(1980) 04 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 104 of 1974

Adarsh Krishi Sewa Kendra APPELLANT

Vs

Government of M.P. and Another RESPONDENT

Date of Decision : 24-04-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 352
Defence of India Rules, 1971 — Rule 114, 114(2), 114(3), 114(4), 36(3)
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1981 MP 44 : (1980) JLJ 829 : (1980) MPLJ 810

Hon'ble Judges : G.P. Singh, C.J;B.C. Varma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; L.S. Baghel, Dy. A.G. and S.L. Saxena, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

The petitioner in this petition under Article 226 of the Constitution carries on the business of selling fertilisers at Morena. The challenge in this petition now is to the M. P. Fertiliser (Prices Control) Order, 1974 which was made by the State Government on 23rd July 1974 in exercise of the powers conferred by Sub-rules (2) and (3) (h) of Rule 114 of the Defence of India Rules, 1971.

The Essential Commodities Act, 1955 is an Act to provide in the interest of general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities. Section 2(a) of the Act contains the definition of "essential commodity". Apart from the enumerated commodities in Clauses (i) to (x) of this definition Clause (xi) empowers the Central Government to declare any other class of commodities to be an essential commodity for the purpose of this Act, being commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in Seventh Schedule to the Constitution. By notification No. 1048 of 29th March 1957, the Central

Government declared fertilisers, whether organic, inorganic or mixed to be an essential commodity under the Act. Section 3 of the Act empowers the Central Government to make orders providing for regulating or prohibiting the production, supply and distribution of any essential commodity and trade and commerce therein if the Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies or for securing its equitable distribution and availability at fair prices, or for securing it for the defence of India or the efficient conduct of military operations. Without prejudice to the generality of the power conferred by Section 3(1), the Central Government can make orders on the matters enumerated in Sub-section (2) of Section 3. Under Clause (c) of Sub-section (2) the Central Government can make an order for controlling the price at which an essential commodity may be bought or sold. Section 6 of the Act provides that any order made wider Section 3 shall have effect notwithstanding anything inconsistent, therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

The Central Government in exercise of its power u/s 3 of the Act made the Fertiliser (Control) Order, 1967. Clause 3 of this Order provides that the Central Government may, with a view to regulating equitable distribution of fertilisers and making fertilisers available at fair prices, by notification in the official Gazette, fix the maximum prices or rates at which any fertiliser may be sold by a manufacturer or a dealer. By notification dated 11th October 1973, the Central Government in pursuance of Clause 3 of the Fertiliser (Control) Order, 1957 fixed the maximum prices per tonne at which the fertilisers specified in the Schedule to the notification could be sold to the tea, coffee, or rubber plantations or to cultivators. There is a note in the notification which says that when sale of any fertiliser is made in quantities not exceeding 5 kilograms at a time, the dealer may charge one paise per kilogram in addition to the proportionate maximum price specified in the schedule. By notification No. 254, dated 1st June 1974, the Central Government refixed the maximum prices of fertilisers in supersession of the earlier notification dated 11th October 1973. A perusal of both the notifications would show that by notification dated 1st June 1974 the maximum prices of various kinds of fertilisers were considerably increased. The price of Urea which is the main fertiliser in which the petitioner dealt was increased from Rs. 1050-00 per tonne to Rs. 2000-00 per tonne.

It appears that the view taken by the Directorate of Agriculture, Madhya Pradesh, was that the maximum prices fixed by the notification of the Central Government dated 1st June 1974 were not applicable to the stock that was in existence with the dealers on that date and some instructions to that effect were issued by the Director on or about 11th June 1974. These instructions were later on withdrawn by letter dated 18th June 1974 issued by the Director and it was clarified that the revised maximum prices would also be applicable to the stock existing on the date of the revision of the prices. The State Government, however, took a different view of the matter. A wireless message was issued communicating the decision of the State Government dated 27th June 1974 that the stock of fertiliser as on 31st May 1974 could be sold only at the old rates. The Deputy Director of Agriculture communicated this decision to the petitioner by his letter dated 28th June 1975. The petitioner then filed this petition praying for quashing of the order of the State Government dated 27th June 1974 and the direction of the Deputy Director of Agriculture contained in letter dated 28th June 1974 that the old stork of fertiliser should be sold at the rate prevailing on 31st May 1974.

