

(1956) 07 PAT CK 0017

In the Patna High Court

Case No : Miscellaneous Judl. Case No's. 367, 382, 383, 445 to 447 of 1956

B.L. Chaudhury and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-07-1956

Acts Referred:

Bihar Sugar Factories Control Act, 1937 — Section 29, 29(3), 30(2)

Bihar Sugar Factories Control Rules, 1938 — Rule 48

Constitution of India, 1950 — Article 13, 14, 245

Citation : AIR 1957 Patna 40

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : P.R. Das and A.B.N. Sinha, for the Appellant; A.G. and Lakshman Saran Sinha and Dinesh Charan, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In Miscellaneous Judicial Case No. 367 of 1956 the petitioner is Sri B. L. Chaudhuri, the Manager of the Harinagar Sugar Factory & a duly constituted attorney of the Harinagar Sugar Mills Ltd., which is a company incorporated under the Companies Act. The Company owns a vacuum pan sugar factory at Harinagar in the district of Champaran and carries on business of manufacture of sugar by crushing of sugar cane. On 2-11-1955, the Government of Bihar issued a notification in exercise of the authority conferred by Section 29(2), Bihar Sugar Factories Control Act, (Act VII of 1937) imposing a cess at the rate of 36 pies per maund with effect from 1-10-1955, on all sugar cane entering the local areas comprised in 28 factories including the Harinagar Sugar Factory. The notification is to the following effect:

Government of Bihar, Development (Cane) Department. Notification.

Patna, the 2nd November, 1956. No. BV-O 19/550-3687. In exercise of the powers conferred by Sub-section (2) of Section 29 of the Bihar Sugar Factories Control Act, 1937 (Bihar Act VII of 1937) as amended by the Bihar Sugar

Factories Control (Amendment Act, 1950 (Bihar Act VI of 1950) the Governor of Bihar is pleased to order that with effect from the 1st October, 1955 a cess of thirty-six pies per maund shall be imposed on all sugarcane entering the local areas comprised in the following factories for" consumption, use or sale therein during the crushing season 1955-56.

Name of the factories:

1. Sasamusa Sugar Works Ltd., Sasamusa.
2. Vishnu Sugar Mills Ltd., Harkhua.
3. Bharat Sugar Mills Ltd., Sidhwalla.
4. Shri Krishna Gyanodaya Sugar Ltd., Mirganj.
5. New Savan Sugar & Gur Refining Co. Ltd., Siwan,
6. Bihar Sugar Works, Pachrukhi.
7. Cawnpore Sugar Works, Ltd., Marhowrah.
8. North Bihar Sugar Mills Ltd., Begaha.
9. Harinagar Sugar Mills Ltd., Harinagar,
10. New Swadeshi Sugar Mills Ltd., Narkatiaganj.
11. Champaran Sugar Co. Ltd., Chanpatia,
- 12 Shri Krishna Gayanodaya Sugar Ltd., Lauriya.
13. Motilal Padampat Sugar Mills Ltd., Majha-ulia.
14. Sugauji Sugar Works Ltd., Sugauli.
15. Shri Hanuman Sugar Mills Ltd., Motihari.
16. Champaran Sugar Co. Ltd., Barachakia.
17. Sitalpur Sugar Works Ltd., Goraul.
18. Belsund Sugar Co. Ltd., Righa.
19. Motipur Sugar Factory Ltd., Motipur.
20. Byam Sugar Factory Ltd., Ryam.
21. Darbhanga Sugar Co. Ltd., Sakri,
22. Darbhanga Sugar Co, Ltd., Lohat.
23. Samastipur Central Sugar Co. Ltd., Samasti-pur,
24. New India Sugar Mills Ltd., Hassanpur.
25. Rohtas Industries Ltd., Dalmianagar.

26. South Bihar Sugar Mills Ltd., Bihta.

27. Mohini Sugar Mills LCd., Warisajiganj,

28. Gaya Sugar Mills Ltd.. Gurani.

By order of the Governor of Bihar. Sd. S. R. Sinha, Deputy Secretary to Govt."

The petitioner states that in the month off February 1956, a quantity of 912937 maunds of, sugarcane entered the local area of the Harinagar Sugar Factory, and in the month of March 1950, a quantity of 839415 maunds entered the same area. The petitioner submitted returns of the sugar-cane to the authorities Under Rule 46A(3), Bihar Sugar Factories Control Rules. The petitioner also wrote a letter (Annexure D) dated 29-3-1950, to the Rent and Cess Deputy Collector, Chairman, submitting that the levy of cess was illegal. But the Collector of Champaran respondent No. 2 wrote in reply to the petitioner asking him to show cause why a penalty should not be imposed upon him under Rule 46A(6) for not depositing the amount of cess on the due date.

