REX *v.* BASUDEV.

1949

Nov. 25.

[SIR HARILAL KANIA C. J., SIR FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN and MUKHERJEA, JJ.]

Government of India Act, 1935, Sch. VII, List II, entry 1—United Provinces Prevention of Black-marketing (Temporary Powers) Act, 1947, s. 3 (1) (i)—Provincial Legislature—Act authorising preventive detention of person habitually indulging in black-marketing —Legality.

The power to make laws with respect to preventive detention which a Provincial Legislature has under entry 1 of List II of the Seventh Schedule of the Government of India Act, 1935, is strictly limited by the condition that such detention must be for reasons connected with the maintenance of public order.

The Legislature of the United Provinces passed an enactment entitled the United Provinces Prevention of Black-marketing (Temporary Powers) Act, 1947, s. 3 (1) (i) of which provided that if upon information received, the Provincial Government was satisfied that any person habitually indulges in black-marketing, the Provincial Government may make an order that such person be detained in such custody and for such period not exceeding six months as may be specified in the order:

Held, that the law enacted in s. 3 (1) (i) was not a law with respect to private detention for reasons connected with the maintenance of public order and it was therefore *ultra vires* the Provincial Legislature and invalid.

APPEAL from the High Court of Judicature at Allahabad: Case No. XVIII of 1949.

This was an appeal under s. 205 of the Government of India Act against the judgment of a Special Bench of the Allahabad High Court (Wali Ullah, A. C. J., Shankar Saran and Wanchoo JJ.) dated 12th May, 1949, in Criminal Miscellaneous Case No. 71 of 1949 allowing an application made by the respondent under s. 491, Criminal Procedure Code, for releasing him from detention. The material facts and arguments of counsel appear from the judgment.

P. L. Banerjee, Advocate-General of the United Provinces (*Sri Ram* with him) for the appellant.

G. S. Pathak (*Durga Bai* with him) for the respondent.

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1949. Nov. 25. The judgment of the Court was delivered by

PATANJALI SASTRI J.—This appeal arises out of an application made to the High Court of Judicature at Allahabad under s. 491 of the Criminal Procedure Code to release the respondent from detention in pursuance of an order made by the Government of the United Provinces under the U. P. Prevention of Black-marketing (Temporary Powers) Act, 1947.

The respondent is a dealer in kerosene oil which is an essential commodity as defined in the Act. On the allegation that the Provincial Government was satisfied that the respondent habitually indulged in black-marketing, he was arrested on the 19th December, 1948, and ordered to be detained in exercise of the powers conferred by s. 3 (1) (i) of the Act. The respondent contended that his detention was unlawful as the provision aforesaid was void and inoperative as being *ultra vires* the Provincial Legislature. This contention was upheld and the respondent was ordered to be released by a Special Bench of the High Court which heard the application, and the Provincial Government has brought this appeal challenging the correctness of the order.

The Act is described as an Act to provide, during a limited period, for powers to prevent black-marketing. The preamble recites that it is "expedient in the interests of maintenance of public order and supplies essential to the life of the community to provide, during a limited period, for further powers to prevent black-marketing in the United Provinces". Black-marketing is defined in s. 2 (a) as including "as respects any essential commodity, disposing of or otherwise dealing in such commodity with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of the U. P. Control of Supplies (Temporary Powers) Act, 1947, or the Essential Supplies (Temporary Powers) Act, 1946, or of any order made or deemed to have been made thereunder". "Essential commodity" means, according to s 2 (b), any essential commodity as defined in

the one or the other of the aforesaid two Acts. Section 3 (1) provides that "if upon information received the Provincial Government is satisfied that any person habitually indulges in black-marketing, the Provincial Government may make one or more of the following orders, namely, (i) that such person be detained in such custody and for such period not exceeding six months as may be specified in the order". The other clauses of the sub-section empower the Provincial Government to suspend or cancel the licence held by such persons and to close or continue the business belonging to them in so far as such licence or business relates to an essential commodity. Provision is made in s. 4 (1) for execution of the detention order, and in s. 8 for the grounds of any order made under s. 3 (1) being disclosed to the person concerned so as to enable him to make any representations to the Provincial Government if he so desires. Then follow provisions for reference of such representations to a Special Tribunal constituted under the Act, for the procedure to be followed by such Tribunal, and for final orders being made by the Provincial Government in accordance with the report submitted by the Tribunal.

The power of a Provincial Legislature to make laws with respect to preventive detention is derived from s. 100 of the Government of India Act, 1935, read with entry No. 1 of List II in Schedule VII of that Act, which relates, among other things, to " preventive detention for reasons connected with the maintenance of public order." The question is whether the impugned provision falls within the ambit of that legislative power.

