

(1997) 05 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 9291 of 1994

Agriculture Produce Market Committee	APPELLANT
Vs	
Cantonment Board, Danapur and Another	RESPONDENT

Date of Decision : 23-05-1997

Acts Referred:

Constitution of India, 1950 — Article 24, 246, 246(1), 246(3)

Citation : (1997) 05 PAT CK 0014

Hon'ble Judges : Nagendra Raj, J

Bench : Single Bench

Advocate : Ashok Kumar Keshari, for the Appellant; S.K. Agrawal, Binay Kumar and Amrendra Kumar Patnaik, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—With the consent of the parties this application is being disposed of at the stage of admission itself. The petitioner, Agriculture Produce Market Committee, Danapur, has filed the present application for quashing the order of the Executive Officer, Cantonment Board, Danapur restraining the petitioner from collecting the market fee under the provisions of the Bihar Agricultural Produce Markets Act (hereinafter referred to as the Market Act) from the Danapur Cantonment area on the ground that the administration and management of the Cantonment Board is controlled by the provisions of the Cantonment Act, 1924 and the Market Act is not applicable to the Cantonment area and for restraining the Cantonment Board from interfering with the collection of the market fee from the areas falling under the Danapur Cantonment and further restraining them from interfering with the function of the market committee constituted under the Market Act.

2. According to the petitioner a notification u/s 4 of the Market Act has been issued declaring the entire Danapur Sub-division as market area under the Market Act and Danapur Cantonment Board has also been included within the market area. On 4th December, 1990 vide Gazette Notification No. 14916 the

Principle Market Yard and Sub-Market Yard has been declared under the provisions of the Markets Act. A copy of the said notification has been annexed as Annexure-1 to the writ application. The market committee has also been constituted under the provisions of the Markets Act and in view of the provisions of the Markets Act the Committee is entitled to collect market fee with regard to agricultural produce bought or sold in the market area.

3. The Executive Officer of the Danapur Cantonment Board vide letter dated 2.4.1993, a copy of which has been annexed as Annexure-2 to the application, assured the market committee for the collection of the market fee as per the provisions and the rules of the Market Act. Several dealers carrying on their business within the area of Cantonment Board also applied for the licence to the petitioner's Market Committee and the licenses were granted to them till 1982-83 but thereafter they did not renew their respective licenses and stopped paying Market fee and on 18.3.94 the Executive Officer of the Danapur Cantonment Board wrote a letter to the Secretary of the Market Committee, a copy of which has been annexed as Annexure-3 to the application, informing that the Market Committee has no power to realise the market fee within the area falling under the Cantonment Board.

4. According to the petitioner, the Cantonment Board falls within the market area and the Principal Market Yard and Sub-Market Yard has been established and the committee has been constituted and as such with regard to any agricultural produce mentioned in the schedule of the Act and bought or sold in the market area, the Committee is entitled to levy market fee. As the Cantonment Board falls within the market area any person carrying on business in agricultural produce, in the market area has to obtain a licence under rule 98 of the Bihar Agricultural Produce Markets Rules, 1975 (hereinafter referred to as the rules) and the market committee is entitled to levy and collect market fee on agricultural produce bought or sold in the market area. Thus, the authority of the Cantonment Board is not justified in restraining the market committee from realising the market fee from the persons carrying on business within the market area.

5. The stand of the respondent Cantonment Board is that the Cantonment Board has been constituted under the Cantonment Act, which is Central Government Act. The Cantonment Act is covered by Entry No. 3 of Union List (List I of the seventh Schedule) and with regard to the area falling under the jurisdiction of the Board the Markets Act has no application. The entire control and management including the establishment of markets within the Cantonment area is governed by Cantonment Act, the relevant rules and the notification.

