

## Durga Prasad vs The State And Ors. on 27 July, 1954

**Equivalent citations:** AIR1955ALL9, AIR 1955 ALLAHABAD 9

**Author:** V. Bhargava

**Bench:** V. Bhargava

### JUDGMENT

Malik, C.J.

1. This is a petition under Article 226 of the Constitution by one Durga Prasad who is a resident of village Sisaiya, Police Station Izatnagar, District Bareilly.

2. The affidavit in support of the petition has been filed by one Murari Lal, a resident of village Kesarpur, police station Isatnagar, district Bareilly. A riot took place in village Kesarpur on 23-3-1951. A large number of Hindus, including the petitioner, was arrested and the papers were sent to the Additional District Magistrate (Judicial), Bareilly for enquiry. We are, however, not concerned with those proceedings. As a result of the riot, a notification was issued under Sub-section (1) of Section 15, Police Act, 1861 (5 of 1861), declaring village Kesarpur and certain other villages in Police Circle Izatnagar and village Saidpur within Police Circle Earadari in the district of Bareilly to be in a disturbed state. This proclamation was to remain in force for a period of five months.

As a result of this notification, additional police force had to be sent to these villages. The cost of this additional police force was made payable by the inhabitants of the locality who were responsible for the disturbed state of the area. On the recommendation made by the District Magistrate, Bareilly, the State Government passed an order under Sub-section (5) of Section 15, Police Act, exempting CD Government servants, (2) Muslims, (3) invalids and (4) persons who neither participated in nor were in any way connected with the rioting from the liability of paying the costs of the additional police. A claim was also made for payment of compensation by certain persons who had suffered as a result of the disturbances, and this was done within one month as required by Section 15A, Police Act.

The Sub-Divisional Magistrate made enquiries and found that a sum of Rs. 4,875/- was payable as compensation to the Muslim inhabitants of the locality. The persons exempted from payment of cost of the additional police under Sub-section (5) of Section 15 were also exempted from paying compensation under Sub-section (3) of Section 15A, Police Act. Learned counsel urged that the State Government had passed a most unjust and discriminatory order in exempting Muslims from paying costs of the additional police and in awarding them compensation as they were responsible for the

disturbed condition of the area.

In the affidavit filed in support of the petition or in the rejoinder affidavit, no such allegation has, however, been made. The language used in paragraph 4 of the affidavit of Murari Lal filed on 15-11-1951, is in most guarded language and reads as follows:

"4. That enquiry proceedings are pending against 107 Hindus and 'it is said for the defence that the Muslim inhabitants of the locality had taken law into' their own hands and the Hindus are absolutely innocent."

From the portion underlined, (here in ' ') it would appear that the deponent was not taking the responsibility for the truth of the allegation but was making a statement to the effect as to what the defence was of the 107 Hindus against whom proceedings were pending.

AS a result of our pointing this out to learned counsel, he confined his arguments only to a short point that the provisions of Sub-section (5) of Section 15 and Sub-section (3) of Section 15A, Police Act, are invalid as they give an arbitrary power to the State Government to exempt from payment of the cost of additional police and compensation anybody they liked irrespective of the fact whether he was or was not a person responsible for the disturbed condition of the area.

3. The scheme of Section 15 is that if there is a local disturbance in any part of the country, the State Government can declare that a particular area has been found to be in a disturbed or dangerous state. It can, in the alternative, issue a proclamation that it is expedient to increase the number of police in that particular area due to the conduct of the inhabitants of that area or of any class or section of them. Sub-section (5) of Section 15 then provides as to who should pay for this additional police. It says that the costs for the additional police shall be borne by the inhabitants of the area described in the proclamation. Though the proclamation may cover the inhabitants described in it, the State Government has been given the power under Sub-section (5) of Section 15 to grant exemptions.

Sub-section (5) of Section 15, Police Act, reads as follows:

"15(5) It shall be lawful for the State Government by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost."

The expression "such inhabitants" must here, refer to inhabitants described in the proclamation under Sub-section (3) of Section 15A and the words that are important are that the State Government can, by order, exempt any persons or class or section of the inhabitants described in the proclamation. The power of exemption given to the State Government under sub-s. (5) of Section 15 thus appears to be very wide and from the mere reading of the sub-section, it would appear as if it is uncontrolled by any other provision and the State Government can exempt even those who may have been responsible for the disturbed condition of the area.

