

(1966) 04 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2572 of 1964 connected with Civil Miscellaneous Writ Nos. 1793 and 2573 of 1964

Bailey Singh

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 26-04-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Dangerous Drugs Act, 1930 — Section 5
Opium Act, 1878 — Section 7, 8

Citation : (1966) 04 AHC CK 0014

Hon'ble Judges : W.BROOME, J and SATISH CHANDRA, J

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This and the two companion petitions under Art. 226 of the Constitution challenge the constitutional vires of the Opium Act (Act XIII of 1857) whereunder the respondents have completely banned the cultivation of poppy in pargana Jaunsar Bawar in the district of Dehradun.

2. The petitioners state that they are the residents of pargana Jaunsar Bawar, Tehsil Chakrata, district Dehra Dun and carry on the occupation of agricultural cultivation in small hilly fields. From times immemorial the petitioners and their ancestors have been cultivating poppy for purposes of using its seed as staple food. It is alleged that poppy is used for preparing Chapati, Dal and even Chatni. Before 1950 there was absolutely no restriction upon the cultivation of poppy for purposes of extraction of opium or for seeds. With the enactment to the Opium and Revenue

Laws (Extension of Application) Act, 1950, the Opium Act, 1857 was extended to the Pargana of Jaunsar Bawar. Section 8 of the Opium Act provides for the issue of licences to cultivators who may choose to engage in cultivating poppy. The petitioners allege that even after the Opium Act became applicable, the inhabitants of the Pargana Jaunsar Bawar continued to cultivate poppy without

any let or hindrance and without the issue of any licence. In 1958 the Union Government attempted to stop the cultivation of poppy, but as a result of representations made by the residents of pargana Jaunsar Bawar the Government did not enforce the provisions of the Opium Act in the pargana of Jaunsar Bawar. The residents continued to cultivate poppy without taking licences, yet no penal action was taken by the authorities. It is averred that in fact the authorities have not issued any licence to any person since 1958. In October 1963 the petitioners sowed poppy seeds as usual. In the month of March when the snow melts the poppy seeds start sprouting and the poppy plants start growing gradually. In or about the month of March, 1964 a large number of excise staff appeared in the pargana of Jaunsar Bawar. They threatened to destroy the poppy plants that had started growing by immediate uprooting of the standing crop. They also threatened the petitioners with prosecution. It is stated that in his locality poppy is the crop which can conveniently be grown and no other crop grows there easily. The petitioners grievance is that the authorities acted arbitrarily in completely banning the cultivation of poppy and that the provisions of the Opium Act violate the fundamental right guaranteed to the petitioners by Arts. 14 and 19 of the Constitution. The petitioners pray that the respondents be directed not to interfere with their right of cultivation of poppy and also be directed to issue licences to the petitioners under the provisions of the Opium Act.

3. In answer the UnderSecretary in the Ministry of Finance (Department of Revenue and Company Law), Government of India, has filed an affidavit. The case taken by the Union of India has been more or less supported by the State Government in another counteraffidavit filed by its UnderSecretary. They have denied the various averments of the petitioners. It is stated that poppy seeds are not used by the residents of Jaunsar Bawar as a staple food. It is only used as a subsidiary spicy item. Out of 35 khatahs in the whole of Jaunsar Bawar Pargana only 14 khatahs cultivated poppy, which shows that it is not considered an essential item of their diet by the residents of this Pargana.

4. Prior to the enforcement of the Constitution of India Jaunsar Bawar pargana was a scheduled area to which the provisions of the Opium Act, 1857 and Dangerous Drugs Act, 1930 were not applicable. With the promulgation of the Opium and Revenue Laws (Extension of Application) Act, 1950, the provisions of the Dangerous Drugs Acts and the Opium Act became applicable to this Pargana with effect from 18th April, 1950. Originally this Pargana was not included as an area within which licences for cultivation of poppy might be granted, but on account of the representations made by the residents of this Pargana and the recommendations of the State of Uttar Pradesh, the Union Government by its notification No. 2 Dangerous Drugs dated 3rd July, 1954 included this Pargana and authorised the State Government to grant licences for the cultivation of poppy for the production of poppyheads only under the Central Opium Rules, 1934. This was done with a view to gradually prohibit the cultivation of poppy in this pargana as recommended by the State of Uttar Pradesh after four years i.e.

