Tej Bahadur Singh And Ors. vs State Through Data Din on 3 May, 1954

Equivalent citations: 1954CRILJ1399, AIR 1954 ALLAHABAD 655

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. The petitioners, Tej Bahadur Singh, Jang Bahadur Singh and Raj Narain Singh, were convicted for offences punishable under Sections 447 and 506, Penal Code, by Opposite Party No. 3, the Panchayati Adalat of Sarai Haidar Shah, pergana Amethi, district Sultanpur, on a complaint made before the Panchayati Adalat by Data Din Dhobi opposite party No. 1 and sentenced to fines of Rs. 25/- and Rs. 10/- each for the two offences respectively. After the conviction by the Panchayati Adalat, the petitioners moved a revision before opposite party No. 2, the sub-Divisional Magistrate of Amethi but that revision was dismissed. The petitioners, consequently moved this petition under Article 227 of the Constitution, challenging the validity of their conviction

2. The first point, that has been urged by learned Counsel for the petitioners, is that the provisions relating to trial of criminal cases by a Panchayati Adalat under the U. P. Panchayat Raj Act, 1947, are ultra vires of the legislature inasmuch as the U. P. Legislature had no power to legislate on this subject. Learned Counsel referred to the preamble of the U. P. Panchayat Raj Act which is as follows:

> Preamble : Whereas it is expedient to establish and develop Local Self Government in rural areas of the United Provinces and to make better provisions for village administration and development; it is hereby enacted as follows :
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> It was urged that, from this preamble, it is clear that, when enacting this statute, the U. P. Legislature purported to act under item 13 of List II of Schedule VII of the Government of India Act, 1935.
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> Item 13 relates to local government, that is to say, the constitution and power of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

His contention was that, under this item, the U. P. Legislature had no power to enact provisions, constituting Panchayati Adalats, granting them powers to try criminal offences, laying down the procedure to be followed by them in trying criminal cases and regulating the rule of evidence applicable to such trials. There is no doubt that this part of the enactment is beyond the scope of item 13 of List II of the Seventh Schedule of the Government of India Act, 1935. It may, however, be noticed that, under items Nos. 1, 2, 5 and 15 of List III, the Provincial Legislatures and the Central Legislature had concurrent powers of legislation on subjects of criminal law, criminal procedure, evidence and Constitution and Jurisdiction of Courts.

The legislatures, when enacting a particular statute, do not, in that statute itself, lay down provisions indicating what power of legislation is being exercised in enacting that statute. It is from the provisions of the statute itself and by reference to the legislative power granted to the legislatures that it is to be inferred what particular power is exercised in enacting a particular provision of the statute.

The constitution of Panchayati Adalats and the powers to be exercised by them in respect of criminal cases were within concurrent legislative powers of the Provincial and Central Governments under the Government of India Act, 1935, according to item No. 15 of List III of the Seventh Schedule of that Act. The power to legislate on criminal law, criminal procedure and evidence was also exercisable concurrently by the Provincial Legislatures and the Central Legislature under items Nos. 1, 2 and 5 of List III of Schedule VII mentioned above. It must, therefore, be presumed that, in enacting provisions constituting Panchayati Adalats, defining their powers, laying down the procedure to be followed by them and regulating the rules of evidence in those courts, the U. P. Legislature purported to act under the relevant items of List III of Schedule VII of the Government of India Act, 1935.

The mere fact that the preamble did not mention that the U. P. Panchayat Raj Act was being enacted also for the purpose of constituting village courts and laying down a special procedure for trial of petty offences in village areas by such courts does not mean that the legislature necessarily purported to act under item No. 13 of List II and not under items 1, 2, 5 and 15 of the List III. of Schedule VII.

The U. P. Panchayat Raj Act, having been passed by the U. P. Legislature, was reserved by the Government for assent of the Governor General and received the assent of the Governor General before the Act was published in the U. P. Gazette. Under Sub-section (2) of Section 107, Government of India Act, 1935, therefore, the provisions of the U. P. Panchayat Raj Act, in so far as they are repugnant to the provisions of the Code of Criminal Procedure and the Indian Evidence Act, prevailed within the United Provinces and the validity of those provisions could not, therefore, be challenged when the Constitution came into force. On the enforcement of the Constitution, the U. P. Panchayat Raj Act, 1947, which was an existing law, continued in force and is, therefore, still effective and valid in the State of Uttar Pradesh.

3. The second ground, on which learned Counsel contended that these provisions of the U. P. Panchayat Raj Act, 1947, are void, is that they infringe the fundamental right guaranteed by Article 14 of the Constitution. This argument was based on two contentions : One was that the provisions of the U. P. Panchayat Raj Act, relating to trial of criminal offences by Panchayati Adalats, brought about discrimination between people who might have committed offences in rural areas where the U. P. Panchayat Raj Act is applicable and others committing the same offences in the neighbouring areas to which that Act is not applicable.

