

(1972) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 275 of 1970

Bhagwandas and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-01-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 245, 41

Madhya Pradesh Nirashriton Ki Sahayata Adhiniyam, 1970 — Section 1(3), 4, 5, 6, 7

Citation : (1975) ILR (MP) 738 : (1972) JLJ 264 : (1972) 17 MPLJ 568 : (1972) MPLJ 568

Hon'ble Judges : Bishambhar Dayal, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : R.S. Dabir, V.S. Dabir and A.P. Tare, for the Appellant; Y.S. Dharmadhikari, General and M.V. Tamaskar, Deputy Govt. Advocate (for No. 1) and D.M. Dharmadhikari, (for No. 3), for the Respondent

Final Decision : Partly Allowed

Judgement

Bishambhar Dayal, C.J.

This order will also govern the disposal of Miscellaneous Petition No. 618 of 1970.

These are two petitions under Article 226 of the Constitution challenging the validity of the Madhya Pradesh Nirashriton Ki Sahayata Adhiniyam, 1970 (M.P. Act No. 12 of 1970. hereinafter called the Act). Several grounds have been taken for attacking individual provisions of the Act. but the general attack against the Act is that the State Government has no power to pass any legislation on the subject of providing for the helpless. Individual provisions of the Act are challenged either upon the ground that the State Legislature has delegated uncontrolled power to the executive and the delegation is invalid or on the ground that the provisions infringe the equality clause under Article 14 of the Constitution.

Before dealing with the individual provisions and the grounds on which they have

been attacked, it may be noted that the main purpose of the Act is to place the responsibility upon, the local authorities to provide for the destitutes within their local areas. The preamble of the Act is:--

"An Act to make provision for assistance to destitutes by making it obligatory on the local authorities to provide relief to them and for matters connected therewith,"

The Act itself has been made applicable to the whole of the State, but the effective provisions of it can be extended to such parts as the State Government may consider suitable. The word "destitute" has been defined in Section 2(a) of the Act. It includes old and infirm persons and blind, deaf, dumb or otherwise disabled persons. The term "local authority" has also been defined in Section 2(d) as meaning a Municipal Corporation. Municipal Council, Notified Area Committee. Gram Panchayat or Adivasi Panchayat. Thus, destitute persons residing within these areas are to be provided for by these local authorities. It has been made compulsory on these local authorities to make such provision by Section 3. Sections 4 to 7 provide for raising of funds to meet these expenses and their individual provisions having been attacked separately, they will be dealt with hereafter. Section 8 creates an obligation to spend the amount realised from the impositions provided for in the Act for the relief of the destitutes in accordance with the provisions of the Act. Section 9 gives power to the State Government to make rules.

It will be seen that the very purpose of the Act is to take care of the helpless. Article 41 of the Constitution is as follows:--

"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to public assistance incases of unemployment, old age. sickness and disablement"

List II in the Seventh Schedule of the Constitution by item No. 9 empowers the State Legislature to make laws for "relief of the disabled and unemployable." This clearly indicates that the subject of legislation for this purpose is squarely within the scope of State Legislation.

Before dealing with individual provisions of the Act, which have been challenged on the ground of excessive delegation of power to the executive authority, it would be helpful to quote from a recent decision of the Supreme Court in Sita Ram Bishambhar Dayal v. State of Uttar Pradesh, Civil Appeals Nos. 362 and 1972 of 1969, D/-21-10-1971 = (reported in 1972 Tax LR 1861 SC) where the validity of Section 3-D (1) of the U.P. Sales Tax Act. 1948. was challenged among others on the ground of excessive delegation. Their Lordships after discussing the position of the modern legislature and the responsibility of the State Government observed as follows:--

"Text book doctrines evolved in the 19th century have become out of date. Present position as regards delegation of legislative power may not be ideal, but

En the absence of any better alternative, there is no escape from it. The legislatures have neither the time, nor the required detailed information nor even the mobility to deal in detail with the innumerable problems arising time and again. In certain matters they can only lay down the policy and guidelines in as clear a manner as possible,"

Their Lordships also followed their own dictum laid down in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, and quoted the following passage:--

"Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied, the rate at which it is to be charged in respect of different classes of goods and the like."

In the light of the above observations we now proceed to consider the attack on individual provisions of the Act. By Sub-section (3) of Section 1 power has been given to the State Government to extend certain provisions of the Act to different areas in the State and the contention is that this power is unrestricted and unguided and is discriminatory inasmuch as the State Government is authorized to treat different parts of the State in a different way. In this connection it is noteworthy that the responsibility is to be placed on the local bodies to take care of the destitutes. Such a responsibility depends upon the capacity of a particular local body to undertake that responsibility and also the existence of and the number of such destitutes who really need help in a particular locality, as also on the capacity of that locality to provide the necessary machinery for the impositions permitted under the Act and thus to make it possible for the local body to take proper care of the destitutes. These elements must differ from local authority to local authority and it was not possible for the Legislature to make a uniform rule applicable to all local authorities. It had necessarily, therefore, to leave it to the executive Government to investigate into these and such other conditions as are necessary for the application of the Act in respect of each local authority and to apply such provisions of the Act as would serve the purposes for which the Act has been passed.

