), the point which the petitioner here wishes to argue is quite unarguable. The doctrine of delegated legislation has been exhaustively and elaborately considered in AIR 1951 SC 332 (F), which has been summarised by the Supreme Court in -- "Rajnarain Singh v. Chairman Patna Administration Committee", AIR 1954 SC 509 (H). The one proposition which" seems to emerge clearly from these authorities and the decisions in State of Bombay Vs. Narothamdas Jethabai and Another,); Joylal Agarwala Vs. The State, and AIR 1949 175 (Federal Court) is that the Legislature cannot repose any power essentially Legislative in another body or organ; it cannot efface itself and set up a parallel legislative authority; it must exercise its judgment on vital matters of policy and enact the general principles which should be embodied in the legislation; but it can confer upon, any person or body fitted to exercise it, the power to work out details and particulars for carrying out its policy and in order to give effect to the legislation in a particular direction. It is not possible to lay down any hard and fast rule for determining whether a matter is of principle and policy or whether it is one of detail, ancillary to the statute for carrying it into effect. The question, though often beset with difficulty, has to be answered with reference to the nature of the impugned legislation.

No such difficulty arises in the present case. For fortunately we have a decision of the Supreme Court in Joylal Agarwala Vs. The State, which directly covers the point which arises in the present case, namely, whether there is any delegation of any legislative power when the Legislature passes an Act providing that it shall remain in force for a certain minimum period and empowering another body to extend the Act thereafter, if it thinks fit, for a further period fixed by the Legislature itself. In Joylal Agarwala's case (B), the Supreme Court considered

the question of the validity of the extension of the life of Essential Supplies (Temporary powers) Act 1946. Section 1(3) of the Essential Supplies Act provided that it shall cease to have effect on the expiration of the period specified in S. 4 of the India (Central Government and Legislature) Act 1946. Section 4 of the latter Act ran as follows:

.....the period mentioned.....is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceases to operate or, if the Governor General by public notification so directs, the period of two years beginning with that date:

Provided that if and so often as a resolution approving the extension of the said period is passed by both Houses of Parliament, the said period shall be extended for a further period of twelve months from the date on which it would otherwise expire so, however, that it does not in any case continue for more than five years from the date on which the Proclamation of Emergency ceases to operate.

4. After pointing out that the period of operation of the Essential Supplies Act mentioned in S. 1(3) was not necessarily one year from the date of cessation of emergency; that it could be two years if the Governor-General by notification so directed and it may even go up to a maximum period of five years in instalments of one year each under the proviso, and after emphasizing the fact that the fixation of the period of operation of the Act was not left to any other Act but was provided by the Act itself, the learned Judges of the Supreme Court said that the case of AIR 1949 175 (Federal Court), had no application and further observed as follows:

In the case now before us the Legislature has itself applied its mind and has fixed the duration of the Act, but has left the machinery to reach the maximum period by instalments to be worked out in a particular manner. There is here no question of delegation at all much less delegation of any legislative power.

5. In the instant case also, the Legislature has applied its mind to the maximum period for which the Act could remain in force and has fixed that period. The executive has been given the discretion to determine, at the proper time, whether circumstances for the continuance of the Act beyond the minimum prescribed period exist and if they do, to extend the Act for a further period not exceeding two years from the date on which it would otherwise expire. The notification of the Government extending the Act is not Legislation; the fixation of the maximum duration of the Act is a legislative act of the Legislature itself, the effect of the proviso to S. 1(4) being to confer upon the Government the discretion to determine conditions necessary to give effect to the legislative act of the Legislature providing for the extension of the Act for a further period of two years.

