

(1960) 04 OHC CK 0010

In the Orissa High Court

Case No : O.J. Cs. No's. 145, 175 and 176 of 1959

Hrudananda Sahu and Others

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 27-04-1960

Acts Referred:

Orissa Agricultural Produce Markets Act, 1956 — Section 12, 4, 4(3), 4(4)
Orissa Agricultural Produce Markets Rules, 1958 — Rule 48

Citation : AIR 1961 Ori 81

Hon'ble Judges : R.L. Narasimham, C.J; G.C. Das, J

Bench : Division Bench

Advocate : M.N. Das, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—By these several applications the constitutional validity of the Orissa Agricultural Produce Markets Act, 1956 (Orissa Act 3 of 1957) was challenged by the respective petitioners. The point involved was common to all the petitions. Accordingly, they were heard together and are governed by the common Judgment.

2. In order to provide for the better regulation of buying and selling of agricultural produce and for the establishment of suitable markets therefore inside the State of Orissa, Orissa Act III of 1957 (hereinafter referred to as "the Act") was passed and came into force on February 8, 1957. u/s 3 of the Act the State Government issued a notification declaring its intention of regulating the purchase and sale of certain agricultural commodities including Jute and subsequently issued a notification under Sub-section (i) of Section 4 of the Act bearing No. 10744-NI-N4/59 (D) dated 26th/27th May, 1959, declaring an area around Kendupatna to be a market area within which the purchase and sale of jute amongst other agricultural produce is to be regulated.

Thus, by virtue of this notification no one within the market area or within a

distance thereof to be notified in the gazette in this behalf (since notified) could set up, establish, or allow to be set up, established or continued any place for the purpose of sale of any agricultural produce so notified except under a license granted by the State Government. A market committee was established u/s 5 of the Act by the State Government within the aforesaid market area. u/s 12 of the Act, this market committee was to issue licenses to traders, Adtyas, brokers and the like for carrying on their occupation within the market area. The Market Committee also had the power to renew, suspend and cancel such licenses.

The petitioner contended that by virtue of the aforesaid notification his right to carry on freely a trade in jute and his right to sell the same grown by him as a producer in a greater competitive market has been infringed, thus encroaching upon his fundamental right to carry on the trade or business under Article 19(1) (g) of the Constitution of India. The State Government had also framed certain rules known as the Orissa Agricultural Produce Markets Rules, 1958, by which the market committee has been empowered to collect the license fee from the traders, commission agents, brokers, weighmen, measurers, surveyors and other persons operating in the market area according to rates specified.

Thus, the rules framed are repugnant to Article 301 of the Constitution as interfering with the freedom of trade within, the territory of India. It was further contended by the petitioners that Section 12 which centers on the Market Committee an unlimited and uncontrolled discretion to grant or refuse licenses is void. Thus the main operative sections 4 and 12 of the Act being void, the whole Act is ultra vires the Constitution.

3. A counter affidavit was filed by the State Government controverting the several allegations made in the petition. It was stated that the objections as contemplated under Sub-section (1) of Section 3 were invited for the declaration of the Government's intention to regulate the purchase and sales in the Kendupatna area. This objection was to be filed within one month from the date of issue of the notification No. 7122/D, dated 24th February, 1959. No objection, however, was filed within the stipulated period.

Thereafter by Notification No. M. I. N. 559-23468/D, dated 26-6-59 the State Government in pursuance of Section 5 of the Act, established a market committee for the market area of Kendupatna as declared in the notification of the Development Department No. 19744/D, dated 27th May, 1959. The main source of the income of the market Committee were mainly two (1) the license fee and (2) the market fee. A major portion of the income of the Committee is ear-marked for the development work in the market yard as providing rest-shed and cattle-shed for the producers, erect auction hall and market committee hall, provide sanitary and light arrangement, construct approach roads and disseminate market news service to the producers and traders as well.

