

(1968) 11 KL CK 0012
In the High Court Of Kerala
Case No : Criminal Reference 14 of 1968

Mrs. Udayasi, Metro Cycle Importing Co.	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 01-11-1968

Acts Referred:

Constitution of India, 1950 — Article 19
Criminal Procedure Code, 1898 (CrPC) — Section 3, 432(1), 433(1)
Essential Commodities Act, 1955 — Section 3, 3(2), 3(3), 4, 5

Citation : (1969) KLJ 596

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : V.M. Nayanar, for the Appellant;

Judgement

T.C. Raghavan, J.—The District Magistrate (Judicial) of Trivandrum has referred u/s 432(1) of the Code of Criminal Procedure the following questions: (1) Whether the words "refuse to sell" in section 3 of the Kerala Cycle Tyres and Tubes (Declaration of Stocks and Maintenance of Accounts) Order, 1966, would include any refusal to sell to any person, as distinct from a total refusal to sell to all persons, and if so, whether that section is invalid, on the ground that its enactment is in excess of the power of legislation delegated to the State Government and that it is also ultra vires Article 19 of the Constitution

(2) Whether section 4 of the Order is invalid on the ground that its enactment is in excess of the power of legislation delegated to the State Government.

I do not propose to go into the facts or merits of the case.

The Kerala Government has passed the Kerala Cycle Tyres and Tubes (Declaration of Stocks and Maintenance of Accounts) Order, 1969. Section 3 of the Order reads:

No dealer shall withhold from sale or refuse to sell cycle tyres and tubes ordinarily kept for sale.

And section 4 enacts:

Every dealer shall exhibit at the entrance or some other prominent place of his business premises the price list of cycle tyres and tubes held by him for sale. Such price list shall be legibly written in the principal language of the locality concerned. It shall indicate separately the prices of different varieties of cycle tyres and tubes.

2. The first matter to be considered is whether the expression "refuse to sell" in section 3 extracted above means a refusal to sell to any one person as distinct from a total refusal to sell to all persons which is indicated by the other expression "withhold from sale" in the same section. In other words, is there a difference in meaning between the expressions "withhold from sale" and "refuse to sell"? Section 3 itself appears to make a distinction between the two expressions. A refusal to sell to any one person cannot be said to be withholding from sale; withholding from sale must be a total refusal to sell to everybody. This distinction appears to emerge from the expressions themselves. And Mr. K.V. Suryanarayana Iyer, the counsel of the accused person, has drawn my attention to the Division Bench ruling of the Bombay High Court in *Mahadev Mahalu v. Emperor* (A.I.R. 1943 Bom. 49) by Beaumont C.J. and Wassoodew J. Beaumont C.J. observes thus:

But we can and ought to say, in my opinion, that a man has not withheld sugar from sale to any person, if he has sold some sugar to any person demanding it, and has not evinced any unwillingness to sell the rest of the sugar to other persons. I think in order to bring home the offence, the police will have to go much further than they have gone, and show that the accused was over a period withholding his sugar from sale.

The learned Chief Justice also gives an example in the following terms:

As I put it to the learned Advocate-General in argument, supposing a grocer, when he opens his shop in the morning, finds a queue of persons waiting who want to buy sugar, and he sees amongst the queue many regular customers, and supposing the first person in the queue, who does not happen to be a regular customer, demands to purchase the whole of the grocer's stock, can it be seriously suggested that the grocer, in refusing to comply with that order, is withholding sugar from sale, when he has every intention to sell sugar to the other people in the queue in their turn? And if it be conceded that in such a case it cannot be said that he was withholding sugar from sale, the position must be the same, although his regular customers are not visible, but from his past experience he knows that they are likely to come in to buy sugar in the course of the day.

Towards the end of the judgment appears another passage, which also may be noted with advantage:

I do not think that a dealer is bound to sell his whole stock, or a large part of it,

to the first customer who demands it. If at the end of a period, it is found that a dealer has not sold his stock, although asked to do so, there may be a case for prosecution.

3. This line of reasoning of the learned Chief Justice gives support to the view I have already expressed that withholding from sale must be a total refusal to sell at least for a period.

4. With this difference in meaning between the two expressions in mind, I shall examine the powers delegated by the Central Government to the State Government u/s 5 of the Essential Commodities Act of 1955. The order of the Central Government dated 18th June 1966 reads:

In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs

(a) that the powers conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clauses (d), (e), (f), (g), (h), (i) (ii) and (j) of sub-section (2) thereof shall, in relation to all commodities other than foodstuffs and fertilisers etc. etc.

5. The other clauses of the order are not relevant. The clause extracted shows clearly that the powers delegated to the State Government are only those mentioned in clauses (d), (e), (f), (g), (h), etc. of section 3(2) of the Act, One relevant clause is clause (e) which reads:

for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale.

6. Section 3 of the Cycle Tyres and Tubes (Declaration of Stocks and Maintenance of Accounts) Order could have been promulgated only under this clause, namely, for prohibiting the withholding from sale of cycle tyres and tubes. Thus, the delegated power is to "prohibit the refusal to sell". In fact, the Act itself contemplates only the "prohibition of the refusal to sell". Thus, the State Government has gone beyond the powers delegated to it by the Central Government and even beyond the powers contemplated by the Act when it promulgated section 8 to prohibit refusal to sell cycle tyres and tubes as well. This answers the earlier part of the first question referred by the District Magistrate.

7. The latter part of that question is whether section 3 violates Article 19 of the Constitution. In view of my finding that section 3 is ultra vires the delegated power of the State Government and ultra vires section 3 (2) (e) of the Act, the latter part of the first question need not be answered.

8. Now about the second question. Section 4 of the Kerala Order demands that every dealer shall exhibit a price list of the cycle tyres and tubes held by him at his business premises in the principal language of the locality. This section could have been promulgated only under clause (c) of sub-section (2) of section 3 of

the Essential Commodities Act which reads:

for controlling the price at which any essential commodity may be bought or sold.

9. The purpose of publishing a price list at the premises of the shop can only be to control the prices at which the tyres and tubes may be bought or sold. No other clause of section 3 (3) of the Act can be said to confer this power. Now turning to the Order of the Central Government delegating powers to the State Government, what is found is that the power under clause (c) of sub-section (2) of section 3 is not one of the powers delegated under the Order. As I have already stated, the powers delegated were only those under clauses (d), (e), (f), (g), (h), etc. Section 4 is thus beyond the competence of the delegated powers of the State Government and hence invalid. These answers will be sent to the District Magistrate as contemplated by section 433(1) of the Code of Criminal Procedure; and the District Magistrate will dispose of the case in the light of these answers.