



Petitioner: Harla vs Respondent: The State of Rajasthan

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INTRODUCTION

Natural justice requires that before a law can become operative it must be promulgated and published in a recognised way so all men can understand what it is. It must be broadcasted in an recognisable manner or at least there must be some special rules and regulations or the customary channel through which such knowledge has been acquired with the exercise of due and reasonable diligence.

It was conceded in that case that the ruler of the jaipur has authority to make all those legislation. But after some the time the crown has been died; now his successor should be the next crown but the issue was that he was minor. So during his minority administrative appointed the council of Ministers to make laws for the territory. After sometime the council of minister had passed an act that is Opium Act,1923 but that particular law was not been published or promulgated towards public. Thus it was against the natural justice of the public. They passed an resolution purporting the law called The Opium Act of 1923. But it was neither promulgated or published in any Gazzete, nor it is known to the public.

About the same time (that is to say, in the year 1923) the same Council enacted the Jaipur Laws Act, 1923. Section 3(b) of this Act provided as follows:-

“3. Subject to the prerogative of the Ruler the law to be administered by the Court of Jaipur State shall be as follows:

(b) All the regulations now in force within the said territories, and the enactments and regulations that may hereafter be passed from time to time by the State and published in the Official Gazette.”

This law came into force on the 1st of November, 1924. It is admitted that the Jaipur Opium Act was never published in the Gazette either before or after the 1st of November, 1924. But it is contended that was not necessary because it was a “regulation” already in force on that date.

The only other fact of consequence is that on the 19th of May, 1938, section 1 of the Jaipur Opium Act was amended by the addition of subsection (c) which ran as follows:

“(c) It shall come into force on the 1st of September, 1924.”

After the terms of fourteen years i.e. in 1938 that Acts one section has been published what was about 14 years that the particular act comes into force in 1st November 1924 then why only one section has been promulgated 14 years later.

Held, that the mere passing of the Resolution of the Council without further publication or promulgation of the law was not sufficient to make the law operative and the Jaipur Opium Act was not therefore a valid law. Held further, that the said Act was not saved by s. 3 (b) of the Jaipur Laws Act, 1923, as it was not a valid law in force on the 1st November, 1924, and the mere addition of a clause in 1938 that it shall come into force in 1924 was of e will state the facts chronologically.

It is conceded that the Rulers of Jaipur had full powers of government including those of legislation. On the 7th of September, 1922, the late Maharaja died and at the time of his death his successor, the present Maharaja, was a minor. Accordingly,-the Crown Representative appointed a Council of Ministers to

look after the government and administration of the State during the Maharaja's minority-

FACTS

On the 11th of December, 1923, this Council passed a Resolution which purported to enact the Jaipur Opium Act, and the only question is whether the mere passing of the Resolution without promulgation or publication in the Gazzete, or other means to make the Act known to the public, was sufficient to make it law. We are of opinion that it was not. But before giving our reasons for so holding, we will refer to some further facts.

About the same time (that is to say, in the year 1923 we have not been given the exact date) the same Council enacted the Jaipur Laws Act, 1923. Section 3(b) of this Act provided as follows:--

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This law came into force on the 1st of November, 1924. It is admitted that the Jaipur Opium Act was never published in the Gazette either before or after the 1st of November, 1924. But it is contended that was not necessary because it was a "regulation" already in force on that date.

The only other fact of consequence is that on the 19th of May, 1938, section 1 of the Jaipur Opium Act was amended by the addition of sub-section (c) which ran as follows: "(c) It shall come into force from the 1st of September, 1924." The offence for which the appellant was convicted took place on the 8th of October, 1948.

Dealing first with the last of these Acts, namely the one of the 19th of May, 1938, we can put that on one side at once because, unless the Opium Act was valid when made, the mere addition of a clause fourteen years later stating that it shall come into force at a date fourteen years earlier would be useless. In the year 1938 there was a law which required all enactments after the 1st of November, 1924, to be published in the Gazette. Therefore, if the Opium Act was not a valid Act at that date, it could not be validated by the publication of only one section of it in the Gazette fourteen years later. The Jaipur Laws Act of 1923 required the whole of the enactment to be

published; therefore publication of only one section would not validate it if it was not already valid. We need not consider whether a law could be made retroactive so as to take effect from 1924 by publication in 1938, though that point was argued. That throws us back to the position in 1923 and raises the question whether a law could be brought into operation by a mere resolution of the Jaipur Council. We do not know what laws were operative in Jaipur regarding the coming into force of an enactment in that State. We were not shown any, nor was our attention drawn to any custom which could be said to govern the matter. In the absence of any special law or custom, we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.