After this petition was filed, the State Government on 23rd July 1974 issued the Madhya Pradesh Fertiliser (Prices Control) Order, 1974 in exercise of its powers under Rule 114 of the Defence of India Rules, 1971. Clause 3 (1) of the Order provides that no registered dealer shall charge or retain or enter into or enforce any contract for charging, in respect of any fertiliser sold to any person on or after the date of issue of this Order, from out of any stock carried over by him from 31st May 1974 at a price exceeding the maximum price fixed under Clause 3 of the Fertiliser /Control) Order, 1957, as it prevailed on 31st May 1974. The effect of this Order was that from 23rd July 1974 the petitioner was obliged to sell the stock of fertilisers existing on 31st May 1974 at the maximum price prevailing on that date and he could not take the benefit of the revised maximum prices which were notified by the Central Government on 1st June 1974 in respect of the old stock. The petitioner then amended the petition and as mentioned earlier now challenges the validity and effective ness of Clause 3 (1) of the said order.

The Defence of India Act, 1971 which came into force on 4th December 1971, was an Act to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith. The preamble of the Act reads as follows.

"Whereas the President has declared by Proclamation under Clause (1) of Article 352 of the Constitution, that a grave emergency exists whereby the security of India is threatened by external aggression;

And whereas it is necessary to provide for special measures to ensure the public safety and interest, the defence of India and civil defence, and for the trial of certain offences and for matters connected therewith;

Be it, therefore, enacted by Parliament in the Twenty-second Year of the Republic of India as follows :--"

The Act was to remain in force during the period of operation of the Proclamation of Emergency and for a period of six months thereafter.

The proclamation of emergency was withdrawn on 22nd March 1977 and the Act expired six months thereafter. We have here omitted to refer to the proclamation of internal emergency and consequent amendment of the Act by Act 32 of 1975 for here we are not concerned with that.

Section 3(1) of the Act provides that the Central Government may by notification in the official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community. Section 37 of the Act provides that the provisions of this Act or any rule made thereunder or any order made under any Such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. The Central Government in exercise of its powers u/s 3 of the Act made the Defence of India Rules, 1971.

Rule 114 (2) of these rules provides that if the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt practice or abuse of authority in respect of any matter. Rule 114 (3) enumerates certain matters on which orders may be made by the Central Government or the State Government without prejudice to the generality of the powers conferred by Rule 114 (2).

One of the matters enumerated in Clause (h) of Rule 114 (3) is "controlling the price or rates at which articles of things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such prices or rates." It is in exercise of the power conferred by Rule 114 (2) and Rule 114 (3) (h) that the State Government issued the Madhya Pradesh Fertiliser (Prices Control) Order, 1974 which is impugned by the petitioner.

By Article 246 of the Constitution, Parliament has been conferred power to make laws in respect of any of the matters enumerated in List I and List III in the Seventh Schedule. The State Legislature has exclusive power to make laws in respect of any matter in List II. It can also make laws is respect of matters enumerated in List III subject to Article 254 of the Constitution. Although the Slate Legislature has exclusive power to make laws in respect of the matters enumerated in List II, when Proclamation of Emergency is in operation, Parliament has also power to make laws with respect to any of the matters in that List. This is specifically provided in Article 250 of the Constitution. It is further provided in Article 353(b) that while a Proclamation of Emergency is in operation, the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilisation form the subject matter enumerated in Item 1 of List I. Trade and commerce in, and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest are matters falling within Item 33 of List III. Price control is a matter falling under Item 34 of List III.

