

(1978) 01 CAL CK 0054
In the Calcutta High Court
Case No : Matter No. 472 of 1977

Pushraj Puranmull and Another

APPELLANT

Vs

N. Roy and Others

RESPONDENT

Date of Decision : 19-01-1978

Acts Referred:

Constitution of India, 1950 — Article 246
West Bengal Relief Undertakings (Special Provisions) Act, 1972 — Section 3, 4, 8,
8(1), 8(2)

Citation : AIR 1978 Cal 215 : 82 CWN 350

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Sabyasachi Mukharji, J.; S.K. Datta, J.; S.C. Ghose, J.; A.K. Janah, J

Bench : Full Bench

Advocate : A.K. Sen, J. Pugalia, T.K. Biswas and S.K. Mallick, R.C. Deb, Bhaskar Gupta and R. Deb, for the Appellant; Standing Counsel and Jr. Standing Counsel (for Nos. 1, 2 and 3), R.N. Bajoria, S.K. Bajoria and B.K. Chatterjee, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

Sankar Prasad Mitra, C.J.—In this application under Article 226 of the Constitution the validity of the West Bengal Relief Undertakings (Special Provisions) Act, 1972 has been challenged. The petitioner asks for a declaration that the Act is beyond the legislative competence of the State of West Bengal and is void. The petitioner has also prayed for issue of a writ in the nature of mandamus or appropriate direction for recall, cancellation and withdrawal of Notifications Nos. 1272--CSI and 1277--CSI both dated the 24th March, 1977 issued by the Deputy Secretary to the Government of West Bengal, Department of Closed & Sick Industries. By the first Notification the State Government in the exercise of power conferred by Section 3 of the Act declared Messrs. Nafar Chandra Jute Mills Ltd. to be a relief undertaking. By the second Notification the State Government directed in the exercise of power conferred by Section 4 of the Act that the operation of all contracts, assurances of property, agreements,

settlements, awards, standing orders or other instruments in force relating to the relief undertaking shall remain suspended.

2. The petitioner claims to be a creditor of the said Jute Mills. It has been affected by the notifications like many other creditors inasmuch as it is unable to take steps for realisation of its dues.

3. To appreciate the petitioner's contentions it may be convenient to refer to some of the entries in the three lists in the seventh schedule to the Constitution. Entry 52 of List I is "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". Entry 24 in list II is "Industries subject to the provisions of entries 7 and 52 of list I".

4. There are a few other entries in List III which should be noted in this connection. Item No. 23 in List III is "social security and social insurance: employment and unemployment". Item No. 33 is "trade and commerce in, and the production, supply and distribution of :--

(a) the products of any industry where the control of such industry by the Union is declared by Parliament to be expedient in the public interest, and imported goods of the same kind as such products:"

5. On behalf of the petitioner our attention was drawn to the Industries (Development and Regulation) Act, 1951. This Act was passed by Parliament and it came into force by a notification in the Gazette of India Extraordinary on the 8th May, 1952. By Section 2 of this Act the Parliament declared that it was expedient in the public interest that the Union should take under its control the industries specified in the first schedule. Item No. 23 in the first schedule to this Act includes jute and jute textiles. According to the petitioner the said declaration was made by Parliament by law under Entry 52 in list I.

6. The petitioner then contends that Entry 24 in list II enables the State Legislature to legislate in regard to industries but subject to the provisions of, inter alia, Entry 52 in list I. The State Legislature, therefore, does not have competence to legislate in respect of industries the control of which has been taken over by the Union.

7. The petitioner submits that the West Bengal Act referred to above relates to control and regulating of industries in the State by the Government of West Bengal. The applicability of the State Act must be confined to those industries the control of which by the Union of India has not been declared by Parliament by Law to be expedient in public interest.

8. The petitioner's contention is that since the control of jute industry is a subject-matter of the Industries (Development and Regulation) Act, 1951, the West Bengal Act has no application to jute industry. The impugned notifications relate to jute industry and are, therefore, ultra vires and void. There are no entries either in List II or List III, according to the petitioner, under which the West Bengal Act could have been enacted.

9. It is well known that the entries in the three lists have been widely construed. While interpreting the entries Courts have on numerous occasions discovered overlapping. It often happens that legislation made under a particular entry may incidentally touch upon or affect another entry in another list.

