
(1973) 12 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2665 of 1972

Gurcharan Singh

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 04-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Control of Bricks Supplies Act, 1949 — Section 3

Citation : AIR 1974 P&H 223

Hon'ble Judges : Pritam Singh Pattar, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

Pritam Singh Pattar, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India to quash the order dated 28-7-1972 of the District Food and Supplies Controller, Ambala, whose copy is Annexure "C" attached to the writ petition, and to declare clauses 22 and 18(ii) of the Haryana Control of Bricks Supplies Order, 1972 as unconstitutional and invalid.

2. The facts of this case are that Gurcharan Singh petitioner is running a brick kiln in village Nenola, District Ambala, to whom notice dated 28-12-1971 was issued by the District Food and Supplies Controller, Ambala, whose copy is Annexure "A" to the petition, to show cause why his brick kiln licence be not cancelled and the security deposited by him be not forfeited for having committed the irregularities mentioned in the notice. The petitioner filed reply dated 27-1-1972 Annexure "B" to this petition. The District Food and Supplies Controller then passed the impugned order Annexure "C" dated 28-7-1972 forfeiting his security to the extent of Rs. 500/- and warned him to be careful in future. He filed this writ petition alleging that this impugned order is illegal and unconstitutional because it was based on show cause notice dated 28-12-1971, which was issued under the Punjab Control of Bricks Supplies Order, 1956 which was declared invalid along with all the notices and notifications issued thereunder by a Division Bench of this Court in Civil Writ No. 1632 of 1971--M/s. Vaksons v. State of Haryana decided on 20-3-1972(Punj. & Har.), Since the Punjab Control

of Bricks Supplies Order, 1956 had been declared invalid, therefore, no action could be taken against him in pursuance of a notice issued under that Act. It was asserted that clause 22 of the Haryana Control of Bricks Supplies Order, 1972 is illegal, null and void and without jurisdiction as the executive authorities had no power to validate which had been invalidated by the High Court.

3. Shri Ramji Dass, District Food and Supplies Controller, Ambala filed affidavit on behalf of the respondents, wherein he admitted the material facts mentioned in the petition. It was admitted that the Punjab Control of Bricks Supplies Order, 1956 was struck down by the High Court. However, it was pleaded that the State of Haryana promulgated the Haryana Control of Bricks Supplies Order, 1972 with effect from 24th March, 1972 and by its clause 22 anything done or any action taken under the Punjab Control Order, 1956 shall, if not inconsistent with the provisions of this Order, be deemed to have been done or taken under the corresponding provisions of this Order, and, therefore, the impugned order was valid and the writ petition may be dismissed.

4. It is common case of the parties that the Punjab Control of Bricks Supplies Order, 1956 was applicable to the State of Haryana and in Civil Writ No. 1632 of 1961 decided on 20-3-1972(Punj. & Har.) by a Division Bench this Control Order was declared invalid along with all the notices and notifications issued thereunder. A notice dated 28-12-1971, whose copy is Annexure "A" to the writ petition was issued by the District Food and Supplies Controller, Ambala to the petitioner wherein he was asked to show cause why his brick kiln licence be not cancelled and his security not forfeited in part or in full for committing the following irregularities:--

"(i) that the record was not kept at the kiln site.

(ii) that no placards were displayed to indicate the classes of bricks on the Chattas.

(iii) that the stock rate board was not filled in.

(iv) that the classification of bricks had not been done properly as the stock of Ist Class bricks contained admixture of 12% IInd and IIIRD Class.

The petitioner submitted his reply on 27-1-1972 to this show cause notice and its copy is Annexure "B" wherein he denied all the allegations made in the show cause notice. After considering his reply, the District Food and Supplies Controller, Ambala passed the impugned order under clause 18(ii) of the Haryana Control of Bricks Supplies Order, 1972(hereinafter called the Haryana Control Order, 1972) and forfeited his security to the extent of Rs. 500/- and also administered a warning to be careful in future. This Haryana Control Order, 1972 came into force with effect from 24th March, 1972, when it was published in Haryana Gazette Extraordinary dated 24-3-1972. The show-case notice, Annexure A, was issued to the petitioner under the Punjab Control Order, 1956 while the impugned order was passed under the Haryana Control Order, 1972.

We may set out the relevant clauses of the Haryana Control Order, 1972 as follows:--

"Clause 18(ii)

If the manufacturer or dealer contravenes any of the provisions of this Order or conditions of his licence then without prejudice to any other action which may be taken against him, the District Magistrate may direct by order in writing that his security shall be forfeited in whole or in part."

"Clause 22

The Punjab Control of Bricks Supplies Order, 1956 is hereby repealed:

Provided that anything done or any action taken under the Order so repealed shall if not inconsistent with the provisions of this Order, be deemed to have been done or taken under the corresponding provisions of this Order."

5. The contention of Mr. Bhal Singh Malik, the learned counsel for the petitioner is that since the Punjab Control of Bricks Supplies Order, 1956 had been declared invalid by the High Court along with all the notices and notifications issued thereunder by judgment dated 20-3-1972, therefore, the Haryana State Government had no power to issue an Ordinance giving it the retrospective effect and that proviso to clause 22 of the Haryana Control Order, 1972, is invalid and illegal and may be quashed. In support of this contention, he relied on Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others, wherein it was held as under:--

"By issuing notification in exercise of powers conferred u/s 2(44)(ii) the State Government cannot invest the Tahsildar with the powers of a Tax Recovery Officer with effect from a date prior to the date of the notification i.e., retroactively or retrospectively. Consequently, attachment of shares belonging to assessee in order to recover arrears, by the Tahsildar, subsequent to 1st April, 1962, i.e., commencement of the Act of 1961 but prior to the date of notification empowering him as a Tax Recovery Officer is invalid.

It is open to a sovereign legislature to enact laws which have retrospective operation. The Courts will not ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

To the same effect was the law laid down in *Shivdev Singh v. State of Punjab* AIR 1959 P&H 453 and *India Sugars and Refineries Ltd., Hospet v. State of Mysore* AIR 1960 Mys 326. The Haryana Control of Bricks Supplies Order, 1972 was issued by the respondent-State u/s 3 of the East Punjab Control of Bricks Supplies Act, 1949(East Punjab Act No. 1 of 1949). This East Punjab Act I of 1949 did not confer any power on the State of Haryana to issue any Bricks Control Order u/s 3 of the Act with retrospective effect. It is thus well settled that unless the power to legislate conferred on an executive body by the Legislature expressly mentioned that such power can be exercised retrospectively, it can only be exercised prospectively. Power conferred by the Legislature on a subsidiary body i.e. the Government to issue notifications can only be exercised prospectively. However, the legislature unlike the executive body can always legislate retrospectively unless there is any prohibition under the Constitution, which has created it. In view of the law laid down in these authorities, the proviso to Clause 22 of the Haryana Control of Bricks Supplies Order, 1972, which makes the application of the provisions of this Order retrospectively, is illegal and invalid and is struck down. The impugned order dated 28-7-1972, Annexure "C" to the writ petition issued under Clause 18(ii) of the Haryana Control of Bricks Supplies Order, 1972 is also quashed as being illegal and invalid. There will be no order as to costs.

D.K. Mahajan, J.

6. I agree.

7. Petition allowed.