State Through Gokul Chand vs Banwari And Ors. on 24 January, 1951

Equivalent citations: AIR1951ALL615

ORDER

Desai, J.

1. This is an appln. by seven men, five of whom are barbers & two, dhobis, from their conviction under Section 6, U. P. Removal of Social Disabilities Act, XIV [14] of 1947. It is laid down in Section 3 of the Act that no person shall "refuse to render to any person merely on the ground that he belongs to a scheduled caste, any service which such person already renders to other Hindus on the terms on which such service is rendered in the ordinary course of business;"

> person contravening this provision is liable to be punished under Section 6 with imprisonment & fine. It has been found by the Cts. below that the appcts. refused to shave & wash clothes of Chamars. On the passing of the Act, the Chamars served a notice upon the barbers & the dhobis of the village calling upon them to render service to them. When they did not agree, a Panchayat was called by the Chamars; it was attended by the appcts. In the Panchayat the Chamars & other people assembled there, asked the appcts. to render service to the Chamars. The Chamars had brought bundles of clothes to be washed. At first the appcts. agreed to render service & even accepted the bundles of clothes for washing. Then they said that they would reconsider the matter, held consultation with one another at some distance from the Panchayat, returned & told everybody that they had decided not to render service to the Chamars & returned the bundles to them. They were pressed to reconsider that decision but they remained adamant & the Panchayat broke up. It is this refusal which was the subject-matter of their prosecution.

2. It was contended that there was no refusal actually to render service to the Chamars & that what the appets. did was to refuse to agree or promise to render service. It was pointed out that no request was made to the appcts. to render service there & then & that the Panchayat was called simply to obtain an agreement from them that henceforth they would start rendering service. When they refused, it amounts to their refusal to agree to render service in future & not refusal to render service there & then. It was pleaded that this was no offence of refusal, or even an attempt to refuse to render service but was, at the most, a threat or preparation to refuse to render service. If it was only a threat or preparation to refuse to render service, undoubtedly, it would not amount to an offence. The evidence, that has been believed by the Cts. below, is that the bundles of clothes were actually offered to the dhobis & that they had refused to accept them. So in the case of the dhobi appcts. there was a refusal actually to render service & not merely a threat of, or preparation for, a

refusal. The evidence is that the dhobis accepted the bundles & then refused. It does not matter which dhobi accepted the bundles because the final refusal was by all. By the refusal they undoubtedly committed the offence. But the case of the barbers is different; they were not called upon to shave any of the Chamars there & then; they were simply asked to agree to shave them in future. So their act of refusal was simply a threat or preparation to commit the offence. They had plenty of locus poenitentiae & even after their refusal in the Panchayat it was open to them when they were asked actually to shave the Chamars. So no offence was committed by the barbers by their refusal in the Panchayat.

3. The reasons given by the appcts. for their refusal were that if they rendered service to the Chamars, other Hindus would not accept service from them & they would lose their custom. It was urged that the refusal on this ground is not refusal merely on the ground that the Chamars belong to a scheduled caste. It is true that the appcts. did not say, in so many words, that they were refusing to render service because the Chamars belong to a scheduled caste, but that undoubtedly was the ground, & the only ground, if their refusal; because the Chamars belong to a scheduled caste, the other Hindus would not accept service from the appcts. if they rendered service to the Chamars & the appcts. would lose custom of the other Hindus. The loss of the custom of the other Hindus would be a consequence only of the fact that the Chamars belong to a scheduled caste. So when the appcts. said that they would not render service because otherwise they would lose the custom of other Hindus, it meant that they would not render service because the persons 'demanding it belong to a scheduled caste.

4. No prosecution witness stated anything about the terms on which the service was demanded from the appcts. & it was contended that the prosecution failed to show that they had refused to render service on the same terms on which they were rendering it in the ordinary course of business. When in the Panchayat the appcts. were asked to render service, it was presumed by everybody that they were asked to render it on the same terms on which it was rendered in the ordinary course of business. The Chamars did not ask for any special or favourable terms. There was no discussion about the terms because the appcts. flatly refused to render service. They were not prepared to render service on any terms & that is why there was no discussion of the terms. They did not ask for any terms which might have been refused by the Chamars. There is no doubt, the appets. refused to render service on the same terms on which they were rendering it in the ordinary course of business.

5. Mr. Saksena referred to Articles 17 & 23 of the Constitution. Article 17 simply lays down that untouchability has been abolished & that the enforcement of any disability arising out of it shall be an offence punshable in accordance with law. It is not necessary that the law which punishes that offence must be framed after the Constitution came into effect; a law existing at the time when the Constitution came into effect would be a law within the meaning of Article 17. In any case, there is nothing in the Article to render the U. P. Act invalid. The Article is only an enabling Article. Article 23 is to the effect that "traffic in human beings & begar & other similar forms of forced labour are prohibited."

The passing of the U. P. Act does not contravene this Article at all. When the Provincial Legislature laid dawn that nobody shall refuse to render service merely on the ground that the person

demanding it belongs to a scheduled caste, it does not mean that it has infringed the prohibition on "begar & other similar forms of forced labour". When a person is prohibited from refusing to render service merely on the ground that the person asking for it belongs to a scheduled caste he is not thereby subjected to forced labour similar in form to begar. Therefore I do not see any illegality in The Provincial Act.

6. Mr. Saksena disputes the validity of the joint trial. The question whether the joint trial was valid or not would be determined on the basis of the allegations or the case put before the Ct. & not upon the result. The joint trial could be justified only on one ground & it is that the appcts. committed the offence in the course of the same transaction (see Section 239 (a), Cri. P. C). The case against them was that they committed the offence jointly in a concerted move in the Panchayat after holding consultation with one another. They decided among themselves to commit the offence; so it can be said that they committed the offence in the course of the same transaction. It does not matter if the act of some of them did not amount to an offence; the prosecution contended that it amounted to an offence & that contention is sufficient to make the joint trial of all the appcts. legal.

7. In the result I allow the appln. of Banwari, Mul Chand, Babu Ram, Ram Din & Babu Ram, set aside their conviction & sentences & acquit them. If they have paid up the fine, it shall be refunded. I maintain the conviction & sentences of Bahadur & Nanhu & dismiss their appln.