

UTTAM BALA RAVANKAR

A

v.

ASSTT. COLLECTOR OF CUSTOMS & CENTRAL
EXCISE, GOA & ANR.

August 3, 1970

[S. M. SIKRI AND I. D. DUA, JJ.]

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Goa, Daman and Diu (Laws) Regulation, 1962, s. 8—'Difficulty' meaning of.

Power—Wrong authority for its exercise invoked—Validity of exercise of power.

General Clauses Act (10 of 1897)—'Central Government' includes Lt. Governor of Goa, Daman and Diu.

C

Under s. 3(2) of the Goa, Daman and Diu (Laws) Regulation, 1962, November 1, 1963, was the date fixed for coming into force of the Indian Penal Code and the Indian Code of Criminal Procedure in Goa, Daman and Diu. Under s. 8 of the Regulation if any difficulty arises in giving effect in Goa, Daman and Diu, to any Act extended to that territory the Central Government may make provision for the removal of the difficulty. As some difficulties were experienced regarding the law relating to criminal procedure the Lt. Governor, on November 6, 1963, passed an Order, not under s. 8 of the Regulation, but in purported exercise of the powers conferred by the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, to the effect that all criminal proceedings in relation to offences committed prior to the date of coming into force of the Indian Criminal Procedure Code shall be carried on under the law in force in the territory before that date.

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On June 25, 1963, some bars of gold were seized from the residence of the appellant and a complaint was filed against him, in 1966.

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On the question of the procedure to be followed, the Judicial Commissioner, in revision, held that the Order of November 6, 1963 was *ultra vires* the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, and held that the procedure laid down in the Indian Criminal Procedure Code should be followed.

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In appeal this Court,

HELD : (1) The Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, does not enable the Lt. Governor to pass the Order dated November 6, 1963. But s. 8 of the 1962-Regulation authorised him to pass the Order. If the power subsists, and the Lt. Governor could justify the order under any law, the parties are not debarred from relying on it. [717 B-D]

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(2) Section 8 of the Regulation authorises *the Government* to make provision for removal of difficulties. The word 'difficulty' is not to be construed in the narrow sense of a difficulty with respect to a concrete case. [717 F]

Majority opinion in *Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union*, [1967] 1 S.C.R. 15, 59, followed.

(3) Under the definition of 'Central Government' in the General Clauses Act, the Lt. Governor, as the Administrator of Goa, Daman and Diu is entitled to exercise the powers of the Central Government, [178 B-C]

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- A (4) Therefore, the procedure to be followed in the present case is the one laid down by the Portuguese Criminal Procedure Code and not by the Indian Code of Criminal Procedure. [718 C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 30 of 1970.

- B Appeal by special leave from the judgment and order dated June 19, 1969 of the Judicial Commissioner's Court, Goa, Daman and Diu in Criminal Revision Application 23 of 1968.

M. C. Chagla, E. C. Agarwala and S. R. Agarwal, for the appellant.

- C *V. A. Seyid Muhammad and S. P. Nayar*, for the respondents.

The Judgment of the Court was delivered by

- D *Sikri, J.* This appeal by special leave is from the judgment and order of the Judicial Commissioner, Goa, Daman & Diu, allowing the revision application under s. 435 of the Indian Code of Criminal Procedure filed by the State. The only point involved in this appeal is whether the order passed by the Lt. Governor dated November 6, 1963, was invalid. This order reads as under :

- E "ORDER—GAD/74/63/25007—In exercise of the powers conferred by the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962 and notwithstanding anything to the contrary contained in any law for the time being in force in this Territory, the Lieutenant Governor makes the following order :

- F All criminal proceedings in relation to offences committed prior to the date of coming into force of the Criminal Procedure Code shall be carried on under the law in force in the Territory before that date.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu."

- G Before dealing with the question of the validity of this order it is necessary to give a few facts. On December 20, 1961, Goa, Daman and Diu became part of the territory of India. The residence of the appellant was raided on June 25, 1963, and 72 bars of gold were seized. On November 1, 1963, the Goa, Daman and Diu (Laws) Regulation, 1962 (Regulation No. XII of 1962) hereinafter referred to as the Regulation was promulgated by the President and published in the Gazette on November 22, 1962. The effect of s. 3 of the Regulation, read with the Schedule, was *inter alia* to extend the provisions of the Code of Criminal Procedure, 1898, to Goa, Daman and Diu.
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Section 3(2) of the Regulation enabled the Lt. Governor to fix the date of coming into force of the Act in Goa, Daman and Diu. It appears that by notification dated September 24, 1963, the date of the coming into force of the Indian Penal Code and the Code of Criminal Procedure was changed from October 1, 1963, to November 1, 1963. Accordingly, it is the latter date on which the Code of Criminal Procedure came into force in Goa, Daman and Diu.

