
(1965) 04 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ No's. 1678 of 1964 and 96 of 1965

Bankidass Moolraj and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-04-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 246, 302
Essential Commodities Act, 1955 — Section 3(1), 3(2), 5

Citation : AIR 1966 Raj 105 : (1965) RLW 498

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : B.L. Purohit, for the Appellant; G.C. Kasliwal, Advocate-General and M.M. Vyas, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—We have before us two writ petitions under Article 226 of the Constitution which raise a common question of law and can, therefore, be conveniently disposed of together. The petitioners, who are grain dealers, seek to challenge the vires of the Rajasthan Gram and Barley (Regulation of Distribution) Order, 1964 here-in-after to be referred as the Control Order.

2. As the writ petitions do not raise any dispute on the facts we may only give the facts of Writ Petition No. 1678 of 1964. The petitioner is a partnership firm and carries on business of a wholesale grain dealer at Merta City and has a licence under and in accordance with the Rajasthan Food Grains Licensing Order, 1964. Some time in August 1964 the petitioner booked three wagons of gram to different destinations in the State of Madras. The Tahsildar, Merta City having come to know of these despatches checked the stock register, the existing stocks, and other books of the petitioner on or about 12-9-64 and as a result of the checking thought fit to seize the registers and books of account. The Tahsildar then lodged information about these consignments with the Station House Officer, Merta City requesting him to take legal steps against the petitioner

for the infringement of the Control Order as it amounted to an offence under the Essential Commodities Act, 1955 hereinafter to be referred as the Act. The Station House Officer then took up the investigations against the petitioner.

3. The petitioner contends that the Control Order being ultra vires of the powers of the State Government was null and void and he cannot be prosecuted for the breach thereof. In the first place it is pointed out that the Control Order purports to have been issued by the State Government in pursuance of the powers delegated to it by the Central Government by a Notification issued u/s 5 of the Act which was GSR/888, dated 28-6-61 and it is urged that this notification does not bear underneath it the name of the authority publishing it. Then it is urged that the notification does not authorise the State Government to issue any order under Sub-section (2) (g) of Section 3 of the Act which, according to him, is the relevant clause applicable to the subject-matter of the Control Order.

Resides the above contentions it was also urged that the Control Order affects the interstate trade by putting restrictions on it, and this the State Government could not have done. It is pointed out that the restrictions on interstate trade could not be imposed without making a proper law in accordance with Section 304 of the Constitution, after obtaining the previous sanction of the President. As regards the Act it is pointed out that the Parliament has passed it in exercise of its legislative power under Item 33 of the concurrent list and not under Item 42 of the Union List which deals with inter-state trade. Lastly it is contended that the Control Order results in discrimination between a State and a State and as such a Law cannot be passed without the Parliament declaring that there was scarcity in any area.

4. The Writ Petition has been opposed by the State of Rajasthan. Countering the submissions made in the writ petition it is submitted that the writ petition is premature as the matter was yet at the stage of investigation. Denying that the Control Order is ultra vires as asserted by the petitioners it is pointed out that it has been issued by the State Government in exercise of the power delegated to it by the Central Government under Clause (d) of Sub-section (2) of Section 3 of the Act. As regards the mode of authentication it is submitted that when the same officer has to authenticate more than one order to be published at the same time the signature is printed only at one place underneath the several orders. It is, therefore, urged that the notification GSR/888, dated 28-6-61 has been properly authenticated by the Deputy Secretary to the Government.

It is denied that the Control Order introduces any discrimination between a State and a State. It is further submitted that the Control Order has been designed to secure fair distribution of essential commodities like gram and barley in the State of Rajasthan and the restrictions imposed in the carrying on of trade in food grains are reasonable. It is denied by the State that the Act imposes restrictions on interstate trade as such but even if any restriction results indirectly in exercise of the legitimate powers by the State under the Act that is not violative of any provision of the Constitution. At the time of arguments the learned

counsel for the petitioner further contended that the Control Order was violative of Articles 14 and 19 of the Constitution as well.

5. Before we address ourselves to the several points argued before us we find it convenient to refer to the relevant statutory provisions which call for consideration. The Act is designed to provide, in the interest of the general public, for the control of the production, supply, and distribution of, and trade and commerce in certain commodities. Section 2 thereof defines what are essential commodities and it is not denied that food stuffs are included as essential commodities. Section 3 of the Act which defines the powers to control the production, supply and distribution of essential commodities runs, omitting the portions not applicable, as under:-- ,

"3 (2) (g). for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest....."