The first contention raised by the learned counsel for the petitioner is that the M. P. Fertiliser (Prices Control) Order. 1974 issued on 23rd July 1974 cannot prevail over the notification dated 1st June 1974 issued by the Central Government fixing the maximum prices of fertilisers under Clause 3 of the Fertiliser (Control) Order, 1957. We have already stated that the Fertiliser (Control) Order, 1937 under which the Central Government issued the notification dated 1st June 1974 is an order issued u/s 3 of the Essential Commodities Act. We have also stated that the Fertiliser (Prices Control) Order, 1974 was issued by the State Government under Rule 114 of the Defence of India Rules, 1971 which were made under the Defence of India Act, 1971. We have further stated that Section 6 of the Essential Commodities Act provides that any order made u/s 3 of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act of any instrument having effect by virtue of any enactment other man this Act. There is a similar provision contained in Section 37 of the Defence of India Act which also we have noticed and which provides that the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. The maximum prices fixed by the Central Government''s notification of 1st June 1974 make no distinction between old and new stock of fertilisers.

The State Government''s order dated 23rd July 1974 in effect makes the notification of the Central Government inapplicable to the stock existing on the date of the notification and the sale of this stock is governed by the maximum prices prevailing before the notification. Thus, there is apparent conflict to this extent between the notification issued by the Central Government fixing the prices of fertilisers and the order issued by the State Government on the same matter. The order of the Central Government gains validity u/s 3 of the Essential Commodities Act read with the Fertiliser (Control) Order issued under it. The order of the State Government, on the other hand, becomes effective in law u/s 3 of the Defence of India Act read with Rule 114 made thereunder. Section 3 of the Essential Commodities Act empowers issuance of orders for controlling the price at which the essential commodity may be bought or sold. Similarly. Section 3 of the Defence of India Act empowers the making of rules for maintaining supplies and service essential to the life of the Community. The answer to the question whether the order issued by the State Government fixing the prices of fertilisers can or cannot prevail over the notification issued by the Central Government in the same matter will depend upon the question whether the provisions of the Defence of India Act and the rules made thereunder will or will not prevail over similar provisions contained in the Essential Commodities Act in case of conflict. Now, the Defence of India Act is an Act which was enacted after the Proclamation of Emergency by the President under Article 352 of the Constitution, to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith. The Essential Commodities Act, on the other hand, is a peace time legislation.

The Act may have its origin in the circumstances emerging after the Second World War but it is now a permanent Act and deals with measures which have to be adopted in normal times for regulating trade and commerce in and prices of essential commodities. It is true that by amendment made by Act 35 of 1967 orders u/s 3 of the Essential Commodities Act can also be made for securing any essential commodity for the defence of India or the efficient conduct of military operations, yet the Act cannot be called an emergency legislation of the same nature as the Defence of India Act, 1971 which is a special legislation designed for the period the proclamation of emergency is in force and for six months thereafter. As the Defence of India Act is a special Act, it will prevail over the provisions of the Essential Commodities Act which is a general Act in case of inconsistency. There is yet another reason why the provisions of the Defence of India Act must prevail over the Essential Commodities Act. This reason is that the Defence of India Act is a later Act and it is well settled that the provisions of a later Act prevail over the provisions of an earlier Act in case of inconsistency or repugnancy. Similar would be the result when inconsistency or repugnancy arises between orders issued under these Acts. The view taken by us is amply supported by the decision of the Supreme Court in Kumaon Motor Owners'' Union Ltd. and Another Vs. The State of Uttar Pradesh, . In this case, an order was issued under Rule 131 of the Defence of India Rules, 1962 which directed that with effect from October 1, 1964 "no private operators shall ply any vehicle or class of vehicles for the carriage of persons or goods on, and no vehicle or class of vehicles operated by the private operators shall pass through, Tanakpur-Dharchula a route of Kumaon region."