Thus, it was contended that the different sections of the Act and the Rules made thereunder do not impose any restrictions nor do they prevent the producers

from their right to sell the jute produced by them in a competitive market. On the other hand all the provisions are conducive towards providing facilities for sale under better competition without the cultivator being fettered or made to sell under duress. The notifications under Sections 3 and 4 bring direct advantage to the jute growers in the particular area inasmuch as the point of transaction and the place of transaction are localised and unrestricted activities of traders at various points are checked.

The market committee as contemplated u/s 5 of the Act has been constituted in Development Department Notification No. 23468 dated 24-6-59. This committee as provided under Sub-section (1) of Section 6 is a committee representing all interests, namely, agriculturists, traders, local body, co-operative as well as Government Officers. The Market Committee for the Kendupatna area thus consists of 15 members out of which seven are agriculturists, four are traders, one representative of local body, one from the co-operative, one is the regional marketing officer and the Sub-divisional Officer, Sadar (Cuttack) as the Chairman of the said Committee.

Accordingly, in the constitution of the Committee the agricultural interest has been duly safeguarded by adequate representation of seven members out of 15 as against four from traders. Sub-rule (4) of Rule 55 of the Orissa Agricultural Produce Markets Rules, 1958, lays down that the price, of agricultural produce brought into the market for sale shall be settled by open auction or by open, agreement and not by secret bids and no deduction shall be made from the agreed price of the consignment except for any authorised trade allowance. Sale by open auction system is therefore the best method to ensure competitive market and as such the contention of the petitioner that the right to sell jute grown by him as a producer in a competitive market is not infringed in any way.

On the contrary better facilities are afforded to him so as to encourage competition. The notified commodities brought from villages to the market yard are put to auction in the presence of respective buyers who assemble at the prescribed time and place. The sale is also permissible under special circumstances" and the highest bidder is declared as the buyer for that commodity after obtaining the assent of the seller. If a seller does not sell his produce he is at liberty to pledge his produce with any trader or commission agent for later sale at adequate price. No such restriction of sale is imposed upon the producer outside the area of market proper, which comprises of nine surrounding Gram Panchayats. Thus, the producer gets the following benefits:

(1) Correct weightment is ensured where weighing is done by licensed weighmen under the supervision of the market committee staff. Only 40 seers (standard) of jute is taken as unit of one maund as against 41 to 43 seers in the present system.

(2) Better market price due to open auction system.

(3) Market charges on weighing, handling, market fees are clearly defined.

(4) Undue deduction on driage and samples, as prevalent in the present system are strictly prohibited.

(5) Arrangements are made for settlement of dispute regarding quality and weighment and deduction etc.

(6) Arrangements for the display of correct market information in the market yard are also made.

(7) Quick payment is made to the producers, through issue of sale slips by the purchaser trader, and

(8) Amenities such as rest houses, cattle shed, drinking water and light arrangement, canteen etc. are provided for the person using the market yard.

The activities of the traders are only restricted within the market proper in accordance with the provision of Rule 55 wherein they cannot purchase the notified commodities but can take the produce of sellers on pledge. On the other hand the trader can purchase outside the limits of market proper without any restriction, but nominal market fees as provided in the bye-laws are to be paid by the trader for such purchase outside the market proper, Thus, the right to sell jute grown by the petitioner as a producer or as a trader is not infringed in any way. The State Legislature is empowered to impose reasonable restriction on the freedom of trade within the State in the public interest by virtue of Clause (b) of Article 304 of the Constitution. The petitioners have not yet applied for licenses. The market committee, it was contended, had no unrestricted powers since all their various actions are controlled by the State Government u/s 25 of the Act.