from 30th September, 1957. The State Government gave extensive publicity to the decision of the Government that poppy cultivation would not be allowed after 30th September, 1967. Posters and leaflets were distributed and individual cultivators were contacted. On an enquiry conducted on the spot by an officer of the Narcotics Department in the month of April, 1958, it was found that illegal poppy cultivation has been done in Jaunsar Bawar area in the year 1957-58 in 302 acres by 1189 cultivators of 82 villages. At this stage the Government of Uttar Pradesh again made representations and requested the Union Government to postpone its decision to impose the total ban on the cultivation of poppy for another four years. Theoretically cultivation had been permitted for the production of seeds only, but it was found that actually opium was being illegally extracted and disposed of to the illicit traders. Taking this reality into consideration the Government felt that it would not be proper to affect legal sanction to the extraction of opium when the State Government was unable to prevent it. The Government decided to allow extraction of opium for a limited period of four years on condition that it would be reduced progressively by about 25 per cent every year so that by 30th September, 1962 it was completely eliminated. By another condition the cultivators were expected to deliver 3 seers of opium per bigha during 1958-59 season for being eligible for licensing during 1959-60, but the cultivators tendered only 0.80 seer per bigha as against the then All India average yield of 6.87 seers per bigha of opium. This fact showed that the cultivators did not tender full quantity of opium produced by them and instead kept a larger part of it for sale in the illicit market. The allegation that no licences for cultivation were issued was denied. It was stated that licences were issued, but for progressively reduced areas. In 1958-59 licences were issued for 113 hectares (1 hectare is equal to 2.471 acres) in 1959-60 for 40 hectares, in 1960-61 for 34 hectares and in 1961-62 for 17 hectares.

5. Though the decision to impose total ban with effect from 1st October, 1962 was given wide publicity, yet illicit cultivation of poppy was noticed. Only 17 hectares were

licensed during 1961-62, but actually poppy cultivation was reported in 25 hectares. The Opium Protocol of 1953 came into force with effect from 8th March, 1963, whereunder it became obligatory for the Union Government to control the cultivation of poppy totally. It, therefore, completely banned even the legal cultivation of poppy in Jaunsar Bawar pargana with effect from 1-10-1963.

6. The counteraffidavit states that it is not practicable to permit cultivation of poppy for the production of seeds alone. It states that each opium plant when grown bears two or three capsules which when incised at the proper time in the outer shell produce latex. After coagulation this latex becomes semisolid and is known as opium. When matured, the capsules produce seeds which though not a patent source of opium are not devoid of alkaloids. Opium can be manufactured in small quantity even from the stems of the poppy plant and the broken capsules from which seeds have been taken out. Thus in actual practice it is

difficult, if not impossible, to restrict the cultivation of poppy for purposes of seeds only. The only effective way to do so is to prohibit the cultivation of the poppy plant altogether, Jaunsar Bawar pargana consists of difficult hilly terrain. Poppy cultivation in this pargana is carried on in small holdings over scattered areas. In view of administrative difficulties it is extremely difficult to exercise proper supervision over poppy cultivation in this area. Under the provisions of law, cultivation of poppy is altogether illegal. On compassionate grounds the law has not been enforced strictly in this area, but nonetheless the petitioners in cultivating poppy committed illegal acts.

7. The action of the excise staff in uprooting poppy plants was with the authority of the law and justified on facts. The petitioners claim that poppy alone can conveniently be cultivated in this area is seriously disputed. It is urged that a large quantity of potatoes and paddy is being increasingly grown in this area. The petitioners claim that opium was being cultivated only for purposes of seed is also denied. It is averred in the counteraffidavit that fifteen seizures of illegal produce were made in 1962-63 and in 1963 alone seven seizures have been effected.

