

Citation Analysis

Presumption of validity to Legislation explained

Supreme Court of India

Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar & ...

AIR1958 SC 538

Facts as summarized by the Apex Court

These six several appeals are directed against a common judgment and order pronounced on April 29, 1957, by a Division Bench of the Bombay High Court in three several Miscellaneous Applications under Art. 226 of the Constitution, namely, No. 48 of 1957 filed by Shri Ram Krishna Dalmia (the appellant in Civil Appeal No. 455 of 1957), No. 49 of 1957 by Shri Shriyans Prasad Jain and Shri Sital Prasad Jain (the appellants in Civil Appeal No. 456 of 1957) and No. 50 of 1957 by Shri Jai Dayal Dalmia and Shri Shanti Prasad Jain (the appellants in Civil Appeal No. 457 of 1957). By those Miscellaneous Applications the petitioners therein prayed for an appropriate direction or order under Art. 226 for quashing and setting aside notification No. S. R. O. 2993 dated December 11, 1956, issued by the Union of India in exercise of powers conferred on it by s. 3 of the Commissions of Enquiry Act (LX of 1952) and for other reliefs. Rules were issued and the Union of India appeared and showed cause. By the aforesaid judgment and order the High Court discharged the rules and dismissed the applications and ordered that the said notification was legal and valid except as to the last part of cl. (10) thereof from the words "and the action" to the words "in future cases" and directed the Commission not to proceed with the inquiry to the extent that it related to the aforesaid last part of cl. (10) of the said notification.

The Commissions of Inquiry Act

The Commissions of Inquiry Act, 1952 (hereinafter referred to as the Act), received the assent of the President on August 14, 1952, and was thereafter brought into force by a notification issued by the Central Government under s. 1 (3) of the Act. As its long title states, the Act is one "to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers". Sub-section (1) of s. 3, omitting the proviso not material for our present purpose, provides:

The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the Inquiry and perform the functions accordingly." Under sub-s. (2) of that section the Commission may consist of one or more members and where the Commission consists of more than one member one of them may be appointed as the Chairman thereof. Section 4 vests in the Commission the powers of a civil

court while trying a suit under the Code of Civil Procedure in respect of the several matters specified therein, namely, summoning and enforcing attendance of any person and examining him on oath, requiring discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or officer, issuing commissions for examination of witnesses or documents and any other matter which may be prescribed. Section 5 empowers the appropriate Government, by a notification in the Official Gazette, to confer on the Commission additional powers as provided in all or any of the sub-ss. (2), (3), (4) and (5) of that section. Section 6 provides that no statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement provided that the statement is 'made in reply to a question which he is required by the Commission to answer or is relevant to the subject matter of the inquiry. The appropriate Government may under s. 7 issue a notification declaring that the Commission shall cease to exist from such date as may be specified therein. By s. 8 the Commission is empowered, subject to any rules that may be made, to regulate its own procedure including the time and place of its sittings and may act notwithstanding the temporary absence of any member or the existence of any vacancy among its members. Section 9 provides for indemnity to the appropriate Government, the members of the Commission or other persons acting under their directions in respect of anything which is done or intended to be done in good faith in pursuance of the Act. The rest of the sections are not material for the purpose of these appeals.

Impugned notifications to appoint Commission

In exercise of the powers conferred on it by s. 3 of the Act the Central Government published in the Gazette of India dated December 11, 1956, a notification in the following terms:

MINISTRY OF FINANCE (Department of Economic Affairs) ORDER New Delhi, the 11th December, 1956 S. R. O. 2993-Whereas it has been made to appear to the Central Government that:

(1) a large number of companies and some firms were promoted and/or controlled by Sarvashri Ramakrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, Shital Prasad Jain or some one or more of them and by others being either relatives or employees of the said person or persons, closely connected with the said persons; (2) large amounts were subscribed by the investing public in the shares of some of these companies;

(3) there have been gross irregularities (which may in several respects and materials amount to illegalities) in the management of such companies including manipulation of the accounts and unjustified transfers and use of funds and assets;

(4) the moneys subscribed by the investing public were in a considerable measure used not in the interests of the companies concerned but contrary to their interest and for the ultimate

personal benefit of those in control and/or management; and (5) the investing public have as a result suffered considerable losses.

And Whereas the Central Government is of the opinion that there should be a full inquiry into these matters which are of definite public importance both by reason of the grave consequences which appear to have ensued to the investing public and also to determine such measures as may be deemed necessary in order to prevent a recurrence thereof; Now, therefore, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act (No. 60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of the following persons, namely : Shri Justice S. R. Tendolkar, Judge of the High Court at Bombay, Chairman.

Shri N. R. Modi of Messrs A. F. Ferguson & o., Chartered Accountants, Member.

