
(1964) 04 MP CK 0004
In the Madhya Pradesh High Court
Case No : M. P. No. 221 of 1963 (J)

Krashi Upaj Vyavsayi Mandal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-04-1964

Acts Referred:

Madhya Bharat Agricultural Produce Markets Act, 1952 — Section 3, 4

Citation : (1965) JLI 68

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pandey J.

1. This petition under Article 226 of the Constitution mainly calls in question the validity of the Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance, 1962 (2 of 1962) and the Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962).

2. The facts giving rise to this petition, which are somewhat involved, may be stated as briefly as possible. Before the formation of the United State of Madhya Bharat in the year 1948, the city of Ujjain formed part of the erstwhile princely State of Gwalior where the Qawaid Mandi Hai Gwalior (Samvat 1986) (hereinafter called the Qawaid) was in force. By virtue of section 4 of Act 1 of 1948, the laws in force in all the Covenanted States were continued in force until duly amended or repealed. In the year 1952, the Madhya Bharat Agricultural Produce Markets Act, 1952 (hereinafter called the Madhya Bharat Act) was placed on the statute book. By section 31 of that Act, the corresponding laws in force in various parts of the new State, including the Qawaid, were, subject to the following proviso, repealed :

Provided that the Mandi or Market Committees duly constituted under the said Qawaid or rules and holding office immediately prior to the date on which this

Act comes into force shall continue to function as if constituted under this Act and the Chairman of any such committee holding office prior to the commencement of this Act shall continue to be the Chairman thereof until new Market Committees are duly constituted to replace them under this Act. It shall however be open to the Government to nominate not more than 3 representatives of Agriculturists on every one of these committees and also to pass such orders as they deem fit in respect of the market areas for which each of these committees may be deemed to have been constituted and also in respect of the commodities each of them may regulate.

Without issuing any notification under sections 3 and 4 of the Madhya Bharat Act, fresh elections were held and nominations were made in the years 1954 and 1958 with a view to constituting new market committees in accordance with the provisions of section 6 of that Act. Also, the State of Madhya Bharat issued a number of notifications in the purported exercise of its powers under the Madhya Bharat Act and the rules made thereunder. By a notification No. 145/13 dated 9 June 1953, it established Mandis, including the one at Ujjain, declared market areas and specified the agricultural commodities which could be vended in these Mandis. By another notification No. 497/13 dated 26 May 1954, it declared inter alia that Daulatganj would be the market yard for transacting business in grains at Ujjain. By the third notification No. 2916/13 dated 26 May 1954, it invited suggestions relating to, and objections against, its intention to regulate the purchase and sale of wheat in certain towns including Ujjain. By the fourth notification No. 3670/13 dated 12 August 1954, it declared certain Mandis, including the one at Ujjain, to be market areas for purchase and sale of wheat. By the fifth notification No. 8188/XIV/ 57 dated 11 June 1957, it superseded the notification No. 497/13 dated 26 May 1954 whereby Daulatganj was declared to be the market yard at Ujjain for dealing in grains and instead declared Chimanganj to be the market yard. Finally, by an order dated 6 February 1958, [the market committee (respondent 2) prohibited use of Daulatganj for transacting business in any agricultural commodity.

3. In Miscellaneous Petition No. 31 of 1958, which was mainly directed against disestablishment of the Daulatganj market yard, Razzaque J., by his order dated 20 September 1961, declared the five notifications mentioned in the last paragraph to be void and forbade interference with the right of the petitioners to carry on business at Daulatganj "till the various notifications are regularised and validated". Thereupon, by the Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962, which re-enacted the Ordinance made earlier, the aforesaid notifications were sought to be validated. The relevant enactment, which is contained in section 3 of the validating Act, reads:

3. (1) Notwithstanding any judgment, decree or order of any Court or any provision in the Act, or the rules made thereunder

(a) the "Mandi or market areas" purported to have been declared by the notifications set out in Part A of the Schedule hereto annexed shall be and shall

always be deemed to have been validly declared for the purpose of the Act and in respect of the agricultural produce specified therein and the validity of the said notifications or of the constitution or continuance of such Mandi or market areas thereunder with respect to the items of agricultural produce mentioned therein shall not be called in question in any Court whatsoever;

(b) no act done or action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rule or bye-law framed, permit or licence granted, proceedings instituted) by the State Government or any of its officers or a Mandi or market committee under the Act in respect of a Mandi or market area referred to in clause (a) shall be called in question on the ground that such Mandi or market area was not declared as such in accordance with the provisions of the Act.

