

(1971) 09 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 4210, 4233 and 4234 of 1971

Garib Dass and Others

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-09-1971

Acts Referred:

Constitution of India, 1950 — Article 13, 226

Uttar Pradesh Excise Act, 1910 — Section 14, 20(4), 20A, 20B

Citation : AIR 1972 All 78

Hon'ble Judges : W. Broome, J;J.M.L. Sinha, J

Bench : Division Bench

Advocate : R.R. Agrawal, A.S. Kapoor and S.N. Doval, for the Appellant;
Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Broome, J.—These three writ petitions challenge a notification issued by the U. P. Government under Sections 14 and 20 (4) of the U. P. Excise, Act and published in the U. P. Government Gazette of 28-3-1970, prohibiting the import, export, transport and possession of liquor and intoxicating drugs in the districts of Tehri-Garhwal and Pauri-Garhwal. The petitioners, who were liquor dealers running liquor shops in the districts in question, at first acquiesced in the notification, being advised that the imposition of prohibition was valid. On 13-4-1971, however, the position was radically changed by the decision given by this Court in writ petition 3430 of 1970 (All), holding Section 20 (4) of the Excise Act to be void. The petitioners sought to take advantage of this decision by bringing it to the notice of the District Magistrate concerned and asking them to grant licences for the vend of liquor, as had been done before the issue of the impugned notification; but it appears that the matter was referred to the Excise Commissioner of U. P. for instructions, and no action was taken to afford the petitioners any relief, with the result that they were eventually obliged to file these writ petitions in July, 1971.

2. Two preliminary objections have been raised on behalf of the respondent State of U. P.: firstly, that the petitioners have no locus standi entitling them to present the petition, and secondly, that the petitioners have been guilty of undue delay in seeking redress from the Court. We can see no force whatsoever in either of these contentions. It is difficult to conceive of anyone who could have a better locus standi than the petitioners to challenge the impugned notification. The petitioners in writ petitions 4210 and 4234 had been carrying on the business of retail vend of country liquor in the districts of Tehri-Garhwal and Pauri-Garhwal respectively for a number of years before prohibition was introduced by means of the said notification; and in the auctions of country liquor shops for the 1970-71 season the petitioners were among the bidders and their bids were the highest, with the result that they would in the normal course have been granted licences, had it not been for the introduction of the impugned notification. Similarly the petitioner in writ petition 4233 had for many years been the sole vendor of foreign liquor in the district of Tehri-Garhwal and could normally have expected his licence to be renewed from 1-4-1970, if the impugned notification had not been issued. The petitioners have, fundamental right to carry on their trade and are, clearly entitled to claim relief from this Court if they are prevented from doing so on account of the enforcement of a notification which has been rendered invalid and inoperative by a decision of this Court.

3. The objection regarding delay is equally untenable. It is no doubt true that the petitioners did not come forward to challenge the notification at the time when it was issued in March, 1970; but that was because they were advised that, as the law was then understood, the imposition of prohibition was valid. When, however, the decision given by this Court on 13-4-1971 showed that the notification issued in March 1970 was invalid, the petitioners lost no time in approaching the District Magistrates concerned and asking them to take suitable action in the light of the Court's decision. Thereafter no action seems to have been taken by the State authorities either in the district concerned or in Lucknow; nor was any communication sent to the petitioners to inform them that their request had been rejected. The petitioners very properly waited for some response from the State and it was only when it became apparent by lapse of time that the State was going to do nothing in the matter that the petitioners felt obliged to come forward and file the present writ petitions. We fail to understand how it can be suggested that in circumstances such as these the petitioners have been guilty of any laches disentitling them to the issue of a writ in their favour.

4. Coming to the merits of the petitions, we are satisfied that the impugned notification of 20-3-70 cannot stand, in view of the decision given by this Court on 13-4-1971 in Writ Petn. 3430 of 1970 (All) declaring Sub-section (4) of Section 20 of the U. P. Excise Act to be void. Oddly enough, the stand taken by the State in its counter-affidavits is that Section 20 (4) of the Excise Act "still holds the field"; but learned Standing Counsel was obliged to admit that so long as the decision given by this Court on 13-4-1971 remains operative this assertion is meaningless.

5. Learned Standing Counsel suggests that the aforementioned decision given in Writ Petn. 3430 of 1970 (All), declaring Section 20 (4) of the Excise Act to be void, requires reconsideration in the light of the subsequent Full Bench decision of this Court in Gappulal Munni Lal v. State of U. P. 1971 All LJ 796 : 1971 T LR 1141 . His contention is that even if it be correct to say that Section 20 (4) of the Excise Act suffered from the vice of excessive delegation of power to the executive, that defect must be deemed to have been cured by the subsequent enactment of Sections 20-A and 20-B, which laid down guidelines for the implementation of Section 20 (4). In our judgment in Writ Petn. 3430 of 1970 (All) we held that "these two new sections cannot operate to give life to a section that was still born and void." But learned Standing Counsel contends that Section 20 (4), though possibly defective on account of excessive delegation, cannot be said to have been still born and completely void on that account: according to him the most that can be said is that Section 20 (4) was initially defective, but the defect was removed by the subsequent enactment of Sections 20-A and 20-B. In this connexion particular reliance is placed on the following passage in the judgment of the Full Bench in the aforementioned case:--

"There is fundamental difference between a still-born Act and an Act of which only some particular provision is invalid or is rendered invalid due to some defect or lacuna- In the absence of any express bar or inherent incompetence, the power to remove the defect by appropriate Amendment Act or Ordinance, as the case may be, with retrospective effect must be held to be inherent in the legislative power itself."

