

Piara Kishen Sadhu Ram Vs. the Crown

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Court : Punjab and Haryana

Decided On : Dec-29-1950

Reported in : 1951CriLJ886

Judge : Bhandari and; Soni, JJ.

Appellant : Piara Kishen Sadhu Ram

Respondent : The Crown

Judgement :

Bhandari, J.

1. The short point for decision in the present case is whether Clause 3, East Punjab Cotton Cloth & Yarn (Regulation of Movement) Order, 1948 which prohibits the transport of cloth from one district to another in the Punjab except under the authority & in accordance with the conditions of a permit issued by the appropriate authority was valid on 5-4 1949.

2. It is common ground that on 6-4-1949 Piara Kishen petnr. was transporting 21/2 maunds of cloth from Amritsar to Jullundur when he was arrested by the police & prosecuted under the provisions of Section 3, Essential Supplies (Temporary Powers) Act, 1946, for contravention of Clause 3, East Punjab Cotton Cloth & Yarn (Regulation of Movement) Order, 1948. He was convicted & sentenced by the trial Ct. & the order of the trial Ct. was upheld by the learned Ses. J. in appeal. The petnr. has come to this Ct. in revn. & the question for this Ct. is whether the Cts. below have come to a correct determination in point of law.

3. Section 3, Essential Supplies (Temporary Powers) Act, 1946, empowered the Central Govt. to provide for regulating by licenses, permits or otherwise the transport etc. of any essential commodity & Section 4 empowered the said Govt. to delegate its power to make orders to any Provincial Govt. or to any officer or authority subordinate to the Central or a Provincial Govt. On 28-12-1946 the Central Govt. delegated certain powers conferred on it by Sub-section (1) of Section 8 of the Act of 1946 to provide for certain matters including among others a provision of regulating licenses, permits or otherwise the storage, transport, etc, of any essential commodity, subject to the condition that no order made by a Provincial Govt. in the exercise of the aforesaid powers shall have effect in so far as it is repugnant to any order made under the said Sub-section (1) by the Central Govt. [vide Govt. of India Notfn. No. 73/1/t.a./46 dated 28-12-1946). On 4-9-1948, the Govt. of the Punjab promulgated the East Punjab Cotton Cloth & Yarn (Regulation of Movement) Order, 1948, hereinafter referred to as the East Punjab Order, Clause 3 of which declared that no person shall export any cotton cloth or yarn except under the authority & in accordance with the

condition of a permit issued by a competent authority. The expression 'export' is defined in Clause 2 (b) to mean to take out of the Province of East Punjab to any province or acceding State of the Dominion of India or Pakistan or from one district of the province to another. Six days later, i. e., on 10-9-1948 the Central Govt. promulgated the Cotton Textiles (Control of Movement) Order, 1948, Clause 5 of which directed that no person shall transport any cloth, yarn or apparel except under & in accordance with a general permit notified in the Gazette of India by the Textile Comr. or a special transport permit issued by the Textile Comr. On the same day the Textile Comr. issued an order under the heading 'General Permit No. 1', (vide Govt. of India Notfn. No. 101/19-Tex. 1/48 (i) dated 10-9-1948). Para. No. (sic) of this order declared that for the purposes of this General Permit, the Dominion of India shall be divided into several zones including the East Punjab Zone comprising the Province of East Punjab. Clause 3 of this order was in the following terms:

3. Transport within a Zone.-Any person may transport or cause to be transported by road, air, sea or inland navigation or by goods train or as a rly. 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....

4. On 8-1-1949 the Textile Comr. issued another notfn. (No. 101/19-Tax, 1/48) by virtue of which he directed that to para. 8 of the said General Permit the following further proviso shall be added, namely:

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

5. The combined effect of these two notfns. was that although the public were granted a general permit to transport cloth, yarn or apparel from one place to another within the local limits of a particular zone this permission was to be subject to such restrictions as a Provincial or a State Govt. concerned thought fit to impose.

6. As it has been established on the record that the petnr. was in fact transporting cotton cloth from Amritsar to Jullundur on 5-4-1949 the only question which falls to be determined in this case is whether the order of the Provincial Govt. (which prohibits the movement of cloth from one district to another except under the authority of a permit issued by the appropriate authority & which was passed on 4-9-1948 several months before the issuing of the Textile Comr.'s notfn. dated 8-1-1949) was valid on 5-4-1949 when the offence is alleged to have been committed.