(2) Any order of a Court declaring any of the notifications set out in Part A of Part B of the Schedule invalid on the ground mentioned in clause (b) of sub-section (1) shall be deemed to be and always to have been of no legal effect whatsoever.

4. The petitioner 1 is a Society of persons dealing in agricultural produce at Ujjain. It is also registered under the Societies Registration Act, 1860. The members of the Society and 2 other persons, petitioners 2 and 3, carry on business in agricultural produce, including grains, in the Daulatganj market yard. They have challenged the Validating Ordinance and the Validating Act mainly on the following three grounds :

(i) The enactments are incompetent because, by validating the notifications struck down by a judicial pronouncement, they merely seek to remove an impediment to their validity without establishing any market.

(ii) They impose unreasonable restrictions on the fundamental right of the petitioners to carry on their occupation, trade or business and thereby infringe the fundamental right guaranteed to them by Article 19(1)(g) of the Constitution.

(iii) They subject the petitioners to differential treatment in that, if the impugned Act be regarded as competent, it would validate the establishment of the Chimanganj market yard without any enquiry when, under the Madhya Pradesh Agricultural Produce Markets Act, 1960 Act 19 of 1960), the provisions for establishing such a market contemplate an enquiry.

5. In regard to the first ground, the precise contention is that it was not competent to the legislature to merely validate with retrospective effect the notifications; which had been struck down, without

(i) retrospective amendment of the law whereunder such notifications could be issued

or

(ii) taking action or doing things covered by the notifications.

The argument that mere validation of an action invalidated by a judgment amounts, in effect, to exercising judicial power cannot be accepted because it proceeds upon an unwarranted assumption that validation simpliciter is not within the ambit of the power of legislating on a particular subject. In the first place the Legislature can be regarded as exercising judicial power only when, without amending the law, it directs, contrary to the law in force, that pending cases shall be disposed in a particular manner or that cases decided in one way shall be deemed to have been decided in another way: *Mohanlal Hargovindas Vs. State of M.P. and Others*, .So in *Basanta Chandra Ghose Vs. The King Emperor* 1944 F. C. R 295 the Federal Court struck down clause (a) of section 10 of the Restriction and Detention Ordinance (III of 1944), which is reproduced below, as a direct disposal of cases by the Legislature itself and, therefore, an arrogation of judicial powers by a Legislative authority:

(2). If at the commencement of this Ordinance there is pending in any Court any proceeding by which the validity of order having effect by virtue of section 6 as if it had been made under this Ordinance is called in question, that proceeding is hereby discharged."

It is obvious that here that is not the case and section 3 of the Validating Act cannot be challenged as a judicial act performed by the legislating authority. Secondly, none of the items in the Legislative Lists of the Constitution should be read in a narrow or restricted sense and each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it. So, it has been held that, in construing any entry in a List conferring legislative power, the widest possible construction according to the ordinary meaning must be put when the words therein employed: *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, and Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, . It is also now firmly established that validation of action taken or things done should be regarded as ancillary or subsidiary to the power to legislate. Long ago, Gwyer C. J. stated in the *United provinces Vs. Mst. Atica Begum* 1940 F. C. R. 110 as follows:

It is true that "Validation of executive orders" or any entry even remotely analogous to it is not to be found in any of the three Lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued. (Page 136)

The same view was taken in *Piare Dusadh Vs. The King- Emperor* 1944 F. C. R. 61. *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, and *Mst. Jadao Bahuji Vs. Municipal Committee, Khandwa and Another*, . Since validation of an executive order or a notification made under any enactment falls within the ambit of the relevant entry in the appropriate Legislative List and the Legislature has, subject to constitutional limitations, plenary powers to make laws with respect to matters covered by the entry, the

two enactments challenged in these proceedings cannot be assailed as incompetent.

