
(1968) 02 DEL CK 0011

In the Delhi High Court

Case No : C.W. No. 1398 of 1967

Chuni Singh Behari Lal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-02-1968

Acts Referred:

Citation : AIR 1968 Delhi 196 : (1968) ILR Delhi 428 Supp

Hon'ble Judges : I.D. Dua, C.J;S.K. Kapur, J

Bench : Division Bench

Advocate : P.S. Safeer, for the Appellant; Dipak Choudhri, G.D. Gupta and M.L. Sanyal, for the Respondent

Judgement

(1) This judgment will dispose of Civil Writ Petitions Nos. 1398 of 1967 and 1491 of 1967. Since the learned counsel are agreed that the decision rendered in Civil Writ No. 1398 of 1967 will govern the other writ petitions, it is sufficient to recite the facts of Civil Writ No. 1398 of 1967.

(2) The petitioners claim to be the dealers in barley and they say that on the date of the petition they possessed large quantities of "Ghat" and barley and by reason of the impugned order No. F. 6 (56)/66-DCS (P) , published in Delhi Gazette Extraordinary, dated 21st August, 1967, in exercise of powers conferred by Section 3 of the Essential Commodities Act 1956, they; have been incapacitated from dealing with the said stocks. The petitioners further allege that they applied for permits for disposing of their stocks which have been declined and in view of the impugned Notification dated 19th August, 1967, published in the Gazette dated 21st August, 1967, the Ministry of Railways, are no longer going to accept my dispatches of barley to out-station.

(3) In exercise of powers conferred by Section 3 of the Essential Commodities Act (hereinafter referred to as the said Act), the Administrator of Delhi, issued the Delhi Coarse Grain (Export Control) Orders, 1966. In the said Order, Clause 2 (d) defines the "Coarse Grain" to mean "Maize, Jowar or Bajra and includes flour

of any of them". Clause 3 thereof restricts for export of coarse grain and provides that "No person shall export or attempt to export or abet the export of coarse grain except under and in accordance with a permit issued by the Administrator or by the Director" The provision which are not relevant to the inquiry. By aforementioned Notification dated 19th August, 1967, the Lt. Governor, Delhi amended the Delhi Coarse Grain (Export Control) Order, 1966, by including "Barley" in the definition of "Coarse Grain".

(4) The petitioners allege that, as a result of the amendment, they cannot now, export barley and "Ghat" to places like Calcutta, Purnia and Burdwan, as they were doing, and consequently, their fundamental right of trade has been violated. The petitioners, Therefore, challenge the validity of Section 3 of the said Act and of the Delhi Coarse Grain (Export Control) Order, 1966, as amended by Notification dated 19th August, 1967. The petitioners applications for permits to export barley having been rejected, they filed the present writ petitions.

(5) The respondents, in their written statement, deny that either Section 3 of the said Act or the impugned order is invalid or constitutional. They are that Clause 3 of the impugned order seeks to regulate the transport of coarse grain with a view to maintaining an increase in the supply thereof within the Union Territory of Delhi and that the impugned order could be legitimately made under the said Act, with a view to controlling and regulating the distribution of food-stuff which is an essential commodity u/s 2(a) defines "Essential Commodity" and the relevant part thereof reads:-

(a) Essential Commodity "means any of the following classes of commodities,

(5) "food-stuffs, including edible oilseeds and oils."

(5-A) Clause (xi) of Section 2(a) authorises the Central Government to declare other commodities as "essential commodities" and reads:

"Any other class of commodity which the Central Government may, by notified order, declare to be an "Essential Commodity" for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List Iii in the Vii the Schedule to the Constitution". I have made a specific reference to Clause (xi) because the petitioners leaned counsel strenuously challenged the validity thereof on the ground that it gave uncontrolled and unfettered power to the Executive to include any commodity within the definition of "Essential Commodity"

(6) On behalf of the respondents, we are asked to pronounce on the validity of the said clause because the impugned order deals with food-stuffs, specifically included in the definition of "Essential Commodity";, u/s 2(a)(v) . It is further stated in the reply affidavit that "....the petitioners were at liberty to sell their stocks within the Union Territory of Delhi. By issuance of the said Notification they were prevented from making very High profits by exporting grains out of Delhi. It may not be out of way to mention here that immediately on the

issuance of the said notification the prices of barley fell from Rs. 150 to Rs. 100 a quintal" and this statement in the reply affidavit was relied upon on behalf of the respondent in support of their argument that the impugned order was necessary, not only; for maintaining or increasing the supplies of essential commodities, but also for securing their equitable distribution and availability at fair prices, as contemplated by Section 3 of the said Act.

