

(1975) 02 PAT CK 0013

In the Patna High Court

Madanlal Chandak and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-1975

Acts Referred:

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 — Section 44
Constitution of India, 1950 — Article 226, 227
Contract Labour (Regulation and Abolition) Act, 1970 — Section 35
Essential Commodities Act, 1955 — Section 3, 4, 5, 7

Citation : (1975) CriLJ 1821

Hon'ble Judges : S. Ali Ahmad, J;Nagendra Prasad Singh, J

Bench : Division Bench

Judgement

Nagendra Prasad Singh, J.—These three applications have been filed by the two petitioners (petitioner in Cri. Misc. 58/72 and Cr. W. J. C. 67/72 being the same person) for quashing their criminal prosecution u/s 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the "1955 Act"), for having allegedly violated the provisions of the different Control Orders framed by the Government of Bihar in exercise of the powers conferred on it u/s 3 of the 1955 Act.

2. Against the petitioner in Criminal Miscellaneous No. 58 of 1972, a complaint was filed on the 30th November, 1971 by Shree R. N. Pandey, Assistant Marketing Officer, Sadar, Chaibassa, alleging that, when he had gone to the business premises of the petitioner, who happens to be the proprietor of Chaibassa Tyre House, he found that the petitioner had not displayed the price list and stock position in his shop and the godown, and, as such, he had contravened the provisions of the Bihar Essential Commodities (other than Foodgrains) Prices and Stocks Display Control Order, 1967 and as such was liable to be prosecuted u/s 7 of the 1955 Act. On the basis of the said petition of complaint, the petitioner was summoned and the case was transferred to the Court of a Munsif-Magistrate for disposal. This petitioner has also filed Criminal Writ Jurisdiction Case No. 67 of 1972 under Articles 226 and 227 of the

Constitution of India for the same relief, that is, for quashing of the aforesaid prosecution pending against him.

3. The petitioner in Criminal Misc. No. 2173 of 1974, a licensee under the Bihar Foodgrains Dealers' Licensing Order, 1967. (hereinafter referred to as the "Licensing Order"), runs a Kirana shop at Chapra. On the 19th October, 1973, at about 3.30 p. m., the Assistant Marketing Officer, along with others, went to the shop of the petitioner and seized stocks of mustard oil linseed oil and other foodgrains and submitted a report on the basis of which cognizance was taken against the petitioner and he was summoned to stand his trial u/s 7 of the 1955 Act, for having violated the provisions of the Licensing Order. All the three applications have been heard together with the consent of the parties as a common question of law has been raised in all of them, and this judgment will govern them all.

4. Mr. B.C. Ghose, learned Counsel appearing for the petitioners in these applications, has submitted that the prosecution of the petitioners is void ab initio inasmuch as the petitioners are being prosecuted in respect of contravention of the provisions of the aforesaid Control Order and the Licensing Order which are unconstitutional and ultra vires. According to the learned Counsel, in exercise of the powers u/s 3 of the 1955 Act. the Central Government has been vested with powers to regulate or prohibit production, supply and distribution of any essential commodity. Any order framed by the Central Government in exercise of the said power is to be laid before both the Houses of Parliament, as soon as may be after it is made, as required by Section 3(6) of the 1955 Act. The State Government frames such orders as a sub-delegatee of the Central Government u/s 3, read with Section 5(b) of the 1955 Act. The orders framed by the State Government cover the same field and purport to achieve the same objects, that is, to regulate or prohibit the production, supply and distribution of the essential commodities. So far as the exercise of the power by the State Government is concerned, there is no check under the 1955 Act similar to Sub-section (6) of Section 3 which relates to the orders made by the Central Government. It was further submitted that, per se, Section 5(b) is ultra vires inasmuch as it suffers from the vice of excessive delegation, because neither there is any guideline nor any check by Parliament over the power of the State Government to make the Control Orders, and, in exercise of the said power, the State Government is performing legislative function which is beyond its competence as a sub-delegatee.

5. Section 3(1) of the 1955 Act prescribes that, if the Central Government is of opinion that it is necessary for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability, it can make orders for regulating or prohibiting the production, supply and distribution of such essential commodities. Sub-section (2) of Section 3 prescribes, without prejudice to the generality of the powers conferred by Sub-section (1), the details in respect of which Orders may be made by the Central Government,

under its different clauses. Sub-section (6) of Section 3 reads as follows:

(6) Every order made under this Section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

This sub-section requires that every order made in exercise of the powers u/s 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both the Houses of Parliament, as soon as may be, after it is made. Section 5, which is relevant for our present purpose, is in these words:

5. The Central Government may, by notified order, direct that the power to make orders u/s 3 shall, in relation to such matters, and subject to such conditions, if any, as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government;

as may be specified in the direction.

This section enables the Central Government to direct that the power to make orders u/s 3 shall "in relation to such matters" and "subject to such conditions" which may be specified in such direction, be exercised by such State Government or by such officer or authority subordinate to such State Government as may be specified in the said direction. The aforesaid Control Order and the Licensing Order have been made by the State Government in view of Section 5(b).

