

(1969) 12 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Appeal No. 1307 of 1967

Raj Pal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-12-1969

Acts Referred:

Citation : (1969) ILR Delhi 1099

Hon'ble Judges : V.D. Misra, J; Narain Andley, J; M.R.A Ansari, J

Bench : Full Bench

Advocate : P.P. Grover, B. Dayal and B. Kirpal, for the Appellant;

Judgement

H.R. Khanna, J.

(1) Raj Pal petitioner by means of this petition under Articles 226 and 227 of the Constitution of India has prayed for the issuance of a writ of certiorari for quashing the proceedings which have been initiated against him in the Court of Additional District Magistrate, (Central District), Delhi, and for holding the provisions of the Bombay Police Act to be ultra vires. The respondents impleaded in the petition are Union of India through Lieutenant Governor, Delhi, and Shri V. K. Kapoor, Additional District Magistrate, Delhi.

(2) The petitioner is a resident of Delhi. Following notice u/s 59 of the Bombay Police Act, as extended to the Union Territory of Delhi, was served upon the petitioner calling upon him to show cause why he should not be externed from the Union Territory of Delhi for a period of two years :-

"UNDER Section 59 of the Bombay Police Act, as extended to the Union Territory of Delhi, you are hereby informed that the following allegations are made against you to proceedings against you under sections 55, 56 and 57 of the said Act (Score out the figures not wanted).

(3) In order to give you an opportunity of tendering your Explanation regarding the said allegations and to show cause why you should not be externed from the

limits of the Union Territory of Delhi for a period of 2 years, I have appointed 2-00 P.M. on 16-12-1966 to receive your Explanation and to hear you and your witnesses, if any, in regard to the said allegations. I, Rajendra Jain, Ias, A.D.M., Therefore, require you to appear before me at Room No. 40, New Courts Building, Tis Hazari, Delhi on the said date, viz. on 16-12-1966"at 2-00 P.M. for the said purpose and to pass a bond in the sum of Rs. 2,000.00 with one surety in like amount for your attendance during the said proceedings. Should you fail to appear before me and to pass the bond as directed above, I shall proceed with the inquiry in your absence. Take note.

"ALLEGATIONS 1.That you have been convicted of offences, particulars of which are mentioned below:

S. Court Date Section Sentence F.I.R. P. Station. No of Conviction of Law No.
eviction Fined Rs. 1. M.T.C. Delhi 10-9-58 12/9/55 10.00 176/58 P.Nagar 2. Do.
17-1-61 Do. 20.00 133/60 M.Nagar 3. Do. 18-12-62 Do. 10.00 98/62 H.Avenue
4. Do. Do. 20.00 510/62 P.Ganj 5. Do. 18-2-64 Do. 15.00 682/62 Kotwali 6. Do.
18-12-63 Do. 30.00 18/63 L.Nagar 7. Do. 6-7-63 Do. 30.00 14/63 L.Colony 8.
Do. 24-6-63 Do. 100.00 84/63 H.Avenue 9. Do. 1-12-64 Do. 30.00 341/64 G.R.I.

2.That you are likely again to engage yourself in the commission of an offence similar to that for which you have been convicted as mentioned above.

3.That since 1958 your movements and acts are causing and are calculated to cause alarm, danger and harm to persons residing in the Union Territory of Delhi and that you are engaged in the commission in the Union Territory of Delhi of the offences punishable under Chapters Xvi and Xvii of the Indian Penal Code, as is evident from the fact that you were again arrested in the following cases which are pending trials :

1.FIR No. 112/65 U/S 392 Indian Penal Code P.S. Chanakya Puri.

2.FIR No. 556/66 U/Ss 379/356 Ipc, P.S. Parliament Street.

4.That you have committed several acts of the nature mentioned above since 1958 in the Union Territory of Delhi.

5.That witnesses to the offences committed by you are not willing to come forward to give evidence in public against you by reasons of apprehension on their part as regards the safety of their person and/or property.

6.That your activities are menace to the people living in the Union Territory of Delhi and are having an extremely adverse effect on the law and order situation as your movements are causing alarm, danger and harm to the person and property of the citizens of Delhi.

ADDITIONAL. District

Magistrate, CENTRAL District ,Delhi."