The question before the Supreme Court was whether, in view of Section 68-B of the Motor Vehicles Act, 1939, the order issued under the Defence of India Rules could be effective. Section 68-B occurs in Chapter IV-A of the Motor Vehicles Act which deals with schemes of nationalisation. Section 68-B provides that the provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV or in any other law for the time being in force or in any instrument having effect by virtue of any such law. Section 43 of the Defence of India Act, 1962 contained a section similar to Section 37 of the Defence of India Act, 1971. The Supreme Court having regard to these provisions held that the order issued under Rule

131 of the Defence of India Rules, 1962 was effective and operative because the Defence of India Act was an emergency legislation and, therefore, its provisions prevailed over the Motor Vehicles Act which was a general law in respect of motor vehicles. It was also observed that Section 43 of the Defence of India Act 1962 prevailed over Section 68-B of the Motor Vehicles Act because it was contained in a later Act and also because it was more emphatic in terms. The reasoning of the Supreme Court in this decision fully applies to the case before us. For these very reasons, orders passed under the rules made u/s 3 of the Defence of India Act, 1971 would prevail over the orders or notifications issued u/s 3 of the Essential Commodities Act.

In Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, the Supreme Court again dealt with two enactments operating in the same field and each containing a non obstante Clause stating that its provisions will have effect "notwithstanding anything inconsistent therewith contained in any other law for the time being in force." The ratio of the decision of the Supreme Court is that the conflict in such cases is resolved on consideration of purpose and policy underlying the enactments and the language used in them. It was also pointed out that another test that is applied is that the later enactment prevails over the earlier one. As earlier stated by us the object of the Defence of India Act is to enact a law which remains in force during the period of the emergency and six months thereafter to provide for special measures to be taken to tide over the situation created by the emergency. The Essential Commodities Act deals with measures which are to be taken in normal times. Having regard to the objects of the two Acts, the provisions in the Defence of India Act would prevail over the provisions of the Essential Commodities Act. Section 37 of the Defence of India Act for this reason will have effect over Section 6 of the Essential Commodities Act as also for the reason that the former is contained in a later Act.

Same argument was also addressed on the point that the Central Government''s order could not be curtailed in its operation by the State Government and that if there is any inconsistency, the order of the Central Government must prevail. In our opinion, there is no merit absolutely in this argument. This is not a case where Article 254 of the Constitution has any application. The notification of the Central Government and the order of the State Government derive their authority from two different Acts which have both been passed by Parliament. It is not a case where there is any competition between a law made by Parliament and a law made by the State Legislature. In such a situation, it cannot be held that the State Government''s order cannot prevail over the order of the Central Government if the Act under which the order of the State Government has been made on a proper construction in case of conflict prevails over the Act under which Central Government acted. The learned counsel for the petitioner relied upon an unreported Judgment of a Division Bench of the Rajasthan High Court in Letters Patent Appeals decided on 22nd December 1978. The Division Bench overruled the judgment of a learned single Judge. The judgment of the Division Bench does support the submissions made by the learned counsel for the petitioner but for the reasons given above and with great respect we are unable to agree with it. In our opinion, the judgment of the learned single Judge which was overruled by the Division Bench had taken a correct view and we respectfully agree with it.

The second contention raised by the learned counsel for the petitioner is that fertiliser has not been declared to be an essential commodity under the Defence of India Rules and, therefore, it was not open to the State Government to fix the price of fertilisers in exercise of its powers under Rule 114. A reference in this connection was made to Rule 36 (3) which defines "essential commodity" to mean food, water, fuel, light, power or any other thing essential for the existence of the community which is notified in this be half by the Government. In the absence of any notification, fertiliser cannot be called an essential commodity within Rule 36 (3). The power, however, to issue an order under Rule 114 is not restricted to fixing the fair price of an essential commodity alone. The power conferred by Rule 114 (2) is very wide in terms. It empowers the State Government to make an order providing for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt practice or abuse of authority in respect of any such matter, if it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices. Rule 114 (3) (b) further empowers the State Government to issue an order controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such prices or rates. Now a reading of these provisions goes to show that the power of the State Government is not restricted to controlling the price of commodities essential to the life of the community.