6. In exercise of power u/s 60 of the Cantonment Act, the Cantonment Board Danapur with previous sanction of the Central Government has imposed taxes on trade and profession within the limits of the Danapur Cantonment Act. A copy of the said notification giving the details of the taxes on the different trader and professions has been annexed as Annexure- E to the affidavit. It is asserted that

the Cantonment Board has built up market area, tin sheds and shops for trading purpose at several places within its area and it is providing all types of facilities to the public within the said area and no arrangement has been made by the State Government for trading business in the Cantonment areas. Bye-laws have been also framed u/s 282 of the Cantonment Act regulating the prohibition/occupation of any street or any other places by itinerant vendors and fee has also been prescribed for such use or occupation in the Danapur Cantonment vide Annexure-A to the counter affidavit. Thus as the market for trading and business purposes with regard to agricultural produce has been provided by the Cantonment Board and all the facilities are provided by it and management and administration of markets falling within the Cantonment areas is governed by the provisions of the Cantonment Act the provision of the Market Act is not applicable to the Cantonment area.

7. The only question falls for consideration is as to whether the provision of the Markets Act is applicable to the Cantonment area governed by the Cantonment Board or not.

8. The Parliament has exclusive power to make laws with regard to List I (Union List) of seventh Schedule. The State Legislature has power to make law with regard to the matters enumerated in List II (State List) of the said Schedule. The Parliament and the State Legislature both have power to make laws with regard to matter enumerated in concurrent list of the said schedule. Entry No. 3 of the Union List gives exclusive power to the Parliament to make law with regard to the cantonment area. It authorises to make law with regard to delimitation of cantonment area local self government in such areas, constitution and power of cantonment authority, regulation of house accommodation including control of rents. The Cantonment Act falls within the said entry. Preamble of the Act says that it is an Act which has been enacted to consolidate and amend the law relating to administration of Cantonments. There is provision under the Cantonment Act for constitution of the Cantonment Board to manage the affairs of the Cantonment Board. Chapter-V empowers the Cantonment Board to impose tax. Section 60 empowers the Cantonment Board with previous sanction of the State Government to impose tax, which under any enactment for the time being in force, may be imposed in any municipality in the State where the cantonment is situated. Chapter VI deals with cantonment fund and property and section 109 under the said chapter speaks about application of cantonment fund and property. Chapter XI contains provisions with regard to control over buildings, streets, boundaries, trees, etc. Chapter XII contains provisions regarding markets, slaughter house, trades and occupations. Section 282 empowers the Board to make bye-laws.

9. In exercise of power u/s 60 of the Cantonment Act, the Danapur Cantonment Board has imposed taxes on several commodities as Trades and professions Taxes at the rate specified therein which has been annexed as Annexure-E to the counter affidavit.

10. Sub-section (13) of section 282 of the Cantonment Act provides for making of bye-laws by the Cantonment Board with regard to the permission, regulation or prohibition of the use of occupation of any street or place by itinerant vendors or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall, and the fee chargeable for such use or occupation. In exercise of the said power the notification has been issued by the Danapur Cantonment Board prescribing fee for different trades and professions, a copy of the said notification has been annexed as Annexure-A to the counter affidavit.

11. The conspectus of the provisions of the Cantonment Act shows that it has been enacted for establishment and administration of the cantonments. It can impose tax only with regard to those matters of which the Municipality of the State where the cantonment is situated is empowered to levy taxes and it has power to collect fee only for the purpose as mentioned above.

12. The Market Act falls under Entry No. 28 of list II (State List) of seventh Schedule of the Constitution of India. In exercise of the said power the Market Act has been enacted by the State Legislature. Preamble of the Act says that the Act has been enacted to provide better regulations of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for the matter connected therewith.