IN pursuance of the above notice, the petitioner appeared before the Additional

District Magistrate and raised a number of preliminary objections about the validity of the notice. One of the objections was that the provisions of the Bombay Police Act as extended to the Union Territory of Delhi, were ultra vires. The learned Additional District Magistrate as per order dated August 21, 1967 repelled the objections raised by the petitioner. It was also observed that the Additional District Magistrate was not the proper authority to determine whether the provisions of the Bombay Police Act. as extended to the Union Territory of Delhi, were ultra virus or not. The petitioner thereupon filed the present petition on September 8, 1967.

(4) Although a number of matters have been raised in the petition, the learned counsel for the petitioner has confined his argument to assailing the virus of clause (c) of Section 57 of the Bombay Police Act, 1951 (Bombay Act Xxii of 1951). In so far as that clause has reference to the Delhi Public Gambling Act, 1955 (Delhi Act IX of 1955), in order to appreciate the above argument, it would be necessary to reproduce the relevant provisions A of law. Section 56 of the Bombay Police Act provides that the Commissioner of Police in areas for which he has been appointed and a District Magistrate or Sub-Divisional Magistrate specially empowered in other areas may by an order in writing infer alias direct a person or immigrant to remove himself outside the area within the local limits of his jurisdiction, in case it appears to the Commissioner, District Magistrate or Sub-Divisional Magistrate that (a) the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that, such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter Xii, Xvi or Xvii of the Indian Penal Code, or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant. The material part of Section 57 of the Bombay Police Act reads as under :

"IF a person has been convicted-

(A)of an offence under Chapter Xii, Xvi or Xvii of the Indian Penal Code (XLV of 1860), or

(B)twice of an offence u/s 9 or 23 of the Bombay Beggars Act, 1945 (Bom. Xi of 1923),

or

(C)thrice of an offence within a period of three years u/s 4 or 12A of the Bombay Prevention of Gambling Act, 1887 (Bom. Iv of 1887), or under the Bombay Prohibition Act, 1949 (Bom. Xxv of 1949),

THE Commissioner ,the District Magistrate or the Sub- Divisional Magistrate

specially empowered by the State Government in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself outside the area within the local limits of his jurisdiction, by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself."

ACCORDING to Section 58, the period of the operation of the order under Sections 56 and 57 should be specified and should not exceed a period of two years. Section 59 provides *intra vires* that hearing should be given to the person concerned before an order u/s 56 or 57 of the Act is passed against him.

SECTION 2 of the Union Territories (Laws) Act, 1950 (Act Xxx of 1950) reads :

"THE Central Government may, by notification in the official Gazette, extend to the Union territory of Delhi, Himachal Pradesh, Manipur or Tripura or to any part of such territory, with such restrictions and modifications as it thinks fit, any enactment which is in force in a State at the date of the notification;"

(5) In exercise of the powers conferred by the above Section, i.e., Section. 2 of Act Xxx of 1950, the Central Government as per notification dated September 2, 1965 extended to the Union Territory of Delhi a number of provisions of the Bombay Police Act subject to modifications indicated in the notification. The Section mentioned included Sections 56, 57, 58 and 59 of the Bombay Police Act. The modification made in Section 56 was that the power to take action under this Section was given to the District Magistrate and the Sub-Divisional Magistrate specially empowered by the Chief Commissioner in that behalf. Some other modification was also made but we are not concerned with that. The relevant part of Section 57 of the Bombay Police Act as modified and extended to Delhi reads as under :--

".IF a person has been convicted-

(A)of an offence under Chapters Xii, Xvi of Xvii of the Indian Penal Code (XLV of 1860), or

(B)twice of an offence u/s 6 of section 11 of the Bombay Prevention of Begging Act, 1959 (Bombay Act X of 1960) as extended to Delhi, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956), or

(C)thrice of an offence within a period of three years under the Delhi Gambling Act, 1955 (Delhi Act IX of 1955) or under the Punjab Excise Act, 1914 (Punjab Act 1 of 1914), as extended to Delhi

THE District Magistrate or the Sub-Divisional Magistrate specially empowered by the Chief Commissioner in this behalf, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person to remove himself

outside the area within the local limits of his jurisdiction by such route and within such time as the said officer may prescribe and not to enter or return to the area from which he was directed to remove himself."