7. Sub-section (1) of Section 107, Govt. of India Act, 1935, runs as follows :

Sub-section (1). If any provision of a Provincial law is repugnant to any provision of a Dominion law which the Dominion Legislature is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the concurrent Legislative List, then subject to the provisions of this section, the Dominion law, whether passed before or after the Provincial law, or, as the case may be, the existing law, shall prevail & the Provincial law shall to the extent of the repugnancy be void.

8. Mt. C. Rai for the petnr. contends that as the East Punjab Order dated 4-9-1948 is a Provincial law & as the Textile Comr.'s order dated 10-9-1948 is a Dominion law & the two orders are inconsistent with each other, then in view of the provisions of Section 107, Govt. of India Act, 1935, the order of the Textile Comr. which empowers the public to transport cloth & yarn without let or hindrance within the limits of a particular zone, must take precedence over the order of the Provincial Govt. which prohibits transport from one district to another, & consequently that the order of the Textile Comr. must be regarded as supreme & the order to the contrary passed by the Provincial Govt. must be regarded as void. He contends further that as the order of the Provincial Govt. dated 4-9-1948 was void ab initio it could not be revived even when the Textile Comr. directed on 8-1-1948 that the permission contained in the General Permit was subject to such restrictions as may be imposed from time to time by an order of a Provincial Govt. As the original order could not be revived & as no order was passed by the Provincial Govt. on or after 8-1-1948 the Ct. should hold that on 5 4-1949 when the offence is said to have been committed there was in fact no order which prohibited the transport of cloth from one district to another. On the contrary the General Permit issued by the Textile Comr. on 10-9-1948 specifically authorised him and the other members of the public to transport cloth from any place within the East Punjab zone to any other place in the said zone. This being so, it is contended, the conviction of the petnr. is wholly unjustified & is liable to be set aside.

9. The argument which has been addressed to us in all seriousness appears to me to be wholly devoid of force. In the first place a reference to Section 107 is wholly irrelevant in the present case for we are not dealing with inconsistencies in the actual terms of competing statutes. The order passed by the Textile Comr. can by no stretch of imagination be deemed to be a Dominion law for a perusal of Ss. 100 & 107, Government of India Act makes it quite clear that the expression 'Dominion law' appearing in Section 107 means act or law passed or law made by the Dominion Legislature established under the Act of 1935. Nor can the East Punjab Order of 1948 issued by the Provincial Govt. in exercise of the powers delegated to it by the Central Govt. be deemed to be a Provincial law for the expression 'Provincial law' as defined in Section 311, Govt. of India Act, means an Act passed or law made by a Provincial Legislature established under the Act of 1935. Section 107 comes into play if & only if there is an inconsistency between a Dominion law & a Provincial law; the help of this section cannot be invoked when there is no conflict between two competing, statutes & when the conflict is confined to two orders issued by two independent authorities, both acting in exercise of the powers delegated to them by another authority. Nor can a conflict between two such orders be resolved by a reference to Section 107 Govt. of India Act for it is a well known principle that provisions of law cannot be extended by analogy.

10. Secondly, even if there is an inconsistency between a Dominion law & a Provincial law the inconsistency is not with respect to any of the matters enumerated in the Concurrent Legislative List. Section 107 refers to those powers of the Dominion Legislature which are not exclusive but concurrent; & when concurrent powers are exercised both by the Dominion & the Province the law of the Dominion takes precedence over the law of the Province & the law of the Province on so much of a subject as is covered by the Dominion law becomes void. By Section 2, India (Central Govt. & Legislature) Act, 1946, the British Parliament declared that notwithstanding anything in the Govt. of India Act, 1935, the Indian Legislature shall have power to make laws in respect of trade & commerce in & the production, supply & distribution of cotton & woollen textiles. It was for this reason that the Essential Supplies

(Temporary Powers) Act. 1946 was enacted by the Dominion Legislature. Even if an order of the Textile Comr. were to be regarded as a Dominion law & the order of the Provincial Govt. as a Provincial law & even if the provisions of these two laws are repugnant to each other, the matter being exclusively in the federal sphere cannot be resolved with the help of Section 107, Govt. of India Act.