Barley being a food-stuff, falls expressly within Section 2(a)(v), and consequently, it is an "Essential Commodity" subject to regulation u/s 3.. In these circumstances it is really unnecessary to pronounce upon the validity of Section 2(a)(xi). In exercise of powers under Article 226, the Court is not concerned with academic questions which do not arise for decision. Thus it is unnecessary to consider the arguments on behalf of the petitioners that Section 2(a)(xi) delegates unguided powers to the Executive to legislate.

That brings me to the other arguments of the learned counsel for the petitioners. They are :-

(1) Section 3 of the said Act is unconstitutional as it confers unguided and arbitrary powers on the executive to make an order completely destructive of the fundamental rights of the subjects, guaranteed under Articles 14 and 10 of the Constitution ;

(2) Section 3 of the said Act and the impugned notification are violative of Articles 301, 302 and 304(b) Under this head the learned counsel for the petitioners confined himself only to the following points:

(a) the restrictions imposed were not in the public interest and, Therefore, violative of Article 301, read with Article 302; and

(b) the restrictions imposed on the trade, commerce and intercourse by the impugned order are unreasonable and, Therefore, violative of Article 304(b)

(3) Articles 301 to 304 completely rule out delegation of legislative powers.

(4) Conferment of powers on the Executive by the impugned notification to grant or refuse permit at its own sweet-will without providing any guidelines are violative of Articles 14, 19 and 304(b) and

(5) Amendment introduced by order dated 19th August, 1967, in the Delhi Coarse Grains (Export Control) Order, 1966, is illegal, inasmuch as Section 3 of the said Act requires an order to be made after determining that the commodity is an "Essential Commodity" and such determination, without affording any opportunity, to the parties interested, of being heard, is arbitrary and violative of rule of natural justice.

(7) The learned counsel for the petitioners did not however, dispute that the same tests which are applicable to determine reasonableness under Article 19(6) are also applicable to determine reasonableness under Article 304(b).

(8) So far as the validity of Section 3 of the said Act is concerned, the matter stands concluded by the decision of their Lordships of the Supreme Court in Harishankar Bagla and Another Vs. The State of Madhya Pradesh, . The supreme Court was in that case concerned with the validity of Section 3 of Essential Supplies (Temporary Powers) Act, 1946. Their Lordships held that the preamble and the body of the section sufficiently formulated the legislative policy inasmuch as the power could be exercised only for maintenance or increase in supply of essential commodities and of securing equitable distribution and availability of fair prices. The said decision, in my opinion, completely meets the attack of the learned counsel for the petitioners even against the said Act. The preamble of the Act reads:--

"An Act to provide, in the interest of general public, for the control of the production, supply and distribution of and trade and commerce in certain commodities."; this read with Section 3, provides sufficient guidance to the Executive in exercising powers under the Act. Powers u/s 3 can be exercised only if the Central Government is of the opinion that 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. In all such cases the test is, has legislature laid down intelligible standards for the guidance of administrative agencies? Every statute has to be adapted to complex conditions involving host of details with which the legislature cannot deal directly. Filling of such details must be left to the administrative agencies by applying their talent, skill and experience, having regard to the varying demands of the situation from time to time. The constitution has never been regarded as denying to the legislature the necessary resources of flexibility and practicability, though in so doing, the legislature is expected to indicate something to be thus supplemented. In other words, the legislature must first adopt a policy or set an intelligible standard to which the administrative action must conform. The legislature, though best conversant with the needs of its subjects, cannot deal with all the details required to be filled in and for this reason the matter of such details, has of necessity, to be left to the administrative agencies in the interest of achievement of goals shared by different limbs of a democratic Government. The fact that the power has to be exercised for the purposes mentioned above provide the necessary safeguards and the guidelines for the administrative agencies to observe. If the exercise of power falls outside the statute, that exercise of power may be bad, but it cannot render the Act unconstitutional on the ground of excessive delegation. (9) The learned counsel for the petitioners relied on certain decisions of their Lordship of the Supreme Court, but it is not necessary to read them in detail as, part from the fact that the matter stands concluded, as I have already said, by decision in Harishankar Bagla and Another Vs. The State of Madhya Pradesh,), each statute has to be judged on its own merits though, of course, the decisions provided the guiding principles to be observed in testing the validity of each statute. The learned counsel for the petitioners mainly relied on Dwarka Prasad Laxmi Narain Vs. The State of Uttar

