

that the case must be reconsidered by him after taking this statement into account. I accordingly accept the revision petition, set aside the order of the learned Senior Subordinate Judge accepting the defendants' appeal and dismissing the plaintiff's suit and remand the case for redecision after taking into account the evidence which has been ruled out as inadmissible. I make no order as to costs in this Court and the parties have been directed to appear in the Court of the Senior Subordinate Judge, Ambala, on the 7th of November, 1960.

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v.
Ram Ditta Mal
and another

Falshaw, J.

K.S.K.

CRIMINAL MISCELLANEOUS.

Before Mehar Singh and S. B. Kapoor, JJ.

COMRADE CHANAN SINGH,—Petitioner

versus

THE UNION OF INDIA ETC.,—Respondents.

Criminal Writ No. 3 of 1960.

1960

Oct. 5th.

Dramatic Performances Act (XIX of 1876)—S. 3 (a) and (c)—Whether ultra vires Article 19 (1) of Constitution of India.

Held, that section 3(a) and (c) of the Dramatic Performances Act, 1876, places restriction on the fundamental right of freedom of speech and expression and that restriction is not reasonable because no opportunity is provided to the person against whom order is made under this section to have the same removed by showing that it could not or should not have been made. Section 3(a) and (c) of the Act are, therefore, *ultra vires* of Article 19 of the Constitution of India.

(1) (1957) 1 Allahabad 399.

(2) 1958 S.C.R. 308, (1950) 1 S.C.R. 519, followed.

(3) 1960 P.L.R. 473 referred to.

Case referred by Hon'ble Mr. Justice Capoor on 30th June, 1960 to a Division Bench for decision owing to the importance of question of law involved in the case.

... Petition under Article 226 of the Constitution of India praying that a writ in the nature of a writ mandamus, be issued, quashing the order of District Magistrate, dated 1st March, 1960.

B. S. BINDRA, ADVOCATE, for the Petitioner.

K. S. KWATRA, ASSISTANT ADVOCATE-GENERAL, for the Respondents.

ORDER

Mehar Singh, J. MEHAR SINGH, J.—The petitioner is the Secretary of the Ferozepur District Kisan Sabha, which organised a conference at Abohar Mandi between March 5 and 7, 1960, and dramatic performances were to be performed on the night of March 7, 1960.

On March 1, 1960, the District Magistrate of Ferozepur, respondent No. 2, issued the following order under section 3 of the Dramatic Performances Act (Act No. 19) of 1876,—

“Whereas on receipt of reliable information, I am of the opinion, that the Kisan Sabha of district Ferozepur will hold conference at a public place in village Abohar on 5th-6th-7th March, 1960, under the management of Comrades Ram Rattan, District Secretary, Joginder Singh Bhullar, Mehar Singh Jandiana and Karam Chand Kamboh, in which Dramatic performance of a scandalous nature likely to deprave and corrupt persons is to be staged.

Now, therefore, I, Bhim Singh, I.A.S., District Magistrate, Ferozepur, by virtue of powers vested in me under section 3 of the Dramatic Performances Act No. XIX of 1876, read with notification No. 310/S, dated 30th May, 1930 of the Punjab Government, do hereby, by this order prohibit the performance of any drama or play in the said conference.

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A copy of this order be served on the persons conducting any performance, prohibited hereby and be notified by proclamation and fixing its copy on a conspicuous place, for giving information of the order to the persons intending to take part in or witness the performance so prohibited.”

The petitioner and the members of the District Kisan Sabha were not aware of the making of the order on the date it was made. It was duly notified by proclamation and by sticking up, in the locality in which the conference was to be held, copy of it on March 4 and 5, 1960, and this in accordance with section 5 of Act No. 19 of 1876. It appears that the organisers of the drama made themselves scarce and were not to be found till March 7, 1960, on which date the order was served upon them, but they refused to accept service. After the conference dramatic performance was begun and the petitioner and some others started taking part in the same. They were thereupon arrested by the police for offences under section 6 of Act No. 19 of 1876 and section 188 of the Penal Code. The first report was lodged at about 10.30 p.m. on the same evening and the brief facts stated above are narrated

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in it, though in more graphic detail. Although there is some divergence in the statement of facts in the petition and the affidavit of the District Magistrate but at the hearing the learned counsel have agreed that the petition be considered upon the facts as stated in the first report, without going into the truth or otherwise of the same. The petitioner and his co-accused are being prosecuted for the offences referred to in the Court of a Magistrate.

The petitioner has filed this petition under article 226 of the Constitution attacking the *vires* of section 3 of Act No. 19 of 1876 on the ground that it infringes his fundamental right of freedom of speech and expression under Article 19(1) of the Constitution and the provisions of the section are not reasonable restriction upon those rights within the scope of clause (2) of article 19. The petitioner has also thus questioned the *vires* of the order of the District Magistrate. He prays for the quashing of that order.

In the affidavit of the District Magistrate the facts as stated are not controverted. There is no reply on behalf of respondents Nos. 1 and 3, that is to say, the Union of India and the Magistrate of the First Class of Fazilka before whom the petitioner and his companions are being tried for the offences stated. No body has appeared on behalf of the Union of India in spite of service.