11. Thirdly, assuming for the sake of argument that Section 107 applies to this case & that the order of the Textile Comr. must be preferred to the order of the Provincial Govt. it seems to me that the order of the Provincial Govt. was not ultra vires but was merely inoperative during the period commencing with 10-9-1948, when the Textile Comr. issued the General Permit, and ending with 8-1-1949 when he directed that the General Permit issued by him was subject to such restrictions as may be imposed by an order of a Provincial Govt. As soon as the Textile Comr. issued his notfn. dated 8-1-1949 & as soon as he directed that the General Permit shall be subject to certain restrictions the order of the Provincial Govt. dated 4th September which was in a state of an, animated suspension since 10-9-1948 came back to life. Section 107 declares that when concurrent powers are exercised the law of the Dominion shall prevail & the law of the Province on so much of the subject matter as is covered by Dominion law on whatever date it was passed is void. Void, however, in this context appears to be equivalent to inoperative. The Provincial law does not become ultra vires in whole or in part, for if Dominion law were repealed the Provincial law would again become operative. In *Carter v. Egg and Egf Pulp Marketing Board*, 66 Commonwealth L. R. 557, the Section C. of Australia was called upon to interpret the provisions of Section 109, Australian Constitution, which provides that when a law of a State is inconsistent with a law of the Commonwealth the latter shall prevail & the former shall, to the extent of inconsistency be invalid. Latham C.J. observed as follows :

This section applies only in cases where apart from the operation of this section both the Commonwealth & the State laws which are in question would be valid. If either is invalid ab initio by reason of lack of power no question can arise under the section. The word 'invalid' in the section cannot be interpreted as meaning that a State law which is affected by the section becomes ultra vires in whole or in part. If the Commonwealth law were repealed, the State law would again become operative (*R. V. Brisban Licensing Court, Ex parts Daniell* (per Higgins J.) (of. *Attorney General for Ontario v. Attorney General for the Dominion, & Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd.*, Thus the word 'invalid' should be interpreted as meaning inoperative. This is I think made clear by the provision that the Commonwealth Law (shall prevail, i.e. the Commonwealth Law has superior authority & takes effect to the exclusion of the inconsistent State law.

12. The principle propounded by this decision has been accepted in this country for the framers of the Constitution of India have enacted in Article 251, that if any provisions of a law made by the Legislature of a State is repugnant to any provision of a, law made by Parliament the law made by Parliament shall prevail & the law made by the Legislature of the State shall to that extent of the repugnancy, but so long only as the law made by-Parliament continues to have effect, be inoperative. The expression 'void' appearing in Section 107 has been carefully avoided & has been replaced by the word 'inoperative'.

13. The decision of this case does not turn upon the interpretation of Section 107, Govt. of India, Act, 1935. The powers exercised by the Textile Comr. to the Govt. of

India & the Provincial Govt. of the Punjab were exercised by them as delegates of the Central Govt. The answer to the question whether the order of the Provincial Govt. prohibiting transport of cloth from one-district to another was or was not valid on. 5-4-1949 can be furnished by the notfn. by which the Central Govt. delegated its powers to the Provincial Government. Central Govt. Notfn. Ho. 73/1/TA/46 dated 28-12-1946 by which certain; powers were conferred on the Provincial Govt. makes it quite clear that the delegations were subject to the condition that no order made by the Provincial Govt. in exercise of the powers conferred upon it was to have effect in so far as it was repugnant to any order made by the Central Govt.,

14. On 4-9-1948 the Punjab Govt. promulgated the East Punjab Order of 1948 by which it was declared that no person shall transport cloth from one district of the province to another except under & in accordance with the terms of a permit issued by a competent authority. This order was clearly repugnant to the order issued by the Textile Comr. on 10-9-1948 (by which every person was at liberty to transport any cloth from one place in any zone to any other place in the same zone) & could not have effect in so far as it was repugnant to the order of the Textile Comr. It had accordingly to yield to the said order. On 8-1-1949 the Textile Comr. issued another notfn. by which he directed that the permission contained in his earlier order was to be subject to such restrictions as the Provincial Govt. thought fit to impose in this behalf. It seems to me, therefore, that during the period 10-9-1948 & 8-1-1948 the order of the Provincial Govt. being repugnant to an order of the Textile Comr. was inoperative in the eye of law. From 8-1-1949 onwards the permission accorded by the Textile Comr. was to be subject to the restrictions, if any, as were imposed by the Provincial Govt. & it seems to me therefore that the order of the Provincial Govt. dated 4-9-1948 was fully effective on 5-4-1949 when the petnr. in this case transported cloth from Amritsar to Jullundur.

15. For these reasons, I am clearly of the opinion that the petn, should be dismissed & the sentence passed by the Ses. J. confirmed. Order accordingly.

Soni, J.

16. I agree.