6. Now the question is as to whether the two Orders in question are invalid in view of the fact that Section 5(b) itself is ultra vires due to excessive delegation of legislative power. For deciding the said question, it has to be first examined as to whether Parliament has retained in its own hands the essential legislative function and what has been delegated to the State Government is the task of subordinate legislation necessary for implementing the purposes and objects of the 1955 Act. If, on examination, it is found that, while delegating the aforesaid task of subordinate legislation to the State Government, Parliament has enunciated its legislative policy with sufficient clearness and guideline, then no question of excessive delegation will arise.

7. A bare reference, to the different provisions of the 1955 Act will show that, under Sub-section (2) of Section 3, Parliament has stated the objects for which Control Orders can be framed and under the different clauses it has pointed out as to what extent and in respect of what matters the Control Orders are to be made. u/s 5 of the 1955 Act, the Central Government delegates its power to the State Government and has to specify in the direction as to in relation to which matters and subject to which conditions the power u/s 3 is to be exercised by the State Government, Learned Counsel for the petitioners has, however, placed

reliance on a judgment of the Supreme Court in *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, in support of his contention. In the aforesaid case the vires of certain provisions of the Gold (Control) Act, 1968 (hereinafter referred to as the "Gold Act") had been challenged. Section 5 of the Gold Act had vested certain powers in the Administrator to issue directions and orders and Section 5(2)(b) vested in the said Administrator power to "regulate by licence, permits or otherwise, the manufacture, distribution, transport, acquisition, possession, transfer, disposal, use or consumption of gold." Section 114 of that Act conferred power on the Central Government to make rules for carrying out the purposes of the Act. Section 114(2)(d) provided that such rules may provide for conditions, limitations and restrictions subject to which a dealer may sell, deliver, transfer or dispose of or buy and acquire gold. In that connection it was pointed out by the Supreme Court that a parallel power of subordinate legislation had been conferred on the Administrator u/s 5(2)(b) and that amounted to excessive delegation, and it was observed as follows : ---"It is manifest upon a review of all these provisions that the power conferred upon the Administrator u/s 5(2)(b) is legislative in character and extremely wide. A parallel power of subordinate legislation is conferred to the Central Government u/s 114(1) and (2) of the Act. But Section 114(3) however makes it incumbent upon the Central Government to place the rules before each House, of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions. It is clear that the substantive provisions of the Act, namely. Sections 3, 11, 21, 32 (3), 34(3), confer powers on the Administrator similar to those contemplated by Section 5(2)(b) of the Act. In these circumstances we are of opinion that the power of regulation granted to the Administrator u/s 5(2)(b) of the Act suffers from excessive delegation of legislative power and must be held to be constitutionally invalid."

In my opinion, the facts and the circumstances of the Gold Act and the 1955 Act are different. In the instant cases there is no question of vesting of Parallel power in the State Government Section 5(b) of the 1955 Act makes it clear that the Central Government is to direct, by a notified order, that the power to make orders u/s 3 shall be exercised by the State Government in relation to such matters and subject to such conditions as may be specified in the said direction. The object of the Act itself is to control production, supply and distribution of and trade and commerce in, certain essential commodities in the interest of the general public. The demand and supply of these essential commodities may differ from State to State, according to the prevailing local conditions, and, as such, it was necessary to vest powers in the respective State Governments to make orders for their respective States within the framework indicated by Section 3 of the 1955 Act.

8. It may be mentioned that, be-fore the 1955 Act came into force, earlier the Essential Supplies (Temporary Powers) Act, 1946 (hereinafter referred to as the "1946 Act") was in force for achieving precisely the same objects. Many sections of foe 1946 Act and the 1955 Act are similar. Sub-sections (1) and (2) of Section

3 of the 1946 Act were, more or less, similar to Sub-sections (1) and (2) of Section 3 of the 1955 Act. Section 5 of the 1955 Act was Section 4 of the 1946 Act, and it was in these words:

4. The Central Government may by notified order direct that the power to make orders u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by

(a) such officer or authority subordinate to the Central Government, or

(b) such Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.

The vires of Sections 3 and 4 of the 1946 Act was challenged before the Supreme Court in the well known case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, on the ground of excessive delegation. Their Lordships examined the question as to whether Sections 3 and 4 suffered from the vice of excessive delegation and, while repelling the said argument in respect of Section 3, it was observed:

As already pointed out. the preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy. Mr. Uhmrigar could not very seriously press the question of the invalidity of Section 3 of the Act and it is unnecessary therefore to consider this question in greater detail.

Section 4, which was similar to Section 5 of the 1955 Act, was attacked on the ground that the delegate, meaning thereby the Central Government, had been authorised to further delegate its power in respect of exercise of the power u/s 3. In that connection it was submitted that it was for the legislature itself to specify the particular authorities or officers who could exercise the power u/s 3 and it was not open to the legislature to empower the Central Government to say what officer or authority could exercise the said power. While repelling the said argument, it was observed by their Lordships as follows:

Reference in this connection was made to two decisions of the Supreme Court of the United States of America-*Panama Refining Co. v. Ryan* (1934) 293 US 388 and *Schechter v. United States* (1934) 295 US 495 In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. These decisions in our judgment do not help the contention of Mr. Umrigar as we think that Section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself.

