

(1963) 12 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petns. No"s. 2134, 2171 and 2188 of 1963

Kesho Ram Kale Ram

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 12-12-1963

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 352, 358

Defence of India Act, 1939 — Section 2, 3, 3(1), 3(2)

Defence of India Rules, 1962 — Rule 125(1J), 125(2), 81

Citation : AIR 1964 P&H 307

Hon'ble Judges : Mehar Singh, J;H.R. Khanna, J

Bench : Division Bench

Advocate : J.S. Shahpuri and Lakhbir Singh Wasu, for the Appellant; L.D. Kaushal, D.A.G. and K.R. Mahajan, for the Respondent

Judgement

H.R. Khanna, J.—This judgment would dispose of three writ petitions Nos. 2134, 2171 and 2188 of 1963 in which the validity of the order dated (5th November, 1963, of the Punjab Government under Rule 125(2) of the Defence of India Rules, 1962 (hereinafter referred to as the Rules) prohibiting the production of Gur by use of sugarcane crushers operated by power in certain areas, has been called in question.

2. The facts and the points involved in the three petitions are identical and for the sake of convenience it would be useful to refer to the facts as given in Civil Writ No. 2134 of 1963. According to the allegations of the Petitioner in that petition he has been carrying on the business of crushing sugarcane and manufacturing Gur with a power crusher of 10 Horse Power in village Kheri Dab-dalan, District Karnal, for the last six years.

On 24th October, 1963, the Cane Commissioner for Punjab, who. is Respondent No. 2 in these petitions, passed an order reserving an area within 10 miles radius of the various sugar factories and 5 miles radius of the purchasing centre, the details of which were given in the order. It was directed that every sugarcane

grower in the reserved area should supply to the factory concerned at least 75 per cent of the sugarcane grown by himself or if he was a member of a Cane Growers Co-operative Society operating in that area, through such Society.

It was further provided that in the event of failure on the part of" any cane grower or Cane Growers Co-operative Society to offer and sell the determined quantity of sugarcane to the sugar factory in accordance with the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 and the Rules framed thereunder, the Cane Commissioner or the person authorised by him in this behalf would be competent to get the entire cane crop harvested and transported to the sugar factory after making payment to the cane growers.

According further to that order, no person should, without obtaining from the Cane Commissioner, Punjab, a licence, carry on or undertake any process connected with the manufacture of Gur by means of a power crusher or by a crusher not belonging to a grower or a body of growers of sugarcane, within the reserved area. A copy of the above order was sent to the Petitioner along with a note countersigned by the Cane Development Inspector calling upon the Petitioner to stop the working of his power-driven crusher for the manufacture of Gur without a licence. The Petitioner thereafter applied for the issue of a licence to him but a reply was sent to him by the Cane Commissioner that licence could not be issued to the Petitioner in view of the Punjab Government order dated 6th November, 1963, issued under Sub-rule (2) of Rule 125 of the Rules. The relevant part of the order was as under:

Agriculture Department Order No. 8748-Agr. II(VI)-83/-

Extraordinary Chandigarh, dated the November, 1983.

Whereas it appears to the State Government that for maintenance and increase of supplies essential to the life of the community it is necessary to prohibit in certain areas the production of gur by use of sugarcane crushers operated by power:

Now, therefore, in pursuance of the provisions of Sub-rule (2) of Rule 125 of the Defence of India Rules, 1962, the Governor of Punjab is pleased to prohibit, in the, following areas, the production of gur by the use of sugarcane crushers operated by power:

Name of factory.

Areas within which production of gur. by sugarcane crushers operated by power is prohibited.

1. Saraswati Sugar Mills, Yamunanagar.

(a) Areas within 15 miles radius of the factory gate. The following villages and areas within 10 miles radius thereof:

(1) Shahzadpur (2) Jathalanu (3) Bharaboli (4) Chhaehhraul (5) Budheri (6)

Mustalabad (7) Radaur (8) Pabni (9) Thana Chhapar (10) Jaidhri (11) Barshami (12) Bilaspur (13) Ladwa (14) Barara (15) Dadupur (16) Kishenpura (17) Jalubi (18) Neohari (19) Mathana (20) Mulana (21) Kesri (22) Bihta (23) Indri (24) Sadbaura (25) Sardheri.

There were some other sugar factories and areas also specified in the order but we are not concerned with them in this petition. The sugarcane crushers of the Petitioners in petitions Nos. 1113.) and 2188 of 1963 are situated within 10 miles radius of village Barshami and that of Petitioner in petition No. 2171 of 1963 within 10 miles radius of village Kishaupura, mentioned in the above order.

According to the Petitioner, the above order of the Punjab Government is ultra vires, null and void, unconstitutional, without jurisdiction and illegal because it contravenes Article 19(1)(g) of the Constitution. Another ground set up by the Petitioner is that Rule 125(2) goes beyond the powers conferred by the Defence of India Act. The Petitioners have, accordingly, prayed that the above order under Rule 125(2) issued by the Punjab Government be quashed.

3. The petition has been resisted by the State of Punjab and it has been averred in the return filed on its behalf that the fundamental rights granted under Article 19(1)(g) of the Constitution have been suspended under Article 358 of the Constitution and, therefore, the petition is not maintainable.