Shri S. C. Chaudhuri, Commissioner of Income-tax, Member.

1.The Commission shall inquire into and report on and in respect of:

(1) The administration of the affairs of the companies specified in the schedule hereto;

(2) The administration of the affairs of such other companies and firms as the Commission may during the course of its enquiry find to be companies or firms connected with the companies referred to in the schedule and whose affairs ought to be investigated and inquired into in connection with or arising out of the inquiry into the affairs of the companies specified in the schedule hereto;

(3)The nature and extent of the control, direct and indirect, exercised over such companies and firms or any of them by the aforesaid Sarvashri Ram Krishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, their relatives, employees and persons connected with them;

(4)The total amount of the subscription obtained from the investing public -and the amount subscribed by the aforesaid persons and the extent to which the funds and assets thus obtained or acquired were misused, misapplied or misappropriated;

(5) The extent and nature of the investments by and/or loans to and/or the use of the funds or assets by and transfer of funds between the companies aforesaid;

(6)The consequences or results of such investments, loans transfers and/or use of funds and assets ;

(7)The reasons or motives of such investments, loans transfers and use and whether there was any justification for the same and whether the same were made bona fide, in the interests of the companies concerned ; (8) The extent of the losses suffered by the investing public, how far

the losses were avoidable and what steps were taken by those in control and/or management to avoid the losses;

(9) The nature and extent, of the personal gains made by any person or persons or any group or groups of persons whether herein named or not by reason of or through his or their connection with or control over any such company or companies;

(10) Any irregularities frauds or breaches of trust or action in disregard of honest commercial practices or contravention of any law (except contraventions in respect of which criminal proceedings are pending in a Court of Law) in respect of the companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission and the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases.

(11) The measures which in the opinion of the Commission are necessary in order to ensure in the future the due and Proper administration of the funds and assets of companies and firms in the interests of the investing public.

SCHEDULE

1. Dalmia Jain Airways Ltd.
2. Dalmia Jain Aviation Ltd., (now known as Asia Udyog Ltd.)
3. Lahore Electric Supply Company Ltd., (now known as South Asia Industries Ltd.)
4. Sir ShapurjiBroacha Mills Ltd.
5. MadhowjiDharamsi Manufacturing Company Ltd.
6. Allen Berry and Co. Ltd.
7. Bharat Union Agencies Ltd.
8. Dalmia Cement and Paper Marketing Company Ltd., (now known as Delhi Glass Works Ltd.)
9. VastraVyavasaya Ltd. Ordered that the Order be published in the Gazette of India for public information. (No. F. 107 (18INS/56)).

H.M. Patel Secretary.

It should be noted that the above notification did not specify the time within which the Commission was to complete the inquiry and make its report.

On January 9, 1957, the Central Government issued another notification providing that all the provisions of sub-ss. (2), (3), (4), and (5) of s. 5 should apply to the Commission. As the notification of December 11, 1956, did not specify the time within which the Commission was to make its report, the Central Government on February 11, 1957, issued a third notification specifying two years from that date as the time within which the Commission of Inquiry should exercise the functions conferred on it and make its report.

Previous verdicts and propositions considered

In *Budhan Choudhry v. The State of Bihar* ([1955] 1 S.C.R. 1045) a Constitution Bench of seven Judges of this Court at pages 1048-49 explained the true meaning and scope of Art. 14 as follows:

" The provisions of Article 14 of the Constitution have come up for discussion before this court in a number of cases, namely, *Chiranjit Lal Choudhuri v. The Union of India* ([1950] S.C.R. 869) , *The State, of Bombay v. F. N. Balsara* ([1951] S.C.R. 682), *The state of west Bengal v. Anwar Ali Sarkar* () [1952] S.C.R. 284), *Kathi Baniing -Rawat v. The State of Saurashtra* ([1952] S.C.R. 433) *Lachmandas Kewalram Ahuja v. The State Of Bombay* ([1952] S.C.R. 710), *Qasim Razvi v. The State of Hyderabad* ([1953] S.C.R. 581) and *Habeeb Mohamad v. The State of Hyderabad* ([1953] S.C.R. 661). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together (1). (2). (3). (4). (5). (6). (7) (8)

from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there 'Must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish-

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption 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;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest ;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and - violative of the equal protection of the laws.

A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art. 14 of the Constitution, may be placed in one or other of the following five classes:-

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in *Chiranjitlal Chowdhuri v. The Union of India* ([1950] S.C.R. 869), *The State of Bombay v. F. N. Balsara* (1951] S.C.R. 682),

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but, no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum v. Mahboob Begum* ([1953] S.C.R. 44) and *Ramprasad Narain Sahi v. The State of Bihar* ([1955] 1 S.C.R. 10045).

