
(1975) 04 CAL CK 0020
In the Calcutta High Court
Case No : Criminal Mis. Case No. 2055 of 1974

Pradip Poddar Alias Bablu Alias Babu	APPELLANT
Vs	
District Magistrate, Darjeeling and Others	RESPONDENT

Date of Decision : 24-04-1975

Acts Referred:

Constitution of India, 1950 — Article 245, 246, 246(1), 246(2), 248

Citation : 79 CWN 694

Hon'ble Judges : Sudhamay Basu, J;B.C. Basak, J

Bench : Division Bench

Advocate : Bagchi, for the Appellant;G.N. Roy and D.K. Sen Gupta, for the State, S.C. Bose and Anjan Mukherjee for the Union of India and D.P. Chowdhury, Amicus Curiae, for the Respondent

Judgement

Sudhamay Basu, J.—This Rule relates to an order dated the 22nd of June, 1973 passed by the District Magistrate, Darjeeling in exercise of the powers conferred upon him under subsection (1) read with sub-section (2) of Section 3 of the Maintenance of Internal Security Act, 1971 with a view to preventing the detainee from acting in a manner prejudicial to the maintenance of public order. The grounds served upon the detainee were two but for reasons which will appear later on, it is not necessary to state them. Mr. Bagchi, the learned advocate appearing in support of the Rule challenged the validity of Section 6 subsection 6(d) of the Defence of India Act. The constitutional issue raised by him may be viewed from different aspects. I shall mainly confine myself to a consideration of the arguments made and discussed at the Bar. My learned brother has chosen to discuss some other aspects in a separate judgment. The said section 6(6d) of the Defence of India Act amends the provision of Section 13 of the Maintenance of Internal Security Act which earlier provided that the maximum period of detention should be twelve months. The amendment substitutes the words "or until the expiry of the Defence of India Act, 1971 whichever is later" after the word "from the date of detention". This amendment thus extends the period of detention beyond 12 months to a period "until the expiry of the Defence of India

Act, 1971". u/s 3 of the Maintenance of Internal Security Act the power to make orders detaining certain persons may be made upon satisfaction regarding acts which are prejudicial (i) to the Defence of India, relation of India with foreign powers or the security of India; (ii). Security of the State or the maintenance of public order; (iii). Maintenance of Supplies and services essential to the community.

2. Mr. Bagchi contended that in so far as the power conferred u/s 3 of the Maintenance of Internal Security Act relates to prejudicial activities in relation to "the maintenance of public order", the same cannot be affected by amending section 6(6d) of the Defence of India Act. Mr. Bagchi's contention seems to be that section 6(6d) of the Defence of India Act, in so far as it covers detention on grounds related to public order, is not connected with either the security of India or the Defence of India. Therefore, it is beyond the legislative competence of the Parliament. Section 6 sub-section 6(d) of the Defence of India Act, in so far as it purports to cover acts dealing with public order, must according to Mr. Bagchi, be struck down as being ultra vires. According to him, Parliament could not, through the Defence of India Act, enlarge the period of detention so far as the same related to public order. According to him the scope and ambit of the Defence of India Act will govern the scope and ambit of the amendments effected by its provisions including 6(6d). He pointed out that the preamble of the Defence of India Act, 1971 (Act 42 of 1971) stated that this act is to provide for special measure to ensure public safety and interest, the Defence of India and civil defence. Moreover, it begins by saying that "whereas the President has declared by proclamation.....that a grave emergency exists whereby the security of India is threatened by external aggression; and whereas it is necessary to provide for special measures to ensure public safety and interest.....be it, therefore, enacted by Parliament...." Mr. Bagchi argued that the purpose of the Defence of India Act was limited in scopes The preamble provides a key to the understanding of the entire act and is intended to solve all ambiguities in the provisions when they are open to doubt. In this connection he referred to Maxwell Interpretation of Statutes, 11th edition, page 43 and some cases referred to therein. He argued that the expression ""until the expiry of the Defence of India Act 1971" is in general terms and, therefore, applies to all cases including public order. He referred to Article 245 and 246 of the Constitution and entry 1, list 1 in the 7th schedule of the Constitution. Entry 1 schedule 1 relates to "Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation". Mr. Bagchi's contention was that entry 1, list 1, was limited in point of time and purpose. As the competence of the parliament was subject to the Constitution the provisions made in Section 6(6d) inasmuch as it relates to public order travels beyond the scope of the subject matter in the preamble and also the ambit of entry 1, list 1. It is, therefore, beyond the power of Parliament. He contended that public order has no bearing on Defence of India but was limited to war and demobilisation. Mr. Bagchi

