KANGSARI HALDAR & ANOTHER

v.

THE STATE OF WEST BENGAL

1959

December 18.

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO AND J. C. SHAH, JJ.)

Criminal Trial—Statute providing for trials by special Tribunals of specified offences committed in disturbed areas during specified periods—Constitutionality—Reasonable classification—Test—Tribunals of Criminal Jurisdiction Act, 1952 (W.B. Act XIV of 1952), s. 2(b), proviso to s. 4(1).

The appellants were prosecuted for having committed offences under s. 120B read with ss. 302 and 436 of the Indian Penal Code and their case was taken up for trial before the Third Tribunal constituted under the West Bengal Tribunals of Criminal Jurisdiction Act, 1952 (W.B. Act XIV of 1952). By a notification dated September 12, 1952, and issued under s. 2(b) of the Act the Government of West Bengal declared the whole area within the jurisdiction of Kakdwip and Sagar Police Stations to be a disturbed area and specified the period from January 1, 1948, to March 31, 1950, to be the period during which the notification was to be effective. The case against the appellants was that between the dates mentioned in the notification, they took leading part in a violent movement called the *Tebhaga* movement in Kakdwip and incited the *Bhagehasis*, i.e., the cultivators who actually cultivated the land, to claim the entire crop instead of 2/3 share of it and that they preached murder and arson amongst the cultivators and such preaching was followed by arson and murder on a large scale. The appellants moved the High Court for an order quashing the proceedings against them on the ground that s. 2(b) of the Act, which allowed the Government to declare an area in which "there was" disturbance in the past to be a disturbed area, offended Art. 14 of the Constitution as discriminating between persons who had committed the same offences and whose trials had already concluded before the notification under the normal and more advantageous procedure and others whose trials had not concluded and who had to be tried by a less advantageous and special procedure prescribed by the Act. The application of the appellants was first heard by a bench of two judges but as there was difference of opinion between them the matter was referred to a third judge, and the High Court by a majority held that the provisions of the impugned Act were *intra vires* and did not offend Art. 14 of the Constitution.

On appeal by special leave challenging the vires of s. 2(b) and the proviso to s. 4(1) of the Act,

Held (per Sinha, C.J., Gajendragadkar and Shah, JJ.), that the equality before law, guaranteed by Art. 14, no doubt prohibits class legislation but it does not prohibit the Legislature to legislate

on the basis of a reasonable classification. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed.

Chiranjitlal Choudhuri v. *The Union of India and Others*, [1950] S.C.R. 869 and *Kedar Nath Bajoria* v. *The State of West Bengal*, [1954] S.C.R. 30, followed.

Where the classification is reasonable and is founded on an intelligible differentia and that differentia has a rational relation to the object sought to be achieved by the statute, the validity of the statute cannot be successfully challenged under Art. 14. Since the classification made by the impugned Act is rational and the differentia by which offenders are classified has a rational relation with the object of the Act to provide for the speedy trial of the offences specified in the Schedule, s. 2(b) and the proviso to s. 4(1) of the Act cannot be said to contravene Art. 14 of the Constitution even though the procedure prescribed by the Act may amount to discrimination.

The State of West Bengal v. *Anwar Ali Sarkar*, [1952] S.C.R. 284, distinguished.

Kathi Raning Rawat v. *The State of Saurashtra*, [1952] S.C.R. 435, *Lachmandas Kewalram Ahuja and Another* v. *The State of Bombay*, [1952] S.C.R. 710 and *Gopi Chand* v. *Delhi Administration*, A.I.R. 1959 S.C. 609, considered.

Per Sarkar and Subba Rao, JJ. (dissenting).—Whether a law offends Art. 14 or not does not depend upon whether it is prospective or retrospective for both prospective and retrospective statutes may contravene the provisions of that Article. Although the general rule is that a law must apply to all persons, it is permissible to validly legislate for a class within certain well-recognised limits. The true test of a valid classification is that it must be capable of being reasonably regarded as being based upon a differentia which distinguishes that class from others, and the differentia itself must have a reasonable relation with the object the statute has in view.

Shri Ram Krishna Dalmia v. *Shri Justice S.R. Tendolkar*, [1959] S.C.R. 279, followed.

The object of the Act in question being to secure a speedy trial of certain offences committed in a specified area during a specified period of time in the interest of the security of the State and the maintenance of public peace and tranquillity in a disturbed area, a distinction made between the cases where the trials had been concluded and the cases where the trials had not yet been concluded, is not a distinction which has any rational relation to the object. In order to secure that object it is necessary to place both classes of persons in the same situation.

Gopi Chand v. *Delhi Administration*, A.I.R. 1959 S.C. 609, distinguished.

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The Act in so far as it permits an area which was a disturbed area in the past to be declared a disturbed area for the purposes of the Act offends Art. 14 of the Constitution and is, therefore, unconstitutional and void. That portion of s. 2(b) which declares an area to be a disturbed area in the past and the notification in question must therefore be held to be void.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 204 of 1959.

Appeal by special leave from the judgment and order dated June 23, 1959, of the Calcutta High Court in Criminal Revision No. 640 of 1958.

