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Editorial Committee:
N. M. JOSHI,
S. G. VAŻE,
Vice-President and Secretary respectively of the All-India Civil Liberties Council

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Edited by R. G. KAKADE, M. A., LL. B., PH. D.,
Assistant Secretary, All-India Civil Liberties Council
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DEFAMATION OF GOVERNMENT SERVANTS

The clause in the Criminal Procedure Code Amendment Bill providing for the prosecution of journalists who make allegedly defamatory statements against public servants is happily now shorn of a great part of its objectionable features, as the clause has emerged from the lower house of Parliament. In its original form the clause had made defamation of public servants a cognisable offence, in so far as the defamatory allegations made were in respect of the discharge by these officials of their public duties. This involved arrest of the writer without a warrant from the magistrate, seizure of his papers and other incidents which could not but be a source of serious harassment to the alleged offender, with the result that the press would be under a severe handicap in exposing misdeeds of Government servants, which is one of its more important duties. The Press Commission rightly denounced the clause in that form as in its opinion it would be an engine of oppression of honest journalists at the hands of the police.

The Commission therefore suggested another course which it thought, while affording the necessary protection to responsible-minded journalists, would also enable Government to inquire into the truth of what looked like defamatory allegations so that if the allegations were well-founded proper disciplinary action could be taken against the public servants concerned. This latter object was duly appreciated by everyone, but it was widely felt that in order to attain it the special procedure recommended by the Commission, or a variant of it that was recommended by the Select Committee on the Bill, was unnecessary, and that there was no justification for placing public servants in a separate class in the matter of defamation. Government has by an executive order only to ask the public servants who are charged with having misbehaved themselves to clear themselves of the charges on pain of dismissal or other suitable disciplinary action (as happens in France, vide para. 1128 of the Press Commission's Report), and the necessity for all action by proxy will thus be avoided, making it unnecessary to amend sec. 198 of the Criminal Procedure Code, as proposed by the Commission or the Select Committee.

Government has now gone far to accept this position. In fact the emphasis now is not so much on the misdeeds of journalists as on those of public servants. The Home Minister said: "He was most anxious that there should be some check not on the publications but on the public servant himself. Either the public servant vindicated his character or he was dismissed or he resigned.... Government were (in this Bill) devising machinery for the purpose of purifying the services." He pointed out that the normal procedure Government would adopt when they saw that any serious charges were levelled against any public servant in newspapers was that they would ask the public servant whether there was any truth in the charges. If he said there was none, Government would ask him to file a private complaint against the journalist and clear himself of the charges. If he refused, Government would themselves make an inquiry and if they found that the charges were true to any extent they would prosecute the official. If the charges were found to be substantially untrue, then of course the journalist who made the charges would be prosecuted. The Home Minister gave the assurance that in most cases where the allegations made against public servants appeared to have an element of truth, the public servant concerned would be called upon to vindicate his character in a court of law by a private complaint and there would be no need for the Public Prosecutor, as recommended by the Select Committee, to file a complaint against this journalist. It is only in exceptional cases that the special procedure of the Public Prosecutor setting the law in motion would be resorted to. The Home Minister computed that such cases would be only about 2 per cent. If the public servant "was unable because of transfer, illness, etc., to appear as a private complainant," then only would the Public Prosecutor be authorized to file a public complaint. The reason given by the Home Minister for following the exceptional course, viz., transfer or illness of the defamed public servant, is not at all convincing, for, by giving the official the necessary facilities like leave, the necessity for not departing from the normal course could well have been avoided. Thus, although the fundamental objection to

the clause remains, viz., that Government servants are to be treated in some cases on a different footing from private individuals in a matter in which there should be no discrimination, still the scope of the objection will be very much reduced if the Home Minister's assurance is carried out.

An encouraging feature of the discussion on this clause of the Bill is that several back-bench Congressmen joined with the Opposition groups in attacking the principle of the Bill, and in fact all the amendments introduced, which soften the rigour of the measure, were moved by Congressmen. One such amendment limits the operation of the defamation clause to libel or printed words and excludes slander or spoken words from its scope. Another amendment provides that the public servant alleged to be defamed would be examined in the court as a prosecution witness "unless the court otherwise directed in writing." A third amendment provides that prosecution for defamation of a public servant would be sanctioned by Government and not by any lesser authority, so that prosecution in frivolous cases would become unlikely. A fourth amendment provides that if the accusation brought against a journalist is found to be false or vexatious, the court might direct that compensation up to Rs. 1,000 be paid to the accused. These amendments, it may be freely admitted, are expected to result in making considerable improvement in the operation of the law.

