

## Bashir Ahmad And Anr. vs The State on 3 October, 1950

**Equivalent citations: AIR1951ALL243, AIR 1951 ALLAHABAD 243**

ORDER

Kidwai, J.

1. According to the facts which are now established, on the night between 14 & 15 -12-1949, Bashir Ahmad & Mahmood Khan were arrested near Rly. Station Kauriala Ghat, in the District of Kheri, with a cart loaded with six bales of millmade cloth by a police party in the course of its rounds. Since the police party found an infringement of the U. P. (Supplementary) Cloth (Control of Movement) Order, 1947 inasmuch as the two persons were with this quantity of cloth within the "Sector" as defined in that order without a permit, it sent the two accused persons & the cart to police station, Nighasan & a report was lodged.

2. The police prosecuted the case & the learned Mag. found an infringement of the provisions of para. 3 of the U. P. (Supplementary) Cloth (Control of Movement) Order, 1947. He accordingly convicted them under Section 7, Essential Supplies (Temporary Powers) Act of 1946 & sentenced them to pay a fine of Rs. 150 each. He also directed that the bales of cloth be forfeited to the State.

3. The persons convicted appealed, but the learned Addl. Ses. J. of Kheri upheld the findings & the conviction & maintained the sentences. They have now come up in revn.

4. The appots' learned Advocate contended: (1) That the conviction is illegal because the order under which it was passed was no longer in force when the accused were arrested; (2) That the cart was standing under a tree at night & consequently it could not be said that the cloth was moved from one place to another; & (3) That, having regard to the uncertainty of the law, only a technical offence was committed & the sentence is too severe.

5. The act by which this matter governed is the Essential Supplies (Temporary Powers) Act, XXIV [24] of 1946 which received the assent of the Governor-General on 19-11-1946. Section 3 of this Act confers certain powers on the Central Govt. to provide for the regulation or the prohibition of the production, supply or distribution of essential commodities.

6. By Section 4 the Central Govt. is authorised to delegate all or any of its powers under Section 3, subject to such conditions & limitations as it may deem fit to impose, upon any officer or authority subordinate to the Central Govt. or upon any Provincial Govt. or officer or authority subordinate to Provincial Govt.

7. In pursuance of the powers so conferred, the Central Govt. authorised the Provincial Govt. to issue such orders as it might itself have issued under Section 3 of the Act. One of the orders issued

was the U. P. (Supplementary) Cloth (Control of Movement) Order, 1947. This order, therefore, had the same force as an order issued direct by the Central Govt. would have.

8. The learned Advocate for the appcts. refd. to Notfn. No. 101/19-Tex. 1/48, dated 10-9-1948, to show that the order of the Provincial Govt. had been withdrawn. Para. 3 of this Order is as follows:

"No person shall transport or cause to be transported by rail, road, air, sea or inland navigation any cloth, yarn or apparel except under & in accordance with -

(1) a general permit notified in the Gazette of India by the Textile Comr."

He next refd. to Notfn. No.101/19-Tex. 1/48 (1) dated 10-9-1948, issued by the Textile Comr., which is called a General Permit. This divides the whole of India into 33 zones, one of which, i. e. No.7 is the United Provinces Zone comprising the United Provinces and the States of Benares, Eampur and Tehri Garhwal. Paragraph 3 of this Permit is as follows :

"Any person may transport or cause to be transported by road, air, sea or inland navigation or by goods train or as a railway parcel by a passenger train any cloth, yarn or apparel from any place in any zone described in para. 1 to any other place in the same zone :

Provided that nothing in this para..shall apply to such transport :from Greater Bombay or from the Ahmedabad Municipal Borough ;

Provided further that the permission contained in this paragraph is subject to the restrictions which may be imposed from time to time by any order of a Provincial or State Government."

9. It was contended on the basis of these two notifications that cloth might be taken to any place within the United Provinces from any other place within the said Province, & that the order of the Provincial Govt. to the contrary, contained in the notfn. upon which the prosecution reld. marking off a sector bordering upon the Nepal & the Behar frontiers, within which movement could not take place was repugnant to the Govt. of India notfn. & should be deemed to have been revoked. Particular emphasis was laid on the Textile Comr's. Circular No. TOS 1V/CMM/7/46 (xiii), dated 11-11-1948, addressed to all the Provincial Goyts. & recommending that "it is considered that the restrictions if any Imposed by the Provincial or State Govt. on the movement of Cotton Textiles are superfluous ... It will be greatly appreciated if steps are taken to repeal the Provincial restrictions If any, immediately."

10. The contention raised cannot be accepted because the Textile Comr. at the most had coordinate authority with the Provincial Govt. & although he could recommend that the Provincial authorities should act in a particular manner, he could not override or cancel the orders of the Provincial authority nor does he purport to do so in the circular mentioned above.

11. With regard to Textile Comr's. Notfn. noted as a General Permit the second proviso to para. 3 makes it clear that it does not affect any restrictions which might from time to time, be imposed by the Provincial Govt. It would not, therefore, affect the order of the Provincial Govt. placing a restriction upon movement within at particular Sector. The case, therefore, urged on behalf of the appct. that the Provincial Order of 1947, had been withdrawn or rescinded is not made out & the movement of cloth within the sector in defiance of that order remained an offence.

12. With regard to the second contention, it may be pointed out that the goods were loaded in a cart and it was admitted by the accused themselves that they had brought it to that place, although they said that they had brought it at the instance of one Shahzada. Even if this statement is accepted that does not make them any the less guilty of infringe, ment of an order having the force of law.

13. Finally it was contended that there was uncertainty as to the law & that only a technical offence had, therefore, been committed. There was no uncertainty at all with regard to the law. The Provincial Govt's. orders were perfectly clear & their object is to prevent the export without proper authority of cloth, of which there is a shortage in the Province to the Nepal State or to the Behar Province. The orders of the Govt. of India & of the Textile Comr. in no way supersede this order & if the appcts. were relying upon the Textile Comr's. Permit, it obviously implies that they were aware of it. I have quoted the relevant para, in an earlier part of this judgment. If they were aware of the order, they should have been aware of the proviso to Section 3 maintaining Provincial restrictions. It cannot, therefore, be said that the offence was committed in a bona fide belief that the Provincial Govt.'s order was no longer the law.

14. The offence is of a serious nature & could have been punished more severely but the learned Mag. has imposed only a fine of Rs. 150 on each of the offenders. There is no reason for reducing this fine or for revoking the order confiscating the cloth in respect of which the offence is committed to the state. This appln. fails & is dismissed.