contended that even if at the time of enactment of Defence of India Act the provisions of Section 6(6d) may have been said to have some relevance to public order, after the disappearance of conditions of war and mobilisation the statute has out grown its purpose and was no longer good. He also cited the cases of Jones v. Farrell, 1940 (3) A.E.R. 608 and Rex v. Haliday, 1917 A.C. 260 116 LT 417 for construing the provisions reasonably and imposing limitation on them as regards time and purpose. When there was a danger to liberty conferment of arbitrary powers in the executive should be viewed with extreme strictness.

3. The Court heard this matter along with some other connected matters and had the benefit of arguments made by Mr. S. Bose and Mr. D. Gupta on behalf of the Government of India and the Attorney General of India besides the learned advocates appearing in this case. Mr. D. Chowdhury who appeared as amicus curiae, also, ably assisted the Court in this matter.

4. After careful consideration we are, however, unable to accept the validity of the submissions made by Mr. Bagchi. It is well known that the preamble cannot affect the clear provisions of a statute. As was pointed out in the case of Secretary of State for India v. Maharaja of Bobbili, reported in 46 Indian Appeal 302 (at page 309), even if the amending act makes operative provisions somewhat in excess of the apparent ambit of the preamble the section must govern. Reference was made in that decision to an earlier case K.B. Rao v. Secretary of State for India, reported in 44 Indian Appeal 166. The preamble may act as a guide to the intention of the statute but it can neither extend nor restrict the enacting part when the language of the Act is not open to doubt. Halsbury Laws of England, 3rd edition, page 45; Powell v. Kempton P. Racecourse Co. 1899 A.C. 143; Attorney General v. Prince E.A. of Hanover 1957 A.C. 436; Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, ; Janapada Sabha v. P. Syndicate, 1971 S.C. 57 (this related to a taxing statute). Therefore, even assuming that the provisions of section 6 sub-section 6(d) travels beyond the ambit of the preamble in the Defence of India Act, the latter cannot override the former as the same is in clear terms.

5. Again, the Maintenance of Internal Security Act, 1971 may be said to be enacted by the Parliament in exercise of the powers under Article 246(1) read with entry 9 of list 1 and Article 246(2) read with entry 3 of list 3 of the 7th schedule. Prescribing the period of detention is incidental to the power of enacting the law relating to preventive detention. The security of State is mentioned in entry 9 list 1. Therefore, irrespective of any declaration of emergency the parliament can exercise the power and enact section 6(6d). In other words, irrespective of the emergency the Defence of India Act, 1971 would have been valid, firstly by virtue of list 1, item 1 and secondly with the aid of list 3 entry 3 which specifically mentions the public order. Public order cannot be said, moreover to have no link with Defence of India. Therefore, there is no lack of legislative competence.

6. Looking at it from another point of view, emergency was no doubt an occasion

which called into being the Defence of India Act but the Defence of India Act was not, as Mr. D. Chowdhury pointed, enacted by virtue of any additional power conferred by emergency. Therefore, the parliament's power to enact, that is, its legislative competence with regard to the subject matter is beyond question. Moreover as we have pointed out the preamble in a statute and the purpose of the enactment cannot take away from the validity of the clear provisions in the statute to legislate which the parliament has ample power. These considerations, in our view, are enough to dispose of the arguments of Mr. Bagchi.