Section 7 of the Regulation provides :

"Until the relevant provisions of the Code of Criminal Procedure, 1898, are brought into force in Goa, Daman and Diu, all offences under any Act shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the corresponding law in force in Goa, Daman and Diu."

The effect of s. 7, as is clear from the section, was that offences committed prior to the coming into force of the Criminal Procedure Code were to be investigated, inquired into, etc., under the provisions of the corresponding law in force in Goa, Daman and Diu.

Section 8 of the Regulation provides :

"If any difficulty arises in giving effect in Goa, Daman and Diu, to the provisions of any Act extended by this Regulation to that Union territory, the Central Government may, by order in the Official Gazette, make such provisions or give such directions as appear to it to be necessary for the removal of the difficulty."

It appears that some difficulties were experienced by the Lt. Governor and he purported to pass the impugned order which we have set out above.

It will be noticed that the impugned order does not refer to s. 8 of the Regulation but refers instead to Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962. We have seen this Order and it is common ground that this Order did not enable the Lt. Governor to pass the impugned order.

On April 20, 1966, a complaint was filed against the appellant in the Court of Judicial Magistrate 1st Class, Margao, under the Defence of India Rules. The prosecution was challenged on various grounds but these grounds failed before the Judicial Magistrate. The order of the Judicial Magistrate is not on the record. A revision was filed to the Sessions Judge, who first discussed the question of jurisdiction. He held that by virtue of

- A the impugned order the procedure to be followed in the case is one laid down by the Portuguese Criminal Procedure Code and not by the (Indian) Code of Criminal Procedure, 1898.

B On a revision filed by the State, the learned Judicial Commissioner came to the conclusion that the impugned order was *ultra vires*. He agreed with the Government pleader that the impugned order was not in conformity with the 1962 Order [Goa, Daman and Diu (Administration) Removal of Difficulties Order] passed by the Central Government.

- C It is common ground that if a power subsists and the Lt. Governor can justify the impugned order under any law, the appellant is not debarred from relying on that law. It seems to us that s. 8 of the Regulation clearly authorised the Lt. Governor to pass the impugned order.

- D The learned counsel for the State says that the word "difficulty" in s. 8 of the Regulation has to be interpreted in a very narrow sense and in this connection relies on the following observations of Hidayatullah, J., as he then was, in *Jalan Trading Co. (Private) Ltd. v. Mill Mazdoor Union*(¹) :

- E "The order, of course, would be passed within the four-corners of the parliamentary legislation and would only apply the Act to concrete cases as the courts do when they consider the application of an Act."

- F He says that there was no concrete case arising in this case and, therefore, the impugned order cannot be justified by reference to s. 8 of the Regulation. But Hidayatullah, J., was in minority and Shah, J., speaking for the majority, proceeded on the basis that the section under consideration authorised the Government to determine for itself what the purposes of the Act were and to make provisions for removal of doubts or difficulties. Shah, J., did not give any limited meaning to the word "difficulty" in that case.

- G We may mention here that neither the appellant nor the respondent has urged before us that s. 8 of the Regulation itself is invalid.

- H It seems to us that difficulty was bound to arise in giving effect to the Code of Criminal Procedure because this Code contemplates investigation and trial under the Code. If investigations had been done under the Portuguese Criminal Procedure Code, unless there was some clear provision to deem that investigation as investigation under the Code of Criminal Procedure, fresh

(1) [1967] 1 S. C. R. 15, 59.

investigations under the Code of Criminal Procedure would have to be undertaken. Be that as it may, whatever the difficulties which impelled the Lt. Governor to act, he was competent to make provisions to remove the difficulties. A

We may mention that although s. 8 of the Regulation enables the Central Government to remove the difficulty, by reading the definition of the "Central Government" in the General Clauses Act, the Administrator of Goa, Daman and Diu is entitled to exercise the powers of the Central Government, and the Lt. Governor is the Administrator of Goa, Daman and Diu. We are accordingly of the opinion that the impugned order is valid and the prosecution must be conducted in accordance with its provisions. B C

In the result the appeal is allowed, the judgment and order of the Judicial Commissioner set aside and that of the learned Sessions Judge restored.

V.P.S.

Appeal allowed. D