4. The sole contention raised by the petitioners was that the operating sections 4 and 12 being void, the whole Act is ultra vires the Constitution. Though in course of the argument, counsel for the petitioners stated that the Act is reasonable, but the working of it is unreasonable, he contended on behalf of the petitioners that unreasonable restrictions have been put on the-retail sales by the producers. According to the petitioners the retail sale should have been completely exempted. Sub-sec. (4) of Section 4 empowers the State Government with unrestricted right in matters of issuing licenses. The other contention in respect of the market fee as contemplated under Rule 48 of the Orissa Agricultural Produce Markets Rules, 1958, was that it was an the nature of a tax and not a fee.

5. Before dealing with the various contentions as raised on behalf of the petitioners it would be relevant to mention that the Orissa Act 3 of 1957 repealed the Madras Commercial Crops Markets Act, 1933, (Mad. Act XX of 1933). Except for certain minor differences, the Orissa Act and the Madras Act appear to be pari materia. Section 3 of the Orissa Act Jays down that the State Government may by notifica-tion declare its intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified in the notification. Such notification may also be published in the regional language of the area in a

news-paper circulated in the said area or in such other manner as the State Government may deem fit. Sub-section (2) of that Section provides for any objection or suggestion which may be received by the State Government within a period of not less than one month to be specified in the said notification, may be considered by the State Government. This Section is almost the same as Section 3 of the Madras Act. Section 4 of the Orissa Act makes provision for declaration of the market area. So also in the Madras Act by Section 4, the Provincial Government was empowered to declare a notified area by publication in the official gazette.

The other clauses of Section 4 of the Orissa Act are equivalent to certain other clauses of Section 5 of the Madras Act whereas Section 5 of the Orissa Act corresponds to Section 4-A of the Madras Act regarding the establishment of market committee. The constitution! of the Market Committee as contemplated u/s 6 of the Orissa Act is practically the same as in the Madras Act. Sections 7, 8, 9, 10 and 11 of the Orissa Act correspond to the same section in the Madras Act. Section 12 of the Orissa Act on the other hand corresponds to Sub-section (1) of Section 5 and proviso of the Madras Act. Regarding the expenditure from the market committee fund the provision u/s 16 of the Orissa Act corresponds to Section 13 of the Madras Act. It is unnecessary to refer to the various other sections since we are concerned only with Sections 4 and 12 of the Orissa Act. Thus, it is fairly clear that except for certain minor difference the Madras Act XX of 1933 corresponds to the Orissa Act III of 1957.

6. One of the main contentions of the petitioners was that the retail sale should have been completely exempted. "Retail sale" has been defined in the Orissa Act u/s 2 (1) (xii) to mean a sale of any agricultural produce not exceeding such quantity as a Market Committee may, by bye-laws, made u/s 28 determine to be a retail sale in respect of such agricultural produce. In this case the quantity of retail sale has been fixed by the bye-laws. The whole argument centres round Subsections (3) and (4) of Section 4. It would be better to quote Sec, 4 here :

"4(1). After expiry of the period specified in the notification issued u/s 3 and after considering such objections and suggestions as may be received before such expiry and after holding such enquiry as may be necessary, the State Government may, by notification, declare the area specified in the notification u/s 3 or any portion thereof to be market area for the purpose of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this Section may also be published in the regional language of the area in a news-paper circulated in the said area or may be published in such other manner as the State Government may deem fit.

(2) For the removal of doubts, it is hereby declared that a notification published in the gazette u/s 3 or under Sub-section (1) shall have full force and effect notwithstanding any omission to further publish the same in any other manner or any irregularity or defect in such further publication in pursuance of Section 3 or Sub-section (1) as the case may be.

(3) On and from the date of the notification issued under Sub-section (1) or such later date as may be specified therein, no local authority notwithstanding anything contained in any other law for the time being in force and no other person shall, within the market area or within a distance thereof to be notified in the gazette in this behalf in each case by the State Government set up, establish or continue or allow to be set up, established or continued any place for the purpose of sale of any agricultural produce so mentioned, except under a license granted by the State Government and except in accordance with the provisions of this Act, rules and bye-laws and the conditions specified in the license.