It was submitted that an occasion may arise when some offence is committed by some person within a municipal area to which the U. P. Panchayat Raj Act does not apply and the same offence is committed by another person outside the municipal area, though within a few yards from it, to which the U. P. Panchayat Raj Act is applicable, and the effect of the U. P. Panchayat Raj Act would be that the latter would be tried according to the procedure laid down by the U.P. Pahchayat Raj Act whereas the former would be tried in accordance with the provisions of the Code of Criminal Procedure.

The second point was that the procedure, laid down in the U. P. Panchayat Raj Act for trial of criminal cases, curtailed some of the rights which were granted to an accused who might be tried under the Code of Criminal Procedure and, further, that the rules of evidence applicable to a trial under the U. P. Panchayat Raj Act were also less favourable than those applicable to a trial under the Code of Criminal Procedure. This argument was urged with reference to section 83 of the U. P. Panchayat Raj Act, 1947, which lays down that the Code of Criminal Procedure and the Indian Evidence Act shall not apply to trials by Panchayati Adalats under that Act and that the procedure and the rules of evidence applicable to such trials would be laid down in that Act itself or in the rules framed thereunder.

It cannot be denied that the effect of Section 83, U. P. Panchayat Raj Act, is to discriminate between a person tried under the provisions of the U. P. Panchayat Raj Act and another person who may be tried under the Code of Criminal Procedure, in which trial the Indian Evidence Act would also be applicable. It is, however, not every discrimination that makes a statute void under Article 14 of the Constitution. In the case of -- the State of West Bengal v. Anwar Ali Sarkar , on which learned Counsel has mainly placed reliance in support of his contention, Mahajan, J. has held as follows:

> Equality of right is principle of republicanism and Article 14 enunciates this equality principle in the administration of justice. In its application to legal proceedings, the article assures to everyone the same rules of evidence and modes of procedure. In other words, the same rule must exist for all in similar circumstances. This principle, however, does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position.
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> By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it

is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

The classification permissible, however, must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

Thus the legislature may fix the age at which persons shall be deemed competent to contract between themselves, but no one will claim that competency to contract can be made to depend upon the statute or colour of the hair. 'Such a classification for such a purpose would be arbitrary and a piece of legislative despotism'.

Mukherjea, J., who delivered the leading majority judgment, held:

It can be taken to be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be . applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to ail in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation, their position is substantially the same.

This brings in the question of classification. As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class the legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated.

In -- Lachmandas Kewalram v. State of Bombay , Das J. remarked:

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act.

Patanjali Sastri, C. J., in Kedar Nath Bajoria v. State of West Bengal , held:

Now it is well settled that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and Classifying persons or things for the purposes of legislation.

To put it simply, all that is required in class or special legislation is that the legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation to the object which the legislature seeks to attain. If the classification on. which the legislation is founded fulfils the requirement then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation were all-embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative purpose.

In the present case, therefore, we have only to see whether the discrimination brought about by "the U. P. Panchayat Raj Act is based on any classification which has a rational basis having a reasonable relation to the purpose of the Act. From the preamble and the main provisions of the Act, it is clear that this Act was designed to simplify the administration in village areas by providing for management by bodies elected by village communities themselves and to provide easy and simple remedies for redress of grievances of members of such village communities.

It was contended by learned Counsel for the petitioners that, in order to judge the purpose of the Act, we should confine ourselves to the preamble only and this preamble would indicate that the legislature intended merely to establish and develop Local Self-Government in rural areas and make better provision for village administration and development.

The constitution of village 'panchayats' and trial of criminal offences by them by a simple procedure, it is contended, is not covered by the objects of the Act as disclosed in this preamble. Firstly, we are not at all satisfied that the general words 'provision for village administration and development' would not cover administration of justice in the rural areas also. Secondly, in judging the purpose of an Act, it is not necessary that the preamble alone should be taken into consideration and the plain language of the provisions in the Act itself must be ignored altogether.

In -- Kedar Nath Bajoria's case (C)', cited above, when dealing with the validity of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, Patanjali Sastri C. J. observed:

The real issue, therefore, is whether having regard to the underlying purpose and policy of the Act as disclosed by its title, preamble and provisions as summarised above, the classification of the offences, for the trial of which the Special Court is set

up and a special procedure is laid down, can be said to be unreasonable or arbitrary and, therefore, violative of the equal protection clause.

According to this view of the Supreme Court, the underlying purpose and policy of the Act are disclosed by "its title, preamble and provisions". In the case of the U. P. Panchayat Raj Act, the provisions relating to the Constitution and powers of the Panchayati Adalats and trial of cases, suits or proceedings by them clearly indicate that one of the objects of the legislature was to provide for effective and speedy remedy locally to the village communities for trial of petty offences and decision of petty civil disputes. Das J., in the case of -- ', cited earlier, held:

Although the Preamble of an Act cannot override the plain meaning of the language of its operative parts, it may, nevertheless, assist in ascertaining what the true meaning or implication of a particular section is, for the Preamble is, as it were, a key to the understanding of the Act.

The preamble can, therefore, be used only as an aid to the interpretation of the provisions of the Act itself and it cannot be held that, if any particular provisions of the Act are not covered by the brief language of the preamble, the legislature did not intend to make provision for purposes which can clearly be inferred from those provisions of the Act though not mentioned in the preamble.