The petitioner submits that the provisions of Section 29 of Act VII of 1937 contravene Article 14 of the Constitution, as the Government is granted an arbitrary and uncontrolled discretion to difierentiate between several local area,. The case of the petitioner is that the notification dated 2-11-1955, of the Government of Bihar imposing cess on the sugar-factories is constitutionally invalid. The petitioner therefore, prays that a writ in the nature of certi-orari should be granted for calling & quashing the proceedings taken by the respondents against the petitioner for the demand of cess. The petitioner has also prayed that there should be an injunction-restraining the respondents from taking steps for the realisation of cess from the petitioner on account of the entry of sugarcane into the local area, comprised in the "Harinagar Sugar Factory.

2. In Miscellaneous Judicial Cases Nos, 382, 383, 445, 446 and 447 of 1956 the material facts are of similar description and the reliefs which have been- claimed by the petitioners are in similar terms.

3. Cause has been shown in all these cases by the Advocate General on behalf of the respondents; A counter-affidavit has also been filed on behalf of the State of Bihar. It is stated in the counter-affi-davit that there are 28 sugar factories working to the State of Bihar, that cess has been Imposed at a uniform rate on all these sugar factories and that no discrimination has been made by the State of Bihar in choosing a local area or imposing the rate of cess,

4. The main question presented for determination in this cage is whether Sections 29 (2) & (3) and 30(1)(i) of Bihar Act VII of 1937 and rule 48 of the Bihar Sugar Factories Control Rules are constitutionally valid and operative.

5. It is advisable at this stage to quote in full Section 29(2) and (3) Of Bihar Act VII Of 1937.

"29 (2) The Governor may, by notification, impose a cess not exceeding thirty-six

pies a maunor on the entry for sugarcane into a local area, specified in such notification, for consumption, use or sale therein:

Provided that such cess shall not be imposed on the entry into any such area of any sugarcane in respect of the sale of which a tax imposed under Sub-section (1) is payable: .

Provided further that the State Government, may, by notification, reduce or remit in whole or in part such cess in respect of sugarcane, Intended to be used in a factory for any purpose specified in such notification.

3. The State Government shall make rules specifying the authority empowered to collect the tax or cess and the person from whom, and the manner in which, the tax or cess shall be collected."

Section 30 (2) (t) is enacted in language similar to that of Section 29(3).

Section 30(1) states:

"30. (1) The State Government may make rules to carry out the provisions of this Act".

Section 30(2)(t) is to the following effect:

"30. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for.

* * * *

(t) the authority by which, the person from whom and the manner in which a tax or cess im posed u/s 29 shall be collected."

In exercise of the power conferred by Section 30, the State Government have framed certain rules called the Bihar Sugar Factories Control Rules, 1938. Rule 48, which is challenged in this case, is to the following effect:

"48 Power to exempt from .rules: The State Government may for special reasons, by notification, exempt any factory or class of factories from all or any of the provisions of these rules.

6. The first contention put forward on be-half of the petitioners is that Section 29(2) Bihar Act VII of 1937 is upon the face of it discriminatory and there is a violation of the guarantee of equal protection given under Article 14 of the Constitution. Mr. P. B. Das put forward the argument that Section 29(2) granted an uncontrolled discretion to the State Government to pick and choose - particular factories for the purpose of imposing the sugar-cane cass. It vas contended that Section 29(2) conferred a naked and arbitrary power upon the state government to Impose a cess.

Counsel submitted that the State Government had arbitrary power to choose local area A and not local area B for imposing the cess. Counsel, therefore, said

that the State Government had the arbitrary power of causing financial benefit or financial ruin to individual sugar factories by selecting suitable local areas. Mr. P. R. Das referred to the counter affidavit filed on behalf of the State of Bihar and argued that though there might be no discrimination in actual practice, the section itself was void because it was discriminatory *ex facie*.