(6) Section 56 of the Bombay Police Act has been enacted with a view infer alias to remove a person from a particular area, if it is apprehended that such a person is engaged or about to be engaged in the commission or abetment of an offence specified in the section and if the other circumstances mentioned in the section exist. Section 57 deals with the removal from the limits of a local area of a person who has been previously convicted of certain offences if the authority concerned has a reason to believe that such a person is likely again to engage himself in the commission of an offence similar to that for which he was previously convicted. Section 57, as observed by their Lordships of the Supreme Court in the case of *The State of Bombay (now Maharashtra) v. Vishnu Ramchandra*,⁽¹⁾ does not create a new offence nor makes punishable that which was not an offence. It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The section only enables the authorities to take note of their convictions and to put them outside the area of their activities, so that the public may be protected against a repetition of such activities.

(7) The contention, which has been advanced by Mr. Grover on behalf of the petitioner, is that according to Section 57 of the Bombay Police Act, the previous convictions relating to gambling offences, which were taken into account, were of a serious nature, namely, those u/s 4 and 12A of the Bombay Prevention of Gambling Act, while the convictions under the Delhi Public Gambling Act, which form the basis of action u/s 57 of the Bombay Police Act as extended to Delhi are for each and every offence including minor ones under urged that the only power, which the Central Government had while extending Section 57 of the Bombay Police Act to the Union Territory of Delhi, was to restrict and modify its provisions. The alterations made in Section 57 of the Bombay Police Act by notification dated September 2, 1965, according to the learned counsel, do not amount to restriction and modification of that Section. The above contention has been controverted by Mr. Bishambar Dayal on behalf of the respondents as well as by Mr. Kirpal on behalf of the Attorney General to whom notice of the petition was given. It is the common case of the parties that the alterations made in Section 57 as extended to the Union Territory of Delhi by notification dated September 2, 1965 do not restrict that Section. The stand taken by Mr. Bishambar Dayal and Mr. Kirpal, however, is that the alterations made in Section 57 of the Bombay Police Act as extended to Delhi constitute merely modification of that Section.

(8) In the above context it would be useful to refer to Section 4 and 12A of the Bombay Prevention of Gambling Act and the relevant provisions of the Delhi Public Gambling Act. Sections 4 and 12A of the Bombay Prevention of Gambling Act read as under:-

"4.Keeping Common Gaming House Whoever-

(A)opens, keeps or uses any house, room or place for the purpose of a common gaming-house;

(B)being the owner or occupier of any such house, room or place knowingly or willfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,

(c) has the care or management, of, or in any manner assists in conducting the business of, any such house, room or place opened, occupied, kept or used for the purpose aforesaid,

(D)advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place,

Shall, conviction, be punishable with imprisonment which may extend to six months and fine : Provided that

(A)for a first offence such imprisonment shall not be less than one month and fine shall not be less than two hundred rupees;

(B)for a second offence such imprisonment shall not be less than three months and fine shall not be less than two hundred rupees; and

(C)for a third or subsequent offence such imprisonment shall not be less than six months and fine shall not be less than two hundred rupees."

"12.A.A police officer may apprehend without warrant any person who prints, publishes, sells, distributes or in any manner circulates any newspaper, news sheet or other document or any news or information with the intention of aiding or facilitating gaming :

ANY such person shall, on conviction, be punishable in the manner and to the extent referred to in. Section 4.

AND any police-officer may enter and search any place for the purpose of seizing and may seize all things reasonably suspected to be used, or to be intended to be used for the purpose of committing an offence under this section."

SECTIONS 3, 4, 7 and 12 of the Delhi Public Gambling Act deal with offences which are punishable under that Act and read as under:-

"3.Whoever, being the owner or occupier or having the use of any house, room, tent, enclosure, space, vehicle, vessel or place in the Union Territory of Delhi open, keeps or uses the same as a common gaming-house; and

WHOEVER being the owner or occupier of any such house, room, tent, enclosure, space, vehicle, vessel or place as aforesaid, knowingly or willfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and

WHOEVER has the care or management of, or in any manner assists in conducting the business of any house, room, tent, enclosure, space, vehicle, vessel or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

WHOEVER advances or furnishes money for the purpose of gaming with persons frequenting such house, room, tent, enclosure, space, vehicle, vessel or place;

SHALL be liable to imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to one thousand rupees."

"4.(L)Whoever is found in any such house, room, tent, enclosure, space, vehicle, vessel or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to imprisonment for a term which may extend to three months and shall also be liable to fine which may extend to five hundred rupees.