8. It is stated that by the consensus of world opinion consumption and use of opium for purposes other than medicinal and scientific, has been recognised as extremely injurious to mankind. With the passing of the Opium Act, 1857 the Government of India has been endeavouring to reduce the poppy cultivation in the country. In Bihar it was completely banned in the year 1910. In Uttar Pradesh the area under poppy cultivation has been drastically reduced. In 1910, 27 lac acres were cultivated whereas in 1944-45 the cultivation was reduced to 44,000 acres. The poppy cultivation was completely banned in several districts, for example, Moradabad, Ghazipur, Benaras, Ballia, Farrukhabad, Budaun, Gonda etc. At present poppy cultivation is restricted to about 12,000 acres of land confined to the districts of Bara Banki, Shahjahanpur, Bareilly, Faizabad, Basti, Gonda, Ghazipur and Azamgarh. The yield in these districts is very high and the areas are compact, to ensure proper regulation and control.

9. It is stated that there are nine International treaties on Narcotics formulated during the year 1909 to 1963 which have been ratified by the Government of India. These treaties permitted only a very few countries to produce opium, but strictly for medical and scientific purposes. India was one of the countries so permitted, it has been stressed in these treaties and protocols that effective administrative measure: must be adopted to control and supervise the cultivation of poppy. The fields should be concentrated in compact areas as far as possible. No production should be permitted in remote districts or where administrative control is not effectively possible. The policy of the Government of India has been governed by these international regulations. The licensing principles of the Government of India provide that licences for cultivation of poppy should be issued so as to confine cultivation to the traditional poppy growing tracts and compact areas, create conditions for better and effective control and eliminate

inefficient cultivators and unproductive tracts. Yield tendered by the traditional cultivators of opium and the quality of opium produced are treated as relevant considerations. On account of the hilly terrain of Jaunsar Bawar Pargana, the lack of proper communications and presence of small holdings over scattered areas, it was not possible to exercise effective control over the cultivation of poppy in Jaunsar Bawar pargana. Moreover the yield in this area was very low. It was because of these various reasons that the Government ultimately decided to completely ban the cultivation of poppy in this area. It is slated that this decision of the Government was taken after considering all relevant matters and was not an arbitrary action.

10. Before dealing with the contentions regarding the vires of the Opium Act, it may be useful to trace its legislative history. In the good old days opium was a considerable source of revenue to the Government. The Government enacted rules with a view to control the production of opium. Those rules were consolidated and enacted as Regulation XIII of 1816 by the Governor General in Council. By section III of that Regulation, the cultivation of poppy and manufacture of opium except on account of Government or with their sanction were prohibited. Elaborate rules for cultivation of poppy were laid down and an organisation was set up to control the cultivation. Infringement of the rules was made punishable as a criminal offence. These regulations ultimately were repealed by the Bengal Abkari Act (XXI of 1856), which in turn was replaced by the Opium Act I of 1878. The Opium Act I of

1878 defined opium as "including poppyheads also....." Thus cultivation of poppy heads also became subject to the laws relating to cultivation of opium. The definition of opium was again varied by the Dangerous Drugs Act II of 1930. Under this act Opium also meant the capsules of the poppy. The Dangerous Drugs Act was enacted, as its preamble shows, to give effect to the resolutions of the Second International Opium Conference convened by the League of Nations. Section 5 of the Act provides that "no one shall cultivate poppy or manufacture opium save in accordance with the conditions of any prescribed licence. It would thus appear that the legislature has for more than a century attempted to control the production of poppy as well as of opium and has provided deterrent punishment, for the infringement of the rules relating to it. It is also clear that under this provision the cultivation of poppy is not permissible at all except under a licence duly issued therefor.