JUDGEMENT:

CRIMINAL APPELLATE JURISDICTION:

Criminal Appeal No. 5 of 1951. Appeal from the Judgment and Order dated 18th August, '1950, of the High Court of Judicature for Rajasthan at Jaipur (Nawal Kishore C.J. and Dave J.) in Criminal Reference No. 229 of Sambat 2005.

H. J. Umrigar for the appellant.

G. C. Mathur for the respondent.

1951. September 24. The Judgment of the Court was delivered by Bose J.—

The appellant was convicted under section 7 of the Jaipur Opium Act and fined Rs. 50. The case as such

is trivial but the High Court of Rajasthan in Jaipur granted special leave to appeal as an important point touching the vires of the Act arises.

Nor, is the principle peculiar to England. It was applied to France by the Code Napoleon, the first Article of which states that the laws are executed "by virtue of the promulgation thereof" and that they shall come into effect "from the moment promulgation can have been known." So also it has been applied in India, for instance, matters arising under Rule 119 of the Defence of India Rules. See, for example, *Crown v. Manghumal Tekuml*, *Shakoor v. King Emperor* and *Babulal v. King Emperor*. It is true none of these cases is analogous to the one before us but they are only particular applications of a deeper rule which is rounded on natural justice.

The Council of Ministers which passed the Jaipur Opium Act was not a sovereign body nor did it function of its own right. It was brought into being by the Crown Representative, and the Jaipur Gazette Notification dated the 11th August, 1923, defined and limited its powers. We are entitled therefore to import into this matter consideration of the principles and notions of natural justice which underlie the British Constitution, for it is inconceivable that a representative of His Britannic Majesty could have contemplated the creation of a body which could wield powers so abhorrent to the fundamental principles of natural justice which all freedom loving peoples share. We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative.

It is necessary to consider another point. It was urged that section 3(b) of the Jaipur Laws Act of 1923 saved all regulations then in force from the necessity of publication in the Gazette. That may be so, but the Act only saved laws which were valid at the time and not resolutions which had never acquired the force of law. The appeal succeeds. The conviction and sentence are set aside. The fine, if paid, will be refunded. The court held that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation was not sufficient to make law operative.

Issue

Whether the mere passing of the Resolution without promulgation or publication in the Gazette or other means to make the Act known to the public, was sufficient to make it law?

Authorised Observation of the Case

Section 7 of the Act provides sentence of imprisonment and fine to a person who commits breach of the Orders. In the said Orders, no provision has been made as to how the prices fixed by the manufacturers will be published by them. In case penal action had been provided for contravention of the clauses relating to the price control, it was also necessary that a provision should have been made to the effect that the prices fixed by the manufacturers would be published in the official gazette or in any other way so that every dealer could know about them. This has, however, not been done in the present case. Unless a person with reasonable diligence can acquire knowledge of law, he cannot be convicted for its breach. In this connection reference may be made to the observations of the Supreme Court in *Harla v. The State of Rajasthan*, AIR 1951 SC 467, wherein Bose, J., speaking for the Court, observed as follows.

Observation:

My observation as per this case when any law or legislation or any Act is made it should necessary to be promulgated and published in an recognised way. As per my observation in the case of *Harla Vs State of Rajasthan* when any law or legislation and act is made it is necessary that the particular should be promulgated and published in any of the Gazzete so that the public must be aware about what actually the law is. It must be necessary to be broadcasted in a recognisable manner.

In these case the law made was by the delegated authority in which they made the law that is applicable to the whole territory i.e. Jaipur. The Act is popularly known as an Opium Act, 1923 and it was come into force on 1st September 1924 but it was unknown by the public. If the public was unaware about the law then how does they were restricted to follow that particular act or law. It must be necessary that the law or act should be made for those must be known to those.

In these case of delegated authority crown delegated its authority to the council of minister because the crown was unable to make the legislation for the

territory because of his minority. So, the council of minister are appointed to handle the territory and given authority to make legislation for the welfare of that territory as well as the public of that territory.

And the public was unaware of any law of the Opium Act upto the huge gap of fourteen years i.e. in 1938. The one section that is the section 3 of the act should be known to the public but it was observed that in the whole case that only one section is published in the gazzate and should known to the public of this whole act, and the whole act was of no use and it was known fourteen years later. What was about that fourteen years. Natural justice must be made and the particular law has been published and promulgated in any recognised manner. The question of natural justice must be arises in the mind that the particular law is valid or not? To know that particular law is valid or not it must be necessary that it must be known to all the public of the region, otherwise if no one knows it who does follow it