It has further been urged that in view of the increased home consumption of sugar and foreign commitments, the Government of India fixed a target of sugar production at 33.0 lac tons for the Indian Union and directed the sugar mills in the State of Punjab to produce 1.40 lac tons of sugar during the ensuing crushing season. The target "being very high can only be achieved if all out efforts" were made to make available adequate quantities of sugarcane to feed the mills to their capacities. The abnormal high prices of Gur obtaining in the market have induced the cane growers to convert their crop into gur in preference to supplying it to the mills. The diversion of the mill cane to gur manufacture was accelerated by the working of power crushers in the mill areas and consequently the quantities of sugar offered by the cane growers to the sugar mills, during 1963-64 crushing season were found to be inadequate to achieve the target of sugar production.

Visualising the gravity of the situation, the Government of India obtained special powers under Rule 125-1J of the Defence of India Rules and thereafter notification dated 24th October, 1963, was issued. Since the price of gur further shot up after the issue of that order, the cane growers did not come forward to supply their cane to the sugar mills. It, therefore, became necessary to stop the manufacture of gur by power crushers at least in the mill supply areas. In order to grapple with the seriousness of the situation, therefore, the State Government decided to stop the manufacture of gur by power crushers in the mill supply areas. The prohibitory order issued by the State Government under Rule 125(2) of the Rules was, in the circumstances, stated to be in public interest and

reasonable. The above rule, according to the Respondents, was legal and intra vires.

4. We have heard Mr. Shahpuri on behalf of the Petitioners and the learned Deputy Advocate-General on behalf of the Respondents, and are of the view that there is no merit in these petitions. The first ground taken by the Petitioners is that the impugned order made by the Punjab Government under Rule 125(2) is violative of Article 19(i)(g) of the Constitution. The above order was admittedly made while a proclamation of emergency issued under Article 352 of the Constitution was in operation and, in the circumstances, the Petitioner cannot invoke the guarantee of Article 19(1)(g) of the Constitution with a view to invalidate the above order. Article 358 of the Constitution affords a complete answer to the contention of the Petitioners in this respect. The article reads as under:

While a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetence, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

Article 19 abridges the powers of the legislature and the executive and provides that any piece of legislation or executive order which violates the fundamental rights granted by that article would be null and void. The effect of Article 358 is to suspend the operation of Article 19 for the duration of the emergency and the result thereof is that the curtailment of the powers of the legislature and the executive which was brought about by Article 19 vanishes and the powers of the legislature as well as of the executive to that extent become wider. No piece of legislation or executive action during the period of emergency, in the circumstances, can be questioned on the ground that it contravenes Article 19 of the Constitution. We may in this context refer to the observations of their Lordships of the Supreme Court in case *Makhan Singh Vs. State of Punjab* (and connected appeals), . It was observed as under:

It would be noticed that as soon as a proclamation of Emergency has been issued under Article 352 and so long as it lasts, Article 19 is suspended and the power of the legislatures as well as the executive is to that extent, made wider. The suspension of Article 19 during the pendency of the proclamation of emergency removes the fetters created on the legislative and executive powers by Article 19 and if the legislatures make laws or the executive commits acts which are inconsistent with the rights guaranteed by Article 19, their validity is not open to challenge either during the continuance of the emergency Or even thereafter. As soon as the Proclamation ceases to operate, the legislative enactments passed and the executive actions taken during the course of the said emergency shall be inoperative to the extent to which they con diet with the

rights guaranteed under Article 19 because as soon as the emergency is lifted, Article 19 which was suspended during the emergency is automatically revived and begins to operate. Article 358, however, makes it clear that things done or omitted to be done during the emergency cannot be challenged even after the emergency is over. In other words, the suspension of Article 19 is complete during the period in question and legislative and executive action which contravenes Article 19 cannot be questioned even after the emergency is over.

Mr. Shahpuri, learned Counsel for the Petitioners at the time of arguments has also frankly conceded that in view of Article 358 of the Constitution the Petitioners cannot, assail the validity of the impugned order on the ground that it contravenes Article 19 of the Constitution.

The main contention of Mr. Shahpuri, however is that by the impugned notification dated 6th November, 1963, the production of gur by use of power crushers has been prohibited within specified areas and though this order of prohibition is covered by the language of Sub-rule (2) of Rule 125, it does not fall under any of the clauses of Sub-section (2) of Section 3 of the Defence of India Act under which those rules are framed. Sub-rule (2) of Rule 125, in so far as it empowers the issue of an order prohibiting the manufacture and production of articles and things, according to the learned Counsel, is beyond the rule making power conferred by Section 3 of the Act and to that extent is void and ultra vires.

5. In reply the learned Deputy Advocate-General has argued that extensive powers have been given to control trade and industry as well as agriculture u/s 3 of the Act. He has in this context invited our attention to Sub-section (I) as well as Clauses 23 and 26 of Sub-section (2) of Section 3 of the Defence of India Act. To appreciate the respective contentions of the parties it would be useful to reproduce Sub-rule (2) of Rule 125 as well as the relevant parts of Section 3 of the Act. Sub-rule (2) of Rule 125 reads as under:

If the Central Government or the State Government is of opinion, that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles things and trade and commerce therein.

