Mahal Chand Sethia vs State West Of Bengal on 10 September, 1969

Equivalent citations: 1969(2)UJ616(SC), AIRONLINE 1969 SC 179

JUDGMENT

Mitter, J.

1. In this appeal by special leave the appellant impugn the West Bengal Criminal Law Amendment (Special Courts) Amending and Validating Ordinance, 1965 as also Act XXVIII of 1965 which replaced the Ordinance.

2. The facts are as follows. Eighty one persoa including the appellant had been charged with offences under Sections 120-B, 417 and 409 I. P. C. By notification dated December 8, 1959 (West Bengal Criminal Law Amendment (Special Courts Act. 1949) the State Government distributed the case of the said accused persons to the Calcutta Special Court for trial. On account of the proceedings taken in the write jurisdiction of the High Court the trial could not be proceeded with. On 1st October, 1962 the State Government constituted a Special Court known as the Fourth Additional Special Court under Section 2 of Act XXI of 1949 and by another order of October 16, 1962 the State Government superseded the earlier order of December 8, 1959 and re-allotted the case to the Fourth Additional Special Court. The appellant Mahal Chand Sethia, challenged the order of re-allotment by a writ petition filed on 11th January. 1963 which was summarily dismissed by a single Judge. The appellate Court directed a rule to issue and that rule was made absolute by a single Judge on September 2, 1964 on the finding that the order of re allotment was bad. The Judge ordered that a writ in the nature of certiorari be issued quashing the notification dated October 16, 1962 in so far as the appellant was concerned and a writ of mandamus prohibiting the respondents from continuing the proceedings under the said notification against the appellant. Immediately after the passing of the order by the learned single Judge the west Bengal Criminal Law (Amendment) (Special Courts) Amending Act XIV of 1954 was passed and a new sub-section, viz; Sub-section (3) was appended to Section 4 of the 1949 Act. By this Act the State Government was authorised to withdraw any case from any Special Court and transfer the same to any other Special Court for disposal provided the special Court from which the case was transferred had not taken cognizance of the offence for which the accused were to be tried. In appeal from the order of the learned single Judge dated September 2, 1964 it was argued on behalf of the State that in view of the amended provisions, Section 4(3) of the Act, the appeal ought to be allowed. This contention was however negatived on a finding that the appellant had failed to establish that the Calcutta Special Court to which the case had been originally allotted had not taken cognizance of the offences for which the accused were to be tried. A review petition filed therefrom was also unsuccessful. But during the pendency of this review petition the Governor of West Bengal issued Ordinance VIII of 1965 on September 20, 1965 purporting to amend Section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 by

deletion of old Sub-section (3) and the insertion of a new Sub-section (3) thereto reading:

> "If at any time the State Government thinks fit to do so, it may withdraw any case from any Special Court and transfer the same to any other Special Court for disposal;"

In terms of Section 2 of the Ordinance this new sub section "shall be and shall be deemed to have always been substituted" for the old sub-section. Section 3 of the ordinance provided that:

> "Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or tribunal, where the State Government has withdrawn any case under the said Act from a Special Court before the commencement of this Ordinance, whether or not the offence in such case has been taken cognizance of by the Special Court, and has transferred the same for disposal to any other Special Court, the withdrawal or transfer of such case shall be and shall be deemed to have always been validly made, as if this Ordinance was in force at the time when such withdrawal or transfer was made, and the Special Court to which the case has been so transferred by the State Government shall have and shall be deemed to have always had jurisdiction to try the case."

The Review Petition was thereafter withdrawn. On November 24, 1965 the Special Prosecutor presented an application before the Fourth Additional Special Court requesting it to proceed against all the 81 persons in view of the validation of the withdrawal under the Ordinance. On December 11, 1965 Act XXVIII was passed to replace the Ordinance. The Fourth Additional Special Judge held that the Validating Ordinance and the Act merely validated the law of withdrawal or transfer of a case from a Special Court but could not invalidate a judgment or adjudication inter parties which must remain unaffected even though the effect of the judgment as a precedent may go. Against this order a criminal revision petition was filed in the High Court which was disposed of on September 2, 1968, the High Court holding that in view of the retrospective operation of the Ordinance and the Act the original order of transfer was validated from the date when it was made.

3. The argument of counsel for the appellant was that although it was open to the State Legislature by an Act and the Governor by an Ordinance to amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 it was incompetent for either of them to validate an order of transfer which had already been quashed by the issue of a writ of certiorari by the High Court and the older of transfer being virtually dead, could not be resuscitated by the Governor or Legislature and the validating measures could not touch any adjudication by the Court.

4. It appears to us that the High Court took the correct view and the Fourth Special Court had clearly gone wrong in its appreciation of the scope and effect of the Validating Act and Ordinance. A legislature of a State is competent to pass any measure which is within its legislative compentence under the Constitution of India. Of course this is subject to the provisions of Part III of the Constitution. Laws can be enacted either by the Ordinance making power of a Governor or the Legislature of a State in respect of the topics covered by the entries in the appropriate List in the

