
(1998) 11 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 20064 of 1998

Ellora Paper Mills Ltd. and another	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Constitution of India, 1950 — Article 19(1), 301, 302, 303, 303(1)

Citation : (1999) 1 AWC 758

Hon'ble Judges : S.L. Saraf, J; M. Katju, J

Bench : Division Bench

Advocate : Manish Goyal, for the Appellant; Yatindra Singh, C.S. Singh, P.K. Singhal and R.C. Yadav, for the Respondent

Judgement

M. Katju, J.—Petitioner No. 1 is a company registered under the Indian Companies Act, which is engaged in the business of manufacturing and selling various kinds of paper and pulps. It has its registered office in Bombay and its factory is in Maharashtra. In the course of business, the Petitioner Company entered into contracts with the Government of Uttar Pradesh for supplying papers as required by the State Government. The petitioner has got itself registered with the Directorate of Industries. Uttar Pradesh vide Annexure-5 to the petition. The petitioner sells papers manufactured by it *inter alia* to the book publishers in U. P. who sell the prescribed textbooks for students. In this connection the State Government invited tenders for the printing of the prescribed books. True copy of the notice inviting tenders is Annexure-6 to the petition. The petitioner has contended that it has a right to be considered for supply of paper to the book publishers, but it has been illegally excluded by clause (3) of the impugned order dated 20.5.1998.

2. The petitioner has basically raised two objections regarding the impugned order. The first grievance is that the State Government has provided that only I.S.I. mark paper can be supplied. The learned Addl. Advocate General has clarified this aspect during the course of arguments before us. He submitted that

the above condition only requires that the paper should be of I.S.I, standard and it should have the water mark of the mill manufacturing the paper. He submitted that there is no necessity of any mark by the I.S.I. on the paper. Since the parties are agreed on this no further direction is required by us on this point, and we clarify that there is no necessity of any I.S.I. mark on the paper and the only requirement is that it should be of I.S.I. standard and it should have the water mark of the mill manufacturing it.

3. The second and more important grievance of the petitioner relates to clause (3) of the impugned G.O. The said clause states that only mills of U. P. will be allowed to supply such paper. In our opinion, this condition is clearly violative of Articles 301 303 and 19(1)(g) of the Constitution.

4. The object of Articles 301 and 303 of the Constitution was that India should remain one economic unit. Our founding fathers realized in their wisdom that India will remain a single political unit only if it remains one economic unit, because political unity depends on economic unity.

5. Before dealing with this point we may quote the relevant provisions of the Constitution :

"301. Freedom of trade, commerce and Intercourse.--Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

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

303. Restriction on the legislative powers of the Union and of the States with regard to trade and commerce.--(1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorised 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.

304. Restrictions on trade, commerce and intercourse among States.--Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law :

(a) impose on goods imported from other States (or the Union territories) any

tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced ; and

(b) imposes such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required to the public interest :

Provided that no bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

6. In *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , the Supreme Court observed :

"In drafting the relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal policy which had been adopted by the Constitution for the governance of the country. Political freedom, which had been won, and the political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union, and that may conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the State Legislatures to adopt remedial measures intended solely for the protection of regional interests without due regard to their effect on the economy of the nation as a whole. The object of Part XIII was to avoid such a possibility. Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country. The provision contained in Article 301 , guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character ; it is not also a mere statement of a directive principle of State policy ; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. In appreciating the significance of these general considerations we may profitably refer to the observations made by Cardozo. J. in *Charles H. Baldwin v. GAS F Seeling*. (1934) 294 US 511 at p. 523 : 79 law Ed. 1032 at p. 1088, while he was dealing with the commerce clause contained in Article 1, Section 8. clause (3) of the American Constitution". "This part of the Constitution, observed Cardozo J. "was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together and that in the long run prosperity and salvation are in union and not division."

7. In *State of U. P. v. Laxmi Paper Mart and others* 1997 (2) AWC 813 the facts

were that the exercise books purchased within the State of U. P. were exempted from sales tax, while exercise books purchased outside U. P. and sold within U. P. were subjected to sales tax at 5%. The Supreme Court held that, this is violative of Articles 301 and 304 of the Constitution.

8. In several decisions of the Supreme Court, a distinction has been made between regulatory measures and direct interference with trade or commerce, vide *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . While regulatory measures do not violate Article 301, direct interference with trade and commerce will offend Article 301. In our opinion clause (3) of the impugned G.O. is not a regulatory measure but a direct infringement of Articles 301 and 303(1) of the Constitution.

9. In *State of Bihar and Others Vs. Harihar Prasad Debuka and Others*, (vide paragraph 131, the Supreme Court observed :

"Article 301 mandates free trade, commerce and intercourse throughout the territory of India. Interstate trade has, therefore, to be free from trade barriers. The mobility of goods throughout the territory of India has to be free. Free trade throughout the territory of India would be one with no tariffs and no restrictions or disadvantages of any kind of importing or exporting from the different States. Free trade means complete freedom of inter-State trade without any restrictions on the movement of goods between the States. Anyone aggrieved by infringement of the provisions of Article 301 can seek his remedy from the Court against the offending legislative or executive action."

