

Triloki Nath vs State on 28 April, 1950

Equivalent citations: AIR1950ALL657, AIR 1950 ALLAHABAD 657

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. This is a revision by Triloki Nath against the order of the Sessions Judge, Meerut confirming the conviction under Section 7, Essential Supplies (Temporary Powers) Ordinance, 1946, read with Section 3, U. P. Ghee (Movement) Control Order 1845, and a fine of Rs. 200 and ordering the forfeiture of the ghee to the Government.

2. The facts found against the applicant by the Courts below are that he was taking three tins of ghee to Delhi from Moradabad on 26th March 1949. I have to accept these facts which are supported by evidence. The fact that, according to the accused, he was taking these tins to Mathura in these provinces via Delhi does not affect the finding that he was carrying the ghee to Delhi in contravention of Section 3, U. P. Ghee (Movement) Control Order, 1945, which is :

"No person shall carry or cause to be carried or offer for carriage by rail, road or river, any ghee from any place in the United Provinces, to any place outside the United Provinces except under, and in accordance with, the terms of a permit issued by Government in this behalf."

I have not quoted the two provisos which do not apply to the facts of this case,

3. It is contended for the applicant that this, U. P. Ghee (Movement) Control Order is ultra vires of the powers of the Governor of the United Provinces in view of Section 297, Government of India Act, 1935 and the case reported in Ram Charan v. Rex, 1949 A. L. J. 197:(A. I. R. (36) 1949 ALL. 463:50 Cr. L. J. 694). I do not agree with this contention. There is ample authority that Section 297, Government of India Act, 1935, does not impose limitations on the Provincial Government in connection with its legislative or executive power derived from sources other than the power of legislation under the Provincial Legislative List in Sch. VII, Government of India Act, 1935.

4. It was next contended that the U. P. Ghee (Movement) Control Order, 1945 issued by the Governor in the exercise of the powers conferred by Clause (a), Sub-rule (2) of Rule 81, Defence of India Rules, ceased to operate after 30th September 1946, when the Defence of India Act and the

Defence of India Rules made thereunder ceased to operate. The impugned Order continued to be effective Order after 30th September 1946 in view of the provisions of the Essential Supplies (Temporary Powers) Ordinance, 1946 and the Essential Supplies (Temporary Powers) Act, 1946, which were made in view of the powers-conferred on the Indian Legislature by the India (Central Government and Legislature) Act, 1946 (9 and 10 Geo. VI, ch. 39). Section 2, Indian (Central Government and Legislature) Act, 1946 empowered the Indian Legislature to make laws with respect to trade and commerce (whether or not within a province) and the production, supply and distribution of various specified articles which mentioned foodstuffs including edible oil seeds and oils during the period mentioned in Section 4 of the Act. This section prescribed such period to be one year beginning with the date on which the proclamation of emergency in force at the passing of the Act ceased to operate or, if the Governor-General by notification so directed, for a period of two years beginning with that date. This date is 1st April 1946, when the Proclamation of Emergency was withdrawn. The period could be extended upto another three years by a resolution, approving the extension of the period passed by both the Houses of Parliament, each such extension being: upto one year. It is not disputed that due to the necessary notifications and resolutions, this Act was in force on 26th March 1949, when the offence was committed by the applicant. Section 2, Essential Supplies (Temporary Powers) Ordinance, 1946, (Ordinance XVIII [18] of 1946,) makes foodstuffs including edible oil seeds and oils an 'Essential Commodity' Section 3 empowers the Central Government to pass orders regulating or prohibiting production, supply and distribution of essential commodities and trade and commerce thereunder. Section 6 of the Ordinance provides that until other provisions are made under this Ordinance, any order, made by whatever authority under Sub-rule (2) of Rule 81, Defence of India Rules, in respect of any matter specified in Section 3, which was in force immediately before the commencement of this Ordinance shall, notwithstanding the expiration of the said rules, continue in force so far as consistent with this Ordinance and be deemed to be an order made under Section 3. This Ordinance came into force on 1st October 1946. The Essential Supplies (Temporary Powers) Act 1946 repealed the aforesaid Ordinance. Section 3 empowered the Central Government to pass orders regulating production, supply and distribution of essential commodities and trade under commerce therein. Section 2 defined foodstuffs including edible oil seeds and oils as an 'essential commodity.' Section 17 (1) and (2) said:

"(1) The Essential Supplies (Temporary Powers) Ordinance, 1946, is hereby repealed.