S. K. Acharya and *Janardan Sharma*, for the appellants.

S. M. Bose, Advocate-General for the State of West Bengal, K. C. Mukherjee and *P. K. Bose*, for the respondent.

1959. December 18. The judgment of Sinha, C. J., Gajendragadkar and Shah, JJ. was delivered by Gajendragadkar J. The judgment of Sarkar and Subba Rao, JJ. was delivered by Sarkar, J.

Gajendragadkar J. GAJENDRAGADKAR J.—This appeal by special leave challenges the vires of s. 2(b) and the proviso to s. 4(1) of the West Bengal Tribunals of Criminal Jurisdiction Act, 1952 (W.B. Act XIV of 1952) (hereinafter called the Act). A complaint was filed against Kangsari Haldar and Jogendra Nath Guria (hereinafter called the appellants) in which it was alleged that the appellants along with some others had committed offences under s. 120B read with ss. 302 and 436 of the Indian Penal Code. The case against them was that in 1947 a *tebhaga* movement had been launched in Kakdwip area by the communist party and that later on the Bhagehasis were persuaded to claim the entire and not only 2/3 of the produce in pursuance of the said movement. It was further alleged that the leaders of said movement including the appellants preached murder and arson amongst the cultivators and that such preaching and propaganda were followed by arson and murders on a large scale. It was on these allegations that a charge-sheet was submitted against the appellants and the case

against them taken up for trial before the Third Tribunal at Alipore constituted under the Act. Ninety-nine witnesses were examined by the prosecution in support of its case and the tribunal framed charges against the appellants under the three sections already mentioned by its order dated May 16, 1958. The offences in question are alleged to have been committed during the period beginning from January 1, 1948, and ending on March 31, 1950, within Kakdwip and Sagaour police stations.

By their Criminal Revision Application No. 640 of 1958 the appellants challenged the validity of the proceedings before the tribunal and applied for quashing the said proceedings and the charges framed against them under s. 439 of the Code of Criminal Procedure as well as Art. 227 of the Constitution in the Calcutta High Court. Their application was first heard by Mitter and Bhattacharya, JJ.; but since there was a difference of opinion between the two learned judges the case was referred to Sen, J. Bhattacharya, J., had taken the view that the impugned provisions of the Act were *ultra vires* and so he was inclined to allow the revision application and quash the proceedings taken against the appellants; on the other hand, Mitter, J., had taken a contrary view, and Sen, J., to whom the matter was referred agreed with the view taken by Mitter, J. In the result it was held that the impugned provisions of the Act were *intra vires* and so the rule issued on the appellants' revision application was discharged and the application itself was dismissed. The appellants then applied to the said High Court for a certificate either under Art. 132 or under Art. 134 of the Constitution but their applications were dismissed. Thereupon they moved for, and obtained, special leave from this Court. That is how this appeal has come before this Court; and the only point which it raises for our decision is about the vires of the two impugned provisions of the Act.

On behalf of the appellants Mr. Acharya has contended that the genesis of the Act should be borne in mind in dealing with the vires of the impuged provisions; and in support of this argument he has strongly

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relied on the sequence of events which led to the passing of the Act. It appears that the West Bengal Special Courts Act X of 1950, was passed by the West Bengal Legislature and came into force on March 15, 1950. The vires of s. 5(1) of the said Act were impeached by Anwar Ali Sarkar and others who were being tried under the provisions of the said Act. On August 28, 1951, the Calcutta High Court partially upheld the plea and struck down a part of s. 5(1). The said decision was challenged by the State of West Bengal before this Court in *The State of West Bengal* v. *Anwar Ali Sarkar* (1); but the appeal preferred by the State was dismissed; and by a majority decision of this Court not only a part of s. 5(1) but the whole of it was declared to be *ultra vires* as being violative of Art. 14 of the Constitution. This decision was pronounced on January 11, 1952. Soon thereafter an Ordinance was promulgated (No. 1 of 1952) by the West Bengal Government on March 24, 1952, and in due course this Ordinance was replaced by the Act which came into force on July 30, 1952. Section 12 of the Act purports to repeal the earlier Act of 1950 in conformity with the decision of this Court in *Anwar Ali Sarkar's case* (1). The argument is that by passing the Act the West Bengal Government has attempted to achieve the same result which it intended to achieve by s. 5(1) of the earlier Act, and so, according to the appellants, in substance the decision of this Court in *Anwar Ali Sarkar's case* (1) should govern the decision of the present appeal. In any case it is urged that the sequence of events which supply the background to the present Act should carefully be borne in mind in dealing with the merits of the points raised by the appellants.