It was suggested by Mr. Patankar learned counsel for the petitioner that the case of Joylal Agarwala (B), ought to be distinguished because in that case besides fixing the maximum period of the operation of the Essential Supplies Act, the

Legislature also itself fixed the period of each extension. The observations of the Supreme Court in Joylal Agarwala's case (B), in the submission of the applicant, constituted a rule that in a case of this sort the Legislative provision would be valid only if it fixed not only the maximum period of the operation of the Act but also the period of each extension. It was urged that S. 1(4) of the Madhya Bharat Sthan Niyamtran Vidhan lays down no policy with regard to the period by which the Government may at any time extend the Act; the only policy it has laid down was as to the maximum period for which the Act could be continued in operation and it was open to the Government not to extend the Act at all or to extend it by a period shorter than the maximum period laid down under the Act. It was said that this was not a case of carrying out or enforcing a policy but was a case of laying down the policy itself.

I am unable to accept this argument. To me it appears that there is no material distinction between Agarwala's case and the present case. In holding the validity of the extension of the life of the Essential Supplies Act what the Supreme Court regarded as crucial was the fixation by the Legislature itself of the maximum period of operation of the Act and not the period of each extension by which the maximum period was to be leached. That the Legislature having fixed the maximum period of the operation of the Act, the period of each extension cannot be regarded as a matter of policy and principle, but is by its very nature ancillary to the statute is clear from the fact that the expediency of extending the Act at a particular time and the period of extension are questions which necessarily depend on certain relevant facts and circumstances in regard to which the body empowered to extend the Act alone can have special means of knowledge. In my opinion the question whether S. 1(4) of the Madhya Bharat Sthan Niyamtran Vidhan constitutes delegated legislation is really concluded by the Supreme Court's decision in Joylal Agarwala's case (B).

It may be pointed out that following Joylal Agarwala's case (B), a Division Bench of the Rajasthan High Court in -- Milap Chand Vs. Dwarka Das, , upheld the validity of S. 31 of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which while providing that the Rajpramukh may, if he considered expedient to do so, from time to time extend the duration of the Act by a further period not exceeding five years in the aggregate, did not prescribe any period of each extension. Learned counsel for the applicant strongly relied on AIR 1949 PC 175 (A), as an authority for the proposition that the power to extend the life of an Act is a legislative power which could not be delegated. In my view the present case stands well outside what was laid down in J. N. Gupta's case (A). What the Federal Court laid down in that case was that the power to modify an Act of Legislative power and that if by one and the same provision a body is authorised to extend and to modify an Act, then the two powers being not severable, the entire provision was invalid and constituted delegated legislation.

This was pointed out emphatically by Mahajan J., (as he then was) and Mukherjee J., in State of Bombay Vs. Narothamdas Jethabai and Another, No

question as to any power of modification, such as arose in J. N. Gupta's case (A), arises here. As to the other cases, namely, In Re: Kalyanam Veerabhadrayya, and Ram Kishan Vs. State, , which were cited by the learned counsel for the applicant, it is sufficient to say that after the decision of the Supreme Court in Joylal Agarwala's case (B), they cannot be regarded as laying down correct law in a case of this type. It is pertinent to observe that the decision in Ram Kishan Vs. State, has now been overruled by a Full Bench of the Allahabad High Court in -- Murari Lal Solan Vs. State and Others, The Full Bench held that S. 1(5) of U. P. (Temporary Accommodation Requisition) Act 1947 in so far as it authorised the Government to direct the extension of the life of the Act for a period of one year after the expiry of the one year fixed by the Act was not ultra vires the U. P. Legislature.

6. For all these reasons the objection that section 1(4) of the Madhya Bharat Sthan Niyantaran Vidhan constitutes delegated legislation and was not valid, seems to me to be without foundation.

7. Mr. Patankar also raised the point that on the evidence on record the learned District Judge was not justified in holding that on 1-1-1941 the property in question fetched a rent of Rs. 13/- per month and on its basis determining the fair rent. I see no reason whatsoever for disturbing this finding of fact in a petition under Art. 227 of the Constitution of India.

8. In the result this petition is dismissed. In the circumstances of the case there will be no order as to cost.

Chaturvedi J.

9. I agree.