7. Again, a short title of an act on the preamble does not necessarily indicate the entry or entries in respect of which an enactment has been made by Parliament. The contents of the Act would indicate the same. In this respect the submissions of Mr. Bagchi that the Defence of India Act, 1971 is a legislation under Article 246(1) read with entry 1 of list 1 only has no validity. There is no warrant for thinking that a competent enactment requires to be confined to one particular entry in one list of the seventh schedule of our Constitution. A single statute may certainly contain matters calling for the exercise of power under two or more entries. The question is one of convenience and not of power as Shah, J. put it in the case of *Harikrishna v. Union of India*, AIR 1956 S.C. 619 (622). The Defence of India Act thus validly comprises several entries.

8. The case of *Jones v. Farell* (1940 (3) A.E.R.) and *Rex vs. Haliday* (1917 A.C. 260) have no application to the facts of this case. The former dealt with omission in the drafting of the Emergency Powers (Defence) Act, 1934. Section 1(2) authorised the government to take possession of control of any undertaking. The Court held that the same did not give any power to carry on the undertaking after the possession or control has been taken. No question of ultra vires was or could be involve in that case. The latter case dealt with validity of regulation 14B made under the Defence of the Realm Consolidation Act, 1914. Parliaments power was never in question. The; contention that regulation 14B was not authorised by the Act was negated. These two decisions are hardly of any help to the petitioner in the) present case.

9. The only point that remains to be considered in this connection is whether on account of the disappearance of conditions of war and demobilisation and de facto emergency whether the Defence of India Act, although valid in its inception, can be said to have lost its validity. It is not necessary to deal with this aspect in detail as we have-already pointed out that the legislative competence of Parliament was not derived from any power conferred by emergency. The emergency may have provided on occasion but it was not the source of the legislation. Therefore, if at the inception the enactment itself was valid irrespective of the emergency its continuance also must be held to be valid irrespective of the same.

10. Mr. Bagchi next contended that the grounds suffered from vagueness. It appears that an earlier Habeas Corpus application relating to the same ground was- rejected by a Bench consisting of Ajay Kumar Basu and A. P. Bhattacharyya,

JJ. on the 22nd of April, 1974. Another application for review was made to the same Bench on the ground that the question of vagueness was not considered earlier. In course of a judgment in the said review application it was stated "of course, we do not specifically state that the ground was not vague but when we say that the ground is valid and proper we took into consideration all the points raised by the petitioner". In view of the said observation in the said review applications we feel that it is not open to us to go into the question of vagueness once again. We are, therefore, constrained to negative this contention of Mr. Bagchi. We) are satisfied as to the statutory requirements and safeguards provided by the Constitution.

The petition, therefore, fails and the Rule is discharged.

Bimal Chandra Basak, J.

I agree. However I wish to add something.

11. If a Central Act is challenged as being beyond the legislative competence of parliament it is enough to enquire if it is a law with respect to matters enumerated in List, II. If it is not, no further question can arise. Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon, . In the present case it is not contention Mr. Bagchi that the relevant power is entrusted to the State Legislature by any entry in List II. Accordingly no further question regarding the competency of the Parliament to enact the provisions of Section 6(6) (d) of the Defence of India Act, 1971, arises.

12. Mr. Bagchi also sought to contend as if in respect of a particular enactment the power to legislate must be shown to have been given in a particular entry in a particular list i.e. it must be a law covered by one entry. In our opinion, this is a wrong approach. There is no bar in the legislature enacting a statute which contains several provisions which come under different entries so long as the relevant legislature is competent to legislate regarding the same. Mere fact that it relates to more than one entry is irrelevant. If the Parliament has the power to legislate in respect of certain matters, there is nothing in the Constitution which disentitles the Parliament as a matter of legislative arrangement to incorporate the provisions relating to the same in any other Act. There is no prohibition against the Parliament enacting in a single statute, matters which call for the exercise of power under two or more entries which is otherwise within its competence. In this context reference may be made to the case of Hari Krishna Bhargav Vs. union of india (UOI) and Another, . There is nothing in the Constitution to prevent Parliament from combining its powers under one entry in List I with its powers under some other entry in the same list. There is no principle which debars Parliament from relying on the powers specified under entries 1 to 96 of List I and supplement them with the powers under entry 97 List I and Art. 248 and for that matter powers under entries in the Concurrent List. Union of India vs. Dhillon (Supra). In as much as the Parliament has the competence to legislate regarding the matters specified in section 6(6) (d) of the