In support of his argument counsel referred to the Chinese Laundry case, *Yick Wo v. Peter Hop-kins* (1886) 118 U.S. 356 (A) and also to the decision of the Supreme Court, *The State of West Bengal Vs. Anwar Ali Sarkar*, . In my opinion, the argument submitted on behalf of the petitioners has no warrant or justification. I do not think that the language of Section 29(2) is on the face of it discriminatory. Section 29(2) empowers the State Government to impose by notification a cess at the rate not exceeding 36 pies per maund on the entry of sugarcane into a local area, specified in such notification, for consumption, use or sale therein. There is no intentional "and purposeful discrimination on the face of the statute and I do not think that the principle laid down in (1886) 118 U.S. 356 (A) and *The State of West Bengal Vs. Anwar Ali Sarkar*, has any application to the present case,

There is, however a different class of cases where the statute is not *ex facie* discriminatory but it is applied by the administrative authority in a grossly discriminatory manner. In such a case the petitioners would be entitled to invoke the guarantee of equal protection of laws under Article 14 and ask the High Court for an appropriate writ to quash the action of the administrative authority. For it is "well established that though a statute may be fair and impartial on its face, yet if it is applied and administered by the authority "with an evil eye and an unequal hand", (to quote the language of Mr. Justice Mathews in (1886) 118 U.S. 356 (A) there is violation of equal protection guaranteed under Article 14 of the Constitution. But Mr. P. R. Das was unable to show that there has been actual discrimination made by the State Government in administering the provisions of Section 29(2).

On the contrary, the counter affidavit filed by the State of Bihar demonstrates that there has been no discrimination made by the State Govt. and all the 28 factories in the State have been notified for the purpose of imposing cess at a uniform rate. In this connection it should be noticed that the expression "local area" which finds place in Section 29(2) has been taken from entry 49 of List II of the 7th Schedule of the Government of India Act. Entry 49 corresponds to entry 52 of the State List of the Constitution and states : Cesses on the entry of the goods into a local area for consumption, use or sale therein".

In my opinion the present case falls within the principle laid down by the Supreme Court.

In my opinion the present case falls within the principle laid down by the Supreme Court in *Biswambhar Singh and Others Vs. The State of Orissa and Another*, . *Thakur Amar Singhji Vs. State of Rajasthan*, , and *Budhan Choudhry*

and Others Vs. The State of Bihar, . In the first case the question was raised as to the constitutional validity of Section 3 (1), Orissa Estates Abolition (Amendment) Act, 1952, which ran thus":

"3. (1) The State Government may, from time to time by notification declare that the state specified in the notification has passed to and become vested in the State free from all encumbrances".

It was contended on behalf of the petitioners in that case that there was violation of Article 14 of the Constitution, but the argument was rejected by the Supreme Court on the ground that there was ex facie no intentional discrimination made under the section and it was not suggested or shown that in practice any discrimination was actually made. The principle was re-affirmed by the Supreme Court in the subsequent cases Thakur Amar Singhji Vs. State of Rajasthan, and (S) Budhan Choudhry and Others Vs. The State of Bihar, .

In the last case the question was raised as to the validity of Section 30, Criminal P.C. and it was held by a unanimous Bench of the Supreme Court that there was no violation of Article 14 of the Constitution and that Section 30, Criminal P. C., was constitutionally valid. In view of the principles, laid down in these decisions I hold that Section 29 (2) is constitutionally valid and the argument of Mr. P. R. Das on this aspect of the case must fall.

7. It was next contended on behalf of the petitioners that the second proviso to Section 29 (2) conferred an arbitrary power of exemption on the State Government and was, therefore constitutionally invalid. It was pointed out that the statute did not specify the ground of exemption from payment sugarcane cess. It was also argued that the statute laid down no principle or standard of control over the discretion of the State Government. It was submitted that the power of exemption was a naked and arbitrary power and violated the guarantee of equal protection given "Under Article 14 of the Constitution,

I think that the argument of Mr. P. B. Das on this point has much substance. The second proviso to Section 29 (2) empowers the State Government to by notification to

"reduce or remit in whole or In part such cess in respect of sugarcane, intended to be used or used in a factory for any purpose specified in :such notification".

The statute lays down no principle or standard for granting the exemption. The statute does not) also specify what are the grounds upon which the State Government may grant exemption to any sugar factory. On behalf of the respondents the Advocate General conceded that the second proviso to Section 29 (2) may be constitutionally invalid. It is strictly, not necessary to decide this point in the present case and I do not wish, therefore, to express any concluded opinion on this point. I shall assume in favour of the petitioners that the second proviso is constitutionally invalid. Even so, I think that the main portion of Section 29 (2) is severable from the second proviso and the constitutional

invalidity of the second proviso cannot infect the main portion of Section 29 (2).