The challenge to the vires of the impugned provisions is based on the ground that they violate the fundamental right guaranteed by Art. 14 of the Constitution. The scope and effect of the provisions of Art. 14 have been considered by this Court on several occasions, and the matter has been clarified beyond all doubt. The equality before law which is guaranteed by Art. 14 no doubt prohibits class legislation

(1) [1952] S.C.R. 284.

but it does not prohibit the Legislature from legislating on the basis of a reasonable classification. If the classification is reasonable and is founded on intelligible differentia and the said differentia have a rational relation to the object sought to be achieved by the statute based on such reasonable classification the validity of the statute cannot be successfully challenged under Art. 14. These propositions have been repeated so many times during the past few-years that they now sound almost platitudinous. Thus the enunciation of the principles which flow from the fundamental rights enshrined in Art. 14 now presents no difficulty; it is, however, in the application of the said principles that difficulties often arise. In applying the said principles to the different sets of facts presented by different cases emphasis may shift and the approach may not always be identical; but it is inevitable that the final decision about the vires of any impugned provision must depend upon the decision which the court reaches, having regard to the facts and circumstances of each case, the general scheme of the impugned Act and the nature and effect of the provisions the vires of which are under examination. Let us, therefore, first examine the relevant scheme of the Act and ascertain the effect of the provisions under challenge.

The Act was passed because the Legislature thought it expedient in the interest of the security of the State, the maintenance of public peace and tranquillity and the due safeguarding of the industry and business, to provide for the speedy trial of the offences specified in the schedule. Section 2(b) defines a disturbed area as meaning an area in which in the opinion of the State Government—(i) there was, or (ii) there is, any extensive disturbance of the public peace and tranquillity and in respect of which area the State Government has issued a notification declaring such area to be a disturbed area. The section then adds that in cases falling under cl. (i) the notification shall have effect during such period as may be specified therein, and in cases falling under cl. (ii) the notification shall have effect from such date as may be specified in the

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notification until the notification is revoked. It would thus be noticed that the disturbed area can be of two categories; it can be an area where extensive disturbance as described had taken place but at the time of the notification the disturbance may have ceased; and an area where the disturbance is taking place at the time of the notification. In respect of the first category of disturbed areas the notification has to specify the period covered by the previous disturbance, and it is the specified offences which had taken place during the said period that fall within the mischief of the Act. In the case of the notification issued in respect of areas where disturbances are taking place the notification has effect from such date as it may specify and it will continue to be in operation until it is revoked. Section 2(d) defines a scheduled offence as any offence specified in the schedule and s. 2(e) defines a tribunal as meaning a tribunal of Criminal Jurisdiction constituted under sub-s. (1) of s. 3. The scheduled offences are specified in four items. Item 1 deals with offences against the State prescribed by ch. 6 of the Indian Penal Code. Item 2 deals with some of the offences against human body and property covered by ch. 16 and ch. 17 of the Code. Item 3 refers to some of the said offences if they are committed in the course of a raid on or a riot in a factory or a mill or a workshop or a bank or in relation to transportation of property to or from a factory, mill, workshop or bank; and the last item covers cases of conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items 1 to 3. The scheme of the Act is thus to appoint special tribunals to try the scheduled offences which have taken place in disturbed areas as defined in s. 2(b). That is the effect of s. 4 of the Act. The proviso to s. 4(1) enables the tribunal when it is trying any case to try in its discretion any offence other than a scheduled offence with which the accused may under the Code be charged at the same trial. In other words, the trial of an accused person in respect of the scheduled offences may include any other offence which is not included in the schedule and which would be triable under the provisions of the

Code. As we have already indicated the present appeal challenges the vires of s. 2(b) and the proviso to s. 4(1).

It cannot be disputed that the procedure prescribed for the trial before the tribunal under the Act differs in some material particulars from the procedure prescribed by the Code, and the said difference can be treated as amounting to discrimination which is prejudicial to the accused; under the Act no commitment proceedings have to be taken and the benefit of jury trial is denied. The provision made by the first proviso to s. 5 in respect of adjournment of the trial is also stricter and more stringent. Similarly, the right of an accused person to claim a *de novo* trial where a judge presiding over a tribunal ceases to be available before the completion of the trial is also materially affected by the provisions of s. 6. Section 10 makes applicable the provisions of the Code or of any other law for the time being in force which may be applicable to the trial of criminal cases in so far as they are not inconsistent with the provisions of the Act. Thus it may be conceded that the appellants are entitled to complain that on the whole the procedure prescribed for the trial of scheduled offences under the Act amounts to discrimination. The question is whether such discrimination violates the provisions of Art. 14.

This question necessarily leads us to inquire whether the discriminatory provisions of the Act are based on any rational classification, and whether the differentiation of the offenders brought within the mischief of the Act has a rational nexus with the policy of the Act and the object which it intends to achieve. The preamble shows that the Legislature was dealing with the problem raised by disturbances which had thrown a challenge to the security of the State and raised a grave issue about the maintenance of public peace and tranquillity and the safeguarding of industry and business. It, therefore, decided to meet the situation by providing for speedy trial of the scheduled offences. Thus the object of the Act and the principles underlying it are not in doubt. It is true that speedy trial of all criminal offences is desirable; but there would be no difficulty in appreciating the anxiety of the

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Legislature to provide for a special procedure for trying the scheduled offences so as to avoid all possible delay which may be involved if the normal procedure of the Code was adopted. If the disturbance facing the areas in the State had to be controlled and the mischief apprehended had to be checked and rooted out a very speedy trial of the offences committed was obviously indicated.

