

(2001) 04 GAU CK 0031
In the Gauhati High Court
Case No : Criminal Reference No. 1 of 2001

N.K. Sinha

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Arms Act, 1959 — Section 25(I)
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 395(1)
Essential Commodities Act, 1955 — Section 3, 3(6)
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 326
Tripura Amendment Act, 1997 — Section 1, 1(4)
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (2002) CriLJ 404 : (2001) 1 GLT 616

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : Mr. B.R. Bhattacharjee, A.G., Mr. B. Das, Mr. A. Charkraborty and Mr. H. Sarkar, for the Appellant;

Judgement

1. This is a reference u/s 395(1) of the Code of Criminal Procedure made by the Sub-Divisional Judicial Magistrate, Dharmanagar, North Tripura. The need for such reference arose when the learned Sub-Divisional Judicial Magistrate, (for short, "the SDJM") was considering the prayers for bail in FR Case No. 373/2000 (Kanchanpur PS Case No. 93/2000 under sections 148/149/302/326/436, IPC, and section 3/5, ES Act, and GR Case No. 307/2000 (Pecharthal PS Case No. 33/2000) under sections 148/149/307/353, IPC, 25(I-B)(a), Arms Act and section 148/149/307/353, IPC, section 25(I-B)(a), Arms Act and section 10/13. UA(P) Act. It has been stated in the reference by the learned SDJM that in GR Case No. 373/2000, the two persons, namely Pravanjan Biswas and Bikash alias Bireswar Biswas had been in custody since 22.11.2000 and as per section 167(2), proviso (a)(I), Cr.P.C. they were entitled to be released on bail on 19.2.2001 after expiry of 90 days" statutory period of detention. It has similarly been stated in the reference that in GR Case No. 307/2000, the accused Rajendra Reang had been in custody since 23.10.2000 and he was entitled to get

bail on 20.2.2000 after expiry of the statutory period of 90 days as per section 167(2), proviso (a)(i), Cr. PC. But in both the cases the accused persons named above were not granted bail by the court because the said period of 90 days has been extended to 180 days by the Tripura Amendment Act, 1997, amending the proviso (a) to section 167(2) of the Cr.PC. The Tripura Amendment Act, 1997, was to remain in force for three years, but under subsection (4) of section 1 thereof the Govt. of Tripura has the power to extend the period for one year by a notification and subsequently also can extend the period of validity of the Act for a further period of one year, but in the proviso to sub-section (4) of section 1 of the Tripura Amendment Act, 1997, it has been stated that notification, if any, issued extending the period of validity of the Act is to be laid before the Tripura Legislative Assembly. According to the learned SDJM in order to give validity to the said Tripura Amendment Act, 1997, the notification dated 7.9.2000 extending the period of validity of the Act for a period of one year from 27.1.2001 should have been laid before the Tripura Legislative Assembly. Since the prosecution had failed to show that the notification dated 7.9.2000 has been laid before the Tripura Legislative Assembly, he was of the view that the Tripura Amendment Act, 1997, was invalid. But since there was no decision of this court as well as the Supreme Court that the Tripura Amendment Act, 1997 was invalid or inoperative he decided to make a reference to this court.

2. When this reference was heard Mr. Ashok Chakraborty, learned Special Counsel, assisted by Mr. Haradhan Sarkar, Additional Public Prosecutor, Tripura, appearing for the State, stated on instruction that the said notification dated 7.9.2000 of the Home Department, Government of Tripura, extending the period of validity of the Tripura Amendment Act, 1997, has not in fact been laid as yet before the Tripura Legislative Assembly. According to Mr. Chakraborty, the provision in the proviso to section 1 of the Tripura Amendment Act, 1997, requiring such notification to be laid before the Tripura Legislative Assembly was not mandatory but directory and, therefore, the Tripura Amendment Act, 1997, would not become invalid and in-operative merely because the said notification has not been laid before the Tripura Legislative Assembly. I called upon Mr. BR Bharracharjee, learned Advocate General, State of Tripura, also to make submission on behalf of the State, and he cited a decision of the Supreme Court in *Atlas Cycle Industries Ltd. v. State of Haryana*. AIR 1979 SC 1149, in support of the aforesaid contention on behalf of the State that the Tripura Amendment Act, 1997, would not become invalid and in-operative merely because the notification dated 7.9.2000 of the Home Department, Government of Tripura, extending the period of validity of the said Act for a period of one year with effect from 22.1.2001 has not been laid before the Tripura Legislative Assembly. I also called upon Mr. Bhabesh Das, learned Senior Counsel, to assist the court as an *amicus curiae* who submitted that although the proviso to section 1 of the Tripura Amendment Act, 1997, stated that a copy of the notification extending the validity period of the said Act "shall" be laid, as soon as, may be before the Legislative Assembly of Tripura, the use of the word "shall" does not make the

aforesaid requirement of laying before the Tripura Legislative Assembly mandatory. In support of this submission, he cited the decision of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, wherein it has been held that the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid, Mr. Das further pointed out that in *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, a similar view as in *Atlas Cycle Industries v. State of Haryana (supra)*, has been taken that failure to place the rules before the Houses of Legislature which were required to be so placed did not affect the validity of the rules.

3. Section 1 of the Tripura Amendment Act, 1997, together with the proviso on which the learned SDJM ha placed great reliance in quoted hereinbelow :

"1. (1) This Act may be called the Code of Criminal Procedure (Tripura Fourth Amendment) Act, 1997.

(2) It extends to the whole of Tripura.

(3) It shall come into force on and from the date of its publication in the official Gazelle.