(2) Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act."

5. It follows, therefore, that the U. P. Ghee (Movement) Control Order, 1946, issued by the Governor in exercise of the powers conferred by Rule 81, Sub-rule (2), Defence of India Rules, continued in force from 1st October 1946, in view of Section 5 of Ordinance XVIII [18] of 1946 and after the repeal of that Ordinance in view of Section 17, Sub-section (2) of Act XXIV [94] of 1946. It is not disputed that ghee is included in the expression foodstuffs. Ghee is denoted in the impugned order as

clarified fat obtained from the milk of animals but does not include the hydrogenated product of vegetable oil or oils.

6. The learned counsel for the applicant really contends that the impugned order was not an order issued under Section 3, Essential Supplies (Temporary Powers) Act, XXIV [24] of 1946. It is an order made much earlier than the enforcement of Act XXIV [24] of 1946 and is just treated as an order deemed to have been passed under Act XXIV [24] of 1946 by virtue of Section 17, Sub-section (2) of that Act, and that, therefore, contravention of this order will not come under Section 7 of Act XXIV [24] of 1946, which provides a penalty for persons contravening an order made under Section 3 of the Act. Support for this contention is sought from the fact that the Essential Supplies (Temporary Powers) Ordinance, 1946, Ordinance XVIII [is] of 1946 provides for penalties in Section 8 for contravention of orders made or deemed to be made under Section 3 of the Ordinance. It is argued that due to the omission of a provision for penalty with respect to the contravention of orders deemed to be made under Section 8 of the Act the contravention of such orders are not punishable under Section 7 of the Act. I do not agree with this contention. When a certain Order is said to be deemed to be an Order made under a certain section, it must mean that for all purposes, that Order has been passed under that particular section. It is deemed to be an Order under that section because it was not actually passed under that section, but in all other respects it is as good as an order passed under that section. cannot imagine that any law should provide that certain Orders would be deemed to be Orders under that law and yet should not provide for the contravention of those Orders. I can imagine certain enactments having some lacuna due to an oversight. But I cannot imagine that Legislature would have deliberately omitted the expression "or Order deemed to be made under Section 3" from Section 7 because it considered that contravention of such Orders be not punishable.

7. The Legislature must have dropped the expression because it thought that it was unnecessary to use it for the obvious reason that once an order has been deemed to be an order under Section 3, it partakes the character of an order issued under that section. I notice that this expression 'Order deemed to be made under Section 3,' which has been used in Sections 6, 7, 8, 9, 10, 11, 13, 16 and 17 of the Ordinance has consistently been omitted from the corresponding sections, say, 5, 6, 7, 13, 8, 9, 10, 15, 14 and 16 respectively of Act XXIV [24] of 1946. The omission was clearly by design, and the reason is obvious as indicated above. I am also of the opinion that it was superfluous and unnecessary to have used that expression as an alternative to an order made under that section. I am, therefore, of opinion that the contravention of Section 3, U. P. Ghee (Movement) Control Order, 1946 is punishable under Section 7, Essential Supplies (Temporary Powers) Act, XXIV [24] of 1946. It follows, therefore, that the applicant has been rightly convicted.

8. The learned counsel for the applicant has further submitted that the order about the forfeiture of ghee should be set aside in view of the consideration that the applicant led evidence to show that he was really to take this ghee to Mathura in these provinces and that this evidence was not disbelieved by the learned Magistrate. There is no evidence that the applicant trades in ghee. He gave his profession as zamindari and money lending. In the circumstances, I am of opinion that it is not necessary in the interest of justice that these three tins which he was carrying to Mathura via Delhi should be forfeited to the Government.

9. I, therefore, dismiss the revision against the conviction and sentence of fine and allow it with respect to the order forfeiting the three tins of ghee to the Government and order that the tins of ghee be returned to him.