The classification of offenders who are reached by the Act is obviously reasonable. The offences specified in the four items in the schedule are clearly of such a character as led to the disturbance and it is these offences which were intended to be speedily punished in order to put an end to the threat to the security of the State and the maintenance of public peace and tranquillity. It would be idle to contend that if the offences of the type mentioned in the schedule were committed and the Legislature thought that they led to the disruption of public peace and tranquillity and caused jeopardy to the security of the State they could not be dealt with as a class by themselves. Other offences committed by individuals under the same categories of offences specified by the Code could be rationally excluded from the classification adopted by the Act because they did not have the tendency to create the problem which the Act intended to meet. We are, therefore, satisfied that the classification made by the Act is rational and the differentiation on which the offenders included within the Act are treated as a class as distinguished from other offenders has a rational nexus or relation with the object of the Act and the policy underlying it. Therefore, it would be difficult to accede to the argument that the Act violates Art. 14 of the Constitution.

It is, however, urged that s. 2(b)(i) is not *intra vires* because the classification on which it is based violates Art. 14. This contention has taken a two-fold form. It is urged that the notification which is authorised to be issued under s. 2(b)(i) necessarily deals with an area which has ceased to be disturbed at the time when it is issued; and it is inevitable that when such a notification is issued some of the offences which would have

been tried under the Act as a result of the notification may have already been tried under the ordinary Code, and it is only such cases as are not disposed of on the date of the notification which would fall within the mischief of the Act and that constitutes an irrational or arbitrary classification. It is also urged that when the area covered by such a notification has ceased to be disturbed there is no rational or valid justification for applying the Act to the offences committed in such an area when in the other continuously undisturbed areas similar offences would be tried under the normal provisions of the Code. In fact it is these two aspects of the question which have been strongly pressed before us by Mr. Acharya in the present appeal. Before dealing with these two arguments it would be relevant to recall that this Court has accepted the general principle that "if any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed" (Vide: *Chiranjit-lal Chaudhuri* v. *The Union of India & Ors.* (1) and *Kedar Nath Bajoria* v. *The State of West Bengal* (2)).

It is quite true that when a notification is issued under s. 2(b)(i) specifying the period during which the area in question was disturbed some offences though falling under the schedule might have been tried under the Code while some others which may be pending at the date of the notification would be tried under the Act. But does that introduce any vice in the classification? If the area was disturbed and the notification specifying the period of such disturbance is otherwise justified in the sense that the speedy trial of the scheduled offences committed during the specified period can be validly directed, then the fact that some offences had already been tried before the notification cannot, in our opinion, introduce any infirmity in the statutory provision itself. It must be remembered that the classification on which the impugned notification rests is between the scheduled offences committed in an area which is declared to be a disturbed area and similar offences committed elsewhere in the State; and so the fact that some of the scheduled offences

(1) [1950] S.C.R. 869 at p. 877. (2) [1954] S.C.R. 30 at p. 39.

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escaped the operation of the notification because they had been already tried cannot affect its legality or validity. Such an adventitious or accidental result cannot sustain the attack against the classification which is otherwise rational, reasonable and valid. In fact it would not be easy or always possible for the Legislature to prevent such an accidental escape of some cases from the provisions of a special statute for the reason that they had already been decided. If the statute had permitted discrimination between cases under the scheduled offences which still remained to be tried that would have been another matter. In our opinion it would be unreasonable to requisition the assistance of cases which had been disposed of and have become a matter of history to challenge the classification in question.

The second contention is also without substance because it ignores the material difference between the character of the offences committed during the specified period in the disturbed area and offences committed in continuously undisturbed areas. The offences committed in areas subsequently declared to be disturbed led to and were the cause of the extensive disturbance. In consequence of such disturbance investigation into such offences is rendered difficult; it is not easy in such disturbed conditions to collect and marshall evidence because witnesses are apt to be terrorised, and though the area has ceased to be disturbed absence of disturbance may be temporary, and unless the offenders are brought to book speedily the temporary peace may turn out to be the lull before another storm. That is why even in respect of areas which have ceased to be disturbed, offences committed when the area was disturbed during the period specified in the notification are required to be tried under the Act. Such offences cannot, in our opinion, be reasonably compared with offences committed under the same sections of the Code in continuously undisturbed areas. In their essential features the two offences form two distinct and different categories and the contention that the classification of the offences made in such a case is irrational must,

therefore, be rejected. The argument that some limitation of time should have been prescribed within which the notification should be issued declaring such areas to be disturbed ignores the fact that prescription of such limitation may in some cases defeat the purpose of the Act itself. If the offenders abscond or go underground, as in the present case appellant 1 did, how can any period of limitation be prescribed beyond which the power to issue notification cannot be exercised? In issuing such notification several relevant factors pertaining to the local situation in the area have to be taken into account; and so failure to prescribe any limitation cannot introduce any infirmity in the provision.