11. The provisions of the Dangerous Drugs Act II of 1930 and the Opium Act I of 1878, are attacked as violating the petitioners fundamental right guaranteed under Article 19(1)(g) of the Constitution "to practice any profession or to carry on any occupation, trade or business". The petitioners case is that cultivation of poppy is one of the occupations which the petitioners have a right to carry on, and secondly they have also a right to carry on the trade of selling poppy seeds which are obtained by the cultivation of poppy. The manufacture of opium may be banned legitimately but since the prohibition of the cultivation of poppy has

the effect of prohibiting the cultivators from raising poppy seeds which they could use for their household needs, the prohibition was an unreasonable restriction and was not saved by clause (6) of Article 19 of the Constitution. It is further urged that reasonable restriction cannot mean total prohibition.

12. Theoretically it may be correct to urge that there is no difficulty in permitting the cultivation of poppy for the production of seeds only, but as has been seen earlier, opium can be manufactured from the broken shells of the capsules and the stems of the plant. Thus the objection to the manufacture of opium extends not only to the production of latex but also to stems of the plant and shells of the capsules. Thus in reality it would be wholly impossible to allow the cultivation of poppy but restrict or prohibit the manufacture of opium. It is for this reason that even the definition of opium includes the capsules of the poppy, and in order to effectively control the production of opium, it is essential that the cultivation of poppy itself has to be controlled.

13. The provisions of the Opium Act and the Dangerous Drugs Act were challenged before the Supreme Court in petitions Nos. 111, 148 and 162 of 1955 (SC), *Bahadur Singh v. Union of India*, D/ 1721956 by certain residents of Himachal Pradesh where also the cultivation of poppy was completely banned. The contention that reasonable restriction cannot mean total prohibition was repelled by the Supreme Court. The Supreme Court in this connection quoted with approval the following observations of Mahajan, C. J. in the case of *Cooverjee B. Bharucha v. Excise Commr., Ajmer*, 1954 SCR 873 at p. 879 : (AIR 1954 SC 220 at p 223) :

"It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community."

14. The Supreme Court thereafter dealt with the question whether on facts the prohibition of the cultivation of poppy was a reasonable restriction within the meaning of Cl. (6) of Art. 19 of the Constitution. The Supreme Court in the case of *Bahadur Singh*, Petns. Nos. 111, 148 and 162 of 1955, D/ 1721956 (SC) dealt with the question as follows :

"Regard being had to the nature of the occupation which has been prohibited by

the respondents in these cases, it is obvious that the State should have the power to prohibit the cultivation of the poppy so as to stop the production and the manufacture of opium and its derivatives which not only according to Indian opinion but also according to world conscience is "injurious to the health and the welfare of the public. It has already been noticed that the major portion of the opium produced in Himachal Pradesh is not delivered to Government in accordance with the requirements of the law, with the result that either the undelivered portion remains in the hands of the producers themselves or is placed into the hands of smugglers. In either case the State cannot stand by and let the people of that area indulge in the consumption of a medicinal drug which no one has claimed to be good except for medicinal or scientific purposes. Even the petitioners have not questioned the wisdom and the constitutionality of the legislation enforcing the prohibition of the manufacture of opium. What has been claimed as of right within the meaning of Art. 19 of the Constitution is the right to cultivate poppy seeds and to sell them. If it were feasible to permit the growing of poppy seeds without

there being any risk of illicit manufacture of opium or morphine, the argument may have been plausible. But it loses all force when it is remembered that the permission to grow poppy seeds carries with it the danger of that permission ipso facto lending itself to gross abuse of the provisions of the law impugned in these cases, by the cultivators themselves or with their active assistance by smugglers who may be interested to convey the opium and its derivatives beyond the frontiers of the country, thus causing not only loss of revenue to the State but also aggravation of evils of smuggling and illicit consumption of opium. The argument that the cultivation of the poppy might be permitted and the lacing of the capsules may be prohibited, has no substance in it because we know from the facts and figures contained in the affidavit sworn to on behalf of the respondents that the inhabitants of Himachal Pradesh have been in the habit of abusing their licence. They have not been in recent years surrendering all the opium produced by them and even the opium surrendered to Government as required by law is highly adulterated. It would thus appear that they are either in the habit of consuming the contraband portion of the opium themselves or of making money out of it by putting it in the hands of smugglers. In these circumstances, the State is fully justified in prohibiting the residents of Himachal Pradesh from cultivating the poppy and producing opium any more. When the petitioners insist upon their so called right of producing poppy seed one is reminded of the lines of the great poet "licence they mean, when they cry liberty".