Pradesh and Others, ; Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, . Since the said two decisions were relied upon mainly in challenging the validity of the notification I will deal with those a little later. At present it is enough to say that these cases do not in any manner advance the case of the petitioners so far as the validity of the Act goes. Section 3 of the said Act is, Therefore, in my opinion, valid and constitutional.

(10) So far as Articles 301 and 304 are concerned, their scope may be briefly analysed. Article 301 places a limitation on the executive and legislative power with a view to maintaining freedom of trade, commerce and intercourse throughout the territory of India and to prevent the growth of sectional interests of the nation as a whole.

Article 302 authorises the Parliament to impose restrictions on the freedom of trade etc., "as may be required in the public interest". Neither the Parliament nor the State legislature can, however, give preference to one State over another or discriminate between one State or another or commerce in any of the lists and in the VIIth Schedule. But the parliament may make a law giving or authorising the giving of any preference etc., if it is declared by such law that it is necessary to do so for the purposes of dealing with a situation arising from scarcity of goods in any part of the territory of India. To the limitations imposed upon State legislature by Articles 301 and 303(1), Article 304 lays down certain exceptions and one of the exceptions is that the State legislature may, notwithstanding anything in Articles 301 and 303, impose reasonable restrictions on the freedom of trade, commerce or intercourse as may be required in the public interest, provided the previous sanction of the President is obtained as required by proviso to Article 304. Even discriminatory restrictions may, Therefore, be imposed notwithstanding the ban of Article 303(1) if the conditions prescribed by Article 304 are satisfied. Since the only attack, so far as Article 304 is concerned, by the learned counsel for the petitioners is that the restrictions are neither reasonable nor in public interest, no other point need be considered if it is held that the restrictions are reasonable and in the public interest.

If the statute does not violate Article 19 of the Constitution, the attack on the ground of violation of Article 304(b) must necessarily fail. It is true, as the learned counsel for the petitioners said, that when a law is challenged as imposing restrictions upon a fundamental right the Court has to look at the substance of the law, without being beguiled by the appearance thereof as the legislature cannot disobey the mandate of the constitutional provisions even indirectly. The arguments about the Act suffering from vice of excessive delegation or being violative of Article 14 or as imposing unreasonable restrictions do always, to some extent, overlap. The reasonableness of the restrictions have to be determined in an objective manner and from the point of view of the interest of general public and not upon abstract considerations or the considerations of an individual made subject of restrictions.

In judging the reasonableness of a statute the Courts are expected to strike a balance between the freedom guaranteed by Article 19(1)(g) and the social control permitted by Article 19(6). It follows that the limitation imposed on a person in enjoyment of the right should not be excessive or beyond the requirements of the interest of the public. The restriction also must have a reasonable relation to the object which the legislation seeks to achieve. The nature of the right, the purpose of the restriction, the extent and urgency of the evil sought to be remedied and the demands of the prevailing conditions should all enter into judicial verdict. The present day conditions cast an obligation on the law makers to keep a vigilant eye on the demands of essential commodities by the public. That in turn demands various day to day adjustments for maintaining or increasing supplies thereof and for securing distribution and availability at fair prices. In these matters a rigid pattern cannot be provided as that must inevitably prejudice the national economy. Essential commodities may today be surplus in one area and urgently required in another. Again, such fluctuating demands in different areas may result in unfair prices where there is a shortage. Different essential commodities may be in demand at different times in different places and these requirements have to be adjusted. Such restrictions, therefore, are absolutely necessary for planned development of the economy of the nation. I find nothing unreasonable in the restrictions in the face of sufficient guidance provided to the executive by the statute. The restrictions are, in these circumstances, also necessary in the larger interest of the public to which the individual interest must be subordinated. In the result, I hold that there is no violation of Article 302 or 304(b) of the Constitution.