It is suggested that in view of this pronouncement we must hold that the Amendment Act which introduced Sections 20-A and 20-B into the Excise Act with retrospective effect was sufficient to cure whatever defect may have existed in Section 20 (4) on account of the initial omission of the legislature to provide any guidelines for the exercise by the executive of the power which that section, conferred.

6. We now proceed to examine this proposition. In our view, no fundamental distinction is to be drawn between void Acts and void sections. In the former case the whole Act has to be treated as non-existent, while in the latter the particular section will be treated as non-existent, leaving a gap in the statute. And just as the way to set right a void Act is to re-enact the whole statute with necessary modifications, similarly the way to cure a void section is to re-enact the section with the proper amendments. Re-enactment undoubtedly appears to be necessary; but it has to be borne in mind that in certain cases it may be possible to argue that an Amendment Act which does not specifically re-enact a void section in so many words, may nevertheless be construed as amounting to substantial re-enactment of the section. In *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, the Supreme Court dealt with case of this nature. Section 5 of the Punjab General Sales Tax Act, which originally conferred on the Provincial Govt. an uncontrolled power to fix the rate of tax leviable u/s 4

of the Act) at whatever figure it chose, was amended in 1952 by means of Section 2 of the East Punjab General Sales Tax (Second Amendment) Act, which ran as follows:--

"In Sub-section (1) of Section 5 of the East Punjab General Sales Tax Act, 1948, after the word "rates" the following words shall be inserted and shall be deemed always to have been so inserted, namely:-- "not exceeding two pice in a rupee".

The comment made by the Supreme Court on this was:--

"No doubt in term the section inserts the words "not exceeding two pice in a rupee" in Section 5. If Section 5 is inserted in the Act by the Amending Act with the said words added, there cannot possibly be any objection, for that would be an amendment of an existing Act. But in substance the amendment brings about the same effect. The words "shall be deemed always to have been so inserted" indicate that in substance Section 5, as amended, is inserted in the Act with retrospective effect."

It is important to note, when considering the import of this ruling, that the main charging section of the Act (Section 4), whereby dealers were made liable for the payment of sales tax, remained valid throughout. Only Section 5, which related to the rate at which the tax was to be levied, was void for failing to prescribe a maximum; and Section 2 of the Amendment Act (quoted above) by itself made it quite clear what the maximum rate was to be. It was in such circumstances that the Supreme Court found that the amendment amounted substantially to re-enactment of the void section.

7. Similar is the case with the statutory provisions considered by the Full Bench in 1971 All LJ 796 : 1971 T LR 1141 (supra). The question before the Full Bench was whether Section 28 of the Excise Act was open to attack on the ground of excessive delegation (as well as on account of infraction of Article 14 of the Constitution, with which we are at present not concerned). That section as originally enacted empowered the State Government to impose excise duty on excisable articles without prescribing any maximum; but in 1970 the U. P. Excise (Amendment and Validation) Act was passed, Section 2 of which ran as follows:

"Section 28 of the U. P. Excise Act 1.910 shall be re-numbered and be deemed always to have been re-numbered as Sub-section (1) thereof and the following sub-sections shall be inserted and be deemed always to have been inserted, namely:

(2) The State Government shall in imposing an excise duty or a countervailing duty as aforesaid and in fixing its rate, be guided by the directive principles specified in Article 47 of the Constitution of India.

(3) Such duty shall not exceed the maximum as provided hereinafter.....

This amending section has been worded in such a way that it clearly amounts to substantial re-enactment of the original Section 28 as Sub-section (1) of the new

section. This then was the class of case before the Full Bench; and the passage in the judgment of the Full Bench that has been relied upon by learned Standing Counsel must obviously be construed with reference to this class of case. With respect to cases of a different type the remarks are purely obiter and can have no more than persuasive force.

8. We are satisfied that the case with which we are dealing at present is clearly distinguishable from that which was decided by the Full Bench, as well as from the case of *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*. Those were both cases of substantial re-enactment, whereas here we find that it is not possible to construe the U. P. Excise (Third Amendment) Act of 1970 as substantially re-enacting the void Section 20 (4) of the Excise Act, 1910. All that this amending Act did was to introduce two new Sections (20-A and 20-B), purporting to lay down guidelines for the implementation of Section 20 (4). But since at the time when the amending Act was passed Section 20 (4) was void and therefore non-existent, the introduction of such guidelines was meaningless and could have no effect. No attempt was made in the amending Act to reiterate or to alter the wording of the void Section 20 (4). Instead it was supplemented by two new sections, on the erroneous assumption that it still existed in the statute. In the circumstances we see no reason to change the opinion, already expressed by us in writ petition 3430 of 1970 (All), that Section 20 (4) of the Excise Act was still-born and void and that the subsequent enactment of Sections 20-A and 20-B could not operate to imbue this dead section with life.

9. It follows that the notification impugned in the present writ petitions, having been issued on the basis of Section 20 (4) of the Excise Act, which has been held to be void, cannot be allowed to stand. These writ petitions are accordingly allowed with costs and the impugned notification D/-28-3-1970 is quashed. We further issue a mandamus to the State of U. P. and the District Magistrates concerned to issue permits for the sale of intoxicants, as required by Section 20 (1) of the Act, in the districts of Tehri-Garhwal and Pauri Garhwal, after holding auctions if necessary, within a period of two months from today.