That is why, the Judicial Committee in the case of *Prafulla Kumar Mukherjee v Bank of Commerce Ltd.* 74 I. A. 23, : (AIR 1947 PC 60), said that in distinguishing between the powers of the divided jurisdictions under lists I, II and III of the seventh schedule to the Government of India Act, 1935, it was not possible to make a clean cut between the powers of the various legislatures. According to the Judicial Committee these powers are bound to overlap from time to time and the rule has been evolved by the Judicial Committee itself whereby an impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining in which particular list the legislation falls. The Judicial Committee applied these principles to Indian and dominion legislation. It was of the view that the extent of invasion by the provincial legislature into subjects enumerated in the Federal List was material for the purposes of determining what was the pith and substance of the impugned Act.

10. The House of Lords in *Gallagher v. Lynn* (1937) AC 863 was considering the powers of the Parliament of Northern Ireland. It was held that if in considering whether a statute was within the competence of a Subordinate Legislature to pass, it was found that the substance of the legislation was within the express powers, it was not invalidated because incidentally it affected matters which were outside the authorised field. The House of Lords observed further that the Legislature must not, however, under the guise of dealing with one matter encroach upon forbidden field.

11. Ever since the Judicial Committee laid down the principle aforesaid it had been uniformly applied till the present day to all cases of difficulties created by overlapping of entries in the three lists. The latest case to which our attention was drawn was the case of *Monogram Mills Ltd. and Others Vs. The State of Gujarat*, . In the instant case also the doctrine of pith and substance has to be invoked. If upon examination of the impugned Act we find its pith and substance is a subject falling within an entry in list III the Act cannot be struck down on the ground that it touched upon an item in List I. No entries in the lists should be so construed as to curtail the scope and ambit of other entries in other lists.

12. Bearing these principles in mind we have to discover the pith and substance of the West Bengal Relief Undertakings (Special Provisions) Act, 1972.

13. The preamble to the Act says that it is "An Act to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of preventing, or providing relief against, unemployment".

It is further stated: "Whereas it is expedient to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of preventing, or of providing relief against, unemployment:

14. It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal, as follows :-- "

When the Bill was presented to the West Bengal Legislature its object was stated as follows :--

"A number of industrial undertakings in West Bengal are now closed down for various reasons resulting in substantial loss in production and in employment. For continued economic operation of such industrial units, the State Government in some cases advanced loans, furnished guarantees for Bank loans and even took over the equity shares of some units in the past. Unfortunately, most of the money advanced by the Government was consumed by the past liabilities or large overheads of beneficiary units. In order to enable the State Government to revive and re-start these industrial undertakings and operate them efficiently and thereby provide employment to a large number of workers, it is essential that the State Government should have suitable powers to free the industrial undertakings for a short period from certain financial obligations in the past and to exempt them from the scope of certain labour laws.....Similar legislation has been enacted in the States of Maharashtra, Gujarat, Madhya Pradesh, Kerala, Rajasthan and Tamil Nadu. The main provisions of the Bill have also been incorporated by the Parliament in the Industries (Development and Regulation) Act by a recent amendment, but the State Government has no power under that.""..."

15. From the preamble and the objects set out above we get the indication that the primary intention of the State Legislature was to prevent unemployment or provide relief against unemployment. Various industrial undertakings had been closed down particularly for financial difficulties resulting in unemployment of a large number of workers in a State in which the problem of unemployment was most acute. The State Legislature was attempting to take steps for the revival of these industrial undertakings so that the unemployed workers might be re-employed and one of the baffling problems of the State might be solved at least to some extent.

16. If we now look at some of the sections of the Act we would appreciate what the State Legislature intended to do. Section 3 of the Act runs thus:

"Section 3. Declaration of relief undertaking-- The State Government may, if it is satisfied that it is necessary or expedient so to do in the public interest, with a view to enabling the continued running or re-starting of a State Industrial undertaking as a measure of preventing, or of providing relief against, unemployment, declare by notification, that the State industrial undertaking

shall, on and from such date and for such period as may be specified in the notification, be a relief undertaking;

Provided that the period so specified shall not, in the first instance, exceed one year but may, by a like notification, be extended, from time to time, by any period not exceeding one year at any one time, so however that no notification issued under this section shall in any case remain in force for more than five years in the aggregate."

17. By Section 3, therefore, the State Government has been given the power to declare by notification that an industrial undertaking is a "relief undertaking". This declaration would be made for the continued running or restarting of the undertaking as a measure of preventing or of providing relief against unemployment.