(2)Whoever is found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary is proved, to have been there for the purpose of gaming."

"7.If any person found in any common gaming house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, on being required by such Magistrate or officer to give his name address, shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other Magistrate be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any term which may extend to one month."

"12.A police-officer may apprehend without warrant any person found gaming in any public street, place or thoroughfare situated within the Union Territory of Delhi, or any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the said State, or

ANY person there present aiding and abetting such public fighting of birds and animals,

SUCH person when apprehended shall be brought without delay before a Magistrate and shall be liable to imprisonment for a term which may extend to three months and shall also be liable to a fine which may extend to one thousand rupees

AND such police-officer may seize all instruments of gaming found in such public street, place or thoroughfare or on the person of those whom he shall so arrest, and the Magistrate may on conviction of the offender order such instruments to

be forthwith destroyed."

(9) In order to determine whether the allegations made in Section 57 of the Bombay Police Act as extended to Delhi are mere modifications or not, it would be necessary to refer to the case reported in *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, regarding the Delhi Laws Act. Section 7 of the Delhi Laws Act, 1912, provided that "the Provincial Government may by notification in the official gazette extend, with such restrictions and modifications as it thinks fit, to the province of Delhi or any part thereof, any enactment which is in force in any part of British India at the date of such notification". Section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947, made similar provisions for the extension of any enactment to the province of Ajmer-Merwara. As some doubts were entertained with regard to the validity of laws, the President made a reference to the Supreme Court under Article 143 of the Constitution, asking the Court's opinion on the following three questions:-

"(1) Was section 7 of the Delhi Laws Act, 1912, or any of the provisions thereof and in what particular or particulars or to what extent ultra virus the Legislature which passed the said Act?

(2) Was the Ajmer-Merwara (Extension of Laws) Act, 1947, or any of the provisions thereof and in what particular or particulars or to what extent ultra virus the Legislature which passed the said Act?

(3) Is section 2 of the Part C States (Laws) Act, 1950, or any of the provisions thereof and in what particular or particulars or to what extent ultra virus the Parliament?"

It was held per Fazl Ali, Patanjali Sastri, Mukherjea, Das and Bose, JJ. (Kania C.J., and Mahajan J. dissenting) that section 7 of the Delhi Laws Act of 1912 and section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947 were wholly ultra vires. Similar opinion was expressed with regard to the first portion of section 2 of the Part C States (Laws) Act 1950 which empowers the Central Government to extend to any part C State or to any part of such State with such modifications and restrictions as it thinks fit any enactment which is in force in a Part A State. Their Lordships in the above context dealt with the scope of the word "modification". Kania C.J. in this connection observed :

"THE power to modify an Act in its extension by the order of the subordinate authority has also come in for considerable discussion. Originally when power was conferred on the subordinate authority to apply existing legislation to specified areas it was given only to apply the whole or a portion thereof. That power was further expanded by giving a power to restrict its application also. In the next stage power was given to modify "so as to adapt the same" to local conditions."

DEALING with the extension application of the Bombay Debtors' Relief Act to

Delhi, the learned Chief Justice observed :

"THE Bombay Act limits its application to poor agriculturists whose agricultural income is less than Rs. 500.00. Under the power of modification conferred on it by the Delhi Laws Act, the Central Government has removed this limit on the income, with the result that the principles, policy and machinery to give relief to poor peasants or agriculturists with an income of less than Rs. 500.00 is made applicable in Delhi to big land-owners even with an income of 20 lakhs. This shows how the word "modification" is understood and applied by the Central Government and acquiesced in by the Indian Legislature. I do not think such power of modification as actually exercised by the Central Government is permitted in law. If power of modification so understood is permitted, it will be open to the Central Legislature in effect to change the whole basis of the legislation and the reason for making the law. That will be a complete delegation of legislative power..."

Fazl Ali, J. observed :

"THE modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure or the essential purpose to be served by it."