It is conceivable that the notification issued under s. 2(b)(i) may be colourable or *mala fide* but in such a case it is the validity of the notification which can be successfully challenged, not the vires of the statute under which it is issued. The colourable or *mala fide* exercise of the power in issuing a notification would undoubtedly affect the validity of the notification itself; but the possibility of such abuse of power cannot reasonably affect the vires of the statute itself. Mr. Acharya no doubt suggested that the object of the impugned notification was to bring only the case of the appellants under the mischief of the Act but he frankly conceded that he had not made such a specific plea in his petition and that, though it would be possible for him to urge that a large majority of the scheduled offences committed during the specified period had already been tried under the Code, it would not be possible for him to sustain the plea on the material available on the record that the notification has been issued solely with a view to bring the case of the appellants alone under the mischief of the Act. That is why this aspect of the matter does not fall to be considered in the present appeal.

The next argument is that the proviso to s. 4(1) is *ultra vires*. We do not think that here is any substance in this argument. What the proviso does is to enable the tribunal to try any offence other than the scheduled offence with which the accused may be

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charged and which would be ordinarily triable under the provisions of the Code. But does this amount to an infringement of Art. 14 at all? In our opinion the answer to this question must be in the negative. It is significant that the proviso leaves it to the discretion of the tribunal whether or not any other offence should be tried under the Act along with the scheduled offence charged against the accused in a given case. Besides there can be no doubt that the offences other than the scheduled offences which may be included in a trial under the Act would be minor or allied offences the proof of which would follow from the facts adduced in support of the major offences. That in fact is the position even under the provisions of the Code. If the trial of the major scheduled offence under the Act is justified and valid the impugned proviso does nothing more than enable the tribunal to decide whether the accused is guilty of any minor or allied offence. In our opinion, therefore, the challenge to the proviso in question cannot succeed.

It now remains to consider the decisions to which our attention was invited. In the case of *Anwar Ali Sarkar* (1) where s. 5(1) of the Bengal Act X of 1950 was impeached the majority decision was that the said section was wholly invalid. The preamble to the Act had merely stated that it was expedient to provide for the speedy trial of certain offences, and s. 5(1) had empowered a special court to try such offences or classes of offences or cases or classes of cases as the State Government may by general or special order in writing direct. According to the majority decision the preamble to the Act was vague and gave no indication about the principles underlying it or the object which it intended to achieve; and it was also held that s 5(1) vested an unrestricted discretion in the State Government to direct any cases or classes of cases to be tried by the special court. It was observed that the necessity of a speedier trial mentioned in the preamble was too vague, uncertain and elusive a criterion to form a rational basis for the discriminations made, and that it was unreasonable to have left to the absolute and unfettered discretion of the

(1) [1952] S.C.R. 284.

executive government with nothing in the law to guide or to control its action to decide which cases or classes of cases should be tried under the Act. There were, however, two dissents. Patanjali Sastri, C.J., held that s. 5(1) was wholly valid, where, Das, J., as he then was, agreed with the conclusion of the High Court that s. 5(1) was bad only in so far as it empowered the State Government to direct cases to be tried by a special court; it may be added that though Bose, J., agreed with the conclusion of the majority, he was not satisfied that the tests laid down in deciding the validity of the classification could afford infalliable guide because he thought that the problem posed in such cases is not solved by substituting one generalisation for another. It would thus be seen that the majority decision in that case was based on two principal considerations that, having regard to the bald statement made in the preamble about the need of speedier trials, it was difficult to sustain the classification made by s. 5(1), and that the discretion left to the executive was unfettered and for its exercise no guidance was given by the statute. It is difficult to accept the suggestion of Mr. Acharya that the impugned provisions in the Act with which we are concerned are comparable to s. 5(1) in that case.

The next decision to which reference must be made is *Kathi Raning Rawat* v. *The State of Saurashtra* (1). The majority decision in that case upheld the validity of ss. 9, 10 and 11 of the Saurashtra State Public Safety (Third Amendment) Ordinance, 1949 (66 of 1949) and the notification issued under it. Patanjali Sastri, C.J., and three other learned judges of this Court took the view that the preamble to the Act gave a clear indication about the policy underlying the Act and the object which it intended to achieve, that the classification on which the impugned provisions were based was a rational classification, and that the differentia on which the classification was made had a rational nexus with the object and policy of the Act. Mahajan, Chandrasekhara Ayyar and Bose, JJ., however, dissented. According to them the notification

(1) [1952] S.C.R. 435.

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and the impugned provisions had violated Art. 14. It is significant that in upholding the validity of the impugned provisions and the notifications the tests applied were the same as laid down in *Anwar Ali Sarkar's case* (1).

The third decision pronounced by this Court in the same year is *Lachmandas Kewalram Ahuja & Anr.* v. *The State of Bombay* (2). Section 12 of the Bombay Public Safety Measures Act, 1947, was struck down by the majority decision in that case as it contravened Art. 14 and was void under Art. 13 on the principles laid down in the two earlier decisions to which we have just referred. Patanjali Sastri, C. J., struck a note of dissent. He adhered to the view which he had expressed in *Anwar Ali Sarkar's case* (1) and held that the impugned provision was valid. The decision in the case of *Ahuja* (2) proceeded on the basis that the discrimination which may have been permissible before January 26, 1950, could not be sustained after the said date because it violated Art. 14 of the Constitution. Having regard to the objects which the act intended to achieve and the principles underlying it, it was held that the said object and principles applied equally to both categories of cases, those which were referred to the special judge and those which were not so referred; and so the discrimination made between the two categories of cases which could not be rationally put under two different classes was violative of Art. 14. Thus the application of the same tests this time resulted in striking down the impugned provision and the notification.