But the clause is not limited in its scope to Government servants as the term is ordinarily understood. It extends also to Ministers and various other dignitaries. The inclusion of Ministers in the clause is in particular wholly objectionable. They are not bound by the Government Servants' Conduct Rules to maintain silence when they are attacked; they are essentially politicians and are free publicly to answer any charges made against them. They are not liable to be transferred to a distant place, making prosecution of the offending journalists difficult (unless in the meanwhile they are displaced, in which case they become ordinary citizens). There is not the least justification therefore for them to remain in the background and let the Public Prosecutor prosecute the person who is supposed to have made defamatory allegations against them. They should have the courage to file a private complaint on their own account. Nor would the procedure of compulsory complaint which Government intend to invoke in the case of ordinary public servants be made applicable to them. Obviously, Government cannot compel them to file a private complaint or, in default, ask them to resign. Ministers can very well stick to their jobs when they find that a complaint on their part will be but a boomerang, and the Government's reputation will suffer to a much more grievous extent than when charges are brought against public servants in newspapers. The one thing that mitigates the objectionable character of the defamation clause is that in most cases of defamation Government intend to make the defamed officials bring private complaint, but since this mitigation will not be available in the case of Ministers, the improvement made in the clause will not be effective so far as Ministers are concerned. And it should be remembered that the change in the existing law which was urged by state Governments before the Press Commission was urged by them mainly in order to give special protection to Ministers, and this highly objectionable feature of the clause remains intact in spite of the improvements made in respect of public servants.

An Ordinance

To Validate Elections Set Aside by the Court

A Constitution Bench of the Nagpur High Court on 29th November quashed the entire election to the Janjgir Janapada Sabha in the Bilaspur district and ordered fresh elections to be held with new electoral rolls.

The bench consisting of the Chief Justice and Justice Hidayatullah passed the above orders, accepting a mandamus petition filed by Thakur Naradatta Singh, a resident of the area.

The bench was of the view that since the constituencies in the Janapada were "extremely re-organised" by addition and deletion of villages from one circle to another, there was clearly a necessity for the preparation of fresh electoral rolls and a fresh election would have to be held. The elections of 32 members were accordingly quashed and a direction was given to the authorities to proceed with the preparation of fresh rolls in the light of the observations made.

The contention of the petitioner was that the electoral divisions were to be so constituted as to cover about 10,000 voters. In doing so the Chief Executive Officer had used the census figures for 1941 instead of the 1951 census figures. Also as the elections were held in 1954, the names of all those who were qualified to be voters on 1st January 1953 should have been included in the voters' list. Instead of this the names of those who were qualified to be voters on 1st January, 1952, were included in the list. Thus a large number of persons were excluded from being enrolled as voters.

In view of this judgment and similar other judgments setting aside Janapada elections, the Governor of Madhya Pradesh on 23rd November issued an ordinance validating all the elections quashed by court-orders. The ordinance validates (i) the electoral rolls on the basis of which the elections were held and (ii) validates the elections held on that basis. It says on this point; "Notwithstanding the order of any court to the contrary or any provision in the C. P. Berar Local Government Act (Janapada Act) of 1948, or the rules thereunder,

(a) the electoral rolls shall be and shall always be deemed to have been validly prepared, published and republished;

(b) the electoral rolls shall be deemed to have come into force on the date of the republication and shall continue to be in force until they are revised in accordance with the rules made in this behalf under the Act."

Mr. Mani's Protest

On this subject Mr. R. V. S. Mani, Secretary of the Madhya Pradesh Civil Liberties Union, has issued the following statement.

The ordinance promulgated by the Governor of Madhya Pradesh on November 23, nullifying the Full Bench judgments of the Nagpur High Court quashing a number of Janapada elections for want of proper electoral rolls is a flagrant abuse of his law-making power under Article 213 (i) of the Constitution of India and it is difficult to condemn the Governor's action too strongly.

By declaring that the judgments "shall be deemed to be and always to have been of no legal effect whatsoever" the Governor has interfered with the due course of justice and any person in his capacity would be guilty of gross Contempt of Court. If such ordinances can be issued by Executive fiat with impunity, with the sole object of perpetuating an adjudged wrong and denying to the people what is due to them by right, a day will soon arrive, when it may openly be advocated that the Judiciary be scrapped as of no consequence. These are dangerous potentials and no lover of freedom and democracy can view them with equanimity.

