(1988) 08 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No''s. 2853, 2972, 2973, 2974, 2975 and 2976 of 1979

Harivansh Battad and Others — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 02-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 304, 31C
Maharashtra Tribals Economic Condition (Improvement) Act, 1976 — Section 11, 14, 5, 6, 7

Citation : (1988) 4 BomCR 553

Hon'ble Judges : V.A. Mohta, J;H.D. Patel, J

Bench : Division Bench

Advocate : G.K. Potey, for the Appellant; V.V. Naik, Assistant Govt. Pleader for respondent Nos. 1 and 2 and A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—In these six petitions, the validity of the Maharashtra Tribals Economic Condition (Improvement) Act, 1976 (the Act) is questioned.

2. Preamble gives the aims and objects and also the background of the Act. It reads :

"Whereas having regard to the economic and social backwardness of the Tribals owning to the geographical and social isolation in which they have lived hitherto, it is considered necessary to bring about within as short a time as possible an effective improvement in the economic condition of the Tribals;

And whereas one of the measures to bring about such effective economic improvement was to protect them from exploitation by certain unscruplous elements in society by making any lending made before the commencement of the Maharashtra Tribals Economic Condition (Improvement) Ordinance, 1976, invalid and void ab-initio and by prohibiting private agencies from lending them anything, and by prohibiting the marketing of certain agricultural produce in the

Tribals areas in the State by private agencies and by permitting lending only through the State Government or specified agencies; and by providing suitable alternative arrangement in such areas for marketing of such produce through the State Government and other specified agencies and by providing for matters connected therewith :

And whereas both Houses of the Legislature of the State were not in session;

And whereas the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action for securing the purposes aforesaid, and therefore, promulgated the Maharashtra Tribals Economic Conditions (Improvement) Ordinance, 1976 on the 9th day of October, 1976;

And whereas it is expedient to replace the said Ordinance by an Act of the State Legislature and also to make certain other provisions for the purposes hereinafter appearing; It is hereby enacted in the Twenty-seventh Year of the Republic of India as follows."

3. Section 2 and sub-sections (1) and (4) of section 4 and provisions ancillary to those sections are deemed to be in force from 9th October, 1976. The remaining provisions can be brought into force in such Tribal areas and from such different dates as notified in the Government Gazette. Section 2, inter alia, defines the terms "Scheduled Tribes", "Tribal area", Section 3 gives over-riding effect to the Act. Section 4 makes the lending in cash or kind to Tribals, Invalid and applies the Maharashtra Debt Relief Act, 1975, to such invalid and void debts in a manner they apply to the debts which are deemed to be wholly discharged under that Act. Section 5 prohibits marketing and transport of specified agricultural produce except to the State Government or Tribal Authority or its agent. Section 6 deals with the appointment of agents for the purpose of purchase or sale of agricultural produce in the Tribal area. Section 7 deals with the power of the State Government or its authorised agent to fix purchase price of agricultural produce. Section 8 makes it mandatory for the State Government, Tribal Authority or its agent to purchase and sell agricultural produce at the specified prices and also to make arrangements for storing etc. Section 9 deals with the operation of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, over the specified Tribal area. Section 10 deals with the constitution and functions of the price fluctuation fund. Section 11 empowers a police officer not below the rank of Sub-Inspector with power of entry, search, seizure, etc. Section 12 deals with offences and penalties. Section 13 prohibits cognizance of offence punishable under the Act except with the previous sanction of the State Government or any authorized officer. Section 14 deals with the power to suspend the operation of the provisions of the Act. Section 15 deals with the delegation of powers. Section 16 provides for indemnity for the State Government or Tribal Authority or agent or other person authorised by the State Government for anything which is done in good faith or intended to be done under the Act or any Rules or Orders made thereunder. Section 17 provides that

every officer or agent of the State Government etc. will be deemed to be public servant within the meaning of section 21 of the Indian Penal Code. Section 18 is a rule making power. By the last section 19, the Maharashtra Ordinance No. VII of 1976 is repealed with usual saving clause.