18. We now come to Section 4 the provisions whereof are as follows:--

"4. Application of certain enactments and contracts, agreements, etc. to relief undertaking-- The State Government may, if it is satisfied that it is necessary or expedient so to do for the purpose specified in Section 3, direct, by notification:--

(a) that in relation to any relief undertaking all or any of the enactments specified in the schedule to this Act shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments), as may be specified in such notification; or

(b) that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which any relief undertaking is a party or which may be applicable to any relief undertaking) immediately before the date on which the State industrial undertaking is declared to be a relief undertaking, shall remain suspended or that all or any of the rights, privileges; obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such modifications and in such manner as may be specified in such notification".

19. By this section the State Legislature is making provisions for modifications, additions or omissions of certain Acts. These Acts have been mentioned in the schedule to the Act They are (i) the Industrial Employment (Standing Orders) Act, 1946, (ii) the Industrial Disputes Act, 1947; (iii) the Minimum Wages Act, 1948 and (iv) the West Bengal Shops and Establishments Act, 1963. The State Legislature is also making provisions for temporary suspension of the operation of contracts, agreements, settlements, awards etc. to enable the relief undertaking either to continue its operation or restart its operation unhampered by the burden of past liabilities and obligations for the time being.

20. By Section 8 of the Act power has been given to the State Government to make rules. In particular the State Government may frame rules relating to (a)

the rates of wages payable to the workmen and their workloads and the salary payable to the staff, the payment of bonus, gratuity, compensation, and other benefits; (b) the manner in which the relief undertaking should be run; (c) the strength of staff and labour to be employed for running the relief undertaking economically; (d) the manner in which the net profits or net losses or surplus funds should be appropriated or disposed of; (e) the percentage of profits to be utilised for the benefit of the persons employed in the undertaking and the manner of its utilisation; and (f) the manner in which, and the extent to which the representatives of the workmen may be associated with, or may participate in the management of the relief undertaking.

21. It appears that the State Government was expected to frame rules to ensure a smooth functioning of the relief undertaking after it gets the protection envisaged by Sections 3 and 4.

22. From all the provisions set out above the pith and substance of the legislation appears to us to be prevention of unemployment or providing relief against unemployment. And it comes directly within the scope of item 23 of list III. The legislation, therefore, cannot be struck down on the ground that it is beyond the competence of the State Legislature.

23. Our attention has been drawn to a decision of Division Bench of the Gujarat High Court in *D.S. Patel and Co. v. Gujarat State Textile Corporation Ltd.* reported in (1971) 41 Com Cas 1098. The Bombay Relief Undertakings (Special Provisions) Act was enacted for three main purposes, namely: (1) to make temporary provisions for industrial relations; (2) to enable the State Government to conduct, or provide loan, guarantee or financial assistance for the conduct of certain industrial undertakings in question and (3) to do the above as a measure of preventing unemployment or of unemployment relief. The Act consists of four sections only. The first section provides for the title and extent of the Act and the second for definitions. u/s 3 the Act applies to any industrial undertaking which either run by the State Government or to whom the State Government has provided financial assistance. Notifications, can be issued u/s 3 declaring that an industrial undertaking shall with effect from a specified date be conducted to serve "as a measure of preventing unemployment". u/s 4 the State Government can exercise wide powers to give temporary relief to the undertaking not only from the claims of creditors but also from demands of labour under different labour laws, agreements and awards.

24. The Gujarat High Court has noted that under the Industries (Development and Regulation) Act, 1951, if an industrial undertaking is managed in a manner detrimental to the industry or public interest the Central Government could by notified order authorise any person or body of persons to take over the whole or any part of the management of the undertaking.

25. The Gujarat High Court has noted further that under the Industries (Development and Regulation) Act a textile mill in Gujarat was ordered to be

managed by the Gujarat Textile Corporation. With regard to the same mill, notifications were issued under Sections 3 and 4 of the Bombay Relief Undertakings (Special Provisions) Act declaring the mill to be a relief undertaking from Feb. 21, 1969 and declaring that all rights, privileges, obligations and liabilities accrued or incurred before the undertaking was declared a relief undertaking and any remedy for enforcement thereof shall be suspended with effect from the 21st Feb., 1969.