The Governor's ordinance, I am afraid, has set a bad precedent for undermining the very foundations of the Judiciary and unless the Judiciary with the help of a strong Bar is vigilant enough to find ways and means to protect itself from such inroads on its independence and sanctity, the people will lose faith in its efficacy and the discontent aroused thereby may readily manifest itself through undesirable channels. For three hundred years, the British Judiciary fought with the Executive to further people's rights and to deliver to the British people the freedom guaranteed by the Magna Carta; and I believe that it is the sacred duty of the Judiciary in India to follow the noble example of the British Judiciary in this behalf.

The Governor who also professes to believe in democracy would do well to repeal his ordinance forthwith. Let him not forget that the Judiciary is the bulwark of democracy and that on the eve of his retirement he need not earn a bad name.

Condemnation of Racial Segregation in S. Africa

Mr. Strydom, known to be longing to push racial segregation to its extreme length, has succeded Dr. Malan in the Premiership of South Africa. This fact alone would fill one with despair as regards the state of human relationships in that country. On such an occasion a glance at how even Dr. Malan's comparatively mild policy is regarded by men with a broader outlook may be useful.

The South African Government's policy of apartheid is provoking a storm of protest, in the country itself and in the international field. A most impressive warning has come from the U. N. Commission on the racial situation in the Union of South Africa. In its second report the Commission has stated in forthright terms that the policy of racial segregation that the Union Government is following constitutes a grave threat, internally and externally, and that its policy must be a policy of "gradual integration" of races. While the whites "will have to jettison theories of racial superiority which give a semblance of legality to political supremacy," Bantus and coloureds "will have to realise that the idea of fraternal equality and collaboration ... cannot become a reality at the stroke of a magic wand without passing through successive stages. A policy must be adopted which, being careful to avoid wounding susceptibilities and accepting inevitable delays in implementation, would aim at associating the non-white masses to an ever-increasing extent in the political management of the South African national community, of which they form an indispensible, irreplaceable and inseparable part." But the fundamental fact is that all the races in the country "must necessarily wend their way together ... and "build an organic community." It is the only way "to alleviate the situation and promote a peaceful settlement."

In a debate on South-West Africa (which, although it is mandated territory, the Union Government is integrating in South Africa) in the U. N. General Assembly's Trusteeship Committee, the representative of Iraq (which itself was a mandated country and which the mandatory country, Britain, made independent) blamed, on 12th October, the Dutch Reformed Church of South Africa in large part for the policy of racial segregation practised both in South Africa and South-West Africa. He said, it was "a source of pain that a church which worships God and His law on earth should perpetrate a doctrine of racial inequality. He pointed out that in other countries, where other churches have similarly wandered from the basic principles of their faiths, the impact of opposing religions had served to bring them back to their elemental precepts; but it was otherwise in South Africa, where the Dutch Reformed Church is the only national church that is recognised."

This attack was reinforced by the observer at the United Nations for the Commission of Churches on International Affairs. He observed that the Dutch Reformed Church took a definite position, endorsing the Union Government's policy of racial segregation. The Church said that if the apartheid policy was adopted, segregation must be absolute and must include a separate residential area, separate economy, and separate employment. In addition, the Church proposed that natives no longer be employed in European homes: only thus it thought exploitation of one race by the other would cease.

An official spokesman of the Dutch Reformed Church denied this charge at Johannesburg. He said: "It is true that the Dutch Reformed Churches stand for a policy of separate development for each ethnic group as the only policy by which the complexities of our multi-racial society can be overcome and justice be done to everyone. At the same time, these churches try to give positive content to the doctrine of apartheid," and in any case they "condemn any feeling of racial superiority of one section over another."

It is true that recently considerable efforts have been made to improve the standard of living of the non-European peoples, the burden of which has been borne mainly by the European population. But the other side of the medal should also be kept in view. The "Sun" puts this side as follows:

> There is no difference in the rate of taxation, direct or indirect. The European pays more because he earns more. Whose fault is this? The better paid jobs are reserved for Europeans only, and the Government sets the example. Look at the proportion of money spent on education in the Cape Province. There are more Coloured school children than European; yet three times as much is spent on European education as on Coloured education. (In 1952 the educational expenditure in the Cape was £9,947,000 for Europeans, £3,999 for Coloureds; and £2,610,000 for Africans.) Compare the railway facilities for European and non-European; there is no difference in fares. A Coloured person earning the same salary as a European pays the same tax; but when they apply for an old age pension, the European gets a substantial amount, the Coloured a mere pittance.