Mr. P. B. Das, however, put forward the contention that the second proviso is inextricably inter- _ woven with the main part of the section, and no question of severability arises in this case. I am unable to accept this contention as correct. I do not agree that the second proviso is inextricably woven with the rest of the sub-section. Section 29 (2) grants two powers to the State Government, namely the power of imposing cess on the entry of sugarcane into a local area and the power of granting exemption to a sugarcane factory in respect of the whole or part of the sugarcane cess. I think that the power of exemption is an independent power and it has no connection with the rest of the sub-section.

In a case of this description the real test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains cannot independently survive, or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is ultra vires. This was the test laid down by the Supreme Court in -- *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, . The rule is discussed as follows by Cooley in his treatise on Constitutional Limitations, 8th Edition, at page 360 :

"It would, be inconsistent with all just principles of constitutional law to adjudge these enactments void because they are associated in the same act but not connected with or dependent on others which are unconstitutional. Where, therefore, a part of a statute is unconstitutional, that fact does not authorise the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand though the last fall.

The point is not whether they are contained in the same section; for the distribution into sections is purely artificial but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is stricken out, that which remains is complete in, itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which of the statute are capable, of being separated within the meaning of this rule.

If a statute attempts to accomplish two or more objects ,and is void as to one, it may still be in every respect complete and valid as to the other. But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portion. And if they are so mutually connected with & dependent on

each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect; the legislature would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent conditional, or connected must fall with them".

8. Applying the test to the present case I am satisfied that the second proviso to Section 29(2) is severable from the rest of the sub-section: and even if it is held to be constitutionally invalid, the main portion of the sub-section will stand as a valid and independent enactment.

9. Counsel on behalf of the petitioners also attacked the validity of Rules 48 and 46A on the same grounds as those levelled against the second proviso to Section 29(2). The Advocate-General on behalf of the respondents conceded that Rule 48 may be invalid. His contention, however, was that even if Rule 48 was invalid, it was severable from the rest of the rules which have an independent existence. In my opinion, the contention of the Advocate General is right. Rule 48 is not inextricably woven with the main body of the rules and there is no single integrated scheme.

I have already discussed the question as to what is the legal test of severability in a case of this description. Applying that test I hold that Rule 48 is severable from the main body of the rules framed by the State Government u/s 30 of Act VII of 1937; and even though Rule 48 be constitutionally invalid, it is severable from the rest of the main body of the rules.

10. I proceed to consider the next argument put forward on behalf of the petitioners, namely, that Section 29(3) is invalid because it is a case of excessive delegation of legislative power to executive authorities. Section 29(3) empowers the State Government to make rules specifying the authority empowered to collect the tax or cess and the person from whom, and the manner in which the tax or cess shall be collected. It was argued by learned Counsel that the State Government was authorised to select a person from whom the cess shall be collected and so there was a complete abdication of legislative power.

I think that the argument of Mr.P. B. Das is an extravagant argument and I am unable to accept it as correct. It is manifest that Section 29(3), only delegates the rule-making power to state Government with regard to the collection, of sugarcane case and not with regard to the assessment of cess. The authority granted u/s 29(3) Is only of the machinery type. The authority conferred upon the State Government is to supplement the legislative enactment and to provide the administrative mechanism necessary for the execution of the law.

In my opinion, the power of legislating on policy or principle has not been delegated to the State Government. What is delegated by Section 29(3) is only the power to set up an administrative machinery for the execution of the law. I think such a delegation is constitutionally permissible. There is an elaborate discussion on this point by the Supreme Court in a celebrated case, In re, Article

143. Constitution of India and Delhi Laws Act (1912) etc. AIR 1951 SC 332 (G) and in a subsequent case, Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, . The matter has been clearly but by Stone C. J. in a recent case., Yabus v. United States (1944) 321 U.S. 414 (I) :

"The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations Which it has declared to be pre-requisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate.

The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct -- here the rule, with penal sanctions, that prices shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant date by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework".

I hold, therefore, that Section 29(3) cannot be challenged on the ground that there is an unconstitutional delegation of legislative power. The language of Section 30(2) (t) is identical to that of Section 28(3). The attack on the constitutional validity of Section 30(2) (t) must also fail.

11. For the reasons expressed I hold that the main portion of Section 29(2) of Act VII of 1937 and the notification of the State Government dated 2-11-1955, made by the authority conferred u/s 29(2) are constitutionally valid and there is no any case made out by any of the petitioners for the issue of a writ under Article 226 of of the Constitution against the respondents, In my opinion, all these applications must be dismissed with costs. Hearing fee Rs. 100/- in each case.

Raj Kishore Prasad, J.

12. I agree.