

JAWALA RAM

April 27

STATE OF PEPSU

(P. B. GAJENDRAGADKAR, A. K. SARKAR,
K. N. WANCHOO, K. C. DAS GUPTA and N.
RAJAGOPALA AYYANGAR, JJ.)

Canal Charges—Use Of. water, if of special charges, if amounts to India Canal and Drainage Act, 1873 (VI of 1873), s. 31—PePsu Sirhind Canal and Western Jamuna Canal Rules (Enforcement and Validation) Act (No. IV of 1954), ss. 3, 4—Sirhind Canal Rules, tr. 32, 33.

Certain persons were prosecuted but acquitted of a charge of having damaged a canal. Thereafter the canal officers levied special canal charges on the appellants on the basis of the conclusion that the villagers were responsible for a cut in the canal. The High Court dismissed the appellants' petition under Arts. 226 and 227 of the Constitution on the ground that the case was covered by the case of *Mukundi Ram v. The Executive Engineer*, decided by the High Court (LPAIFAO No. 58 of 1954). On appeal by special leave the appellants contended that ss. 3, and 4 of the Pepsu Sirhind Canal and Western Jamuna Canal Rules (Enforcement and Validation) Act (No. IV of 1954) are unconstitutional being in contravention of Art. 20(1) of the Constitution inasmuch as they have been subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Held, that the use of water by the appellants was not an "offence" and the levy of special rates under Rules 32 and 33 of the Sirhind Canal Rules read with s. 31 of the Northern India Canal and Drainage Act, 1873, for such use was not the imposition of a ("penalty" for an offence as contemplated under Art. 20(1) of the Constitution.

Maqbool Hussain's case, [1953] S.C.R. 730, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 43 of 1958.

Appeal by special leave from the judgment and order dated April 11, 1956, of the former PEPSU High Court in Civil Misc. Case No. 173 of 1955.

Naunit Lal, for the appellants.

S. M. Sikhri, Advocate-general, Punjab, Gopal Singh and D. Gupta, for the respondents.

1961. April 27. The Judgment of the Court was _____ delivered by

Jawala Ram

DAS GUPTA, J.—The 51 appellants all of whom ^{State of Pepsu} belong to village Simla, Tehsil, Narwana, filed in the Das Gupta J. Pepsu High Court at Patiala a petition under Art. 226 and Art. 227 of the Constitution for relief against an order made by the Divisional Canal Commissioner, Narwana, for payment of certain water rates and Tawan. It appears that on the night of September 1, 1951, there was a cut on the left bank of Sirsa Branch Canal. Certain persons were prosecuted on a charge for having damaged the Canal but they were acquitted. Thereafter, the Divisional Canal Officer, Narwana, on the recommendation of the Sub-Divisional Officer, Canal, Narwana made an order levying special charges against these appellants. On appeal the Divisional Canal Officer, Narwana, ordered in partial modification of the order made by the Sub-Divisional Officer, the levy of six times the crop rates on cultivated area and six times the charges on uncultivated area and single bulk rate on water store of village Simla. This levy was made on the basis of his conclusion that the villagers of Simla were responsible for the cut and joined hands for the common good.

The High Court dismissed the application by a short order stating that the points involved in this petition were fully covered by the decision of a Division Bench of the same High Court in *Mukandi Ram v. The Executive Engineer (LPA/FAO No 58 of 1954)* and that the counsel for the petitioners had therefore nothing to say in support of the petition and did not press it. Against this order of dismissal the present petition has been filed by special leave obtained from this Court.

Before mentioning the points raised by Mr. Naunit Lal in support of the appeal it would be convenient to refer to the provisions of law that require consideration.

Section 31 of the Northern India Canal and Drainage Act, 1873, which admittedly applies to the Sirsa Branch Canal provides for the levy of water rates for

S. C. R.

supply of canal water taken in the absence of contract ~~at~~ at the rates and subject to the condition prescribed Jawala Ram by the rules to be made by the State Government in respect thereof. No v. rules have however been made as State of Pepsu regards the rates to be charged for such unauthorised supply of canal water in respect of the Sirsa Branch ^{Das GUPTA} J. Canal which was in the State of Patiala. Rules had however been made by the Punjab Government in respect of the Sirhind Canal and branches thereof as also the Western Jumna Canal and branches thereof as early as April 1873 and August 1878 respectively. These rules had been amended from time to time. At the time the Sub-Divisional Officer made his recommendation and the Divisional Canal Officer made his order these rules had not been extended to the Pepsu. It was when the appeal was pending before the Commissioner that the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Act No. IV of 1954 was passed by the Pepsu State Legislature. Section 3 of this Act applied with retrospective effect from August 1, 1948, the Sirhind Canal Rules and the Western Jumna Canal Rules to the Pepsu State. Section 4 provided that as from August 1, 1948, anything done or any action taken in accordance with the Pepsu Sirhind Canal Rules or the Western Jumna Canal Rules shall not be called in question in any proceedings before any court or other authority merely on the ground that the Sirhind Canal Rules or the Western Jumna Canal Rules were not in force in the Pepsu State on the date on which such thing was done or such action was taken. It may be mentioned that this Act replaced the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Ordinance, 1954, which had been made shortly before this.