The same paper says about the formation of group areas in the Cape Peninsula:

> After scrutinising the latest reports concerning applications and representations to the Land Tenure Advisory Board, one cannot help being struck by the utter selfishness and covetousness of certain White groups. ... Many a respectable and God-fearing Coloured family lived a peaceful and happy existence until racialism raised its ugly head in the form of apartheid. ... In the Cape Peninsula ... racialism and apartheid was not as vicious and fanatical as in the country, and here, at least, there was more tolerance, charity and love. ... To-day this tranquil environment is being destroyed through an ideology which is hated by the Coloured people."

Of the attempt of the Department of Native Affairs to resettle Africans on "a tribal basis" in urban areas, an African paper says: "The Minister should know that the tendency today among our people is to be united into one. They are out to kill tribalism and racialism by every means in their power. ... Africans interpret (tribal grouping) as yet another attempt to divide them so that they can be ruled more effectively."

When the Land Tenure Advisory Board met at Johannesburg some months ago to consider proposals for creating certain group areas in that city, the Transvaal Indian Congress lodged objections to the proposals on behalf of the Indian community. Besides objecting to racial groups in principle, the Congress urged that under the proposals several Indians would be deprived of their livelihood. The Chairman of the Board, however, refused a hearing to the Congress, saying in effect that that body had no interest in the proceedings. Against this ruling of the Chairman, an appeal was preferred to the Supreme Court in Pretoria, and this Court on 28th October set aside the ruling. In his judgment the judge said that any person who might be affected by the Board was entitled to a hearing.

COMMENTS

Renewal of Detention Law

Although the Congress Party has beeen using an essentially war-time measure of detention without trial ever since it assumed power after the termination of World War II, it is not yet willing to give it up; the detention law will now be kept in force for three more years — for the present, i. e., up to the end of 1957. The Home Minister coolly said that the change he wanted in the existing law was the simplest imaginable; 1954 to be altered to 1957! According to him, the Bill he introduced did not warrant any long disquisition on the principle of detention without trial, and no argument that detention without trial was an emergency measure which could not be justified except in a grave emergency was permissible, since the constitution itself contemplates preventive detention in normal times! When this inevitably brought the retort that Art. 22 (7) which permits detention in normal times was a blot on the Constitution, the Deputy Speaker objected that such a remark was a breach of privilege inasmuch as members who took their seats in Parliament had sworn allegiance to the Constitution and a derogatory remark about the Constitution militated against the oath they had taken!

The Home Minister pleaded that the detention law was "the most lenient that could be conceived of," and indeed it was the opinion, he said, not only of State Governments but of many competent observers outside the rank of Ministers that Parliament had introduced so many safeguards into it that it had become wholly "inadequate for the purpose in hand." Not only was the law lenient in itself but the State Governments also were "too lenient" in using it, the last evidence of which was that there were only 261 persons in detention at the end of the year. The Minister was "amazed at the moderation that had been shown in the application of the law." Some 250 was "a negligible number compared to the population of the country" (not even one detenu to a million of free people)!

True, in West Bengal and Bombay the Preventive Detention Act was used rather extensively, but the explanation of that was very simple: "in Calcutta there was a monument before which meetings of all sorts could be held, and in Bombay there was a great maidan which could be used similarly." But on the other hand there were States which did not invoke the Act at all. However, the Home Minister would not let the self-restraint exercised by these Governments to be used as a ground for dropping the measure anywhere. He maintained that the Act had its psychological effect and deterred people from indulging in subversive and violent acts. If to-day, he said, India remained a peaceful country when many a nation outside was embroiled in turmoil and confusion, it was to a large extent due to the mere presence of the Preventive Detention Act on the statute book. The inevitable conclusion was that the Act must be maintained if only as a bug-bear. In his good-will missions to Indonesia and other countries, we suppose he will urge upon the Governments to enact a detention law as the most potent means of ensuring world peace.