(11) That takes me to the impugned order itself. The attack of the petitioner's learned counsel was mainly directed against Clause 3 of the order. He said that the administrative agencies have been given complete control and power to issue or not to issue a permit and the traders have been thrown completely to the mercy of such agencies. The same very argument was advanced before their Lordships of the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , and their Lordships said:--

"The policy underlying the Order is to regulate the transport of Cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power there is ample power in the Courts to undo the mischief. Presumably, as appears from the different forms published in the Manual, there are directions and rules laid down by the Central Government for the grant or refusal of permits". (12) Mr. Safeer, the learned counsel for the petitioners, sought to distinguish this decision on the ground that there are no directions and rules for the grant or refusal of the permit laid down either in the Act or in the impugned order, and that in *Harishankar Bagla's* case the persons aggrieved had not applied for permits. The

learned counsel said that the present case, Therefore, is governed by the decision in Messrs. Dwarka Prasad Laxmi Narain's case.

(13) The policy of the Act, as I have already said, is to impose restrictions for the purposes set out in Section 3, and the Executive agencies must, when exercising power under the order act in a manner that effectuates the said policy. If they travel outside the principles laid down, in Section 3 and the preamble, it may be open to the Courts to strike down the exercise of the power, but it cannot be said that there are no guidelines provided in the order regulating the action of the executive.

(14) In Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, , their Lordships of the Supreme Court, on the construction of the order itself, came to the conclusion that that order committed to the unrestrained will of a single individual, the power of grant, withhold or cancel licenses, in any way he chose, and there was nothing in the order which could ensure a proper execution of the power or operate as a check upon injustice that might result from the improper execution of the same. The Supreme Court was also influenced by the fact that the State Coal Controller could choose to delegate the power in favor of any and every person..

(15) In Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, , their Lordships upheld the validity of Clause 11-B of the Iron and Steel (Control, Production and Distribution) Order, 1941, which authorised the Controller to fix the maximum prices at which any iron and steel may be sold by the producer or the stock-holder or by any other person or class of persons, on the ground that it carried out the legislative object prescribed in Section 3 of the Essential Supplies (Temporary Powers) Act, 1946. It was observed:--

"Having regard to the nature of the problem which the legislature wanted to attack, it may have come to the conclusion that it would be expedient to limit the discretion of the delegate in fixing the maximum prices by reference to any basic price. Therefore, we must hold that the Clause 11-B is not unconstitutional on the ground of excessive delegation". The Supreme Court also repelled the argument that the said clause violated Article 19(1)(f)(g). As I have said already, all these cases only provide the principles to be borne in mind, and once it is found that guidelines have been prescribed the order cannot be struck down either on the ground of excessive delegation or violation of Article 14 or 19. I, Therefore, hold that the said order is constitutional.

(16) So far as the fifth contention of the learned counsel is concerned, the same has also no merit. Issue or orders under the said Act is the exercise of delegated legislative power and I find it difficult to agree with the petitioners learned counsel that the authorities must first hear a party before deciding, whether or not the commodity is or is not an "essential commodity". Moreover, it cannot even be remotely suggested that Barley is not a food-stuff and food-stuffs have

been expressly included in the definition of "essential commodity". This contention of the petitioners must, Therefore, be also repelled. That leaves only one contention of the petitioners learned counsel that Articles 301 to 304 rule out delegation of legislative power completely. This argument was merely adumbrated by the learned counsel, and I find no merit in the same. Exercise of power by a delegate is as much a legislative power as by the legislative itself. Of course, the delegated power has to be tested from the various standpoints, namely, (a) whether it is delegation of an essential legislative power; and (b) whether the delegation is excessive. I however, find nothing in Articles 301 to 304 forbidding delegation, though the delegated legislation will also have to be tested in the light of the said articles.

(17) In these circumstances, there is no merit in these petitions, which fail and are dismissed with costs.

(18) Petition dismissed.