Explanation :-- A local authority or any other person shall not be deemed to set up, establish or continue or to have allowed to be set up, established or continued a place as a place for the purchase and sale of agricultural produce within the meaning of this section, if the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own private use or of the agricultural produce is sold by a retail sale to a person who purchases such produce for his own private use.

(4) The State Government may on the report of the Director, the Collector, the Market Committee or an officer appointed by the State Government in this behalf, after such inquiry as they deem fit and after giving the licensee an opportunity to be heard may, for reasons to be recorded in writing, suspend or cancel any license granted under Sub-section (3). The order of the State Government in this behalf shall be final""

7. It seems that Sub-section (3) of Section 4 corresponds to Section 5 of the Madras Act and the provisos to Sub-sections (1) and (3) of Section 5 of the Madras Act correspond to Sub-section (3), the explanation thereto and Sub-section (4) to Section 4 of the Orissa Act. It is also fairly clear from the Explanation to Sub-section (3) that a local authority Or any other person shall not be deemed to set up, establish, or continue or to have allowed to be set up, established or continued a place as a place for the purchase and sale of agricultural produce within the meaning of Section 4. It further provides that if a seller is himself the producer of the agricultural produce offered for sale at such place or any persons employed by such producer to transport the same and the buyer is a person who purchases such produce for his own private use or if the agricultural produce is sold by a retail sale to a person who purchases such produce for his own private use.

Thus, adequate protection has been given to the producer within the market area. It may be remembered that the object of this Act was to provide better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Orissa. Thus, the State Government has under Sub-section (4) of Section 4 the right to suspend Or cancel any license granted under Sub-section (3) after giving an opportunity to the licensee to be heard. The object of the Act being regulatory, it cannot be said

that Sub-section (4) imposes any unreasonable restriction in matters of regulating the buying and selling of agricultural produce within the State. This being the object of the Act Section 12 cannot be struck down as unconstitutional which merely empowers the Market Committee to issue licenses to brokers and weigh-men etc.

Similarly Rule 48 provides for the realisation of market fees and it says that the market committee shall levy and collect fees on agricultural produce bought and sold in the market area at such rates as may be specified in the bye-laws. The Market Committee shall also levy and collect license fees from traders, general commission agents, brokers, weighmen, measurers, surveyors and other persons operating in the market area according to rates specified in the bye-laws. But no fee shall be levied on agricultural produce brought from outside the market area for use by the industrial concerns situated in the market area or for export and in respect of which a declaration has been made and certificate has been obtained in Form IV, subject to the provision, that if such agricultural produce brought into the market area for export is not exported or removed before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws. Sub-rule (4) says that the seller who is himself the producer of the agricultural produce offered for sale and the buyer who buys such produce for his own private and/or household use shall be exempted from payment of any fees under this rule.

8. Some argument has been made in respect of the proviso and it was contended that no corresponding benefit has been provided by the market committee for the levy and collection of fees on agricultural produce brought into the market area for purposes of export and not exported before the expiry of twenty days from the date on which it was brought. It was contended by the Advocate General that the fees collected in the market area are ear-marked for the development work in the market yard as stated before. Once the agricultural produce is brought into the market area for purposes of export it is inspected by the official of the market committee and! the general supervision is maintained. Hence Rule 48 cannot be held to be ultra vires, because fees realised are in the nature of tax.

9. Part XIII of the Constitution deals with trade, commerce and intercourse within the territory of India, Article 301 provides for the freedom of trade, commerce and intercourse throughout the territory of India. Article 302 empowers the Parliament to impose restriction on trade, commerce and intercourse. Similarly, Article 303 puts certain restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. Article 304 again puts restriction on trade, commerce and! intercourse amongst the States. Article 304(b) is relevant for our purpose. It says notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law

impose on goods imported from other States, such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. Clause (6) of Article 19 lays down that nothing in Sub-clause (g) shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing in the (interests of the general public, reasonable restrictions on the exercise of the right conferred by the said! sub-clause, and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to or prevent the State from making any law relating to (i) professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade of business, or (ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

10. It is well settled that in order to be reasonable, a restriction imposed must have rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object (vide *Chintaman Rao Vs. The State of Madhya Pradesh*, . Patanjali Sastri, C. J., has succinctly stated the law in the case of *State of Madras Vs. V.G. Row*, in the following terms:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed should be applied to such individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should! all enter into the judicial verdict."