If the critics argue that detention without trial is not permissible except in face of a grave national crisis, the Minister is game for that argument too. He meets it by saying: We have critical times ahead of us and we cannot afford to take any risks. But his principal argument is that prevention is always better than punishment. "The main object was to take action with a view to preventing crime, because it would be much better to take action at an early stage before trouble broke out and people were killed." "Any attempt to brush aside the Act," he declared, "will be detrimental to the State and will jeoparadise the maintenance of law and order."

Bill to Control the Theatre

The Madras Government has introduced a Bill "for the better regulation of dramatic performances." The Bill repeals the Central Dramatic Performances Act of 1876 in its application to Madras State and re-enacts its provisions, with certain modifications, for use in the State. The Government felt it necessary to have separate legislation because when, some months ago, it started a prosecution against a troupe because, in spite of the ban it had imposed on a drama under the Central Act, the drama had actually been exhibited, it was compelled to drop the prosecution on account of the legal advice it had received, that the Central Act would be held to violate the Fundamental Rights Part of the Constitution on the ground that the law provided no appeal against a banning order that might be issued thereunder. The present Bill was thus thought necessary, and it differs from the Central Act mainly in the fact that it allows an aggrieved person to make an appeal to the High Court against an order of prohibition, empowering the Court to confirm, vary or reverse the order appealed from.

Thus the Bill is more liberal than the 1876 Act, but the definition "of objectional performance" in the Bill is more comprehensive than that adopted in the old Act. While the latter penalises only three classes of dramas, viz., those that are likely to excite feelings of disaffection against the Government, that are of "a scandalous or defamatory nature," and that are likely to "deprave or corrupt persons present at the performance," the former has borrowed from the Press Act all the six categories of "objectionable matter" (including seducement of persons in the armed or police forces from their allegiance, promotion of hatred between different sections of the people, and even incitement to interference with supply of essential commodities, which seems to be meaningless in the present conditions when all food-grain controls have been called off). The present Bill adds to these categories another category: it declares objectionable a drama "which is likely to outrage the religious feelings of any class of the citizens of India by insulting the religion or the religious beliefs of that class."

Indeed, it is this kind of drama which appears to have afforded an occasion to the Government to introduce the Bill. For, on 2nd December, when a drama entitled "Ramayana" was staged at Madurai, it offended the religious feelings of people to such an extent that they resorted to picketing and on the ground that demonstrators indulged in violence the police made a lathi charge which even those who were in favour of banning the particular drama as a gross misrepresentation of Valmiki's epic described as wholly indiscriminate, resulting in the beating, under the name of patrolling the streets, of persons who were far removed from the theatre. The "Hindu" has given the following characterization of the dramas which are the headache of the Madras Government: "Blasphemous misrepresentations of the heroes of the epics which in Hinduism have the status of scripture have of late sought more and more the telling medium of the drama or the cinema. They are aggressively atheistic in tone and intolerably vulgar in language. They are inspired by pseudo-historical thesis, political violence or sectional animosities and very often seek to stand on their head moral values which are part of the very fibre of the national being." Even so, the "Hindu" gives the warning that legislation of this kind "should be hedged in with carefully designed safeguards against excess, since it would be creating quite a number of new offences."

Mr. Mahesh Desai

It will be recalled that at the last session of the All-India Civil Liberties Conference held at Cuttack the President, Mr. Jayaprakash Narayan, said:

> It happens sometimes that when the ruling party finds that workers of the Opposition parties are gaining influence in a labour area, they attempt to eliminate them by implicating them in false cases under fabricated charges. Recently, in a colliery area in Bihar, a prominent worker has been arrested under a false charge of murder, and the usual

fabrication of evidence, I am afraid, is in progress. I happen to know this labour worker who is a first class law graduate of the University of Bombay and is one of the mildest of men who would hesitate to touch even a fly. I know that this case is sub judice, and yet I have deliberately made this statement because I am sure of the injustice of the case. I would be happy to face the consequences for saying so.

This gentleman is Mr. Mahesh Desai, General Secretary of the Koyala Mazdoor Panchayat, working with the coal mine workers at Jharia for the past four and half years. He was arrested on 20th February last and a charge of murdering, or perhaps abetting the murder of, a worker of a rival trade union was brought against him. We understand that the charge against him has now been withdrawn.