6. Section 4 permits the imposition of certain duties on State Governments, and may also be reproduced,

"4. Imposition of duties on State Governments, etc. An order made u/s 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

7. Section 5 permits the Central Government to delegate its power to make orders u/s 3 to designated authorities and runs as under:--

"5. Delegation of powers:--

The Central Government may, by notified order, direct that the power to make Orders u/s 3 shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction."

8. In exercise of its powers u/s 5 of the Act the Central Government issued GSR/888, dated 28-6-1961. The relevant portions of the G. S. R. are reproduced below:--

"The Gazette of India, July 8, 1961, Asadha 17, 1833.

ORDERS

New Delhi, the 28th June 1961.

G.S.R. 888--In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs-

(a) that the powers conferred on it by Sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clauses (a), (b), (d), (e), (f), (h), (i), (ii) and (j) of Sub-section (2) thereof, shall in relation to food stuffs, be exercisable also by a State Government subject to the condition that before making an order relating to any matter specified in Clause (a) or in regard to regulation of transport specified in Clause (d) of the said Sub-section (2) the State Government shall obtain the prior concurrence of the Central Government.

(b) That the powers conferred on it by Sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clause (f) and for the matters specified in Clauses (h), (i) and (j) in so far as they relate to Clause (f) of Sub-section (2) of the said Section 3 shall be exercisable also,

(i) by the Regional Food Controllers in the State of Uttar Pradesh in relation to stocks of wheat, gram, dal, barley and peas held in that State,

(ii) by the Collectors of districts in each of the States of Maharashtra and Gujarat in relation to stocks of rice and paddy held in that State within their respective jurisdiction, and

(c) that the order of the Government of India in the Ministry of Food and Agriculture (Department of Food) G.S.R. 1083, dated the 15th November 1958 shall stand rescinded."

Immediately below this G.S.R. is published G.S.E. 889, which is followed by G.S.R. 890, and below it is the signature of Shri S. N. Bhala, Deputy Secretary.

9. The Control Order has been issued under the signatures of Shri R. N. Hawa, Secretary to the Government of Rajasthan and purports to have been issued by Order of the Governor. It has a preamble which is as under:--

"Whereas the State Government is of opinion that for the purposes of maintaining the available supplies of gram and barley in the State of Rajasthan, it is necessary so to do;

Now, therefore, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955), read with the notification of the Government of India in the Ministry of Food and Agriculture (Department of Food) published under G.S.R. 888, dated the 28th June 1961, in the Gazette of India (Part II, Section 3, Sub-section (1)), dated the 8th July 1961, and with the prior concurrence of the Central Government, the Government of the State of Rajasthan hereby makes the following Order, namely:--It extends to the whole of Rajasthan. The relevant clause of the Control Order is Clause (3), and is reproduced below:--

"3. Regulation of distribution of gram and barley.--As from the date of commencement of this Order, no licensee shall, without obtaining the prior

permission in writing of the State Government in this behalf, sell or cause to be sold, either directly or through his agent or servant or any other person acting on his behalf, gram or barley either whole or split to any other person for the purpose of export outside the State of Rajasthan in quantity exceeding:--

(a) 25 per cent of the quantity held in stock by him at the commencement of this order, if such quantity is with respect to barley, and $33\frac{1}{3}$ per cent, if such quantity is with respect to gram; and

(b) 25 per cent of the quantity, if such quantity is with respect to barley, and $33\frac{1}{3}$ per cent of the quantity, if such quantity is with respect to gram, purchased or acquired by him every day thereafter and until such time as the State Government otherwise directs."

10. By the Control Order the distribution of gram and barley was controlled in the manner laid down therein but subsequently it appears that on 20th October 1964 a prohibition of export order known as Rajasthan Gram (Prohibition of Export) Order, 1964 was made by the Rajasthan Government with the concurrence of the Central Government. That order provided that the Control Order shall remain suspended so far as it related to gram. Now the Order G.S.R./888 purports to have been issued by the Central Government in exercise of its powers u/s 5 of the Act and was duly notified in the Government of India Gazette, dated 8-7-1961. At the end of two more notifications that were published in continuation of this notification there is the signature of the Deputy Secretary. This mode has obviously been resorted to avoid repetition of signatures and it has to be taken to convey that the signature was appended underneath all the three notifications. We thus do not find any substance in Shri Purohit's contention that the notification G.S.R./888 has not been properly authenticated.