The language of Sub-section (3) of Section 15A is more or less in the same terms and, practically, the same argument has been advanced with respect to that sub-section. The scheme of Section 15A is that if death or grievous hurt or loss of, or damage to property has been caused by or has ensued from the misconduct of the inhabitants of any such area or any class or section of them, then an application can be made within one month to the Magistrate of the district or of the sub-division of a district, within which that area is situate, for compensation.

The Magistrate has been given the power to hold an enquiry and, after the enquiry, he is to "(a) declare the persons to whom injury has been caused by or has ensued from such misconduct;

(b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and

(c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section,"

There is a proviso which, however, limits the power of the Magistrate and he must first be satisfied that damage or injury has been caused as a result of a riot or unlawful assembly in the area and that person, who has suffered the injury, was himself free from blame in respect of the occurrences which led to that injury. This, therefore, gives the Magistrate a quasi-judicial power to determine the compensation payable and the responsibility for the payment of the same.

4. As we have already said, the only two provisions, which are being challenged, are the provisions contained in Sub-section (5) of Section 15 and Sub-section (3) of Section 15-A, Police Act.

5. Reliance has been placed by learned counsel on two decisions of the Supreme Court, --'State of West Bengal v. Anwar Ali Sarkar', AIR 1952 SC 75 (A) and -- 'Ram Prasad Narayan Sahi v. State of Bihar', AIR 1953 SC 215 (B). These two cases, however, are not in point. In the former case, the question arose whether the West Bengal Special Courts Act (10 of 1950) offended against the provisions of Article 14 of the Constitution and was, therefore, 'ultra vires'. It was held that the provisions of the Act did offend against the provisions of Article 14 of the Constitution and were 'ultra vires' and the reason for the decision in short was that for the same offence one person may be tried in accordance with the normal procedure, while another under the West Bengal Special Courts Act.

The Act gave the State Government unfettered power to have any accused person tried in accordance with the provisions of the said Act, who would ordinarily be triable under the provisions of the Code of Criminal Procedure. It was admitted that the procedure prescribed in the Code of Criminal Procedure was more elaborate and provided greater protection and safeguards to an accused person, compared to which the provision of the West Bengal Special Courts Act could be said to be summary proceedings. That question does not really arise in the present case and certain sentences in the Judgments of the learned Judges about the reason why all people should have

equality before the law cannot be held to be of much help in the decision of the present case.

In -- 'Ram Prasad Narayan Sahi's case (B)', the Bihar State Legislature had passed a special Act (Sathi Lands (Restoration) Act, 1950) to deprive the appellants of certain rights conferred on them under a lease by the Court of Wards. Mukherjea J. pointed out that what Article 14 of the Constitution "aims at is to strike down hostile discrimination or oppression of inequality". This Bihar Act, as was pointed out by their Lordships, had singled out two individuals and one single transaction and was thus discriminatory.

6. The case, however, which is more in point is the decision of their Lordship of the Supreme Court in -- 'Dwarka Prasad Laxmi Narana v. State of Uttar Pradesh', AIR 1954 SC 224 (C).

In dealing with Clause 3(2)(b) of the Coal Control Order, 1953, their Lordships said that the provision contained in Clause 3(1) of the U. P. Coal Control Order that "no person shall stock, sell, store for sale or otherwise utilise or dispose of coal except under a licence granted under this Order." was quite unexceptional as a general provision and pointed out that, in fact, that was the primary object which the U. P. Coal Control Order was intended to serve but there were two exceptions engrafted upon the general rule.

One of the exceptions provided that nothing in Clause 3(1) would apply to any person or class of persons exempted from any provision of the above sub-clause by the State Coal Controller to the extent of such exemption. Their Lordships remarked:

"An unrestricted power has been given to the State Controller to make exemptions, and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. Clause 3(2)(b) of the Control Order seems to us, therefore, 'prima facie' to be unreasonable."

The point, however, did not arise in that case and their Lordships, therefore, did not express a final opinion. They then dealt with Clause 4(3) of the U. P. Coal Control Order and held that to be 'ultra vires' as it offended against the provisions of Article 19(1)(g) of the Constitution.