Cause of Friction About to be Removed

One of the causes that often leads to repression resulting in deprivation of civil liberties is the presence in a country of foreigners engaged in subversive activities in the country of adoption. This threatened to be a somewhat acute problem in South-East Asia, and particularly in Indonesia and Burma, where the Governments contended that the large Chinese population settled there was a source of internal subversion. Happily, however, there are signs that this disturbing factor will soon be removed from the political scene of these countries. In Indonesia there are as many as three million Chinese settlers who claim both Indonesian and Chinese citizenship, and the Indonesian Government started in December last negotiations with the Chinese Government with a view to ending this dual nationality which created many complications. But thinking that there was no easy prospect of the Chinese population being induced to give up its Chinese citizenship in Indonesia, the Indonesian Government, composed as it is partly of Communists, submitted to Parliament on 13th November a Bill declaring that dual nationality would no longer be recognized. The Bill provides that "a citizen of Indonesia who is staying within the territory of Indonesia is considered as not possessing another citizenship." Indonesians who retained double nationality would lose their Indonesian citizenship under the Bill. There is every chance, however, of there being a change in this position in the near future. For when the Burmese Premier, Mr. U. Nu, paid a good-will visit to Peking recently, the Chinese Premier, Mr. Chou En-lai, reassured him that China would scrupulously refrain from encouraging or assisting the Communist movement in Burma. He is expected also to give a further assurance that China would not hesitate, if necessary, to take active measures, in co-operation with the established Government in Burma, to seal the frontier and prevent infiltration from either side. If this comes about, the cause of peace will be greatly strengthened in South-East Asia.

COMPULSORY SELF-INCRIMINATION

Production of Incriminating Documents

NOTICE QUASHED BY THE MADRAS HIGH COURT

Justice N. Somasundaram quashed in the Madras High Court on 3rd December the order of a Karaikudi Magistrate issuing a notice to the accused in a criminal case to show cause why a general search warrant as asked for by the police in order to search certain premises for obtaining some documents considered necessary for the prosecution of the case, should not be issued.

His Lordship held that this notice would amount to a testimonial compulsion and would stand on the same footing as a summons to produce those documents thereby offending Art. 20 (3) of the Constitution which guarantees that "no person accused of any offence shall be compelled to be a witness against himself."

This decision was given by His Lordship on a revision petition preferred by the accused (Swarnlinga Chettiar) to whom the notice was issued by the Magistrate. The notice was issued on a petition filed by the local Sub-Inspector of Police before the Magistrate seeking a general search warrant to make a search of the premises of the accused and obtain documents mentioned in the list attached to the petition filed by the Sub-Inspector.

In the course of his order, His Lordship observed that before this petition was filed by the Sub-Inspector the accused himself was asked by the Magistrate to produce certain documents considered necessary for the prosecution case. On that the accused moved the High Court to quash that order on the ground that it was tantamount to compelling the accused to be a witness against himself thereby offending Art. 20 (3) of the Constitution. A Bench of the High Court allowed his petition and quashed the order of the Magistrate. Subsequent to that the events leading up to the notice now being impugned took place. The notice to the petitioner (accused) practically amounted to stating "either he produce the documents or else his premises would be searched" so that in order to avoid the search the petitioner was likely to come forward with the production of the documents himself. Instead of directly compelling the accused to produce the documents himself on summons, this notice would practically have the same effect. This notice would, therefore, amount to testimonial compulsion and would stand on the same footing as the summons to produce those documents. This notice to the petitioner was thus unsustainable and must be quashed.

CRIMINAL PROCEDURE CODE

Sec. 30 by itself Not Discriminatory

SUPREME COURT'S DECISION

The Constitution Bench of the Supreme Court, on 2nd December, dismissed an appeal filed by Mr. Budhan Choudhry and others against a judgment of the Patna

High Court, raising the constitutional validity of section 30 of the Code of Criminal Procedure which empowers certain State Governments to invest any district or first class magistrate " with power to try all offences not punishable with death. "

The appeal arose out of a criminal trial held in Hazaribagh district of Bihar. The police investigating the case first submitted it to a subdivisonal magistrate. The sub-divisional magistrate referred it to the Deputy Commissioner, Hazaribagh, for transferring it to a special magistrate for trial. The Deputy Commissioner ordered the case to be tried by a first class magistrate exercising powers under section 30 Cr. P. C. The appellants were convicted by the magistrate on charges under section 366 I. P. C. (for kidnapping or abducting a woman to compel her marriage) and section 143 I. P. C. (for unlawful assembly). They were sentenced to five years' rigorous imprisonment each under section 366 I. P. C., no separate sentence having been passed under section 143. On appeal to the Patna High Court, the Chief Justice held that section 30 Cr. P .C. did not violate the inhibition of Article 14 of the Constitution. The High Court upheld the conviction but reduced the sentence.