15. These observations of the Supreme Court are apposite and conclusive in the present case. The facts disclosed in the affidavits are similar to those mentioned by the Supreme Court in Bahadur Singhs case, Petn. Nos. 111, 148 and 162 of 1955, D/ 1721956 (SC). The submission that the provisions of the Opium Act and the Dangerous Drugs Act violate Article 19 (1) (g) cannot, therefore, be sustained.

16. In the aforesaid case of Bahadur Singh, Petns. Nos. 111, 148 and 162 of 1955, D/ 1721956 (SC) the Supreme Court also repelled the argument based on Art. 14 of the Constitution. It was urged before the Supreme Court, as it has been urged before us, that in so far as the cultivation of poppy is being permitted in certain areas and same facilities are not permitted to the petitioners, the petitioners are being denied the equal protection of the laws and equality before the law guaranteed by Art. 14 of the Constitution. The submission was rejected by the Supreme Court, which held that it was settled law that in order to give effect to the policy of the Government clearly indicated in the statute in question, it is open to the executive authorities to make a geographical classification so as to apply the law to selected areas with a view ultimately to cover the whole territory for which the law was enacted". It is equally settled that a classification need not be scientifically perfect or logically complete and that a phased application of the laws on the basis of zonal, territorial or geographical classification does not exhibit any vice of discrimination; see *Sakhawant Ali v. State of Orissa*, AIR 1955 SC 166; *Kishan Singh v. State of Rajasthan*, AIR 1955 SC 795; *Purshottam Govindji Halai v. B. M. Desai*, AIR 1956 SC 20; *Ram Chandra Palai v. State of Orissa*. AIR 1956 SC 298; *Anant Prasad v. State of Andhra Pradesh*, AIR 1963 SC 853. *Gopal Narain v. State of U. P.*, 1964 All LJ 479; (AIR 1964 SC 370) and *Bhaiya Lal Shukla v. State of M. P.*, AIR 1962 SC 981.

This point also has no merit.

17. Learned counsel for the petitioners placed reliance upon the following observations of the Supreme Court in the case of Bahadur Singh mentioned above :

"In this connection it has been argued on behalf of the petitioners that it has been admitted in para 19 of the affidavit filed on behalf of the respondents that in certain areas of Tehri Garhwal and Dehra Dun districts in Uttar Pradesh, the cultivation of the poppy is permitted for purposes of seeds only and capsules are not allowed to be laced. It is further argued that what has been permitted in those areas could also be permitted in Himachal Pradesh. But this argument overlooks the further facts stated in the affidavit that traditionally the poppy is grown in Himachal Pradesh primarily for the extraction of opium, whereas the areas in Uttar Pradesh are traditionally not opium growing, and that the cultivation in those areas also is going to be slopped within a period of two years."

18. The petitioners cannot draw any support from these observations. They were based upon the contents of the affidavits filed in those cases. There are no such averments in the affidavits filed in the instant cases. The affidavits filed on behalf of the respondents have explained that it was on compassionate grounds and only for a temporary period that cultivation was allowed for the production of seeds only, but the experiment did not succeed as illicit opium was extracted. We have not been shown any averment in the petitioners affidavits that Jaunsar Bawar area is traditionally not opium growing. In any event, these observations

of the Supreme Court did not constitute the ratio of the decision. That Court was, in this passage merely repelling an incidental submission. These observations are not helpful to the petitioners in the instant case. The challenge on the provisions of the Opium Act and the Dangerous Drugs Act on the ground that they infringe the petitioners fundamental right cannot thus be sustained.

19. The petitions fail and are dismissed with costs.

Petitions dismissed.