This decision was reiterated by the Supreme Court in the case of *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, . In that case the constitutional validity of the Madras Commercial Crops Markets Act (Act XX of 1933) was challenged. I have shown above that except for certain minor differences the terms and implications of the Madras and Orissa Acts are almost the same. In that case their Lordships of the Supreme Court held that the Madras Legislature by enacting the Madras Commercial Crops Markets Act, 1933, has not put any unreasonable restriction on the trade and commerce inside the State.

Thus, it was held that the Madras Commercial Crops Markets Act (Act XX of 1933), was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object to achieve

which it is enacted.

11. Reliance was sought to be placed on a case of the Bombay High Court reported in *Bapubhai Ratanchand Shah and Others Vs. State of Bombay and Another*, . That was a case under the Bombay Agricultural Produce Markets Act (22 of 1939). Chagla C. J. in that case held that it is true that when a restriction is imposed upon the right of the citizen guaranteed to him under Article 19 it is for the State to justify that restriction. But whether a restriction is reasonable or not must be judged not in abstract but in the context of the times and in the context of social needs and social urges. A restriction which may be unreasonable at a particular juncture of time, may be reasonable at a different point of time, and therefore, there is no absolute yard-stick by which one can test as to whether a restriction, is reasonable or not. This decision far from supporting militates against the contention of the petitioner.

12. A Division Bench of this Court appears to have considered) the question at great length in the case of *Ranchhorlalji Vs. Revenue Divisional Commissioner, Northern Division and Others*, . That was a case in which the validity of certain appellate order in declaring to renew the temporary license for the exhibition of cinema films in a temporary building was challenged. Their Lordships held that a statute cannot be struck down as unconstitutional merely because it confers wide discretion on a authority to regulate certain classes of trade or business, by issuing permits or licenses. It is only when no policy or principle has been laid down either in the preamble or in the other provisions of the statute or statutory rules, and the impugned provision confers arbitrary or excessive powers on the authority, it is liable to be struck down. No arbitrary or excessive powers have been shown to have been imposed by the impugned Act on the authorities concerned.

13. Regarding the invalidity of Rule 48, the petitioner sought to rely upon a recent decision of the Mysore High Court reported an AIR 1960 Mys 73, *Firm, of Faruk Anvar Co. v. Market Committee, Raichur*, In that case the learned judges of the Mysore High Court while considering rule 40 framed under the Hyderabad Agricultural Markets Act (II of 1939) went into a discussion regarding the distinction between tax and fee and held that there was no quid pro quo for the produce that had been purchased outside Raichur and brought for the purpose of consumption; the fee levied thereon was unjustified and without jurisdiction. This case cannot be of any avail to the petitioner, for in the instant case the corresponding benefit has been given to the citizen in respect of the fees collected under Rule 48 of the Orissa Agricultural Produce Market Rules, 1958. The law is well settled regarding the differentiation between tax and the fee. In view of the facts in the present case the impugned imposition cannot be held to be a tax.

14. Thus the law on this behalf having been clearly laid down by the Supreme Court in *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, on holding the Madras Act XX of 1933, which is *pari materia* with impugned Orissa

Act to be intra vires the Constitution, there does not appear to be any force at all in the contentions raised by the petitioner. In the result, these petitions are bound to be dismissed with costs.

Hearing fee Rs. 50 in each case.

Narasimham, C.J.

15. I agree.

Petitions dismissed.