The complaint of the appellants before the Supreme Court was that they had been tried by a section 30 magistrate and not by a court of sessions.

A section 30 magistrate was enjoined by that section to try the case brought before him as a magistrate and accordingly he would follow the warrant procedure which was different from the procedure followed by a court of sessions.

The substance of the grievance was that a trial before the Sessions Judge was much more advantageous to the accused person " in that he gets the benefit of the commitment proceedings before a magistrate and then a trial before the Sessions Judge with the aid of the jury or assessors ".

The question for decision was whether " this apparent discrimination " offends against the equal protection clause of the Constitution.

The judgment held that section 30 by itself did not bring about any discrimination whatever. " There is an obvious classification on which this section is based, namely, that such power may be conferred on specified magistrates in certain localities only and in respect of some offences only, namely, all offences other than those punishable with death. "

The judgment said the ultimate decision as to whether a person charged under section 366 should be tried by a court of sessions or by a section 30 magistrate did not depend " merely on the whims or idiosyncrasies of the police or the executive Government but depends on the proper exercise of judicial discretion by the magistrate concerned."

In the present case, the judgment said that " there is no suggestion whatever that there has been at any stage any intentional or purposeful discrimination as against the appellants by the sub-divisional magistrate or the district magistrate or the section 30 magistrate who actually tried the accused.

" Further, the discretion of judicial officers is not arbitrary and the law provides for revision by superior courts of orders passed by the subordinate courts. In such circumstances there is hardly any ground for apprehending any capricious discrimination by judicial tribunals. "

INDUSTRIAL DISPUTES ACT

Taking over Management of Mill

ORDER QUASHED BY THE SUPREME COURT

A Constitution Bench of the Supreme Court on 3rd December allowed a petition under Article 32 of the Constitution filed by Seth Shanti Sarup, a partner of Messrs. Lallamal Hardeodas Cotton Spinning Mills Company, Hathras, for restoring possession of the mill which was taken over by the Government.

The court also quashed two orders, one passed by the Government of India under section 3 (4) of the Essential Supplies (Temporary Powers) Act of 1946 and the other, an earlier one, passed by the State Government under section 3 (f) of the U. P. Industrial Disputes Act, 1947, for taking over management of the mill.

The facts of the case were that the mill with a capital of about Rs. 24 lakhs supplied by 16 partners, all belonging to the same family, was started in 1921. In 1944, as a result of differences among the partners, one of them instituted a suit in the Agra civil court. The suit was dismissed and against this an appeal was taken to the Allahabad High Court which is still pending. During the pendency of the appeal a receiver was appointed to manage the affairs of the mill. In February 1949, the receiver reported that the mill could henceforth be run only at a loss and the court ordered it to be closed on March 19, 1949.

On July 21, 1949, the U. P. Government passed an order purporting to be made under section 3(f) of the U.P. Industrial Disputes Act, 1947, by which one of the partners of the firm was appointed as "authorized controller" of the undertaking. The order authorized the said partner to take over management of the mill and run the undertaking subject to the general supervision of the District Magistrate of Aligarh.

In July 1950, the petitioner, Seth Shanti Sarup, instituted a suit in the subordinate court at Aligarh praying for a declaration that the order of the U. P. Government was illegal and ultra vires and not warranted by the provisions of the U. P. Act. Soon after the filing of this suit the U. P. Legislature passed an amending Act, by which the provisions of section 3 (c) of the Industrial Disputes Act were amended giving wider powers to the persons appointed to manage the mill.

In 1951, the petitioner filed a petition in the Allahabad High Court for a writ to quash the order of the U. P. Government. During the pendency of these proceedings the Union Government passed an order purporting to be

made under section 3(4) of the Essential Supplies (Temporary Powers) Act of 1946 by which the Central Government appointed the same persons as the "authorised controller" to manage the affairs of the mill.

The High Court on July 19, 1953, dismissed the writ petition and thereupon the petitioner came to the Supreme Court, under Article 32 of the Constitution, praying for quashing the orders of both the Central and the State Governments and alleging that the suit which was pending before the Aligarh court could not afford him adequate, effective and expeditious remedy.