4. Before introducing the Maharashtra Tribals Economic Condition (Improvement) Bill, 1976, in the State Legislature, the sanction of the President was obtained. When the Act was passed, it was reserved for consideration of the President and it received the President''s assent. Therefore, it was first published in Government Gazette on 8th January, 1977.

5. We have heard M/s Bhattad and Potey, the learned Counsel for the petitioners, and Shri Naik, the learned Assistant Government Pleader, for the State. The petitioners'' contention is that the Act in general and sections 5 to 8, 11 and 14 in particular are violative of Articles 14, 19(1)(g) and 304(b) of the Constitution. We do not see even an iota of substance in the challenge. The Act, as will be clear from the Preamble as well as the Scheme give effect to the policy of the State towards securing one of the directive principles of State policy laid down in Part IV of the Constitution (Art. 46) and hence is immune under Article 31-C from challenge under Articles 14 and 19. Article 46 reads thus :

"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections : The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Historical truth is that for generations, Tribals have been and still continue to be weakest section of our Society and have been exploited at all fronts. Their economic interest needs promotion with social care.

6. Apart from the protective umbrella of Article 31-C, we are unable to locate any invidious discrimination or arbitrariness so as to attract vice of violation of Article 14 or any unreasonable restrictions on fundamental right to carry on any occupation, trade or business so as to attract the vice of violation of Article 19(1)(g).

7. Section 5 prohibits marketing in cash or kind of specified agricultural produce in specified Tribal area except to the State Government or Tribal Authority or its agent. It further provides for opening of centres for collecting agricultural produce for the purpose of their marketing ; and the goods are to be tendered for sale, whenever desired, only there. There is a prohibition against transport of that produce from Tribal area to any place outside such area, or vice versa except with previous permission. The tribals live in inaccessible area are not in a position to bring their goods to a regulated market area as a result, traders go there and purchase produce at ridiculously low price, taking undue advantage of their helplessness. This provision seeks to eradicate that exploitation. Regulation of import and export of the produce in the Tribal area is absolutely essential;

otherwise, it will be so easy to defeat the object with which the provision is made. No doubt, the power to apply different provisions of the Act to different produce and areas, is delegated to the State; but the delegation cannot be said to be either excessive or unguided. Situations vary from time to time and all eventualities cannot be codified. Delegation is to the highest authority. Principles are laid down. Details are as a matter of policy which can be best judged by the Government. It appears that plenary powers are given to implement the policy, if necessary, even in a phased manner.

8. Power to appoint agents (section 6), power to fix purchase price of the specified produce (section 7), power to compel the State or its agent to purchase or sell the specified produce at a price fixed (section 8), power of entry, search and seizure to police officer in securing compliance with the provisions of the Act (sectionsectionsectionsectionsectionsection 11) power to suspend the operation of any of the provisions of the Act with relation to specified goods and areas (section 14) are all necessary concomitant to achieve the object.

9. All that remains to be considered is, whether the Act is violative of Article 304(b) ? We do not think so. We are proceeding on the assumption that Articles 301 and 303 contained in Part XIII dealing with the subject "Trade, Commerce and Intercourse within the Territory of India" is attracted. Article 304 specifies that notwithstanding anything in Article 301 or 303, the State Legislature may by law impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

10. There is a condition attached, It is that a Bill for the purpose of Clause (b) must be introduced or moved in the State Legislature with the previous sanction of the President. The condition precedent exists. We have already held that the restrictions are reasonable in the public Interest.

11. We may mention that this is not the first time that validity of State enactment for the benefit of Tribals is questioned. In the case of Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, , the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, has been upheld to be valid despite more stringent provisions contained therein. In the case of Raoji Urkude v. State of Maharashtra 1985 Mh.L.J. 843, validity of section 36-A of the Maharashtra Land Revenue Code, 1966, providing for restrictions of transfer of occupancy by a Tribal in favour of a non-tribal except with previous sanction as provided therein, is upheld.

12. Conclusion : The Act is valid. Petition are dismissed. Rules discharged. No costs.