

(1953) 09 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Application No. 141 of 1952

Pratapsingh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-09-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : (1954) RLW 750

Hon'ble Judges : Ranawat, J;Bapna, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; C.B. Bhargava, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Bapna, J.—This is a petition under Art. 226, Constitution of India, challenging the validity of the Rajasthan Government Order, dated 31-5-1952. That order is as follows:

Part I.

Home Department

Notification.

Jaipur, 31-5-1953.

No. F. 3(35) Police-A52. Whereas the Rajpramukh is satisfied that the area shown in the schedule annexed hereto has been found to be in & disturbed and dangerous states.

Now, therefore, in the exercise of the authority vested in him under S. 15(1), Police Act (5 of 1861), the Rajpramukh is pleased to declare that the 24 villages included in the said schedule shall be deemed to be disturbed area for a period of six months from the date of this notification.

Under sub-s. (2) of the said S. 15, Police Act (5 of 1861), the Rajpramukh is pleased to authorise the Inspector General of Police to employ, at the cost of the inhabitants of the said area any police force in addition to the ordinary fixed complement quartered therein.

Under sub-s. (5) of S. 15 of the said Act the Rajpramukh is further pleased to exempt the Harijan and Muslim inhabitants of these villages from liability to bear any portion of the cost on account of the posting of the additional police force.

By order of

His Highness the Rajpramukh,

Sd/- Bhajan Lal Chaturvedi

Secretary to the Government.

Villages of Udaipurwati, Dist. Jhunjhunu.

1. Udaipur.
2. Indarpura.
3. Chirana.
4. Jhajhar.
5. Dhamora.
6. Khirod.
7. Nagal.
8. Chhapoli.
9. Pachlangi.
10. Papra.
11. Surpura.
12. Saria.
13. Bagoli.
14. Gurha.
15. Ponkh.
16. Newhri.
17. Chanawra.
18. Deeppura.
19. Kishorepura.

20. Titanwar.
21. Chhaosari.
22. Raragaon.
23. Gudha.
24. Jakhal.

2. It was mentioned in the petition that the Police Act No. 5 of 1861 had not been brought into force in Rajasthan. At the time of arguments, however, the argument was modified and it was urged that the order of the Rajpramukh dated 18-7-1950 published in the Raj Patra dated 19-7-1950 was not issued by a competent authority. It may be pointed out that various Central Laws were applied to the State of Rajasthan by Ordinance No. 4 of 1950 promulgated by His Highness the Rajpramukh on 24-1-1950 and S. 4 empowered the Rajpramukh to add to the schedule containing the Acts applied to Rajasthan. This schedule did not contain the Police Act at the time, but by order of 18-7-1950 referred to above the Rajpramukh added Central Act 5 of 1861, namely the Police Act, to the list of the laws applicable to Rajasthan. It was conceded that under Art. 385 of the Constitution the Rajpramukh was authorised to make laws for the State of Rajasthan as the legislature of the State contemplated under the Constitution had not been constituted. The Notification issued by the Rajpramukh enforcing the Police Act in Rajasthan by his order dated 18-7-1950 is therefore valid.

3. It was next argued that S. 15, Police Act, was not valid as it offended against Art. 14 of the Constitution inasmuch as sub-s. (5) of the Section empowered the State Government to exempt at its pleasure any persons or class or section of the inhabitants from liability to pay any portion of the costs of the additional police quartered in that area. The learned Government Advocate referred to the last clause of sub-s. (1) of S. 15, Police Act, where the Government is authorised to increase the number of police on account of the conduct of the inhabitants of any area or of any class or section of the inhabitants of that area and contended that in the case covered by that clause it was but reasonable to exempt such inhabitants or class or section of such inhabitants who were not responsible for the conduct which may have necessitated the increase in the Police force. The contention of the learned Government Advocate is not without force and we are not inclined to hold that sub-s. (5) of S. 15, Police Act, offends against Art. 14 of the Constitution.

4. It was next contended that the aforesaid order of the Government dated 31-5-1952 exempted Harijan and Muslim inhabitants of the area from liability to bear any portion of the costs on account of the posting of any additional police force and it was urged that such an exemption offended against Art. 15 of the Constitution. Article 15 of the Constitution lays down that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. It is obvious from a mere perusal of the notification

that no ground has been mentioned for the exemption of the Harijan and Muslim inhabitants from Sharing the burden of costs of the additional police. In reply to the petition, it was stated on behalf of the Government that the exemption was made not because of religion, race, or caste but because they were found to be peace loving and law abiding citizens.

Now this a very strange argument that only persons of a certain community or caste were law abiding citizens, while the members of the other communities were not. Disturbing elements may be found among members of any community or religion just as much as there may be saner elements among members of that community or religion. The exemption granted to Harijan and Muslim inhabitants because they were Muslims or Harijans and therefore peaceful cannot stand as it offends against Art. 15 of the Constitution. The order exempting Harijan and Muslim inhabitants of the area declared to be in a disturbed and dangerous state under the order of 31-5-1952 is therefore illegal.

5. A minor argument was put forth challenging the validity of the order of 31-5-1952 on the ground that the order was not notified in any manner beyond publication in the official Gazette and therefore no compliance had been made of that part of S. 15, Police Act, which directed publication in the official Gazette and further "in such manner as the Government shall direct". We have in the reply of the State that the order was notified in each one of the villages by beat of drum and there is no reason to think that this was not in accordance with the directions made by the State Government or that it was not in compliance with the orders of the State Government that the publication be made in that manner.

6. As a result, this application is allowed only to the extent that the last part of the order of the Government dated 31-5-1952 viz.

Under sub-s. (5) of S. 15, Police Act, the Rajpramukh is further pleased to exempt the Harijan and Muslim inhabitants of these villages from liability to bear any portion of the cost on account of the posting of the additional police force.

is invalid and the District Magistrate of Jhunjhunu, party No. 3, is directed to ignore the exemption notified in the Government order of 31-5-1952 while apportioning the costs among the inhabitants of the area under sub-s. (4) of S. 15, Police Act. No order as to costs.