The relevant parts of Section 3 are as under:

(1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by Sub-section (I), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely:

X X X

X X X

X X X

(23) the control of trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to articles or things of any, description whatsoever which may be used in connection with the conduct of military operations or civil defence or for maintaining supplies and services essential to the life of the community;

X X X

X X X

(26) the control of agriculture (including the cultivation of agricultural land and crops to be raised therein) for the purpose of increasing the production and supply of foodgrains and other essential agricultural products;

According to the Deputy Advocate-General the order about prohibiting the manufacture of gur with power crushers is covered by Clauses (23) and (26) of Sub-section (2) of Section 3 of the Act and more particularly Clause (23). It is urged that the production of gur with power crushers is an industry and the power to control that industry would include the power to prohibit the production of gur through that industry.

6. In reply Mr. Shahpuri has not disputed that the production and manufacture of gur through power crushers is a kind of industry but he urges that the power to control would not include the power to prohibit. The learned Counsel has in this context referred to various clauses of Sub-section (2) of Section 3, wherein the word "prohibit" has been used and, accordingly, contends that if the legislature wanted to give a power for prohibiting the manufacture of article or thing the legislature would not have used the word "control". The position, it would thus appear, hinges upon the meaning of the word "control" and the question which arises for determination is whether the right of control would include within its purview the power to prohibit.

7. The word "control", according to dictionary, means inter alia restraint or check. Prohibition is a kind of restraint and the above meaning would thus go to show that the word "control" is comprehensive to include; the power to prohibit. According to Corpus juris Secundum Volume 18, the word "control", when broadly used, may embrace every form of control actual or legal, direct or indirect, negative or affirmative. It has further been observed as under:

In its primary sense, "to control" has been said to import a check by a

countercheck or registered or duplicate account; but gradually an enlarged meaning, with the connotation of restraint over the subject of control, has been given to the term, and so it has been variously defined as meaning to chuck, curb, hold from action, hold in restraint or check, keep under check, or to restrain; to counteract, or hinder; to direct, or guide; to dominate, overpower, subdue, or subject; to exercise a directing, restraining, or governing influence over; to govern, regulate, or rule; to have authority or power over, or have under command, to manage, to subject to authority.

The observations further go to state that under certain circumstances the word "control" implies the power to prohibit. In case *The Queen v. The Croydon and Norwood Tramways, Co.* reported in (1886) 18 QBD 39, it was observed by Lindley, L.J., as under:

If I prohibit a man from doing a thing. I control him to that extent.

Following the above observations, the Division Bench of Madras High Court in *Public Prosecutor Vs. A. Venhayya*, held, while dealing with the Foodgrains Control Order issued under Rule 81 of the Defence of Indian Rules of 1939, that the power to control includes a power to prohibit. It may be mentioned that the word "control" was held to include the power to prohibit in spite of the fact "that in Section 2 of the Defence of India Act 1939, under which the Defence of India Rules were framed, there were many clauses in which the word "prohibit" had been used. *Roshan Lal v. Emperor* reported in AIR 1946 All 161 was *ft* case, under the U.P. Foodgrains and Oil Seeds (Movement) Control Order (1943) which had also been made under the Defence of India Rules of 1939, and it was held that the word "control" would include the power to prohibit.

Keeping the above observations in view we have no doubt that the power to control includes the power to prohibit and the contention of the learned Counsel for the Petitioner to the contrive is not well founded. Apart from the above, we are of the view that the power conferred by subsection (I) of Section 3 of the Defence of India Act for maintaining supplies and services essential to the life of the community is very wide and an order providing for regulating or prohibiting the, production and manufacture of articles and things for maintaining the supplies essential to the life of the community can be made under the powers conferred by Sub-section (1) of Section 3 of the Act.

8. We, therefore, hold that the impugned order is not illegal or ultra vires of the powers coufcrred by the Defence of India Act. We further hold that the attack upon the vires of Sub-rule (2) of Rule 125 on the ground that it gives power to prohibit the manufacture and production of articles and things, even though for the objects mentioned therein, is bereft of all force.

9. Lastly it has been argued that the Government should not have issued the impugned notification and that the expectation of the Government that it would case the sugar situation is not well founded. In this respect we are of the view that this Court is not to sit in judgment on the wisdom of the action of the

Government in issuing the above notification. Sub-rule (2) of Rule 125 provides inter alia that if the State Government is of the opinion that it is necessary or expedient for the maintenance or increase of supplies essential to the life of the community it may by order regulate or prohibit the production or manufacture of any article or thing. The impugned notification shows that the State Government was of the view that it was necessary to prohibit the production of gur by use of power crushers in certain areas for the maintenance and increase of supplies essential to the life of the community. The impugned notification was thus strictly within the powers conferred upon the State Government and as such it cannot be quashed in these proceedings.

10. The petitions, accordingly, fail and are dismissed, but in the circumstances of the case we leave the parties to bear their own costs.

Mehar Singh, J.

11. I agree.