13. The agricultural produce has been defined under Clause 2(1) (a) of the Market Act which includes all the agricultural produce as mentioned in the Schedule appended to the Act. Section 3 of the Markets Act empowers the State Government to issue notification declaring its intention of regulating the purchase, sale, storage and processing of such agricultural produce and in such area, as may be specified in the notification notwithstanding anything to the contrary contained in any other Act for the time being in force. Section 4 empowers the State Government to declare market area after disposal of objections, if any, and once the market area is declared u/s 4 no Municipality or any other local authority or any other persons, notwithstanding anything contained in any law for the time being in force, shall within the market area, or within a distance thereof to be notified in the official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provision of this Act, the rules and bye-laws. Section 5 empowers the State Government to declare the Principal Market Yard and Sub-Market Yard. Section 15 provides that except the retail sale or the sale for the purposes of personal consumption no person shall store or sale agricultural produce at any other place except at the Principal Market Yard or Sub-Market Yard. There is provision for constitution of Market Committee and Section 27 of the Market Act empowers the Market Committee to levy fee on the sale and purchase of agricultural produce. Rule 82 of the Markets Rules says that the market fee is to be collected from the buyer. Rule 98 provides that no person

shall carry on business as trader in agricultural produce in the market area except under the licence granted by market committee. There is provision under the Act for market committee fund, the assessment of market fee, establishment of agricultural board and provision for Board funds. There is also provision for rendering the services to the concerned beneficiaries in lieu of the fee collected. Thus, the elaborate provision has been made under Act to protect the interest of the Agriculturists by establishing markets and regulating the buying and selling of the agricultural produce in the said Markets and providing services in such markets. The Act regulates only buying and selling of agricultural produce and its purpose is to keep out the middle man so that the agriculturists may not suffer.

14. According to the respondents as there is an elaborate provision for establishment of market and realisation of the fee from the traders, the Markets Act is held to be ultra-vires or non-applicable so far as the area falling under the Cantonment Board is concerned. In other words the Market Act to the extent of its applicability to the areas falling within the Cantonment areas is to be held ultra-vires or invalid. The Constitution provides for federal supremacy and if there is conflict between the legislation made by the Parliament and the State the law made by the Parliament shall prevail.

15. It is well settled by catena of decisions of the apex Court that in case where there is conflict or overlapping between the two legislations one by State and the other by the Parliament the law made by the Union shall prevail on the ground of federal supremacy. However, in such a situation the question has to be resolved by applying the doctrine of pith and substance.

16. In the case of Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, it was observed as follows;

In determining whether an enactment is a legislation with respect to a given power, what is relevant is not the consequences of the enactment on the subject matter or whether it affects it, but whether, in its pith and substance, it is a law upon the subject matter in question. The Central and the State Legislations operate on two different and distinct fields. The Central Rules, to some extent, trench upon the field reserved to the State Legislature, but that is merely incidental to the main purpose, that is, to levy duties of excise on medicinal and toilet preparations containing alcohol. Similarly, some of the impugned provisions may be almost similar to some of the provisions of the Central Rules, but that does not imply that the State Legislature had no competence to enact the provisions.

In the case of Hoechst Pharmaceuticals Ltd. vs. State of Bihar, (1983) 4 S.C.C.45 it was held as follows:

The words notwithstanding anything contained in clauses (2) and (3) in Article 246(1) and the words subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List I shall prevail

over the State power as enumerated in Lists II and III, and in case of overlapping between Lists II and III, the former shall prevail. But the principle of federal supremacy laid down in Article 24 of the Constitution cannot be restored to unless there is an "irreconcilable" conflict between the entries in the Union and State Lists. In the case of a seeming conflict between the entries in the two Lists, the entries should be read together without giving a narrow and restricted sense to either of them. Secondly an attempt should be made to see whether the entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be achieved by giving to the language of the Union Legislature List a meaning which is if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State Legislative list a meaning which it can properly bear. The non-obstante clause in Article 246(1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two lists will arise if the impugned legislation, by the application of the doctrine of pith and substance appears to fall exclusively under one list, and the encroachment upon another list is only incidental.

It may be added as a corollary of the pith and substance rule that once it is found that in pith and substance an impugned Act is a law on a permitted field, any incidental encroachment on a forbidden field does not affect the competence of the legislature to enact that Act.