(4) This Act shall remain in force for three years from the date of commencement :

Provided that the Slate Government may, from time to time, by notification in the Official Gazette, extend the period, as aforesaid, for such period not exceeding one year at a time as may be specified in the notifications : so, however, that the tota period of such extension (after the expiry of first three years) shall not exceed two years and wherein such notification is issued, a copy thereof shall be laid, as soon as may be before the Legislative Assembly of Tripura."

It will be clear from sub-section (4) of section 1 of the Tripura Amendment Act, 1997, quoted above that the Act was to remain in force for three years from the date of commencement of the Act. Under sub-section (3) of section 1, the Act was to commence from the date of its publication in the Official Gazette. The Act was published in the Official Gazette on 27.1.1998. Hence, by virtue of sub-section (4) of section 1, the Act remained in force till 26.1.2001. The proviso to sub-section (4) of section 1 however stipulates that the State Government may from time to time by notification tin the Official Gazette, extend the period of three years for such period not exceeding one year at a time as may be specified in the notifications. It further stipulates that when such notification is issued, a copy thereof shall be laid, as soon as may be, before the Legislative Assembly of Tripura. By notification dated 7.9.2000 the State Government in exercise of the said power under the proviso to sub-section (4) of section 1 of the Tripura

Amendment Act, 1997, has extended the period by one year with effect from 27.1.2001. But admittedly the said notification dated 7.9.2000 has not been laid before the Tripura Legislative Assembly. The question therefore is whether such failure on the part of the State Government to lay the said notification 7.9.2000 before the Legislative Assembly of Tripura would render the Tripura Amendment Act, 1997, invalid void or in-operative with effect from 27.1.2001.

4. In *Jan Mohd v. State of Gujarat*, (supra), cited by Mr Das, section 26(5) of the Bombay Agricultural Produce Markets Act provided that the rules made u/s 26 of the said Act would be laid before each of the Houses of the Legislature at Sessions next following, and would be liable to be modified or rescinded by a resolution in which both Houses concur and such rules would after notification in the Official Gazette be deemed to have been modified or rescinded accordingly. It was urged by the appellant in that case that the rules framed under the said Bombay Act were not placed before the Legislative Assembly or the Legislative Council at the first session and, therefore, they had no legal validity. The Supreme Court did not find merit in the said contention on behalf of the appellant, and held :

"Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under S. 26(1). It is true that the legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the House of the Legislature. Granting that the provisions of sub-section (5) of Section 26 by reason of failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-Section (5) of Section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

Similarly, in *Atlas Cycle Industries Ltd. v. State of Haryana* (supra), cited by Mr. BR Bhattacharjee, learned Advocate General, the Supreme Court found that section 3(6) of the Essential Commodities Act, 1955, provided that every order made u/s 3 by the Central Government or by any officer or authority of the Central Government would be laid before both Houses of Parliament, as soon as may be, after it was made, and it was contended on behalf of the appellant in that case that since the Iron & Steel (Control) Order, 1956, had not been laid before both the Houses of Parliament as required by sub-section (6) of section 3, the same was invalid and in-operative. But the said contention was rejected by the Supreme Court with the following reasons :

"In the instant case, it would be noticed that sub-section (6) of section 3 of the Act merely provides that every order made u/s 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both

Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made u/s 3 of the Act. It does not even say that it shall be subject to any modification which either HOUSE of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both House of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of section 3 of the Act falls within the first category i.e. "simple laying" and is directory not mandatory."

"From the foregoing discussion, it inevitable follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of section 3 of the Act should render the order void. Consequently, non-laying of the aforesaid notification fixing the maximum selling prices of various categories of Iron & Steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification."

It is thus clear from the aforesaid decisions of the Supreme Court that even where the Legislature provides that a rule or a notification shall be laid before the Houses, mere failure to lay such rule or notification before the House of Legislature will not make the said rule or notification void, invalid or in-operative unless the Act in which such provision is made provides for such consequence on failure to lay such rule or notification before the House. A plain reading of the proviso to section 1 of the Tripura Amendment Act, 1997, would show that it only provides that a notification issued under the proviso to sub-section (4) of section 1 extending the period during which the Act is to remain in force shall be laid, as soon as may be, before the Legislative Assembly of Tripura. But it does not further provide that if such notification is not laid before the Legislative Assembly of Tripura, the Tripura Amendment Act, 1997, will cease to be operative and the notification extending the period of the Act under the said proviso to sub-section (4) of section 1 would become invalid or void. A reading of the Tripura Amendment Act, 1997, would further show that there is no provision made anywhere in the Act providing for any penal consequence or other consequence for not laying the notification under the proviso to sub-section (4) of section 1 of the Tripura Amendment Act, 1997, before the Legislative Assembly of Tripura. Hence, although the proviso to sub-section (4) of section 1 stated that the notification issued by the State Government thereunder "shall" be laid, as soon as may be, before the Legislative Assembly of Tripura, the said provision is only directory and not mandatory. The Legislature never intended that if the

notification issued under the proviso to subsection (4) of section 1 of the Tripura Amendment Act, 1997, is not laid before the Legislative Assembly of Tripura, the notification would become invalid or in-operative and the Tripura Amendment Act, 1997, would cease to be operative.

5. The Reference is answered accordingly. In the opinion of this Court, the Tripura Amendment Act, 1997, has not ceased to become operative or has not become invalid from 27.1.2001 due to the fact that the notification dated 7.9.2000 of the Government of Tripura. Home Department, extending the period of operation of the said Act by one year with effect from 27.1.2001 under the proviso to sub-section (4) of section 1 of the Act, 1997 has not been laid before the Legislative Assembly of Tripura.

6. Copy of this order/opinion be sent by the Registry of this court to the learned Sub-Divisional Judicial Magistrate, Dharmnagar, North Tripura, and all Judicial Officers in Tripura empowered to grant bail.