

Pooran Mistry vs State Of U.P. on 19 January, 1955

Equivalent citations: AIR1955ALL370, 1955CRILJ901, AIR 1955 ALLAHABAD 370

ORDER

Mehrotra, J.

1. This revision was filed from jail by the applicant against the order of the Sessions Judge of Moradabad who dismissed the appeal of the petitioner filed against his conviction under Section 6(e), U. P. Provincial Armed Constabulary Act (40 of 1948) by" the Sessions Judge of Moradabad. In appeal however the Sessions Judge reduced the sentence of imprisonment from three years' rigorous imprisonment to 18 months' rigorous imprisonment. The applicant had prayed that he should be informed of the date fixed for hearing. An order was passed by Hon'ble Mukerji, Judge that the applicant be informed of the date and he should either appear in person or as was desired by him, Sri S. P. Gupta practising in the district Court be informed of the date and asked to appear on his behalf. Notice was then issued to Mr. Gupta and on the date of hearing he appeared and was permitted to argue the case on behalf of the applicant. The charge against the applicant was that he being an officer of the Provincial Armed Constabulary, malingered or feigned disease in himself with effect from 14-3-1951 till 31-3-1951 and thereby committed an offence under Section 7(e) of the U. P. provincial Armed Constabulary Act (40 of 1948). He was further charged of an offence under Section 6(e) of the said Act.

2. The prosecution case, in brief is that the applicant was employed in the Provincial Armed Constabulary, IX Bn. stationed at Moradabaa and absented himself from duty, without permission or leave and malingered and feigned up to 31-3-1951 and subsequently absconded and deserted service. On 2-3-1951 the accused made an application to the Commandant of his Battalion for seven days leave on the ground that his wife had been seduced by certain persons from his father-in-law's place, and was sold to someone. The leave-was granted with effect from the 7th March till 13-3-1951. He went to his house and on 12-3-1951 he sent a reply paid telegram to his Company Commander, praying for further extension of his leave for ten days. This was refused and he was required to report himself for duty immediately. The order was communicated to him on the same day by wire. He did not report himself on duty and he was noted absent with effect from 14-3-1951.

A notice was sent to him on the 17th March by the Assistant Commandant, requiring him to report himself for duty within seven days, failing which he was to be prosecuted under Section 6(e) of the Act. This notice remained unserved and was received back on 17-4-1951. On 21-3-1951 another application was sent by the applicant accompanied by a medical certificate of the same date, for 20 days leave. In that it was stated that before the expiry of the leave the accused fell ill. This leave would have expired on 2-4-1951. On 31-3-1951 another application was sent by the accused

supported by a medical certificate stating that he had not completely recovered as yet and the leave should be extended till 3-4-1951. No order was passed on this application as well. The accused appellant did not report himself on duty even after 3-4-1951. Again on 16-4-1951 the P.A.G. authorities at Moradabad sent a letter to the Deputy Superintendent of police, Garhwal, requesting him to direct the accused to report himself for duty within seven days of the receipt of that letter. The Deputy Commissioner war, informed by the Patwari of the circle on 29-4-51 that the accused-appellant had gone back to join his duty some 16 or 17 days before. No reply was received from the applicant. Another letter was sent to him by the P.A.C. authorities on 30-4-1951.

The applicant remained untraced and thereafter on 7-5-1951 the Commandant of the Battalion lodged a formal report to the S.O. Kotwali, Moradabad, for registering a case of desertion under Section 6(e) of the Act. The Battalion thereafter left Moradabad in January 1952 and on 16-4-1952 after making certain enquiries another request was made to the said S.O. Kotwali to register a case. The Police could not find the applicant and proceedings under Section 87, Criminal P. C. and Section 88, Criminal P. C. were taken against the accused. The charge-sheet was sent on 27-1-1952. In the meantime the applicant got himself enrolled as a police constable at Rampur and when all these facts came to light he was arrested on 26-6-1953.