It is well settled that the validity of an Act is not affected if it incidentally trenches upon matter outside the authorized field and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the legislature which enacted it, then it cannot be held to be invalid merely because it incidentally encroaches on matters which have been assigned to another Legislature.

It is equally well settled that the various entries in the three Lists are not powers of Legislation, but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution.

Recently in the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., it was held as follows:

It has been repeatedly pointed out by this Court and the Federal Court (dealing with a similar distribution) of legislative powers among the Centre and the provinces under the Government of India Act, 1935) that the several entries in the three lists in the Seventh Schedule are mere legislative heads and that it is quite likely that very often they overlap. Wherever such a situation arises, it is held, the issue must be solved by applying the rule of pith and substance. As explained by T.L. Venkatarama Ayyar, J in A.S. Krishna vs. State of Madras: 1957 S.C. 297.

It must be remembered that we are construing a federal Constitution. It is of the

essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British, North America Act, 1867, which established a federal Constitution for Canada, enumerated in Sections 91 and 92 the topics on which the Dominion and the provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the Constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matter beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment.

17. Thus, it has to be considered as to whether there is any conflict between the Cantonment Act and the Markets Act.

18. The provision of both the Acts mentioned above clearly show that both the Acts operate in different fields and the Cantonment Act has been enacted to manage the affairs of the Cantonment Board and the Cantonment Board has power to levy taxes and do other ancillary activities in connection with the management and administration of the Cantonment Board. The notifications which have been annexed as Annexure-A & E show that the Cantonment Board has power to levy tax as leviable by Municipality where the Board is situated and the power to levy fees with regard to use and occupation of street or place by traders. There is no provision providing for levy of fee with regard to sale and purchase of agricultural produce or for establishment of market area and the matter connected therewith.

19. The validity of the market has been challenged times without number in this Court and this Court has held it is a valid piece of legislation and it has been enacted with a view to protect the agriculturist from the middle man and also to control the sale and purchase of agricultural produce in a better manner and to render service in lieu of the fee collected.

20. The Markets Act deals with different matter and in no way it is in conflict with the provision of the Cantonment Act. Once the market area has been declared

the Committee has power to realise fee with regard to the agricultural produce bought or sold in the market area and the traders have to obtain licence under the Act. Two Acts are not in conflict. Even though there is provision for establishment of the market etc. in the Cantonment Act but that is ancillary matter in the sense that it has to be established for the purpose of administration and management of the Cantonment area. Even if it is assumed that some of the provisions of the Markets Act encroach upon the provisions of the Cantonment Board that is only incidental and on that ground it cannot be said that the Act has no application to the area falling under the Cantonment Board.

21. In my concluded opinion if an area falling under the Cantonment Board is included in the market area by issuance of notification u/s 4 of the Act the provision of the Act will apply notwithstanding the provision of the Cantonment Act. As in the present case Market Yard has been established long back and committee has also been constituted, any person carrying on business as trader in Agriculture Produce in the market area has to obtain licence and the market committee is competent to realise market fee on agricultural produce bought and sold in the market area. However, it is to be clarified that market committee has to render services in lieu of fees. The area falling under the Cantonment Board has been declared as market area in 1970 and the Board did not raise any objection and on the other hand assisted the Market Committee in collection of fees. This apart, from supplementary affidavit filed on behalf of the petitioner it appears that market fee is being realised from the traders carrying business in notified agriculture produce in Ramgarh Cantonment area falling within the Hazaribagh Market area. At this stage objection raised by the respondents is wholly unjustified. Accordingly, the direction contained in Annexure-3 restraining the petitioner (Agricultural Produce Market Committee, Danapur) from realising the market fee in the Cantonment area is illegal and hereby quashed. The respondents are restrained from interfering with the functioning of the petitioner in terms of the provisions of the Market Act. In the result, the application is allowed.