We are, therefore, of opinion that in such a case when the purpose of the Act is clearly specified by the Legislature and the method of collecting funds and the distribution thereof has also been provided, it cannot be said that the delegation is excessive in favour of the executive Government. Since the conditions in each local authority must be different from one another, we see no force in the contention that in treating different local authorities in a different way so far as the applicability of certain provisions of the Act is concerned, any inequality so as to violate the provisions of Article 14 of the Constitution has been brought about. The State Government is certainly entitled to see from time to time as to which of the local authorities are capable and in a position to undertake the responsibility under the Act and to apply the Act to such local authorities only.

This brings us to the consideration of the question of the validity of Sections 4 to 7 which provide for raising of the funds to meet the expenses to be incurred in providing for the destitutes. We have already noted that Item 9 of List II of the Seventh Schedule confers legislative power on the State to enact a law for relief of the disabled and unemployable. It is not disputed before us that the State Government could validly make the impugned law under Item 9 of the State List. The contention, however, was that inasmuch as the State Government is authorised to impose taxes only under certain Entries, it had no authority to impose taxes when it was enacting a law under Item 9. For the purposes of that law only "fees" could be imposed with the necessary restriction of quid pro quo. Inasmuch as the persons to be taxed were not to receive any benefit, even remote, under the Act, the exaction could not be justified as a "fee" as well. We find it difficult to accept this contention.

The scheme of the Act is that the responsibility of looking after the destitutes is placed on the local authorities and the local authorities have been authorised to recover certain taxes for this purpose. It is now well-recognized that all the taxing power of the State Government can be delegated to the local authorities subject to certain controls by the State Government. Under the impugned Act this very objective has been achieved. The Act first makes it obligatory on the local authorities to look after the destitutes and then provides for the finances by authorising the local bodies to recover certain taxes. While doing that, the Legislature has also taken care to fix the limits which cannot be exceeded. There is, therefore, no unguided delegation of legislative authority to the local bodies.

In *Corporation of Calcutta and Another Vs. Liberty Cinema*, the Corporation of Calcutta had imposed a fee on the cinema houses on the basis of seating capacity and the respondent had to pay the fee of Rs. 6000/-per year on that basis. It was contended that the recovery could not be justified as a fee, as it had no element of quid pro quo. Their Lordships of the Supreme Court upheld the levy as a tax. This was on the principle that to the local authorities the right of the State Government to impose taxes can be validly delegated. On the same principle, the levy by the Municipal Corporation of the City of Poona was upheld by their Lordships of the Supreme Court in *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, . As a matter of fact, in both these cases the authority of the local bodies to collect the taxes was not challenged. The challenge was regarding excessive delegation. We are, therefore, of opinion that the State could validly empower the local authorities to impose taxes for meeting the expenses of the destitutes if the levies could have been imposed by the State itself under the taxing entries. It cannot also be seriously disputed that the impugned levies are for public purposes. We shall, therefore, consider Sections 4 to 7 of the Act in this light.

By Section 4(1)(i) of the Act. M.P. Agricultural Produce Market Committees constituted under the M.P. Agricultural Produce Markets Act, 1960 (No. 19 of 1960) have been directed to contribute annually to the expenditure incurred by

the local authorities on the care of the destitutes under the Act. By Section 4(1) (ii) of the Act such market committees have also been directed to collect at such rate as "the State Government may by general or special order specify" such quantity of grain from every purchaser not exceeding 500 grams per quintal and to deliver the same to the local authority accords to the directions of the Government. The objection to the first imposition, namely, the proportionate contribution to be made by the market committee, is that the State Government cannot take away the income of the market committee as it is a fee charged for the markets and not for the purpose of looking after the destitutes and under the M.P. Agricultural Produce Markets Act, 1960 the market committee is bound to spend its income over the purposes of the agricultural markets only. Reliance is placed on Section 21 and 22 of the Agricultural Produce Markets Act, 1960. Section 21 creates a Market Committee Fund and Section 22 provides:

"..... the market committee fund may be expended for the following purposes only."

It then enumerates ten purposes over which the money can be spent. Thus, under the Agricultural Produce Markets Act the market committee cannot spend the market committee fund on any other purpose. We agree with learned counsel for the petitioners that the liability imposed upon the market committee by Section 4(1)(i) of the *Nirashriton Ki Sahayata Adhiniyam*, 1970, to contribute from its own income, which is a fee charged for another purpose towards the maintenance of the destitutes by local authorities, creates a conflict and is illegal. We are also of opinion that such a liability to contribute is not justified by any taxing provision enabling the State Government to impose such a tax under its taxing power. Such a contribution is not covered by any of the specified taxes in List II of the Seventh Schedule to the Constitution. We, therefore hold that the provision for this contribution is ultra vires.