Defence of India Act, 1971 it is immaterial whether the other provisions of Defence of India Act, 1971 relates to some other subject or relates to some other entry. In the case of Chandriah v. Civil Administrator AIR (1954) Hyd. 121 it was pointed out that Defence of Hyderabad Regulation does not pertain only to the defence of Hyderabad.

13. Mr. Bagchi laid a great emphasis on the preamble to the Defence of India Act, 1971 for the purpose of interpretation of sub-section (6) (d) of section 6 of the Defence of India Act. He tried to interpret section 6(6) (d) in the light of such preamble. He also made submissions regarding the legislative competency in respect of the said provision on the basis of such preamble. We think that this approach is wholly wrong. While it is permissible to look at the preamble for understanding the import of the various clauses contained in the Act, full effect should be given to the express provisions thereof even though they appear to go beyond the terms of the preamble. Where the language of an Act is clear, the preamble must be disregarded. Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, . While a statement in the preamble may be useful as throwing light on the nature of the matter legislate upon, it cannot be conclusive on a question of vires. Rex vs. Basudeva, AIR (1950) F.C. 67.

14. In the matter of interpreting the entries in the List appearing under Schedule VII of the Constitution the following principles are now well settled. The power to legislate is given to the appropriate Legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. Some of the entries in the different Lists or in the same Lists may overlap. Some times some entries may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony amongst them. The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, . Union of India vs. H.S. Dhillon, (Supra) Governor General in AIR 1944 51 (Federal Court) . Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, .

15. The head of legislation in the Lists should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. Each general word should, accordingly, be held to extend to all ancillary or subsidiary matters which can fairly and reasonably comprehended in it. Sri Ram Ram Narain Medhi Vs. The State of Bombay, . Hans Muller vs. Superintendent Presidency Jail & Ore. AIR (1955) S.C. 347 , Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, . It may not be reasonable to import any limitation in interpreting a particular Entry in the List by comparing the said entry or contrasting it with any other Entry in that very List. Seth Banarsi Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc., . When the vires of an enactment is challenged, and there is any difficulty in ascertaining the limits of its power,

the difficulty must be resolved, so far as possible in favour of the legislative body, putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude. *Navinchandra Mafatlal, v. Commissioner of Income Tax (Supra)*. In any event it seems that Mr. Bagchi is putting too narrow a construction to the expression "Defence of India". Firstly, as we have already stated the general principle of interpretation of the Lists does not allow the same. Secondly, entry I of List I itself says about "the Defence of India and every part thereof including the preparation for defence". It cannot be said that maintenance of public order is not relevant to the question of preparation for defence. Moreover, efficient prosecution of war is directly connected with the defence of this country. On the maintenance of public safety, interest and public order, amongst others, depend the effective prosecution of the war and so those matters are connected with the defence of India. A similar question arose in the case of *Shib Nath Banerjee and Others Vs. A.E. Porter and Others*, (at page 383). It is to be pointed out that the decision of the Special Bench of the Calcutta High Court was reversed by Federal Court but on another point. The power to declare war and suppress insurrection is not limited to victories, in the field and the dispersion of the insurgent forces. It includes the power to; remedy the evils which have arisen from its rise and progress and continues for the duration of the emergency, *Wood v. Miller* (1974) 92 Law Ed. 596-333 US 138. *Stewart v. Khan* (1870) 20 Law Ed. 176-11 Wal 493. This power has been held to be the power to wage war successfully. It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase) of the national defence, including the protection of war materials and the members of the armed forces from injury and from the dangers of sabotage and espionage. *Hirabayashi v United States*. (1942) 87 Law Ed. 1774-320 US 81. For the aforesaid reasons, the contentions of Mr. Bagchi must be rejected.