Patanjali Sastri, J., referred to the contention of the Attorney- General that modification was usually taken to connote "making a change without altering the essential nature of the thing changed", but refrained from expressing any opinion on the above contention as, in the opinion of the learned Judge, it was not necessary to do so. Mahajan, J. referred to the dictionary meaning of the word "modify" according to which the word means "the making of partial changes or altering without radical transformation". Mukherjea, J. dealt with the matter in the following words :

"THE dictionary meaning of the expression "to modify" is to "tone down" or "to soften" the rigidity of the thing" or "to make partial changes without any radical alteration". It would be quite reasonable to hold that, the word "modification" in section 7 of the Delhi Laws Act means and signifies changes of such character as are necessary to make the statute which is sought to be extended suitable to the local conditions of the province. I do not think that the executive government is entitled to change the whole- nature or policy underlying any particular Act or take different portions from different statutes and prepare what has been described before us as "amalgam" of several laws."

IT was further observed :

"AS the word "modification" occurring in section 7 of the the Delhi Laws Act does not, in my opinion, mean or involve any change of policy but is confined to alteration of such a character which keeps the policy of the Act intact and introduces such changes as are appropriate to local conditions of which the executive government is made the judge, I have come to the conclusion that

there is no unwarrantable delegation of legislative powers in section 7 of the Delhi Laws Act."

Das, J. observed :

"IT may well be argued that the intention of section 7 of the Delhi Laws Act was that the permissible modifications were to be such as would, after modification, leave the general character of the enactment intact. One of the meanings of the word "modify" is given in the Oxford Dictionary Vol. 1, page 1269, as "to alter without radical transformation." If this meaning is given to the word "modification" in section 7 of the Delhi Laws Act, then THE modifications contemplated thereby were nothing more than adaptations which were included in the expressions "mutates mutants".....".

Bose, J. put the matter in the following words :-

"THE power to "restrict and modify" does not import the power to make essential changes, it is confined to alterations of a minor character such as are necessary to make an Act intended for one area applicable to another and to bring it into harmony with laws already in being in the State, or to delete portions which are meant solely for another area. To alter the essential character of an Act or to change it in material particulars is to legislate, and that, namely the power to legislate, all authorities are agreed cannot be delegated by a legislature which is not unfettered."

In *Rajnarain Singh v. Chairman, Patna Administration Committee, Patna* and another, the Governor of Bihar by a notification applied some sections of Bihar and Orissa Municipal Act of 1922 to Patna Village areas. Some other sections of that Act, which dealt with the formalities to be observed for municipal taxation, were omitted and not applied to the Patna Village areas. The notification was issued u/s 3 of the Patna Administration Act, according to which the Local Government could extend to Patna the provisions of any section of the other Act subject to such restrictions and modifications as the Local Government might think fit. The notification was held to be ultra vires. Bose, J., who spoke for the Court, referred to the observations of the different Judges in the Delhi Laws Act case and said :

"(31)In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above : it cannot include a change of policy."

IT was further observed :

"BUT even as the modification of the whole cannot be permitted to effect any essential change in the Act or an alteration in its policy, so also a modification of a part cannot be permitted to do that either. If that were not so, the law, as laid

down in the previous decision, could be evaded by picking out parts of an Act only, with or without modification, in such a way as to effect an essential change in the Act as a whole. It follows that when a section of an Act is selected for application, whether it is modified or not, it must be done so as not to effect any change of policy, or any essential change in the Act regarded as a whole."

INB. *Shama Rao v. Union Territory of Pondicherry*, (3), it was held by the majority that the Pondicherry General Sales Tax Act, which extended the Madras General Sales Tax Act as it stood immediately before the date on which the Pondicherry Act would be brought into force in the territory of Pondicherry, was void and still-born because the Pondicherry Legislature in enacting the Act in that manner had totally abdicated its legislative functions and surrendered it in favor of the Madras Legislature. Reliance in this context was placed upon the two cases of *Delhi Laws Act* and *Rajnarain Singh v. Chairman, Patna Administration Committee, Patna* and another, (supra). (2)

(10) Keeping in view the observations made in the above cases, it would follow that the power of modification given to the Central Government u/s 2 of the Union Territories (Laws) Act while extending an Act to the Union Territory cannot be construed as authorising any change of policy but is confined to making alterations of such a character as keep the policy of the Act intact and introduce such variations as are appropriate to local conditions of which the Central Government is made the judge. The Central Government, while modifying the Act, has to adhere to its essential features and it is not permissible under the garb of modification of bring about any radical transformation. In case the Central Government alters the essential character of an Act or changes it in material particulars, it would be tantamount to legislation and that is not permissible.