As regards the provision contained in the second part of Section 4(1) of the Act which provides for the collection of certain quantity of grain from the purchasers within the market area, the challenge was that the actual rate of such collection has been left to the executive Government and it is an excessive delegation. It was also argued that this cannot be justified either under any of the taxation heads within the power of the State Legislature or as fees. We are unable to agree with this contention of learned counsel for the petitioners. This collection by the market committee is clearly in the nature of a purchase-tax covered by Entry 54 of List II in the Seventh Schedule to the Constitution which is as follows:--

"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I."

The Legislature having fixed the maximum rate at which grain can be collected under this . head, the delegation of power to fix the actual rate according to the varying needs of each local authority which would get the benefit of such

collection, cannot be said to be excessive delegation. The rate would depend upon the number of destitutes who have to be cared for and the amount that is likely to be collected depending upon the extent of grain trade being carried on in a particular area. The power of the State Government under Sub-section (2) of Section 4 of the Act to distribute this collection in a given proportion among the local authorities coming within the jurisdiction of a particular market area is also an essential part of the delegation and must depend upon the varying circumstances of each area. We therefore, hold that Section 4, so far as it provides for the collection of grain from the purchasers and its distribution according to the directions of the State Government, is not illegal.

By Section 5 of the Act similarly a local authority which undertakes the responsibility of maintaining the destitutes is also authorized to collect a portion of the grain from all wholesale purchasers of agricultural produce within the local area where agricultural market committee does not exist. This collection has also been provided to be according to the rate to be fixed by the State Government which shall be "not more than 500 grams per quintal." Thus, the maximum rate having been prescribed, the delegation of power to the State Government to fix the actual rate according to the needs of the local authority is not excessive delegation.

By Section 6 of the Act such a local authority has been authorised to organize the collection of charities from house to house. Obviously, collection of charity necessarily depends upon the volition of the person who is prepared to contribute towards this charity. It is not a compulsory exaction in any sense and the attack against this provision that it is an illegal exaction is wholly unjustified. Some provision had to be made, for, if a local authority had started asking for charities for this purpose, it might have been objected to on the ground that the local authority had no jurisdiction under its constitution to collect the charity. In order to obviate such a technical objection, this provision has been made and we do not see any illegality in this Section.

Section 7 of the Act authorizes the imposition of a cess on lands and buildings situated within the local area. The maximum rates at which such a cess can be imposed on different lands and buildings have been clearly mentioned in the Section. It cannot be more than ten per cent of the land revenue payable or rent fixed or assessed on land used for the purpose of agriculture and not more than one per cent of the gross annual letting value or annual letting value of land or building determined according to the law relating to the local authority concerned. There are some exceptions in which the rate has to be lower. This imposition is a tax on lands and buildings covered by Entry No. 49 in List II of the seventh Schedule to the Constitution which runs thus:

"Taxes on lands and buildings."

This imposition must, therefore, clearly be within the legislative sphere of the State Legislature. The challenge, therefore, that this provision is not sanctioned

by any of the entries in the Constitution is not justified. For the reasons already stated, the delegation of power to determine the actual rate in each local area delegated to the executive Government is also not excessive.

The provisions of Section 9 of the Act which authorise the framing of rules by the State Government have also been challenged on the same ground that the fixation of rates and the proportion of contributions by the State Government is excessive delegation. We have already dealt with that matter and the making of rules for this purpose, therefore, cannot be illegal. It is also alleged that no machinery for levying, assessing and collecting the tax and the cesses prescribed has been provided for in the Act. But u/s 9(2)(c) rules can be made to provide for --

"the manner in which cess shall be levied under Sub-section (1) of Section 7."

Thus, the State Government has been authorized to make rules to provide for the manner of assessment and collection of the cess imposed. Only because no rules have yet been framed for settlement of disputes in regard to the assessment of cess to be paid by a particular assessee, that does not vitiate the provisions of the Act. Normally, a flat rate having been provided for, there would be no occasion for disputes. But if they do arise, the State Government can frame rules for settlement of such disputes from time to time.

After a consideration of the whole matter, we are of opinion that the provisions of the Act are not open to challenge except Section 4(1)(i) which provides for contribution by the market committee from its own funds. That provision, however, is entirely separable and its being without jurisdiction does not affect the validity of the other parts of the Act. It was contended on behalf of the State that no market committee has filed any writ petition for challenging this part of the Act. We do not think that this argument is sufficient for us to refrain from expressing our opinion about the invalidity of this provision of the Act. The petitioners, who are grain dealers, are equally interested in seeing that the funds of the market committee are not used for purposes other than those for which they can be utilised under the M.P. Agricultural Produce Markets Act, 1960.

The result, therefore, is that these petitions are partly allowed and Section 4(1)(i) of the M.P. Nirashriton Ki Sahayata Adhiniyam, 1970, is declared ultra vires. Parties will bear their own costs in both these petitions. The outstanding amount of the security deposit shall be refunded to the petitioners in both the cases.