In 1953 a similar problem was posed before this Court for its decision. This time it was s. 4(1) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, which was challenged in *Kedar Nath Bajoria's case* (3). This Act had been passed to provide for the more speedy and more effective punishment of certain offences because the Legislature thought that it was expedient to provide for the more speedy trial and more effective punishment of certain offences which were set out in the schedule annexed

(1) [1952] S.C.R. 284. (2) [1952] S.C.R. 710.
(3) [1954] S.C.R. 30.

to the Act. Section 4(1) authorised the Provincial Government to allot cases for trial to a special judge by notification as well as transfer cases from one special judge to another or to withdraw any case from the jurisdiction of the special judge or make such modifications in the description of a case as may be considered necessary. Pronouncing the majority judgment in that case Patanjali Sastri, C. J., elaborately considered the earlier decisions of this Court to which we have already referred, applied the tests laid down therein, and held that s. 4 of the Act was valid and that the special court had jurisdiction to try and convict the appellants. Bose, J., however, did not agree and recorded his dissent with deepest regret. In dealing with the merits of the controversy raised before the Court Patanjali Sastri, C. J., referred to the fact that according to the dissenting view "the decision of the majority in the case of *Kathi Raning Rawat* v. *The State of Saurashtra* (1) marked a retreat from the position taken up by the majority in the earlier case of *Anwar Ali Sarkar* (2)". He, however, added that the *Saurashtra case* (1) "would seem to lay down the principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Art. 14."

There is is one more decision to which reference may be made. In *Gopi Chand* v. *Delhi Administration* (3) this Court has upheld the validity of s. 36(1) of the East Punjab Public Safety Act 5 of 1949. The provisions of this section authorised the State Government to apply the prescribed summons procedure for the trial of the specified offences in dangerously

(1) [1952] S.C.R. 435. (2) [1952] S.C.R. 284.
(3) A.I.R. 1959 S.C. 609.

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disturbed areas. The notification issued by the State Government under authority conferred on it by the impugned Act was challenged as offending Art. 14 but this challenge was repelled and the statutory provision and the notification were held to be valid.

The result of these decisions appears to be this. In considering the validity of the impugned statute on the ground that it violates Art. 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act the court should apply the dual test in examining its validity: Is the classification rational and based on intelligible differentia; and has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied the statute must be struck down as violative of Art. 14. Applying this test it seems to us that the impugned provisions contained in s. 2(b) and the proviso to s. 4(1) cannot be said to contravene Art. 14. As we have indicated earlier, if in issuing the notification authorised by s. 2(b) the State Government acts *mala fide* or exercises its power in a colourable way that can always be effectively challenged; but, in the absence of any such plea and without adequate material in that behalf this aspect of the matter does not fall to be considered in the present appeal.

The result is the order passed by the High Court is confirmed and the appeal dismissed.

Before we part with this appeal, however, we would like to add that, since the offences are alleged to have been committed more than ten years ago, it is desirable that the case against the appellants should now be tried and disposed of as expeditiously as possible.

SARKAR J. The question that arises in this appeal is whether a certain provision of the Tribunals of Criminal Jurisdiction Act, 1952, (W. B. Act XIV of 1952) is void as it takes away the right conferred by art. 14 of the Constitution. In my view, it is.

The Act came into force on July 30, 1952. The object of the Act is set out in the preamble which so far as is relevant in this case reads, "Whereas it is expedient in the interests of the security of the State, the maintenance of public peace and tranquillity..... .....to provide for the speedy trial of the offences specified in the Schedule; It is hereby enacted...."

The provisions of the Act which have to be considered in this case are set out below.

S. 2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(a).....

(b) "disturbed area" means an area in which in the opinion of the State Government—

(i) there was or

(ii) there is

any extensive disturbance of the public peace and tranquillity and in respect of which area the State Government has issued a notification declaring such area to be a disturbed area. In cases falling under clause (i) the notification shall have effect during such period as may be specified therein, and in cases falling under clause (ii) the notification shall have effect from such date as may be specified in the notification until the notification is revoked;

(c).....

(d) "Scheduled offence" means any offence specified in the Schedule.

(e) "Tribunal" means a Tribunal of Criminal Jurisdiction constituted under sub-section (i) of section 3.

S. 4.

(i) Scheduled offences shall be triable by the Tribunals only;

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SCHEDULE

1. .....

2. An offence punishable under section 302, section 304, section 307, section 326, section 363, section 364, section 365, section 366, section 376, section 395, section 396, section 397, or section 436 of the Indian Penal Code, if committed in a disturbed area.

3. .....

4. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items 1 to 3.