11. Now coming to the question whether the Control Order has been made by the State Government in exercise of the powers delegated to it we have to consider the Order G.S.R./888 in the light of the language of Section 3 of the Act. Section 3(1), confers the powers on the Central Government. By virtue of Section 5 of the Act the Central Government is authorised to delegate its powers to State Government, When the State Government is thus acting as a delegate of the Central Government specially when such delegation has been permitted by the law made by Parliament itself we cannot predicate that the State Government has, in any manner, acted in its own legislative field or executive sphere of its own as State Government in issuing the Control Order. That being so we cannot judge the Control Order as a State made law or as an executive act of itself. Moreover the preamble of the Control Order clearly shows that it was issued with the concurrence of the Central Government. In that situation the action of the State Government in issuing the Control Order with the concurrence of the Central Government was to all intents and purposes the action of the Central Government, and the same could not be characterised to be the action of the State Government alone, which enjoyed only a subordinate position in the issuing of the Control Order.

In this context we have to examine the legality of the Control Order as one issued by an authority created by the Parliament to effectuate the policy underlying the Central Act itself. Shri Purohit placed before us two cases of the Supreme Court in support of his contention. In *State of Bombay v. F. N. Balsara* AIR 1951 SC 318, the validity of certain provisions of the Bombay Prohibition Act, 1949 a pre-Constitution Law, came up for consideration. Balsara prayed for a writ of mandamus forbidding the Bombay State from enforcing the provisions of the Act against him and to allow him to exercise his right to possess, consume and use alcoholic articles. His contention was that the Bombay Prohibition Act had made encroachment upon the field of legislation assigned to the Centre. It was contended for Shri Balsara that the legislative field covered by Entry 19 of List I relating to import and export was encroached upon by the Provincial Legislation. On the other hand it was contended for the State that it could legitimately enact the law under Entry 31 of List II that is "intoxicating liquors and narcotic drugs." This case, to our mind, is wholly inapplicable to the facts and circumstances of the present case.

In that case their Lordships were considering the powers of the Provincial Legislature vis-a-vis the powers of the Central Legislature and the question naturally assumed an importance whether a particular subject-matter fell in the jurisdiction of the Central Legislature or for it the Provincial Legislature was competent to legislate. Here as we have already observed the Control Order cannot be said to be a piece of legislation made by the State Government as such as the source of authority for it is the law made by the Parliament itself. Even so their Lordships have pointed out as to what principles should govern the interpretation of various legislative lists.

Following the Federal Court case, in the matter of the Central Provinces and AIR 1939 1 (Federal Court) and the Privy Council in *Governor-General in AIR 1945 98* (Privy Council) their Lordships laid down as follows:--

"Of the principles which govern the interpretation of the Legislative Lists, one is that none of the items in each List is to be read in a narrow or restricted sense; and the second is that where there is a seeming conflict between an entry in List II and an entry in List I, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction."

Then their Lordships also indicated the rule of pith and substance in examining the validity of an Act, and they observed as follows:--

"The validity of an Act is not affected if it incidentally trenches on matters outside the authorised field, 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."

12. It is true that their Lordships were pleased to observe that the Act was passed under Entry 33 of the concurrent List, but to our mind these observations do not render much help in dealing with the Control Order. In this Balsara's case AIR 1951 SC 318, their Lordships were dealing with the validity of a State Law but here the question is not that of seeing whether a particular law could or could not have been made by the State Legislature but it is only of seeing whether the Parliament could effect the subject-matter of an Inter-State trade which lay in the Union List when it proceeded to enact the Essential Commodities Act. As pointed out by the Federal Court, AIR 1939 1 (Federal Court) which was quoted with approval by their Lordships of the Supreme Court in Balsara's case AIR 1951 SC 318, the entries in the Lists should be given a large and liberal interpretation, the reason being that the location of the subjects in the Lists is not by way of scientific definition but by way of a mere enumeration of broad categories. When there is a conflict between the two provisions in two Legislative Lists, the problem of interpretation really arises as the Courts have to define the boundaries of different legislatures and for dealing with such a problem doctrine of pith and substance has been evolved. But these considerations do not arise where one has to deal with the question of legislative competence of the Parliament. The various entries which empower the Parliament to legislate are in that situation taken to be supplementary to each other. In such a case there is really no conflict between the several entries. We are, therefore, of the opinion that even if it were held that the Essential Commodities Act was primarily an Act passed under Entry 33 of the concurrent Lists it cannot be argued that its provisions cannot affect Inter-State trade, if in reality they do affect it. It is not necessary for a competent legislature to indicate as to under what legislative entry it is making the law but it is for the Courts to look at the subject-matter and then reach the conclusion whether it is in the legislative field assigned to that legislature. It is immaterial whether the legislation can be brought under one or the other entry over which the Central Legislature has jurisdiction.