We may mention here, only to dismiss, the suggestion made by the Advocate-General of the United Provinces who appeared for the appellant, that the validity of s. 3 (1) (i) could be sustained on the footing that it provides for punitive detention authorised by competent legislation under entry 37 regarding " offences against laws with respect of (*sic*) any of the matters in this list," read with entry 29 which relates, among other things, to " production, supply and distribution of goods." The detention under the impugned provision is obviously preventive, as indeed is the

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objective of the whole legislation. No doubt contravention of any provision of the Act or of any order made thereunder is constituted an offence for which penalty by way of imprisonment or fine is provided in s. 14. But black-marketing is not made specifically an offence under the Act while s. 17 makes it clear that cognisance of offences committed under the Act should be taken by courts. There can thus be no punitive detention until after trial and conviction by a court of law, whereas the detention contemplated under s. 3 (1) (i) is by order of the Provincial Government for indulging in black-marketing.

Turning to the main question, the learned judges below invoked, somewhat unnecessarily, what may be called the pith and substance rule for a true solution of the problem. That rule has been evolved by the Judicial Committee for determining whether a particular statute is legislation with respect to matters in the one or the other of the Lists in Schedule VII. No such question arises in the present case. The real question is whether the preventive detention provided for in s. 3 (1) (i) is preventive detention for reasons connected with the maintenance of public order. Section 3 (1) itself makes no reference to the maintenance of public order. It is directed solely against persons who habitually indulge in black-marketing. It does not require that the Provincial Government should, before directing the detention of a person, be satisfied that his actions are likely to disturb public order. It may be noted, in this connection, that under the U. P. Maintenance of Public Order (Temporary) Act (IV of 1947) preventive detention could be ordered only where the Provincial Government is satisfied that it is necessary to make an order of detention with a view to preventing the person concerned from "acting in any manner prejudicial to the public safety or the maintenance of public order". This requirement is an important safeguard against the improper exercise of the power of preventive detention and usually marks valid legislation under entry No. 1 of List II. Any contention that would in effect do away with that safeguard calls for a close examination.

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The learned Advocate-General urged that habitual black-marketing in essential commodities was bound sooner or later to cause a dislocation of the machinery of controlled distribution which, in turn, might lead to breaches of the peace and that, therefore, detention with a view to prevent such black-marketing was covered by entry No. 1 of List II. It is true that black-marketing in essential commodities may at times lead to a disturbance of public order, but so may, for example, the rash driving of an automobile or the sale of adulterated foodstuffs. Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of that entry. Preventive detention is a serious invasion of personal liberty, and the power to make laws with respect to it is, in the case of Provincial Legislatures, strictly limited by the condition that such detention must be for reasons connected with the maintenance of public order. The connection contemplated must, in our view, be real and proximate, not far-fetched or problematical.

Stress was laid on the reference in the preamble of the Act to the maintenance of public order as showing that the Legislature was not unmindful of the limitation on its power with respect to preventive detention, and it was urged that, if the Legislature thought that prevention of a particular activity was expedient in the interest of maintenance of public order, it was not for the court to canvass the degree of connection between the two, as that was a matter of policy and not of *vires*. We cannot accept this wide proposition. Whilst a statement in the preamble of a statute as to its ultimate objective may be useful as throwing light on the nature of the matter legislated upon and must undoubtedly be taken into consideration, it cannot be conclusive on a question of *vires*, where the Legislature concerned has powers to legislate on certain specified matters only. The court must still see, in such cases, whether the subject-matter of the impugned legislation is really within those powers. For the reasons

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indicated we are of opinion that s. 3 (1) (i) of the Act is not within the power of the Provincial Legislature to enact, and we accordingly dismiss the appeal.

Appeal dismissed.

Agent for the appellant: *Tarachand Brijmohan Lal.*

Agent for the respondent: *Naunit Lal.*

1949

Dec. 20.

MUSAMMAT JAMNA KUAR
v.
LAL BAHADUR AND OTHERS.

[SIR HARILAL KANIA C.J., SIR FAZL ALI, MEHR CHAND MAHAJAN and MUKHERJEA JJ.]

Practice—Review—Error apparent on the face of the record but caused by counsel's mistake—Power to review.

The Court can in the exercise of its jurisdiction to review its own decisions correct an error which is apparent on the face of the record even though that error was caused by counsel's mistake and not by an oversight on the part of the Court.

APPEAL from the High Court of Judicature at Allahabad: Civil Appeal No. XXXVII of 1948.

This was an appeal under the Federal Court (Enlargement of Jurisdiction) Act, 1947, from an order of the High Court of Allahabad (Verma and Hamilton JJ.) dated 7th February, 1945, made on an application for review of a judgment of the same High Court in its Appellate Jurisdiction, dated 24th July, 1944, in Civil Appeal No. 377 of 1942.

The facts of the case are fully set out in the judgment.

Laxmi Saran for the appellant.

The respondents did not appear.

1949. Dec. 20. The judgment of the Court was delivered by

Mahajan J.

MAHAJAN J.—This appeal is before us on a certificate granted by the High Court of Judicature at Allahabad under s. 110 of the Code of Civil Procedure. The