An order under this rule can be issued for securing the equitable distribution and availability of any article or thing at a fair price and for controlling the prices or rates at which articles or things of any description may be sold or hired. Even assuming that the article the price of which is controlled must have a nexus with maintenance or increase of supplies and services essential to the life of the community, that nexus is not wanting in this case. It is not disputed that foodgrains come within the description of essential commodity. The equitable distribution and availability of fertilisers at a fair price is conducive to the increase of supplies of this essential commodity. This nexus, in our opinion, is not remote or indirect as contended by the learned counsel. The nexus is a direct one and, in our opinion, the State Government had the requisite power under Rule 114 to issue the impugned order. The learned counsel for the petitioner relied upon a decision of the Allahabad High Court in Hari Cold Storage and Gen. Mills Co. Pvt. Ltd. and Others Vs. State of U.P. and Another, . In this case, the State Government issued an order regulating the running of cold storage business by issuing licences and by obliging the cold storage owners not to levy hire charges for storage of agricultural produce at a rate higher than that specified in the order. The order was issued under Rule 114. The Allahabad High Court held that the order went beyond the power conferred on the State Government by the said rule. Regulation of cold storage business is entirely different from regulation of prices of fertilisers the availability of which at fair prices is directly connected with increase in the supply of foodgrains. The Allahabad case has no application here.

It was next contended by the learned counsel for the petitioner that the impugned order violates Article 14 of the Constitution. The contention is that the order makes a distinction between the stock existing on 31st May 1974 and the stock secured after that date. In our opinion, this is a reasonable classification. As earlier pointed out by us, the prices of fertilisers were suddenly doubled by the notification of the Central Government issued on 1st June 1974. The stock existing before that date was purchased by the petitioner with reference to the then prevailing price. There is no equitable ground whatsoever to permit the petitioner or persons similarly situated to make extensive profit in respect of this stock because of the increase in rates from 1st June 1974. The stock acquired on and after 1st June 1974 would be acquired by a dealer with reference to the increased prices and maximum selling prices fixed from 1st June 1974 should reasonably apply only to the stock acquired on and after that date. It is this classification which has been made by the impugned order. In our opinion, the classification being reasonable, there is no violation of Article 14. It was also contended that the impugned order is discriminatory as co-operative societies are not bound by the said order. This argument proceeds upon a misapprehension. There is no exemption given to co-operative societies under the impugned order. If by any executive instruction such an exemption is granted to co-operative societies that would be invalid and that will not make the order in any way defective.

It was lastly contended that Clause 3 of the impugned order is bad because if does not itself fix any maximum prices but only adopts the maximum prices fixed by the Central Government earlier to the notification dated 1st June 1974 which prevailed up to 31st May 1974. The argument is that the price fixation is with reference to a dead order which cannot be made effective. This argument also, in our opinion, proceeds upon a complete misapprehension. The maximum prire prevailing on 31st May 1974 is the price adopted by Clause 3 of the impugned order. The maximum price prevailing on 31st May 1974 may nave been fixed by an order which is now no longer in force. Yet, the effect of Clause 3 is to incorporate it by reference in it. In our opinion, there is no invalidity in Clause 3 of the impugned Order on this ground.

Before parting with the case, we will like to mate it clear that the impugned Order of the State Government applies to sales made on and after 23rd July 1974 and that before that date the Central Government''s order dated 1st June

1974 had operation even or the stock of fertilisers existing on 31st May 1974. This position was not disputed by the learned Government Advocate.

The petition fills and is dismissed There shall, however be no order as to costs. The security amount be refunded to the petitioner.