Section 3 of Act No. 19 of 1876 says—

[His Lordship read section 3 and continued:]

A Division Bench of this Court has in *Punjab State and another v. Harnam Singh and another* (1), held that section 3(b) of Act No. 19 of 1876 is

(1) 1960 P.L.R. 473.

no longer valid as it places restriction on the freedom of speech and the restriction is not reasonable. The learned counsel for the petitioner has canvassed the unconstitutionality of clauses (a) and (c) of this section.

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The argument has been confined to the *vires* of section 3 of the Act No. 19 of 1876. Dramatic performance of a scandalous or defamatory nature and that likely to deprave or corrupt persons present at the performance, in my opinion, fall within the scope and ambit of the words "decency or morality,, defamation", as used in clause (2) of Article 19 of the Constitution and Act No. 19 of 1876 being an existing law within that clause, the legislation imposes reasonable restrictions on the grounds as covered by the words referred to while giving power to the State Government or its delegate to prohibit dramatic performance of the type described. The learned counsel for the petitioner has, therefore, been obliged to concede that the substantive part of section 3 of the Act is not *ultra vires* of Article 19(1) of the Constitution as infringing any fundamental right of freedom of speech and expression of the petitioner. His argument is confined only to the procedural aspect of the manner in which such an order is required to be made by the statute. It is by now settled beyond question that reasonableness of restriction within the scope of clause (2) of Article 19 has to be considered not only in regard to the substantive part of the impugned legislation but also in regard to the procedural part *Dr. N. B. Khare v. The State of Delhi* (1), and the learned counsel for the petitioner has confined himself to this aspect of the case only. The only sections concerning procedure to which he makes reference are sections 4, 5, 7 and 8 of the Act. Out of

(1) (1950) 1 S.C.R. 519.

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these only section 7 relates to action taken by the authority concerned before the passing of an order under section 3 of the Act by calling information about the character of any public dramatic performance, the other sections only refer to acts of the authority after the making of the order. Section 4 relates to service of the order, section 5 to its notification by proclamation or otherwise, as provided, and section 8 to the power to grant warrants to the police to enter premises and to arrest persons present there and seize articles and things connected with the prohibited dramatic performance. These powers are exercisable after the order made under section 3 of the Act. There is no provision in the Act whereby any person concerned or affected by an intended order under section 3 of the Act has any opportunity of being informed of the intention of the appropriate authority to make such order and of having an opportunity to show cause why it should not be made. The learned counsel appearing for the respondents very rightly points out that circumstances may be such that the appropriate authority may not have time or opportunity enough to go through such a procedure and I think such circumstances are conceivable, so the omission in the Act of such an opportunity to the person concerned or affected by a prohibitory order under section 3 of the Act does not render the restriction placed by the section unreasonable because of the procedural aspect of the matter. There is, however, no provision in the Act which enables a person concerned or affected by a prohibitory order under section 3 to show that the order could not or should not have been made, and the provisions of the Act, as they stand, make the order, once made, final. This apparently places the power given under section 3 of the Act,

in its procedural aspect, in the arbitrary plane and the person or persons affected by such an order have no remedy provided by the Act against it. The learned counsel for the respondents admits as much, but contends that it is still open to a person infringing such an order to contest its propriety and validity at the time of his subsequent prosecution for such infringement, but that is hardly any remedy at all, because if it could be shown that the order could not or should not have been made, the occasion for disobedience of the order would never arise and the question of the prosecution of the person concerned will not arise either. This obviously shows that in regard to the procedural aspect the power given under section 3 of the Act is not a reasonable restriction on the fundamental right of freedom of speech and expression within clause (2) of Article 19. In *Lalit Kumar v. S. S. Bose* (1), similar view has prevailed and on this account the provisions of section 3 of the Act have been held to be *ultra vires* and not saved by clause (2) of Article 19. In *Virendra v. The State of Punjab and another* (2), the vires of sections 2 and 3 of the Punjab Special Powers (Press) Act (No. 38) of 1956, was in question. While giving power to prohibit printing or publishing of documents or newspapers or periodicals under section 2 of that Act to the State Government or any authority authorised in that behalf, the legislature further provided a limitation of two months on the order under the section and a right of representation within ten days' against the order to the State Government. Their Lordships of the Supreme Court did not find that this ran contrary to any part of Article 19. But section 3 gave power to the State Government or

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(2) 1958 S.C.R. 308.

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any authority authorised in that behalf to prohibit the bringing into Punjab of any newspaper, periodical, leaflet or other publication, and this provision their Lordships found it difficult to hold as valid because no time limit for the operation of the order was made under the section nor was there any provision made for any representation being made to the State Government to have it set aside. This dictum tends to lend support to the conclusion that has been reached above. I would, therefore, hold that section 3(a) and (c) of Act No. 19 of 1876 places restriction on the fundamental right of freedom of speech and expression and that restriction is not reasonable because no opportunity is provided to the person against whom order is made under this section to have the same removed by showing that it could not or should not have been made.

In consequence, the impugned order is quashed. In this petition respondent No. 2 will bear the costs of the petitioner, counsel's fee being Rs. 60.

CAPOOR, J.—I agree.

K.S.K.

APPELLATE CIVIL.

Before Tek Chand and Prem Chand Pandit, JJ.

ARJAN SINGH,—Appellant.

versus

MOHAN SINGH AND ANOTHER,—Respondents.

Regular First Appeal No. 173 of 1958

1960

Oct. 5th.

*Punjab Pre-emption (Amendment) Act (X of 1960)—
Section 31—Appeal and Cross-objections arising out of a
pre-emption suit pending when the Act came into force—*