The main contentions of the appellants were that the powers under the U. P. Act could be exercised only for preventing strike and lock-out and for the settlement of industrial disputes and other incidental matters. As the mill had already been closed prior to the passing of the order, there was no industrial dispute either existing or apprehended, and no question of preventing any strike or lock-out could arise. Under the Essential Supplies Act, it was stated that the exercise of control connoted the issuing of directions under which "the management is to do or refrain from doing anything." It could not under any circumstance amount to divesting the management or the owners of the property and taking it over from them.

The judgment held that even assuming that the deprivation of property took place earlier under the U. P. Act and at a time when the Constitution had not come into force, the order effecting the deprivation which continued from day to day must be held to have come into conflict with the fundamental rights of the petitioner as soon as the Constitution came into force and become void on and from that date under Article 13(1) of the Constitution.

Quashing the two orders, one under the U. P. Act and the other under the Essential Supplies Act, the judgment said that the respondents were bound to restore the properties taken possession of by them under these orders to the petitioner and his co-partners.

The judgment ordered the properties to be restored to the petitioner and other partners of the mill as the Allahabad High Court, before which an appeal is pending, decides. The petition was allowed with costs.

QUESTION OF BONUS

No Right to Bonus in Year of Loss

SUPREME COURT OVERRULES LABOUR APPELLATE TRIBUNAL

The Supreme Court on 19th November held that the employees of a concern could not, as of right, claim bonus for any particular year in which the concern had suffered trading loss.

The decision, which was unanimous, was given while allowing an appeal preferred by Muir Mills Ltd. of Kanpur against a decision of the Labour Appellate Tribunal awarding a bonus of four annas in a rupee of the basic earnings of the workers of the mill for 1949.

The facts of the case were that Muir Mills in 1948 made a profit of about Rs. 12 lakhs and declared a dividend of 24½% on ordinary shares, being the maximum that could be paid under the Public Companies (Limitation of Dividend) Ordinance of 1948 and also paid the workers bonus at four annas per rupee in their earnings, being their full share.

The next year, it was stated, the mills suffered a trading loss of about Rs. 5 lakhs. But an aggregate sum of about Rs. 12½ lakhs was brought into the balance sheet by transferring two sums under the heads of excess reserve for taxation and reserve amount transferred from the investment account respectively.

The trading loss was deducted from the aggregate amount and the balance of about Rs. 7½ lakhs was shown as profit for 1949. To this amount the balance brought forward from the previous year was added and the company declared a dividend of 24½% payable to ordinary shareholders. The company also paid an ex-gratia bonus to the workers at the rate of 2 annas per rupee of their basic earnings.

Thereupon, the Secretary of the Suti Mill Mazdoor Union, on May 4, 1950, filed a petition to the Conciliation Officer (Textile) claiming that bonus for 1949 should also be at the rate of four annas per rupee.

The dispute was referred to the Regional Conciliation Board, Kanpur, which awarded payment of bonus at four annas per rupee. The Industrial Court (Textile and Hosiery), Kanpur, allowed the mill's appeal, and set aside the award. The Labour Appellate Tribunal, on appeal, substantially agreed with the Industrial Court on questions of fact and general principles of law but imported considerations of "social justice" and directed the payment of bonus at the rate of four annas per rupee.

Mr. Justice Bhagwati, allowing the mill's appeal, said that dividends could only be paid out of the profits and unless and until profits were made, no occasion or question would arise for distribution of any sum as bonus among the employees. If the working of an industrial concern resulted in a trading loss, there would be no profits for the particular year available for distribution of dividends, much less for payment of bonus.

The judgment said that the employees could make a claim for bonus only if, as a result of the joint contribution of capital and labour, the industrial concern had earned profits. If in any particular year the working of the industrial concern had resulted in loss there was no basis or justification for a demand for bonus.

Mr. Justice Bhagwati said that only the shareholders were entitled to receive benefit out of the reserve fund and undistributed profits of the company and the mere fact that dividends were paid to the shareholders out of such reserves and undistributed profits would not entitle the workers to demand bonus when in fact the working of the industrial concern during the particular year showed a loss.

On the question of "social justice" which the Tribunal took into consideration for its decisions, the judgment said that "social justice" was a very vague and indeterminate expression and "no clear-cut definition can be given which will include all situations."

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