The provisions in the U. P. Panchayat Raj Act relating to Panchayati Adalats give a clear indication that the intention of the legislature was that trials of petty offences and decisions of petty suits in rural areas should be entrusted to courts constituted by election from amongst the members of the village communities by themselves and that the procedure and the rules of evidence applicable to the proceedings before such courts should be considerably simplified.

In enacting the U. P. Panchayat Raj Act, the legislature was making provision for people residing in the village areas only and felt that such special provisions for residents of village areas would be justified even though they may differ very considerably from provisions on similar matters applicable to residents in urban areas. Classification by areas has always been considered to be a rational basis of classification for discrimination in respect of the equal protection clause. In the Constitution itself, the legislatures of various States are given independent powers of legislation on a number of matters which are included in Lists II and III of Schedule VII of the Constitution. The Constitution, thus, recognises that different legislative provisions may be made for people residing in different states by the legislatures of those states.

Just as the U. P. Panchayat Raj Act discriminates between a person accused of committing an offence in a rural area as against a person committing the same offence in an adjoining urban area, it may frequently happen that an enactment

> passed by the legislature of one state may discriminate between a person committing an offence within that state as against a person committing the same offence in the adjoining state who would be governed by the statutes passed by the latter state. If the principle be recognised that, in adjoining areas, there can be no such discrimination, the provisions of the Constitution permitting state legislatures to legislate on subjects like Criminal law, Criminal Procedure and Evidence would become meaningless as legislation by the legislature of one state would not be enforcible in an adjoining state.
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> The Constitution itself, therefore, lays down provisions, indicating that, on subjects which are included in Lists II and III of the Seventh Schedule of the Constitution, there might be discrimination between residents of one state and another and this accepts the principle of classification on the basis of areas. There is no reason why it must be held that, if classification on the basis, of states is reasonable, classification on the basis of rural and urban areas for the same purposes is not reasonable.

4. Coming to the second contention, it is to be remembered that no citizen has any vested right in the rules of procedure laid down in the Code of Criminal Procedure or in the rules of evidence laid down in the Indian Evidence Act. They are, no doubt, the principal enactments on these subjects which are, of more or less, general application throughout the Indian territory but even the provisions in these enactments are subject to amendments within the states by the appropriate state legislatures with the assent of the President.

The Supreme Court, in Sukhdev Singh v. Teja Singh C. J. AIR 1954 SC 186 (D), recognised that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and is given a fair and reasonable opportunity to defend himself.

It has not been urged by learned Counsel that the procedure prescribed by the U. P. Panchayat Raj Act for trial of cases by Panchayati Adalats is not fair or does not give a reasonable opportunity to an accused to defend himself. The mere fact, therefore, that the Panchayat Raj Act lays down a different procedure and different rules of evidence in respect of cases triable by the Panchayati Adalats is no ground for holding that this piece of legislation violates the equal protection clause on the ground of discrimination.

These provisions of the U. P. Panchayat Raj Act also bring about discrimination based on gravity of offences. It is only minor offences which have been made triable by the Panchayati Adalats, and major offences continue to be triable by regular courts under the ordinary procedure. Even these minor offences are, under certain circumstances, triable by regular courts under the ordinary procedure, e.g. when a Sub-Divisional Magistrate cancels the jurisdiction of the Panchayati Adalat on grounds of miscarriage of justice or apprehension of miscarriage of justice, or, when a Panchayati Adalat may return the complaint to the complainant, directing him to file it before the Sub-Divisional Magistrate having jurisdiction to try such a case on the ground that the offence is one

for which it cannot award adequate punishment, or, the case is of such a nature or complexity that it should be tried by a regular court.

The fact that, in such cases, the trial is by a different court under a different procedure does not, however offend against equal protection clause as there is a rational basis and a reasonable classification which distinguishes such cases from cases which continue to be triable by the Panchayati Adalats.

5. Learned Counsel for the petitioners has urged one more point based on the language of Section 80, U. P. Panchayat Raj Act, 1947, which runs as follows:

> 80 : No legal practitioner shall appear, plead or act, on behalf of any party in any suit, case or proceeding before a Panchayati Adalat.

Provided that a person who is arrested shall have the right to consult and be defended by a legal practitioner of his choice.

It was contended by learned Counsel that the proviso to Section 80 brought about discrimination favourable to a person who may be under arrest as against a person who is not under arrest even though the two persons may be tried by the same Panchayati Adalat and this offends against the equal protection clause. The argument was, however, not seriously pressed by learned Counsel and it is obvious that it has no force.

The classification of accused persons on the basis of being under arrest or at liberty is clearly a reasonable classification. Article 20(1) of the Constitution grants a right to a person, who is sought to be deprived of his personal liberty, to be represented by legal practitioners. No such right is granted by the Constitution of being represented by a legal practitioner if the liberty of his person is not threatened. The proviso to Section 80, merely enforces the fundamental right which has been granted by Article 20 of the Constitution. Consequently, this contention must also be rejected.

6. No other points were urged in support of this petition.

7. The petition fails and is dismissed.