Har Murat vs The State on 13 March, 1953

Equivalent citations: AIR1953ALL545, AIR 1953 ALLAHABAD 545

JUDGMENT

Desai, J.

1. This is an application by Har Murat in revision against his conviction and sentence under Section 7, Essential Supplies (Temporary Powers) Act, 1946, for infringement of Clause 3 (IX) at the U. P. Foodgraim Movement Control Order, 1949 There Is no controversy about the facts; it has been proved that the applicant drove a motor truck containing twenty-four bags of rice from village Gharawal to village Malvan, both places being within Mirzapur district, on 5-4-50. By. that act the applicant did not contravene Clause 3 (ix) of the Foodgrains Movement Control Order. Clause 3 (ix) of the Order does not contain any mandatory provision; it only mentions a saving provision. It is therefore meaning-less to talk of contravention of the provision of Clause 3 (ix). Really it is Clause 3 (vii) that the applicant is said to have infringed. That provision is to the effect that "no person shall carry....by rail nor motor vehicle any of the foodgrains mentioned in column 1 of .....Schedule I from any place in the United Provinces to any other place in the United Province."

2. The plea that Section 7, Essential Supplies Act, is "ultra vires' has been abandoned in view of this Court's decision that it is not 'ultra vires'. Mr. Sripati Narain Singh urged that the applicant did not "carry" rice because he was only taking it back from a mill. The rice belonged to Kesri Singh Jaiswal, who was also the owner of the truck, and the applicant was Kesri Singh's servant employed to drive the truck. Even if the applicant had taken the rice from Kesri Singh Jaiswal's house to a mill and was taking it back after getting certain operations done upon the rice, it does not mean that he was not "carrying" it from one place to another. There is no justification for saying that taking back does not amount to "carrying". (3) Next it was urged that Clause 3 (vii), Food-grains Movement Control Order, is unconstitutional inasmuch as it contravenes Articles 14 and 19(g) of the Constitution. The provision simply forbids the carriage of some foodgrains from, one place to another in the United Provinces; it does not affect the right of any person to practise any profession or to carry on any occupation, trade or business. A person can practice any profession or carry on any occupation, trade or business even if he is forbidden to carry by rail or motor certain foodgrains from one place to another in the United Provinces. But even if it be said that the provision restricts this right of every citizen guaranteed by Article 19(g) the restriction is reasonable and in the interests of the general public.

Article 19 does not affect the operation of any existing law in so far as it imposes reasonable restrictions on the exercise of the right to practise any profession or to carry on any occupation, trade or business, in the interests of the general public; see Sub-article (5). It was in the interests of the general public that certain restrictions have been imposed by the State Government on the movement of some foodgrains by certain means. Neither is the carrying of all foodgrains from one

place to another place forbidden, nor is the carrying of rice from one place to another by any means prohibited. The prohibition is only on the carriage of rice by rail or motor vehicle; the carriage of rice by carts or on heads or on animals is not at all prohibited.

Further there is a provision in the Order that it will not apply to the movement of any food-grains under a permit issued by the State Government or the Commissioner for Food and Civil Supplies. If any person wants to carry rice by rail or motor from one place to another in the United Provinces, he can do so after obtaining a permit. There is nothing to show that there are difficulties or obstacles in the way of obtaining permits. I am, therefore, of the opinion that even if the provision restricts the right guaranteed by Article 19, the restriction is reasonable and therefore the provision is not unconstitutional.

4. The provision is said to be unconstitutional also on the ground that it makes invidious discrimination between carriage by rail or motor vehicle and carriage by other means. A person who carries rice by rail or motor, without a permit, from one place to another in the United Provinces is rendered punishable while another carrying rice in the same circumstances, but on a cart or on head is not rendered punishable There certainly exists this distinction, but every provision which makes a distinction between one class and another is not necessarily unconstitutional. The constitutional requirement that nobody shall be denied the equality before the law is not always infringed by a provision involving a classification. The equality before the law is satisfied if the same means and methods are applied impartially to all the constituents of each class so that the law shall operate equally and uniformly to all persons in similar circumstances; it does not prohibit legislation which is limited in the objects to which it is directed; see

-- 'Jessie Norton Torrence Mogoun v. Illinois Trust and Savings Bank', (1898) 42 Law Ed 1037 (A).