In Mukandi Ram v. The Executive Engineer (1), on the basis of which without further discussion the petition in this case was dismissed the Pepsu High Court held on facts practically identical with the facts

of this case that the levy of special rates by the Canal Commissioner was justified under Rule 32 and in any case

(I) LPAIFAO No. 58 of 1954.

961 under Rule 33 of the Sirhind Canal Rules read with
— s. 31 of the Act.

Jawala Ram
v.
State of Pepsu

The main contention raised by Mr. Naunit Lal before us in support of the present appeal is that

— 8. 3 and s. 4 of the Pepsu Sirhind Canal and Western
Das Gupta, J. , Jumna Canal Rules (Enforcement and Validation) Act

No. IV of 1954 are unconstitutional being in contravention of Art. 20(1) of the Constitution. Other points that he wanted to urge were (i) that the provisions of Rules 32 and 33 do not apply to the facts of the present case and (ii) that the notice served before the levy was made was not sufficient. As however it appeared clear to us that neither of these points was taken before the High Court we have not given him permission to raise these points before us, in the circumstances of this case. Another point that Rules 32 and 33 are beyond the scope of the rule-making provisions of the Act was mentioned by the learned counsel but was later abandoned.

The only point for our consideration therefore is whether s. 3 and s. 4 of the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Act, 1954, infringes the provisions of Art. 20(1) of the Constitution. Art. 20(1) provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is argued on behalf of the appellants that the application by these

sections of rules allowing the imposition of special rates which have been imposed under the provisions of Rules 32 and 33 of the Pepsu Sirhind Canal Rules, which could not have been imposed at the time the water was used is bad, as thereby the appellants have been subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

This argument is based on the assumption that the use of water by the appellants was an "offence" and
S.C.R.

that the imposition of an enhanced water charge under Rules 32 and 33 read with section 31 of the Jawala Ram Canal Act for such use was "a penalty" for such an

"offence". This assumption is clearly wrong. "Offence" State of Pepsu as was pointed out by this Court in Maqbool Hussain's case (1) where Art. 20(2) of the Constitution came up for consideration has not been defined in the Constitution. So under Art. 367 which provides that the General Clauses Act, 1897, shall apply for the interpretation of the Constitution the word "offence" in the several clauses of Art. 20 must be understood to convey the meaning given to it in section 3(37) of the General Clauses Act. That section defines an "offence" to mean an act or omission made punishable by any law for the time being in force.

Punishment is the mode by which the State enforces its laws forbidding the doing of something, or omission to do something. Punishment may take different forms. It may be a mere reprimand; it may be a fine; it may be whipping; it may be imprisonment—simple or rigorous; it may even extend to death. But whatever the form, punishment is always connected to a law of the State forbidding the doing or the omission to do something. Unless such a law exists, there is no question of any act or omission being made "punishable". Have we in the present case any law forbidding the unauthorised user

of the water which section 31 of the Canal Act provides will be charged at rates that may be prescribed by rules? Quite clearly, there is none. In providing for charge to be made for use of water at rates that may be prescribed by rules the legislature is not prohibiting the use of water. The word "unauthorised use" in the section does not import any idea of prohibition. The intention of the law clearly is to obtain payment for water used; and the fact that the rates prescribed may be high cannot alter this position.

We are therefore of opinion that the use of the water by the petitioners was not an "offence" and the order for levy of special rates for user thereof was not

(1) [1953] S.C.R. 730.

96st the imposition of a penalty for an offence. When the Jawai⁴ Ram Sub.Divisional Canal Officer or the Canal Commissioner was dealing with the matter they had to decide State of Pepsu whether these petitioners had used water in on unauthorised manner and if so at what rates they should Das Gupta J. be charged for such use. In doing this, they were not trying anybody for any offence; and the fact that special rates were imposed did not deprive these rates of their essential character of a charge for water used and did not convert them into any penalty for the commission of an offence. There is therefore no scope here for the application of the provisions of Art. 20(1) of the Constitution.

The appeal is accordingly dismissed with costs.

Appeal dismissed.