Seventh Schedule to the Constitution. Subject to the above limitations laws can be prospective as also retrospective in operation. A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the legislature or if it infringed the rights enshrined in Part III of the Constitution. Needless to add it can strike down of declare invalid any Act or direction of a State Government which is not authorised by law. The position of a Legislature is however different. It cannot declare any decision of a court of law to be void or of no effect. It can however pass an Amending Act to remedy the defects pointed out by a court of law or on coming to know of it uliunds. An Amending Act simpliciter will cure the defect in the statute only prospectively. But as a legislature has the competence to pass a measure with retrospective effect it can pass an Amending Act to have effect from a date which is past. Usually legislatures pass Acts styled Amending and Validating Act; the object being not only to amend the law from a past date but to protect and validate actions already taken which would otherwise be invalid as done without legislative sanction. There is nothing in our Constitution which creates any fetter on the legislature's jurisdiction to amend laws with retrospective effect and validate transactions effected in the past. Further, there is nothing in our Constitution which restricts such jurisdiction of the legislature to cases where court's of law have not pronounced upon the invalidity or infirmity of any legislative measure. Instances of the legislature's user of such power, upheld by our courts, are copious. In State of Orissa v. Bhupendra Kumar Bose (1) where after the High Court had declared certain elections invalid on the ground that the electoral rolls had been improperly prepared the Governor of Orissa promulgated an Ordinance validating not only the elections to the Cuttack municipality which had been before the High Court but also the electoral rolls prepared in respect of municipalities it was contended by the respondent in a writ petition before the High Court that the Ordinance was unConstitutional and that the Governor was not competent to issue the same with a view to over-ride the judgment delivered by the. High Court in its jurisdiction under Article 226 of the Constitution. It was pointed out by this Court that the argument was obviously untenable for it erroneously assumed that the judgment delivered by, the High Court under Article 226 had the same status as the Constitutional provision itself. It was held by this Court that the Legislature was competent to deal with the problems raised by the judgment of the High Court if the said problems and their, proposed solutions were otherwise within their legislative competence.

5. In Rai Ramkrishna v. The State of Bihar (2) the validity of Bihar Ordinance II of 1961 came up for consideration by this Court. In 1950 the Bihar Legislature had passed the Bihar Finance Act levying a tax on passengers and goods carried by public service motor vehicles in Bihar. The appellants had challenged the validity of the Act and certain provisions thereof were struck down by this Court, The State of Bihar then issued Ordinance II of 1961 purporting to validate and bring into force retrospectively the material provisions of the earlier Act from the date when it had come into force. The provisions of the Ordinance were later incorporated in the Bihar Taxation on Passangers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. By the retrospective operation of the Act its material provisions were deemed to have come into force from April 1, 1950 i.e. when the Act of 1950 had come into force. The observations made in that case at pages 908 and 909 clearly show that it is competent to an appropriate legislature to cure the infirmity in any statute pointed out by a court of law and pass a validating Act so as to make the provisions of the earlier law effective from the date when it was passed. Reliance was placed on the decision of the Federal Court in United Provinces v. Mst. Atiqa Begum (3).

6. This Court has had to consider the effect of all validating Acts in cases too numerous to be noted. One of the latest decisions of this Court on this point is that of Udai Ram Sharma v. Union of India (4). In this case the petitioners challenged the vires of the Ordinance later followed by the Land Acquisition (Amendment and Validation) Act, 1967. Section 2 of this Act purported to amend Section 5-A of the Land Acquisition Act by allowing the making of more than one report in respect of land which had been notified under Section 4(1) of the Land Acquisition Act and Section 3 purported to amend Section 6 of the principal Act by empowering different declarations to be made from time to time in respect of different parcles of land covered by the same notification under sec.4 (1) irrespective of whether one report or different reports had been made under Section 5-A Sub-section (2). Section 4 of the Act of 1967 purported to validate all acquisitions of land made or purporting to have be.en made under the land Acquisition Act before the commencement of the Ordinance, namely, January 20, 1967 not withstanding that more than one declaration under Section 6 had been made in persuance of the same notification under Section 4(1) and notwithstanding any judgment, decree or order of any court to the contrary. One of the arguments before this Court was that it was not open to the legislature to under the effect of the judgment of this Court in State of Madhya Pradesh v. V. P. Sharma (5) where it had been held that once a declaration under Section 6 of the Land Acquisition Act, 1894 was made the notification under Section 4(1) of the Act was exhausted and there could not be successive notifications under Section 6 with respect to land in a locality specified in one notification under Section 4 (1) This objection was rejected by this Court. The effect and validity of retrospective legislation was considered in that case in , some detail and it was observed that:

> "…. the power to legislate for validating action taken under statute which were not sufficiently comprehensive for the purpose is only anicillary or subsidiary to legislate on any subject within the competence of the legislature and such Validating Acts cannot be struck down merely because courts of law have declared actions taken earlier to be invalid for want of jurisdiction."

This case is also an authority against the contention pot forward that it is not open to a legislature to encroach into the domain of the judiciary by the device of enacting a Validating Act to cure defects which had been pointed out by a court of law. This objection was repelled in Udai Ram Sharma's case (supra) with a quotation from the decision of Das, J. (as he then was) in A. K. Gopalan v. State (6) reading: --

> "Our Constitution, unlike the English Constitution, recognises the Court's supremacy over the legislative authority, but such supremacy is a very limited one for it is confined to the field where the legislative power is circumscribed by the limitations put upon it by the Constitution itself. Within this restricted field the court may, on a scrutiny of the law made by the legislature, declare it void if it is found to have transgressed the Constitutional limitations."

It necessarily follows that if a law does not suffer from any Constitutional limitation it must be given full play although its effect may be to override the decision of a court of law and cure the defect which was pointed out by that Court.

In the result the appeal fails and is dismissed.