The equal protection clause does not take away from the States the power to classify in the adoption of police laws and admits of the exercise of a wide scope of discretion in that regard and avoids what is done only when it is without any reasonable basis and therefore purely arbitrary; see -- 'Lindsley v. Natural Carbolic Gas Co.', (1911) 55 Law Ed 369 (B). Day J. said in --'Southern Rly. Co. v Greene', (1910) 54 Law Ed 536 at p. 539 (C) that "the equal protection of the laws means subjection to equal laws, applying alike to all in the same circumstances." The selection, or classification, "in order to become obnoxious to the 14th Amendment, must be arbitrary and unreasonable; not merely possibly, but clearly and actually so"; see -- 'Bachtel v. Wilson', (1907) 51 Law Ed 357 at p. 359 (D). The power of classification must have a wide range of discretion and is not reviewable unless palpably arbitrary; -- 'Toyata v. Territory of Hawai', (1912) 57 Law Ed 180 (E). The "equality before the law" clause does not restrain the normal exercise of Governmental power but only abuse in the exercise of such authority and is not offended against simply because some inequality may be occasioned as a result of the exercise of the power to classify; -- 'Louisville and Nashville Rail Road Co. v. Melton', (1910) 54 Law Ed 921 (F).

5. Fazl Ali J. said in -- 'Charanjit Lal v. The Union of India', AIR 1951 SC 41 (G) that : "The presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles"

(page 45). This principle, certainly holds good in respect of a legislation enacted after the Constitution came into force. The question of applying presumption cannot arise in respect of legislation enacted before the Constitution came into force because at the time of its enactment there was no question of its being in accord with the Constitution. But even in respect of a legislation enacted before the Constitution, if a state of facts can be conceived which would make it consistent with the Constitution, the existence of those facts will be assumed and it would be for one attacking it as being inconsistent with the Constitution to prove that those facts did not exist.

> "A general law must be judged by public facts, but a specific adjudication may depend upon many things not judicially known. Therefore, the law must be sustained on this point unless the facts offered in evidence clearly show that the exception cannot be upheld."

Where the local facts are not before the Court, toe Court cannot say that the legislature could not have been justified in thus limiting its action. See -- 'Inter-state Consolidated S. R. Co. v. Commonwealth of Massachusetts', (1907) 62 Law Ed 111 (115) (H). In -- 'Lindsley v.

Natural Carbolic Gas Co.', (B) (Supra), it was laid down :

> "when the classification in such a law is called in question, if any state of facts reasonably can be conceived, that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed."

it makes no difference that the facts may be disputed or their effect opposed by argument;

-- 'Johan W. Rast v. Van Demand & Lewis Co.', ,(1913) GO Law Ed 679 at p. 687 (I), Harian J. said in -- 'South Western Oil Co. v. State of Texas'. (1910) 54 Law Ed 688 (694) (J) that it is not important that the Court should certainly know "what were the special reasons or motives inducing the state to adopt the classification," because it "will assume that the State has in good faith sought, by its legislation to protect or promote the interests of its people."

6. Even when a Court is required to analyse the grounds for the classification it should bear in mind that all that is required for a classification to be valid is that it must have relation to the purpose of the legislature and that logical appropriateness of the inclusion or exclusion of objects or persons or exact wisdom or nice adaptation of remedies is not required; -- 'Heath and M M. Co. v. Worst', (1907) 52 Law Ed 236 (244) (K). The Legislature may disguise degrees of evil and adapt its legislation accordingly; -- 'Truax v. Raich', 60 Law Ed 131 (L) and -- 'Radice v. New York', (1924) 68 Law Ed 690 (M).

7. Regarding the provision of Clause 3 (vii) of the Order in the light of the law stated above, I find that it is not established clearly to infringe the "equality before the law" clause. One can conceive of intelligible reasons for distinguishing between persons who carry rice from one place to another by rail or motor vehicle and persons who carry it by other means. Apparently there is nothing arbitrary or unreasonable in the distinction between the two classes of persons. The Government might have

forbidden. the carriage of certain foodgrains by rail or motor vehicles because they are the means generally adopted for purposes of trade or for carriage of large quantities of foodgrains or for carriage of foodgrains to distant places. The Government certainly did not want to prohibit the carriage of foodgrains over short distances for objects unconnected with trade or of foodgrains in small quantities so as not to interfere with the proper distribution and supply of the foodgrains.

They had to allow the carriage of foodgrains from the place where they are grown to. the place where they are to be stored, or from a shop to the place of consumption. For these purposes, normally the foodgrains would be carried in carts or on animals or on head. The Government might have thought that they could keep an effective check over the distribution and supply of foodgrains if they were carried by carts or on animals or on head but not if carried by rail or motor vehicles. They might have thought that the carriage of foodgrains in large quantities or to distant places would interfere with proper distribution and supply of food-grains, but not the carriage of small quantities or to places in the vicinity and could have reasonably thought that rail and motor vehicles are the usual means for carrying large quantities or to distant places.

Thus the distinction between the carriage by rail or motor vehicle and the carriage by other means is intelligible and not absolutely devoid of sense or arbitrary. The applicant has failed to show that the clause under consideration makes an arbitrary and unreasonable distinction between carriage by rail or motor vehicle and carriage by other means. It is, therefore, not unconstitutional.

8. No other question was raised. I would, therefore, maintain the applicant's conviction and sentence and dismiss the application.

N. Beg, J.

9. I agree.