7. Learned counsel for the State has urged that though the provisions of Sub-section (5) of Section 15 and Sub-section (3) of Section 15-A, Police Act, may, in terms, by very wide and may not appear to lay down any restrictions, the sub-sections read as a whole and reasonably interpreted make it clear that exemptions should only be granted to those who were not responsible for the disturbed or dangerous state of that area and had no connection with it. As a matter of fact, in the exemption granted, the fourth class of persons are those who neither participated in, nor were, in any way, connected with the riot and this clause is wide enough to include people of all denominations, whether Hindus, Muslims or others.

The first, second and third class of persons, viz., Government servants, Muslims and invalids, could also be included in class 4 but they were specifically mentioned as the State Government was satisfied that they were not responsible for the riot. It has not been urged before us nor there is

anything in the affidavit to establish that the exemption order passed under Sub-section (5) of Section 15 and Sub-section (3) of Section 15A, Police Act, was either arbitrary or unjust, or, that the State Government was guilty of having discriminated between one class and another.

8. The two cases relied upon by learned counsel appearing on behalf of the State are -- 'Kedar Nath Bajoria v. State of West Bengal', AIR 1953 SC 404 (D) and -- 'Harishankar Bagla v. State of Madhya Pradesh', AIR 1954 SC 465 (E). In --'Kedar Nath Bajoria's case (D)', the question arose about the validity of certain provisions of the West Bengal Criminal Law Amendment (Special Courts), Act (21 of 1949), under which offences were made triable by special Courts.

Dealing with the question whether the Court should confine merely to the language of a particular provision, their Lordships said:

"The argument overlooks the distinction between those cases where the Legislature itself makes a complete classification of persons or things and applies to them the law which it enacts, and others where the Legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfilment of which the administrative authority is expected to select the persons or things to be brought under the operation of the law." Their Lordships pointed out the difference between the Saurashtra case, -- 'Kathi Raning Rawat v. State of Saurashtra', AIR 1952 SC 123 (F) and the West Bengal Special Courts Act case -- 'AIR 1952 SC 75(A)' and said:

"The majority decision in the Saurashtra case would seem to lay down the principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Article 14."

After the Coal Control case quoted above, the question arose whether any discretion given to the State Government or to its officers not canalised within a definite channel must be held to be arbitrary power in all cases. It was pointed out by the learned Chief Justice in 'Harishankar Bagla's case (E)' that Section 4(3) of the U. P. Coal Control Order was declared void on the ground that it committed to the unrestrained will of single individual the discretion to grant, withhold or cancel licences in any way he chose and there was nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same.

In 'Harishankar Bagla's case (E)', dealing with the provisions of the Essential Supplies (Temporary Powers) Act, 1946, and the Cotton Textiles (control of Movement) Order, 1948, their Lordships of the Supreme Court observed:

"The policy underlying the Order is to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the textile commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power, there is ample power in the Courts to undo the mischief. Presumably, as appears from the different forms published in the Manual, there are directions and rules laid down by the Central Government for the grant or refusal of permits."

These three cases read together indicate that it is not open to the Legislature to give arbitrary power to the State Government or any person or authority to do what it likes & in any manner it chooses, unrestrained by any directions as to how the power was to be exercised. If from the other provisions of the Act, however, it can be gathered how the discretion is to be exercised and in what circumstances, then even though the provision may be widely worded, it is not necessarily void. In case, however, the discretion is abused, it was pointed out by their Lordships in 'Kedar Nath Bajoria's case (D)', such exercise of discretion can be challenged and annulled, under Article 14 which includes within its purview both executive and legislative acts. In -- 'Yick Wo v. Peter Hopkins', (1886) 30 Law Edn. 220 (G)', though the Act was on the face of it, innocuous and the same was to apply to all laundry men, the provisions were utilised to discriminate against Chinese laundry men and it was held that they were, therefore, invalid. In the case before us, we are inclined to the view that the whole scheme of Sections 15 and 15A, Police Act, laid down the principles which should govern the grant of exemptions under Sub-sections (5) and (3) of the said sections and, there being no allegations that the power has been abused by the State Government, there is no reason to interfere.

9. The petition is, therefore, dismissed with costs which we assess at Rs. 200/-.