13. The problem is really one of seeing whether the State Government had made the Control Order within the ambit of the powers delegated to it by the Central Government. A perusal of G. S. R/888 will show that powers under Clauses (a), (b), (d), (e), (f), (h) and (j) of Sub-section (2) of section 3, have been delegated to it but what is important to see is that the powers under Clauses (c) and (g) thereof have not been delegated.

14. It is contended on behalf of the State that the Control Order has been issued by the State Government in exercise of powers under Clause (d). On the other hand, Shri Purohit for the petitioner contends that the Control Order is covered by Clause (g) for which no powers have been conferred on the State Government. He contends that Clause (g) of the Control Order restricts sale for the purposes of export outside the State of Rajasthan in excess of certain permitted quantities and thus what the State was doing was to regulate or prohibit any class of commercial or financial transactions relating to food stuffs within the meaning of Clause (g). According to him in interpreting the words

"transport, distribution, disposal" in Clause (d) we should so interpret them as to exclude export.

15. We are unable to assent to this for more than one reason. In the first place it is not a class of commercial or financial transaction within the meaning of Clause (g) which the Control Order deals. It, to our mind, deals with transactions like carrying on of forward transactions or making pledges of food stuffs with banks for securing loans and the like. Then several clauses of Sub-section (1) of Section 3 of the Act only enumerate and illustrate the powers covered by Sub-section (3) which really contains the totality of powers in the matter of controlling the production, supply and distribution of essential commodities. The clauses are not, to be interpreted in a way as may result in a conflict of powers but an effort has to be made to harmonise the several clauses. If looking to the subject matter of a particular order it can reasonably be held to be covered by a particular clause then it should be held to have been issued by virtue of powers under that clause and the mere fact that it also falls under some other clause should not make the order void. There is a good deal of over-lapping in such enumeration of powers and one has to look to the substance of power contained under a particular clause. The Control Order has a preamble which suggests that it has been made for the purpose of maintaining available supplies of gram and barley. It could thus appropriately fall under Clause (d), as it was obviously made with the purpose of conserving supplies of the essential commodities within Rajasthan so that they could be available for distribution in Rajasthan. It was just incidental that some kind of restrictions resulted on the export of commodities outside Rajasthan. The argument loses much of its force even otherwise as the order was passed with the concurrence of the Central Government, which itself could certainly issue the Control Order in exercise of its own powers. Thus considering the matter we are of the opinion that in making the Control Order with the concurrence of the Central Government, the State Government has acted within the ambit of authority delegated to it.

16. We may now deal with the other arguments of Shri Purohit. As noted by us he contended that the restrictions on inter-State trade could not be imposed in the manner it was done as it would be contrary to the provisions of Articles 303 and 304 of the Constitution. Article 301 enacts that subject to the other provisions of this part trade, commerce and inter-course throughout the territory of India shall be free. This freedom of trade and commerce is subject to the fascicule of articles following it. Article 302 empowers the Parliament to impose such restrictions on the freedom of trade, commerce or inter-course, between one State and another or within any part of the territory of India as may be required in the public interest. Preamble of the Essential Commodities Act, 1955 clearly recites that this law was being passed in the interest of the general public. The Act, therefore, fulfills the requirements of Article 302. Article 303 on which Shri Purohit relies may be reproduced below:--

"303. (1) Notwithstanding anything in Article 302, neither Parliament nor the

Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in Clause (1) shall prevent Parliament from making any law giving or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India."

17. Shri Purohit contends that the Control Order makes discrimination between one State and another. We are unable to agree to this submission. The Control Order purports to have been made for maintaining supplies of essential commodities in Rajasthan and limited percentage of available stocks with a licensee have been permitted to be exported though for it a permit has to be obtained. There is no discrimination about the destination point whether it lies in one State or the other outside Rajasthan. Consequently we are unable to hold that the Control Order brings about discrimination between one State and another. Article 304 places restrictions on the power of the State Legislature to make a law in regard to the inter-State trade and commerce till it obtains the previous sanction of the President. This article is inapplicable in the present case for the simple reason that, as we have already observed, the Act was made by Parliament and the State is only acting as a subordinate executive authority to exercise the powers of the Central Government on delegation.