6. In our opinion, the two enactments are not open to challenge also on the further ground that they were made to undo the effect of the judgment in Miscellaneous Petition No. 31 of 1950. In *Bhaskar Vs. Mohammad Alimullakhan I.* L. R. e952 Nag. 736, a Division Bench of this Court stated:

...it must be taken to be beyond question that in India the Legislature is competent to put an end to the finality of a decision of a Court and reopen a past controversy and even to pass validating Acts and that enactment of a law having such effects does not constitute exercise of judicial functions by the Legislature." [Page 758]

This passage was quoted with approval in *Jadao Bahuji Vs. Municipal Committee, Khandwa I.* L. R. 1956 Nag, 83. The decision in the case last-mentioned was affirmed by the Supreme Court in *Mst. Jadao Bahuji Vs. Municipal Committee, Khandwa* 1962 I S. C. R. 633. Speaking for the Court, Hidayatullah J. stated:

Retrospective legislation being thus open to the provincial Legislatures, the Act of the Governor had the same force. Retrospective laws, it has been held, can validate an Act, which contains some defect in its enactment. Examples of Validating Acts, which rendered inoperative decrees or orders of the Court or alternatively made them valid and effective, are many. In *Atica Begum's* case 1940 F. C. R. 110, the power of validating defective laws was held to be ancillary and subsidiary to the powers conferred by the Entries and to be included in those powers. Later, the Federal Court in *Piare Dusadh Vs. King Emperor* 1944. F. G. R. 61 considered the matter fully, and held that the powers of the Governor General which were conterminous with those of the Central Legislature included the power of validation. The same can be said of the provincial Legislatures and also of the Governor acting as a Legislature. [Pages 639-40]

We may also, in this connection, refer to *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, and *State of Orissa Vs. Bhupendra Kumar* AIR 962 SC 945. The true position, we think, is that the Legislature is authorised only to enact laws. It may make a law operating with retrospective effect. So long as it is acting within the limits of the legislative field reserved for it by the Constitution, any law made by it will not be open to challenge on the ground that that law has, as its direct or indirect consequence, put an end to the finality of a judicial decision or re-opened past controversies settled by such decisions. On this broad ground, no fault can be found with sub-section (2) of section 3 of the impugned Act which, as a consequence of the law enacted in subsection (1), makes the judgment rendered in Miscellaneous Petition No. 31 of 1953 "to be and always to have been of no legal effect whatsoever". Actually, sub-section (2) *ibid* appears to have been enacted by way of abundant caution because what it purports to declare must follow from subsection (1) itself. The Supreme Court took the same view when construing two clauses of section 2 of the Sales Tax

Laws Validation Act, 1956. Venkatarama Aiyar J. stated in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, as follows:

It is true that on the contention of the State that the first clause has independent operation, the second clause would be unnecessary, as even without it, the result sought to be achieved by it must follow on the first clause itself. But it is to be noted that the first clause has reference to the exercise of legislative power while the second is concerned with administrative action, and it is possible that the second clause might have been enacted by way of abundant caution. It is nothing strange or unusual for a legislature to insert a provision *ex abundanti cautela*, so as to disarm possible objection." (Page 1466)

7. In support of the contention that a retrospective amendment of the law was necessary because only then could the notifications issued earlier be validated, reliance is placed upon *Firm Dayalal Meghji and Co. and Others Vs. State of Madhya Pradesh and Others*, . Our attention is also drawn to *Narottamdas Harjiwandas Vs. State of Madhya Pradesh and Others*, to show that, instead of validating the notifications, the Legislature could have established the Chimanganj market. The case of *Firm Dayalal Meghji & Co. (supra)* is distinguishable because there the petitioners concentrated their attack on section 31A, which was inserted in the Principal Act by the Minimum Wages (Madhya Pradesh Amendment and Validation) Act (23 of 1961). Upon examination, the language employed in that section was not found either apt or sufficient to effectuate the result that was sought to be achieved. It is true that, for validating an Act, the law itself may be retrospectively amended: *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, . But, as pointed out by the Supreme Court in *Muhammadbhai Vs. State of Gujarat* AIR 1362 SC 1517, such retroactive amendment is necessary only when it desired to change the law with retrospective effect Speaking for the Court, Wanchoo J. Stated:

It could have been made retrospective also and in that case sub section (1) of section 29-B may not have been necessary. The legislature, however, adopted the method of amending S. 5-AA prospectively and making a separate provision for validating the establishment of markets in sub-section (1) of section 29 B We see no reason why it should be held that the validation made by sub-section (1) is not sufficient because the legislature has adopted one method rather than the other for carrying out its purpose. We are therefore of opinion that S. 29-B is sufficient to cure the defects pointed out in the earlier judgment of the Court and to validate actions taken and things done before the promulgation of the Ordinance which would otherwise have been invalid in view of the earlier judgment of this Court. (page 1524

It is, therefore, clear that validation may be brought about without retrospective amendment of the law. We may add that such validation was considered sufficient not only in the case just mentioned but also in *Gulabrao Keshavrao Dhole Vs. Pandurang Bhanji Dhomne and Others*, and *State of Orissa Vs. Bhupendra Kumar* AIR 1952 SC 945.