The Act provides by some of the sections which need not be set out, a special procedure for trial under it. Thus the trial is to be without a jury even in cases which are triable by a jury. Again, the Tribunal is to follow the procedure laid down for the trial of warrant cases by a Magistrate, instituted otherwise than on a police report and the procedure for committal for trial is omitted. Further, a Judge presiding over a Tribunal may act on the evidence recorded by his predecessor. The procedure provided by the Act is thus clearly less beneficent to an accused than the normal procedure under the Code of Criminal Procedure, which would have to be adopted for his trial if the Act had not been passed. The learned Advocate-General of West Bengal, appearing for the respondent, the State of West Bengal, did not contend to the contrary. The Act, therefore, provides a disadvantageous and so, a discriminatory procedure for the persons who come under its scope.

We turn now to the facts of this case. On September 12, 1952, the Government of West Bengal issued a notification under s. 2(b) of the Act declaring the whole area within the jurisdiction of Kakdwip and Sagar police-stations to be a disturbed area and specified the period from January 1, 1948, to March 31, 1950, to be the period during which the notification was to have effect.

The Special Public Prosecutor Kakdwip cases, of the Government of West Bengal filed a complaint against the appellants and several other persons as a result of the proceedings taken by that Government in case

No. 1 of Judicial Department Notification No. 5916 dated October 24, 1952. The date of the complaint does not appear from the record. The case against the appellants and the other persons appears to be that, between the dates mentioned in the Notification of September 12, 1952, they were among the leaders of the violent form of a movement called the Tebhaga movement, in the Kakdwip area and they, with the others, led the movement to kill the landlords and jotdars and burn down their houses, so that the bhagchasis, that is, the cultivators who cultivated the lands of the landlords and jotdars on the basis of getting a share of the crop produced, might obtain full control over the lands they cultivated and the object of the movement included offering resistance to and killing the police if they intervened, and burning down school houses where the police frequently camped.

On the aforesaid complaint, on March 3, 1958, proceedings were started against the appellants under the Act. After examining 99 witnesses the learned Judge presiding over the Tribunal hearing the case, framed a charge against them on May 16, 1958, under s. 120 B, read with ss. 302 and 436, of the Indian Penal Code. These offences are included in items Nos. 2 and 4 of the Schedule.

On May 26, 1958, the appellants moved the High Court at Calcutta under art. 227 of the Constitution and s. 439 of the Code of Criminal Procedure for an order quashing the proceedings against them on certain grounds. I propose to deal in this judgment with one of these grounds only. It was said that s 2(b) of the Act in so far as it allowed the Government to declare an area in which "there was" disturbance in the past, to be a disturbed area, offends art. 14. of the Constitution as it then discriminates between persons who had committed the same offences in that area within the specified period but whose trials had been concluded before the notification and others similarly situated but whose trials had not been so concluded. It was said that the former class of persons had the advantage of the normal procedure while

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the latter, in whom the appellants are included, were to be tried by a less advantageous procedure.

The application of the appellants was heard by a bench of the High Court consisting of Mitter and Bhattacharya, JJ. These learned Judges came to entertain different views on the question. Mitter, J., thought that the Act had been given a retrospective operation by permitting the declaration of an area as a disturbed area for a past period but that the Act dealt only with procedure and procedural alterations were always retrospective. Bhattacharya, J., seems to have been of the view that a retrospective operation even of a procedural statute is not permissible if such operation results in the statute offending art. 14; that the principle of the retrospective operation of a procedural statute is not available to by-pass the constitutional safeguard guaranteed by art. 14.

In view of this difference of opinion, the matter was referred to a third learned Judge of the Court, namely, Sen, J. He was of the view that the retrospective operation of the Act, by which he meant the application of the procedure laid down in it to cases in respect of offences committed before the Act the trial of which had not been concluded, did not offend art. 14; that there was no fundamental right to a particular procedure for trial and alterations in the procedural law were always retrospective unless the contrary was indicated. He further observed, "The change in the procedure made by a statute in respect of offences falling within a prescribed reasonable classification, affects all pending cases of that class; and so long as all pending cases within the class are tried under the special procedure, there is no discrimination." In the result, the appellant's application was refused. They have now appealed to this Court.

It seems to me that the learned Judges of the High Court were unduly oppressed by considerations of the retrospective operation of the Act. The question is not whether the Act is prospective or retrospective in its operation. Nor is it the question whether the Act deals with procedures or substantive rights. The only question is whether the Act operates in respect only of

a class of persons and if so, whether the classification is justifiable. Whether a law offends art. 14, does not depend upon whether it is prospective or retrospective. There is nothing in art. 14 to indicate that a law operating retrospectively cannot offend it. It is possible both for prospective and retrospective statutes to contravene the provisions of that article. It is not necessary therefore to consider whether the Act is prospective or retrospective or whether it concerns procedure or substantive rights.

The general rule is that a law must apply to all persons. But it is permissible within certain well-recognised limits, to validly legislate for a class of persons. The test for a valid classification is well-known. It may be read from the judgment in the recent case of *Sri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar* [1]. Das, C.J., said at p. 298:

> "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.....Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law."