18. Shri Purohit then invited our attention to the dictionary meaning of the term "commerce". We need not deal with this point at any great length as in our view the term "Commerce" has a varying meaning and the consideration of the dictionary meaning is of little help as we are dealing with the legislative field of the Union Parliament. Its field is very wide indeed and embraces all other topics as are not covered in the State List. Thus nothing will turn on the dictionary meaning of the term "commerce" or "Commercial transactions".

19. Shri Purohit also placed reliance on *James v. The Commonwealth* (1936) 55 Com. WLR 1, in support of his contention. Their Lordships of the Privy Council had to examine the validity of the Dried Fruits Act made by the Commonwealth Parliament of Australia. Their Lordships came to the conclusion that the Act violated Section 92 of the Commonwealth Constitution. This decision is of no help in the present case. Before us there is no competition between the State Legislature and the Parliament. In that case their Lordships held that Section 92 of the Act was contravened. In our case Article 302 clearly permits the Parliament to impose restrictions on the freedom of trade between one State and another. In the Australian case their Lordships had to consider the freedom of export. Consequently we are unable to hold that the Control Order contravenes, the provisions of Articles 303 or 304 of the Constitution in any manner. Mr.

Purohit had himself very candidly placed before us a decision of the Allahabad High Court *Shobha and Another Vs. State*, in which a similar argument was advanced and rejected. The learned Judges came to the conclusion that the Essential Commodities Act was a piece of legislation contemplated by Article 302 of the Constitution which fully protected it. The learned Judges considered Articles 301, 302, 303 and 304 in this connection and made the following observations:--

"Article 303 of the Constitution prescribes the restrictions on the legislative powers of the Union and the States with regard to trade and commerce and Article 304 prescribes restrictions on trade, commerce and inter-course amongst the various States in India. Article 302, however, confers on Parliament the power to impose restrictions on trade, commerce, and inter-course and reads as follows:

"Parliament may by law impose such restrictions on the freedom of trade, commerce or inter-course between one State and another or within any part of the territory of India as may be required in the public interest."

5. A study of the provisions mentioned above clearly reveals that the freedom of trade, commerce and inter-course guaranteed under Article 301 of the Constitution is subject to any law framed by the Parliament under Article 302. The impugned Order has been framed u/s 3 of the Essential Commodities Act, 1955. That Act was passed by Parliament. The Preamble of that Act runs as follows.

"An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of and trade and commerce in, certain commodities."

It is well settled that a Preamble is a key to the interpretation of an Act and can be used to know the aims and the objects of the legislation. (See *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, The Supreme Court of India has on occasion more than one used the Preamble in order to decide the scope, the aim and the object of the legislation (See *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . In *Diwan Sugar and General Mills (Private) Ltd. and Others Vs. The Union of India*, the Supreme Court held as follows with regard to the Essential Commodities Act:

"The Preamble shows that it has been passed in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in certain commodities. Section 3 of the Act gives power to the Central Government to pass orders under the Act if it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices."

Other provisions in that Act also reveal the same thing. Consequently, the Essential Commodities Act is a piece of legislation contemplated by Article 302 of

the Constitution and fully protected by it."

20. Lastly Shri Purohit faintly contended that the Control Order has vested the State Government with such wide powers as may be abused. He submits that while in one case the State Government may grant the permit for exporting food grains out of Rajasthan yet in another equally deserving case it may decline to do so. We are unable to hold that such arbitrary powers as would be violative of Article 14 of the Constitution have been placed in the hands of the State Government. In the first place as the power of giving permission in writing has been given to the State Government itself and not to any subordinate authority, we cannot readily presume the abuse of power and secondly the exercise of discretion by the State Government is to be guided by the policy behind the Act and the Control Order viz. that of maintaining the available supplies of gram and barley in the State of Rajasthan. We, therefore, do not find any merit in this argument of the learned counsel based on Article 14 of the Constitution, Equally flimsy is the contention that Article 19 of the Constitution has been infringed. The restrictions have been imposed by law and as the Act declares it has been passed in the interest of the general public.

21. The result is that we do not find any substance in any of the writ petitions, and hereby dismiss them with costs.