3. A number of points have been raised by Sri Gupta on behalf of the applicant. Firstly he has contended that the U. P. Provincial Armed Constabulary Act is 'ultra vires' of the U. P. Legislature as it is not covered by any of the provincial lists. Secondly it is contended that the 'Act violates the provisions of Article 14 and 19(1)(G), Constitution of India and as such it is void under Art. 13 of the Constitution.

4. Lastly, it was contended that, in any view of the matter the applicant has already been in jail for a sufficiently long time and the sentence be reduced to the period already undergone. Schedule 7, Government of India Act, 1935 contains a legislative list and these lists contain the subject which can be legislated upon by the Central Legislature and the Provincial Legislature. There is also the concurrent list specifying the subjects on which the Central and the Provincial Legislatures could legislate. In the Provincial Legislative list item 3 relates to the "police including railway and village police". It is within the powers of the Provincial legislature to legislate with regard to the police including its strength, its manner of recruitment and other matters incidental thereto.

5. The argument of the counsel for the applicant was that the Act creating a force of armed constabulary is not covered by item 3 of the Provincial list of the Government of India Act, 1935. The functions and duties to be performed by the Armed constabulary are not police functions. The functions of the police are enumerated in the Indian Police Act. On a close examination of the Act and the purpose underlying the Act, it cannot be said that the object of creating the force of armed constabulary was anything but the maintenance of internal peace and order. The Act came within the ambit of the word "police". Therefore, force created under the Act, is not a combatant force like army.

6. The contention of the applicant is that in the absence of any definition of the word "Police" given in the Government of India Act, it should be given the same meaning as is given to it in the Police

Act of 1861. The word "Police" is defined in the said Act "including all persons who shall be enrolled under this Act." It is conceded that the word "Police" in its general sense connotes the "department of the Government or the civil force charged with duty to maintain internal peace and order." In interpreting the words used in the list given in Schedule 7, Government of India Act, 1935 it is an established principle that none of the items are to be read in a narrow or restricted sense.

Reference in this connection may be made to the case of -- 'State of Bombay v. F.N. Balsara', AIR 1951 SC 318 (A), where it has been laid down that one of the principles for the interpretation of the items given in the list is that they are not to be read in a narrow or restricted sense. The second principle in interpreting the items in the list is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. A similar principle was laid down by their Lordships of the Federal Court in the case of -- 'United Provinces v. Atiqa Begum', AIR 1941 FC 16 at p. 25 (B). There is, therefore, no force in the contention of the applicant that the U. P. Act of Armed Constabulary does not come within the ambit of the word "Police" used in the Provincial List.

7. As regards the contention that the Act is 'ultra vires' in view of the provisions of Article 14 of the Constitution, it is enough to point out that having regard to the nature of the subject-matter of the Act the armed constabulary is a valid and justifiable classification and the Act is fully supported on the principle of classification.

"It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not 'per se' amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary: that it does not rest on any rational basis having regard to the object which the legislature has in view." 'Ameerunnissa Begum v. Mahboob Begum', AIR 1953 SC 91 at p. 91 (C).

8. Reference in this connection may be made to the cases of -- 'Charanjit Lal v. Union of India', AIR 1951 SC 41 (D), -- 'Ram Prasad v. State of Bihar', AIR 1953 SC 215 (E), -- 'State of West Bengal v. Anwar All', AIR 1952 SC 75 (F) and. the case of -- 'Lachhman Das Kewal-ram v. State of Bombay', AIR 1952 SC 235 (G).

9. In my judgment the U. P. Armed Constabulary Act is, 'intra vires' and the applicant has been rightly convicted under Section 7(c), U. P. Provincial Armed Constabulary Act (11 of 1948). As regards the sentence, the applicant was convicted by the Assistant Sessions Judge on 15-2-1954. He was arrested on 26-6-1953. He was not let out on bail throughout the trial and before the Sessions Judge in appeal. He has, therefore, been in jail from June 53 to February 1954 as an under-trial prisoner and from February 1954 up to the present day as a convict. He has, therefore, been in jail for more than a year and the ends of justice will be met if the sentence of imprisonment is reduced

to the period already undergone. In other respects, the conviction of the applicant is maintained.