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no Classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwar Ali Sarkar* ([1952] S.C.R. 284.), *Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh* ([1954] S.C.R. 803) and *Dhirendra Krishna Mandal v. The Superintendent and Remembrancer of Legal Affairs* ([1955] 1 S.C.R. 234).

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification, the court will uphold the law as constitutional, as it did in *Kathi Raning Rawat v. The State of Saurashtra* ([1952] S.C.R. 435).

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e. g., in *Kathi Raning Rawat v. The State of Saurashtra* ([1952] S.C.R. 435) that in such a case the executive action but not the statute should be condemned as unconstitutional. In the light of the foregoing discussions the question at once arises: In what category does the Act or the notification impugned in these appeals fall? It will be apparent from its long title that the purpose of the Act is to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. Section 3 empowers the appropriate

Government, in certain circumstances therein mentioned, to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions within such time as may be specified in the notification. It seems clear-and it has not been controverted-that on a proper construction of this section, the functions the performance of which is contemplated must be such as are ancillary to and in aid of the inquiry itself and cannot be read as a function independent of or unconnected with such inquiry. That being the position, as we conceive it to be, the question arises as to the scope and ambit of the power which is conferred by it on the appropriate Government. The answer is furnished by the statute itself, for s. 3 indicates that the appropriate Government .can appoint a Commission of Inquiry only for the purpose of making an inquiry into any definite matter of public importance and into no other matter. In other words the subject matter of the inquiry can only be a definite matter of public importance. The appropriate Government, it follows, is not authorised by this section to appoint a Commission for the purpose of holding an inquiry into any other matter. Learned Solicitor-General, in the premises, submits that the section itself on the face of it, makes. a classification so that this statute falls within the first category mentioned above and contends that this classification of things is based on an intelligible differentia which has a reasonable relation to the object sought to be achieved by it, for a definite matter of public importance may well call for an inquiry by a Commission. In the alternative the learned Solicitor-General urges that in any case the section itself quite clearly indicates that the policy of Parliament is to provide for the appointment of Commissions of Inquiry to inquire into any definite matter of public importance and that as there is no knowing when, where or how any such matter may crop up Parliament considers it necessary or expedient to leave it to the appropriate Government to take action as and when the appropriate moment will arrive. In the tempo of the prevailing conditions in modern society events occur which were never foreseen and it is impossible for Parliament or any legislature to anticipate all events or to provide for all eventualities and, therefore, it must leave the duty of taking the necessary action to the appropriate Government. This delegation of authority, however, is not unguided or uncontrolled, for the discretion given to the appropriate Government to set up a Commission of Inquiry must be guided by the policy laid down, namely, that the executive action of setting up a Commission of Inquiry must conform to the condition of the section, that is to say, that there must exist a definite matter. of public importance into which an inquiry is, in the opinion of the appropriate Government, necessary or is required by a resolution in that behalf passed by the House of the People or the Legislative Assembly of the State. If the preambles or the provisions of the statutes classed under the first category mentioned above could be read as making a reasonable classification satisfying the requirements of Art. 14 and if the preamble to the statute considered in the case of *Kathi Raning Rawat* (supra.) could be construed as laying down sufficiently clearly a policy or principle for the guidance of the executive, what objection can there be to construing s. 3 of the Act now under our consideration as also making a reasonable classification or at any rate as declaring with sufficient clarity the policy of Parliament and laying down a principle for the guidance of the exercise of the powers conferred the appropriate Government so as to bring this statute at least in the fourth category, if not also in the first category ? On the authorities, as they stand, it cannot be said that an arbitrary and uncontrolled power has been delegated to the appropriate Government and that, therefore, the law itself is bad.

Ratio laid

The question before us is not whether the allegations made on the face of the notification and in the affidavits filed on behalf of the Union of India are true but whether the qualities and characteristics, if honestly believed to be found in the petitioners, are so peculiar or unique as to constitute a good and valid basis on which the petitioners and their companies can be regarded as a class by themselves. We are not of opinion that they do not. It is not for us to say on this application and we do not in fact say or even suggest that the allegations about the petitioners and their concerns are at all well founded. It is sufficient for our present purpose to say that the facts disclosed on the face of the notification itself and the facts which have been brought to our notice by the affidavits afford sufficient support to the presumption of constitutionality of the notification. There being thus a presumption of validity in favour of the Act and the notification, it is for the petitioners to allege and prove beyond doubt that other persons or companies similarly situate have been left out and the petitioners and their companies have been singled out for discriminatory and hostile treatment. The petitioners have, in our opinion, failed to discharge that onus. Indeed nowhere in the petitions is there even an averment that there are other persons or companies similarly situate as the petitioners and their companies.