8. The second ground that the impugned enactments impose unreasonable restrictions on the fundamental right of the petitioners to carry on their business in the Daulatganj market yard is, in view of the decisions of the Supreme Court in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, and *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, clearly without substance.

9. The third and the last ground seeks to make out a case of violation of Article 14 of the Constitution. In the first place, only one of the notifications, which have been validated, relates to Ujjain alone and, therefore, it cannot be said that like have not been treated alike. Secondly, a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual is treated as a class by himself *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . A somewhat similar argument was advanced in *State of Orissa Vs. Bhupendra Kumar Bose*, and it was repelled in this way:

Besides, if the power to validate by promulgating an Ordinance is conceded to the Governor under Article 213(1), it would not be easy to appreciate why it was not open to the Governor to issue an Ordinance dealing with the Cuttack Municipal Elections themselves. The Cuttack Municipal Elections had been set aside by the High Court and if the Governor thought that in the Public interest, having regard to the factors enumerated in the preamble to the Ordinance it was necessary to validate the said elections, it would not necessarily follow that the Ordinance suffers from the vice of contravening Article 14 has been the subject matter of decisions in in this Court on numerous occasions. It is now well-established that what the said Article forbids is class legislation no doubt, but it does not forbid reasonable classification for the purposes of legislation In order that the test of premissible classification should be satisfied, two conditions have to be fulfilled, viz., (1) the classification must be founded on an intelligible differentia which would distinguish persons or things grouped together from others left out of group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. As this Court has held in the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, at p. 297, a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Therefore, if the infirmity in the electoral rolls on which the decision of the High Court in the earlier writ petition was based had not been applicable to the electoral rolls in regard to other Municipalities in the State of Orissa, then it may have been open to the Governor to issue an Ordinance only in respect of the Cuttack Municipal Elections, and if, on account of _ special circumstances or reasons, applicable to the Cuttack Municipal Elections, a law was passed in respect of the said elections alone, it could not have been challenged as unconstitutional under Article 14 Similarly, if Mr. Bose was the only litigant affected by the decision and as such formed a class by himself, it would have

been open to the Legislature to make a law only in respect of his case But as we have already pointed out, the Ordinance does not purport to limit its operation only to the Cuttack Municipality; it purports to validate the Cuttack Municipal Elections and the electoral rolls in respect of other Municipalities as well Therefore, we are satisfied that the High Court was in error in coming to the conclusion that section 4 contravenes Article 14 of the Constitution. Having regard to the fact that certain infirmities in the electoral rolls were presumably found to be common to electoral rolls in several Municipalities, the Governor thought that the decision of the High Court raised a problem of public importance affecting all Municipal elections in the State and so, acting on the considerations set out in the preamble to the Ordinance, he proceeded to promulgate it. In dealing with the challenge against section 4 of the said Ordinance, the High Court should have considered all the provisions of the Ordinance together before coming to the conclusion that section 4 was discriminatory and contravened Article 14.

It is not that there was no enquiry before Chimanganj was notified to be the market yard. In paragraph 28 of his judgment, Razzaque, J. stated as follows:

From the above history it would be clear that the action for abolishing Daulatganj and creating Chimanganj market yard was taken on the complaint of the producers, traders and members of the public. Thus the insinuation that this was done for some "obscure reason" is without substance. It is also clear that enquiries were made from the various associations including the traders' association and the licence-holders' association. It is implicit in these enquiries that whatever objections were raised were given due consideration and it was after this that the Chimanganj market yard was established. In the circumstances therefore it is absolutely wrong to say that no enquiries were made and no opportunities were given to the traders and others for being heard. So, as far this case is concerned, it is clear that enquiries were made, opportunities were given for being heard, objections were considered and then Chimanganj market yard was notified.

Having regard to this consideration, we must hold, following the law laid down by the Supreme Court in *State of Orissa Vs. Bhupendra Kumar* (supra) that there is no contravention of Article 14 of the Constitution.

10. In the view we have taken of this case, the petition fails and is dismissed. The petitioners shall bear their own costs and pay out of the security amount those incurred by the respondents. The remaining amount of security shall be refunded. There shall be a separate set of costs for each of the two respondents. Hearing fee Rs. 100.