9. The aforesaid Sections 3 and 4 of the 1946 Act were again examined on the ground of excessive delegation in connection with Indian Iron and Steel (Control of Production and Distribution) Order, 1941. before the Supreme Court in Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, and it was held that the power conferred on the sub-delegatee did not suffer from the vice of excessive delegation. In The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, , while holding that there was no excessive delegation because the legislature had not stripped itself of its essential functions and vested the same in an extraneous authority, the Supreme Court took note of the fact that the local conditions in different States vary, and in that connection it was observed as follows:

Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State.

10. In view of the pronouncements of the Supreme Court in D.S. Garewal Vs. The State of Punjab and Another, . Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, , the Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, and Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, , it is established that the essential legislative functions consist of determination of the legislative policy and its formulation which cannot be delegated by the legislature; such essential legislative functions must be retained by the legislature in its own hands, but it can delegate the task of subordinate legislation necessary for implementing the purposes and objects of the Act. In the case of Gwalior Rayon Mills it was observed as follows:

22. It would appear from the above that the view taken by this Court in a long chain of authorities is that the legislature in conferring power upon another authority to make subordinate or ancillary legislation must lay down policy, principle or standard for the guidance of the authority concerned.

In my opinion, it cannot be said that Parliament has not laid down the policy and guideline in the 1955 Act and has in any manner delegated any of its essential legislative functions to the State Government so as to attract the principle of excessive delegation, Section 3 lays down the policy, the principle and the standard for the guidance of the delegated authorities within the framework of which, and for achieving the objects mentioned therein, it has to make orders. As I have already pointed out, Section 5 of the 1955 Act is exactly in the same language as was Section 4 of the 1946 Act the constitutionality of which had been examined and upheld by the Supreme Court in the aforesaid case of Harishankar Bagla and Another Vs. The State of Madhya Pradesh, and in that view of the matter, it cannot be urged that Section 5 of the 1955 Act is invalid

due to excessive delegation,

11. Learned Counsel appearing for the petitioners has laid great stress on Sub-section (6) of Section 3 of the 1955 Act, and has pointed out that it is a great check by Parliament on the power of the Central Government while exercising the powers of a delegated authority, and, in absence of a similar provision in respect of the orders made by the State Government, it should be held that Section 5 suffers from the vice of excessive delegation. In this connection our attention was drawn to a similar provision in Section 35 of the Contract Labour (Regulation and Abolition) Act, 1970. Section 35 provides that the appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of the said Act. Sub-section (3) of Section 35 prescribes that every rule made by the Central Government under the said Act shall be laid, as soon as may be, after it is made, before each House of Parliament while it was in session for a total period of thirty days. Learned Counsel for the petitioners has also referred to Section 44 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. Sub-section (1) of Section 44 prescribes that the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the said Act. Sub-section (4) of Section 44 prescribes that every rule made under the said section shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days. According to learned Counsel, in absence of such a provision, the orders or the rules, as the case may be, made by the State Government are bound to be declared invalid on the ground of excessive delegation of legislative power; and in this connection reference was made to the aforesaid cases of Harakchand Ratanchand Banthia v. Union of India and D. S. Garewal v. The State of Punjab. In my opinion, it is difficult to accept this contention of the learned Counsel. Sections 3 and 4 of the 1946 Act, which were similar to Sections 3 and 5 of the 1955 Act. were upheld valid even in absence of a provision like Sub-section (6) of Section 3 of the 1955 Act, in the aforesaid case of Harishankar Bagla, Apart from that, in my judgment, it cannot be urged as a proposition of law that any delegation to a subordinate legislative authority will be bad in the eye of law, unless there is a provision like Sub-section (6) of Section 3 of the 1955 Act, making provision for laying before Parliament or the State legislature concerned orders made by such subordinate legislative authority. In my opinion, in the aforesaid cases of Harakchand Ratanchand Banthia and D.S. Garewal, while rejecting the argument of excessive delegation, the provision regarding laying of the rules before Parliament for the requisite, period was taken note of, but the Supreme Court never purported to lay down a rule of law that in every case of delegation to subordinate legislative authority there must be a provision like that. I have already pointed out above that once it is established that Parliament has determined the legislative policy and indicated the guidelines, the State Government, as a subordinate legislative authority, can exercise the said power by virtue of delegation for the purposes of carrying out the objects of the Act. Such delegation was essential so that the

different States may frame orders in accordance with the provisions of the Act within their respective States in the light of the prevailing conditions in the particular State. Once it is held that the State Government had valid authority in law to make the aforesaid Control Order and the Licensing Order in question, it has to be held that the proceedings pending against the petitioners do not suffer from any infirmity and the orders taking cognizance are not liable to be quashed by this Court. Learned Counsel for the petitioners in these applications has not challenged the orders taking cognizance on any other ground.

12. In the result, all the three applications are dismissed.

S. Ali Ahmad, J.

13. I agree.