(11) Applying the above test, we find that the only offences relating to gambling which could justify the experiment of a previous convict Section 57 of the Bombay Police Act were those under sections 4 and 12A of the Bombay Prevention of Gambling Act. Section 4 of the Bombay Act relates to opening and keeping of a common gaming house, while section 12A deals with a person who prints, publishes, sells, distributes or circulates any newspapers, news-sheet or other document or any news or information with the intention of aiding or facilitating gaming. There is no provision in the Delhi Public Gambling Act corresponding to section 12A of the Bombay Act. Section 3 of the Delhi Public Gambling Act corresponds to section 4 of the Bombay Act because both deal with a person keeping a common gaming house. Section 57 of the Bombay Police Act as extended to Delhi makes convictions for offences under any of the provisions of the Delhi Public Gambling Act a ground for externment from Delhi. The provisions of section 57 of the Bombay Police Act as extended to Delhi thus go much beyond the provisions of the Bombay Police Act because convictions for minor offences under the Delhi Public Gambling Act like those under sections 4, 7 and 12 too are made a ground of externment. Convictions for such offences,

however, do not constitute valid basis of externment u/s 57 of the Bombay Police Act as in force in Bombay. The Central Government in extending the provisions of section 57 of the Bombay Police Act to Delhi has, in our opinion, departed from the essential features of that section in the matter of gambling offences, inasmuch as it has tried to include the conviction for minor gambling offences also as a ground for externment, whereas the scheme and policy of that section was to consider only convictions for gambling offences of a serious nature as justifying externment. This was an attempt at legislation and not a mere modification of the provisions of the Bombay Police Act. This cannot be countenanced in law because it is going beyond the "high water mark of legislative provisions", "to use the words of Lord Hew art in King v. Minister of Health. (4)

(12) There is nothing to show that there is something peculiar in the local conditions of Delhi that even though convictions for minor gambling offences did not justify externment of the convict in Bombay, such a course, in view of special local conditions, was considered necessary in Delhi.

(13) Mr. Kirpal has referred to the case of Mithan Lal v. State of Delhi and others, (5). In that case the validity of certain provisions of the Bengal Finance (Sales Tax) Act (Ben. Vi of 1941), which had been extended to the State of Delhi, was challenged. The main question which arose in that case, was about tax on receipts from building contracts. The Supreme Court and in an earlier case State of Madras v. Cannon Dunkerley & Co.(6) held that the State Legislatures had no competence to enact laws imposing tax on the supply of materials in execution of works contract. It was held in Mithan Lal's case that the decision in Cannon Dunkerley" case had no application to the case of a Part C State where the the statute was passed by Parliament. On the facts it was found that there had been no modification by the Central Government of the Bengal Finance (Sales Tax) Act in its applicability to Delhi. The above case was decided on its own facts and the dictum laid down in it does to, in our opinion, militate against the view which we have taken in the matter.

(14) The provisions about the externment of a person from a city of which he is the resident constitute a serious encroachment upon the liberty of an individual and have to be construed strictly. Any attempt at enlarging the grounds for externment must be subjected to close scrutiny and can be sustained only if it stands that test. It is, in our opinion, not permissible to add to those grounds by means of an executive order; the only remedy for that is proper legislation for the purpose.

(15) We Therefore, are of the view that the words "under the Delhi Gambling Act, 1955 (Delhi Act IX of 1955)" in clause (c) of section 57 of the Bombay Police Act as extended to Delhi, are ultra vires.

(16) The learned counsel for the parties are agreed that the portion of clause (c) of section 57, which has been found to be ultra vires. is severable and would not

affect the validity of the remaining part of that section. Looking to the entire scheme of the section we agree with the learned counsel that the invalidity of the portion mentioned above would not affect the virus and enforce- ability of the remaining part of the section.

(17) Mr. Grover states that there are a number of other objections to the notice which has been served upon he petitioner u/s 59 of the Bombay Police Act and that he would agitate those matters before the Additional District Magistrate.

(18) We, Therefore, hold that the provisions of clause (c) of section 57 of the Bombay Police Act, as extended to Delhi, are ultra virus to the extent indicated above. The learned Additional District Magistrate shall decide the matter in pursuance of the notice served upon the petitioner in the light of the above finding. The petition is disposed of accordingly. In the circumstance we make no order as to costs of the petition.