26. The petitioners before the Gujarat High Court to whom the mill owed money challenged the validity of the State Act. They contended that (i) the Act dealt with industry which was within the legislative competence of Parliament and hence contravened Articles 245 and 246 of the Constitution; (ii) the Act was in conflict with the Industries (Development and Regulation) Act; (iii) under the Act there was excessive delegation of power in favour of the State Government and discrimination with persons falling in the same classification infringing Article 14(iv) the Act also infringed the right to property granted under Article 19(1)(f); and (v) the notifications issued under Sections 3 and 4 were vitiated as they had been issued by the Government without applying its mind.

27. The Gujarat High Court has held that in deciding the true nature and character of a Statute which is impugned on the ground that it is ultra vires the power of the legislature reference can be made to its long title, preamble and other provisions in it. It would not be a proper approach to consider the provisions of the Statute piecemeal and decide what provisions thereof are intra vires and what are not. Applying this test it was evident that the main object of the State Act was to prevent unemployment. Sections 3 and 4 of the Act made some provisions which touched the subject of industry and therefore encroached upon a legislative subject in the Union List.

But this encroachment was merely incidental to the main object of the State List. An incidental encroachment on an entry contained in another List would not invalidate an enactment. The State Act fell within Entry 23 of the concurrent List of the seventh schedule to the Constitution and was within the legislative competence of the State Government.

28. The Gujarat High Court has expressed the view that the provisions of the State Act were complementary to those of the Central Industry (Development and Regulation) Act. The State Act would serve the purpose of stabilizing the economy of an undertaking. Section 3 merely provided that the industry should be conducted to serve as a measure of preventing unemployment. It was not tantamount to take over or control of management of the industry.

29. No delegation of legislative power, says the Gujarat High Court, can be considered excessive if it is found that the Statute itself contains a clear-cut policy statement and provide necessary guidelines for exercise of power. The long title and preamble of the State Act suggested the general policy of preventing unemployment. Conditions were prescribed for the application of the

Act. Though Section 4 vested wide powers not only for the purpose of taking action but also for making the selection, that power was controlled by the express policy enunciated in the long title and preamble of the Act and the guidelines provided by Section 3. Moreover the discretion was left not to any officer but vested in the State Government itself. There was no excessive delegation of legislative power.

30. In this judgment we have considered the long title, the preamble, the object and the other provisions of the West Bengal Act and have come to the conclusion that its pith and substance is prevention of unemployment or providing relief against unemployment and, as such, the State Legislature had power to enact it under Item 23 of List III. It has been submitted to us that the judgment of the Gujarat High Court is not relevant for our purposes. The West Bengal Act does not impose any legal duty to run the industry so as to prevent or provide relief against unemployment.

31. In our view the judgment of the Gujarat High Court is of considerable assistance in determining the vires of the West Bengal Act. In Section 3 of the West Bengal Act it is provided that the notification declaring an undertaking to be a relief undertaking shall, in the first instance, be for one year only. The State Government may extend the period from time to time but the maximum period shall be five years. And the extension will also be for a period of one year at a time. These are indications that the protection of the Act would not be available to a sick industry if it is not run properly. Then again, Section 8(1) and (2) of the Act also tries to ensure that the undertaking is run smoothly and economically. Reading the Act as a whole our impression is that the State Government was attempting to give temporary relief particularly against harassment by creditors to certain undertakings to enable those undertakings to rehabilitate themselves and start functioning efficiently in order that persons employed by them might not lose their sources of subsistence. In view of these considerations we are of opinion that the West Bengal Relief Undertakings (Special Provisions) Act, 1972, is intra vires the powers of the State Legislature as it has been enacted under powers conferred by item 23 in list III of the seventh schedule to the Constitution.

32. It has also been argued before us that the Act can come within the scope of Item 33(a) of list III. Since we have already held that the Act is within the scope of Item 23 in list III, it is unnecessary for us to discuss the contentions of the parties on Item 33. We would only observe that upon taking into consideration all the provisions of the Act the argument that its pith and substance is the ensuring of production in a sick industry is of substance. The Act intends to give a breathing time to a sick industry and thereby encourage it to continue its productive activities. And from this point of view it may be held that the Act is intra vires the powers of the State Legislature under Item 33 (a) of list III.

33. In the result, therefore, this application is dismissed. Interim orders, if any, are vacated. We make no order as to costs.

Ghose, J.

I agree.

Sabyasachi Mukharji, J.

I agree.

S.K. Datta, J.

I agree.

A.K. Janah, J.

I agree