Again at p. 299 he observed:

> "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.....
>
> .....
>
> the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of the discretion by the Government in the matter of selection or classification.....
>
> .....
>
> In such a case the court will strike down both the law as well as the executive action taken under such law."

(1) [1959] S.C.R. 279.

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The statute before us has made a classification in regard to offences. It applies only to those offences which are mentioned in the Schedule. I will assume that this classification satisfies the test and is good. I wish to observe here that in this case I am considering the validity of the statute only in so far as it is concerned with an offence committed in a disturbed area. Such an offence comes under items 2 and 4 of the Schedule which alone, therefore, I have set out. Now, the Act leaves it to the Government to decide which is a disturbed area and to make a classification on the basis of areas. I will also assume that the Act is not invalid in so far as it leaves it to the Government to make this classification; that it lays down a principle or policy, namely, extensive disturbance of public peace and tranquillity for guiding the Government in making this classification.

Now, s. 2(b) empowers the Government to declare an area to be a disturbed area where "there was" extensive disturbance of the public peace and tranquillity in the past. The Government has however to mention in the notification making such a declaration, the period during which it shall have effect; in other words, the notification has to specify the period in which in the area declared a "disturbed area", disturbance of the public peace and tranquillity had taken place. The area so declared a "disturbed area" becomes a "disturbed area" within the meaning of the Act for that period only. In such a case only such of the offences mentioned in items Nos. 2 and 4 of the Schedule as were committed in the specified area during the specified period come under the scope of the Act. This is the kind of declaration of a "disturbed area" that we have in this case.

The effect of this kind of declaration is that it makes the Act applicable only to persons who have committed any of the specified offences in the area and during the period indicated. As will presently be seen, it does not apply to all such persons. This being a case, where there had been disturbances in the area in the past, the period mentioned in the declaration must be a period in the past. That is what happened in the present case. The declaration was made on

September 12, 1952, and the period specified was from January 1, 1948, to March 31, 1950. It is possible in such a case that many of the persons who had committed the offences within the past period specified in the declaration, might have already been tried and their trials concluded before the declaration was made. They would in such circumstances have been tried according to the normal procedure provided by the Code of Criminal Procedure. To them the Act does not apply. Other persons, like the appellants who committed the same offences in the same period and in the same area but whose trials had not been concluded before the declaration was made, have to be tried under the disadvantageous procedure prescribed by the Act.

The effect of the Act therefore is to group into one class, persons committing the specified offences in the specified area and in the specified period whose trials had not been concluded before the making of the declaration. It is only to them that the Act applies. This is where the difficulty arises. There does not seem to be any intelligible differentia by which such persons can be differentiated from others who committed the same offences in the same area and during the same period but whose trials had been concluded before the making of the declaration. The object of the Act, as earlier stated, is to secure speedy trials in the interests of the security of the State and the maintenance of the public peace and tranquillity in view of the extensive disturbance of the public peace and tranquillity in an area. It would be necessary to carry out this object that both the classes of persons, namely, those whose trials had been concluded as also those whose trials had not been concluded, should be treated according to the same law. The only distinction between the two classes is that in one case the trials had been concluded while in the other, they had not been. Now that is not a differentia, if it may be called so, which has any reasonable relation to the object of the Act. Indeed, in order to secure that object, it is necessary to place both the classes of persons in the same situation. By permitting a declaration classifying offences committed in the past, the Act makes a classification which cannot stand the

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well-known test which I have read from *Ram Krishna Dalmia's case* (1).

It cannot be said that the object of the Act is only to provide speedy trial and that therefore as there is no question of speedy trial in the cases where the trials had already been concluded there is an intelligible differentia between such cases and those where the trial hadnot been concluded. It is quite plain that the object of the Act is not simply to provide a speedy trial. Indeed, all offences require speedy trial. The object of the Act is expressly to provide speedy trial of certain offences committed in a specified area and during a specified period because "it is expedient in the interests of the security of the State, the maintenance of public peace and tranquillity" to do so. The classification by areas is based on disturbance in an area and the necessity of restoring peace there. Such being the object, a distinction made between the cases were the trials had been concluded and the cases where the trials had not been concluded, is not a distinction which has any rational relation to that object.

The learned Advocate-General for the State of West Bengal contended that this case is covered by the decision of this court in *Gopi Chand* v. *Delhi Administration* (2). There, no such difficulty as arises in this case, had arisen. I therefore do not think that that case is of any assistance.

In my view, s. 2(b) of the Act in so far as it permits an area which was a disturbed area in the past to be declared a disturbed area for the purposes of the Act, offends art. 14 of the Constitution and is therefore unconstitutional and void. The declaration in the present case was made under that portion of s. 2(b) and it cannot be sustained. That portion of the Act and the Notification of September 12, 1952, must therefore be held to be void.

In the result I would allow the appeal.

ORDER OF COURT

In view of the opinion of the majority, the order passed by the High Court is confirmed and the appeal is dismissed.

(1) [1959] S.C.R. 279. (2) A.I.R. 1959 S.C. p. 609.