10. In our opinion Article 303(1) of the Constitution makes it clear that neither Parliament nor the Legislature of a State can give preference to one State over another, or discriminate one State from another. Sri. Yatindra Singh, learned Addl. Advocate General emphasized on the words "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule", and he submitted that in view of these words, it cannot be said that there was any violation of Article 303. In our opinion, the words emphasised by Sri Yatindra Singh indicate that even if there is power in Parliament or the State Legislature to make a law by reason of any entry in the Seventh Schedule, that legislative power is restricted by Article 303 which provides that Parliament or the State Legislature cannot give any preference to one State over another. Hence in fact the words emphasized by Shri Singh go in favour of the petitioner.

11. In *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, , it was held that a local preference in inter-State sales tax violates Article 303 of the Constitution. Similarly in *State of Rajasthan v. Mangilal* 1969 (2) SCO 710 it was held that if goods produced in another State are taxed at a different rate of tax that is violative of Article 303 of the Constitution. In *M/s. Western Electric Co. v. State of Maharashtra* AIR 1980 SC 621 the facts were that the goods manufactured within the State of Maharashtra had to pay lesser sales tax than the goods imported from outside. It was held that this was violative of Articles

301 and 303 of the Constitution.

12. Article 301 of our Constitution appears to have been borrowed from Section 92 of the Australian Constitution which states : "Trade, commerce and intercourse among the States--shall be absolutely free". Similarly Article 303(1) of our Constitution appears to be borrowed from Section 99 of the Australian Constitution which states that the Commonwealth "shall not, by any law or regulation of trade, commerce or revenue, give preference to one State or any part thereof over another State or any part thereof."

13. There are no similar provisions in the U. S. Constitution but the commerce clause in Article I, Section 8 (3) of the U. S. Constitution has been interpreted in a manner which has the same effect. Interpreting the commerce clause Mr. Justice Jackson of the U. S. Supreme Court in *H. P. Hood and sons v. Du Mond*. 336 US 525, observed :

"This principle that our economic unit is the Nation. which alone has the gamut of powers necessary to control of the economy, including the vital power of erecting customs barriers against foreign competition, has as its corollary that the states are not separable economic units. As the Court said in *Baldwin v. Seeling* 294 US (511). 527 what is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation."

14. In *Philadelphia v. New Jersey* (1978) 437 US 617 . Mr. Justice Stewart of the U. S. Supreme Court observed :

"The opinions of the Court through the years have reflected. an alertness to the evils of "economic isolation" and protectionism, while at the same time recognizing that incidental burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people. Thus, where simple economic protection is effected by State legislation, a virtually per se rule of invalidity has been erected. The clearest example of such legislation is a law that overtly blocks the flow of interstate commerce at a State's borders... But where other legislative objectives are credibly advanced and there is no patent discrimination against Interstate trade, the Court had adopted a much more flexible approach, the general contours of which were outlined in *Pike v. Bruce Church, Inc.* 397 US 137 142.

In the above case, the State of New Jersey banned import of solid or liquid waste which originated or was collected outside the territorial limits of the State Striking down the provision, the U. S. Supreme Court held that it is violative of the commerce clause of the Constitution. The Court held that parochial legislation of this kind is constitutionally invalid, whether the ultimate aim of the legislation was to assure a steady supply of goods by erecting barriers to allegedly ruinous outside competition or to create jobs for keeping industry within the State or to preserve the State's financial resources from depletion by fencing out indigent immigrants. The Court held that no doubt quarantine laws could validly be made for health and protective measures, e.g., laws banning the

importation of Articles such as diseased livestock from outside, but the law in question was not a quarantine law and hence could not be sustained.

15. Learned Addl. Advocate. General then contended that since the books belong to the State Government it can legitimately direct that the paper manufactured in U. P. alone can be sold to the book publishers. We cannot accept this contention. It has been held by the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , that the State cannot act as a private person in giving contracts. Hence, in our opinion, the State of U. P. cannot validly say that it will give business only to the mills in U. P., and not consider offers of mills outside U. P. In our opinion clause (3) of the impugned G.O. clearly violates Articles 301 and 303, as well as Article 19(1)(g) of the Constitution.

16. Sri Yatindra Singh then contended that other States are acting in the same manner and giving preference to mills situated within their own States. In our opinion, if other States are acting unconstitutionally, that does not justify the U-P. Government also to act unconstitutionally. India is one nation, and this habit of some States behaving as if they are separate or independent nations has to be deprecated. Moreover the impugned order is purely an administrative order which is not backed by any legislative measure. Hence, clause (3) of the impugned G.O. is unconstitutional as held by the Supreme Court in the *District Collector v. M/s. Ibrahim and Co.* AIR 1979 SC 1275.

17. Thus, this petition is allowed. Clause 3 of the impugned G. O. dated 20.5.1998 is quashed. However, it is made clear that any contract already entered into between the State Government and book suppliers will not be invalidated by this judgment. No order as to costs.