

(1978) 02 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.P. No. 123 of 1977

Rasal Singh

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 27-02-1978

Acts Referred:

Constitution of India, 1950 — Article 213, 213(1), 226, 228A, 254

Citation : (1978) JLJ 216 : (1979) MPLJ 239

Hon'ble Judges : Shiv Dayal Shrivastava, C.J.; S.J. Surana, J.; R.L. Murab, J.; H.G. Mishra, J.; A.R. Naokar, J

Bench : Full Bench

Advocate : A.B. Mishra, for the Appellant; R.S. Bajpai, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Shivdayal, C.J.

By this petition under Article 226 of the Constitution, the constitutional validity of the Madhya Pradesh Krishi Upaj Mandi [Tritiya Sanshodhan Adhyadesh, 1977 (M.P. Ordinance No. 9 of 1977) herein-after called the "Ordinance"] has been challenged. This Bench was, therefore, constituted under Article 228-A of the Constitution.

By this Ordinance, section 11 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972, (hereinafter called the "Act") has been amended. The only ground of challenge is that whereas the Act was enacted after obtaining the assent of the President, the Ordinance has been promulgated without the assent of the President.

The Act provides inter alia for establishment of markets and Constitution of market committees. The petitioner's case is that Mandi Committees throughout the State of Madhya Pradesh were established and incorporated under this Act. The Mandi Committee, Jora (District Morena) (Krishi Upaj Mandi Committee, Jora) is one of such committees. In the month of December 1975, under the

provisions of the Act election to the Mandi Committee was held on January 18, 1976. The petitioner was elected Chairman. The tenure of office is five years. However, on September 19, 1977, the Government of Madhya Pradesh promulgated the Ordinance which, inter alia, provides that the members of every market committee constituted in accordance with the provisions of section 11 of the Act, during the period of operation of proclamation of emergency made by the President on June 25, 1975, under Clause (1) of Article 352 of the Constitution shall cease to hold office with effect from September 19, 1977, and every such market committee shall on that date stand dissolved.

Consequent upon the promulgation of the Ordinance the Deputy Director Agriculture, Morena, has been appointed as Officer-in-Charge of the aforesaid Jora Mandi Committee. The State Government has authorised the Collector to take all necessary actions and decisions for the purpose of taking over charge of the aforesaid Mandi Committee.

Under Article 213 of the Constitution the Governor is empowered to promulgate an Ordinance when the State Legislature is not in Session. However, certain conditions are imposed in the Proviso to Article 213(1). Shri Anand Bihari Mishra, Learned Counsel for the petitioner, contends that the Ordinance is constitutionally invalid inasmuch as the requirement of Proviso (2) was not fulfilled. That Proviso enacts that the Governor shall not, without the instructions from the President promulgate any such Ordinance if an Act of the Legislature of the State containing the same provision would have to be reserved for the consideration of the President and such assent has been received.

The Learned Counsel for the petitioner confines his attack solely to the abrogation of his membership and the resolution of the Committee in pursuance of the Ordinance. Further, it must be mentioned that the only ground of attack is that if that provision had been made in an Act of the Legislature the provision would have been constitutionally invalid for want of assent of the President. The question for our enquiry is, therefore, restricted to this whether an Act of the Legislature which would abrogate membership and dissolve the Mandi Committee constituted u/s 11 of the Act would require the assent of the President. Shri Mishra's argument is that since the Act was enacted after obtaining the assent of the President no amendment can be made in the Act either by an Ordinance or an Act without the instructions or assent respectively. It is further argued that the object of the Act is to provide for better regulation of buying and selling of agricultural products and the establishment and proper administration of markets of agricultural products in the State of Madhya Pradesh and since a Mandi Committee deals with buying and selling, the subject matter of the Act falls within Entry 33 of Schedule 3 of the Constitution. That being so, the provisions of the Act are inconsistent with provisions of Essential Commodities Act relating to food stuffs, and Article 254(1) of the Constitution is attracted.

The first part of the argument is misconceived. There is no such requirement of the law that if an Act has been enacted after it received the assent of the

President, then no amendment of any kind can be made without the President's assent. What is to be seen is whether the provisions introduced by the amending Act fall within the mischief of Article 254 of the Constitution.

As regards the second part of the contention, the enquiry has to be confined to the particular provision which is attracted. Under Article 254 what becomes void is the particular provision which is repugnant to a provision, contained in an Act of Parliament. Again, the words "to that extent" in Article 254(1) are significant.

254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State : (***)--with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this Clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

The provision under challenge by which membership of the petitioner has ceased to continue and the dissolution of the Mandi Committee Jora by virtue of the impugned Ordinance relates to the Constitution of market committees. Now this subject falls under Entry 28 of List II "Markets and Fairs."

It is well known that sometimes entries in the Legislative lists are overlapping. To examine whether a particular provision falls within the competence of the Legislature which passed it, the Court has to consider what constitutes in pith and substance the true subject matter of the legislation, and whether that particular subject matter is covered by the entries in the relevant legislative list. The validity of a provision is not affected even if it incidentally trenches upon a subject-matter of another list. There is a string of Supreme Court decisions in support of this proposition In The Second Gift Tax Officer, Mangalore etc. Vs. D.H. Nazareth etc., Hidaytullah C.J. Speaking for the Court said :--

Since they (entries) are likely to overlap occasionally, it is usual to examine the pith and substance of legislation with a view to determine to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding.

In *State of Bombay v. P.N. Balsara* AIR 1951 SC 318, Mr. Justice Fazl Ali observed :--

It is well settled that the validity of an Act is not affected if it incidentally trenches on matters outside the authorised field, and, therefore, it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacts it, then it cannot be invalid, merely because it incidentally encroaches on matters which have been assigned to another Legislature.

In *Prafulla Kumar v. Bank of Commerce Khulna* AIR 1947 PC 60 : 74 IA 23 their Lordships rejected the argument that the rule of priority should be applied. Their Lordships held:--

The overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and if what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with.

In that case, observations of Gwyer C.J., in AIR 1941 47 (Privy Council) were quoted:--

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list and the different provisions of the enactment may be so closely inter-twined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance" or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that.

Lord Atkin in *Gallagher v. Lynn* (1937) AC 363 observed : --

It is well established that you are to look at the "true nature and character of the legislation"; *Russell v. The Queen* 7 AC 839 "the pith and substance of the legislation". It, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field.

Since the impugned proviso does not deal with any other matter, except the dissolution of particular market committees which were constituted during a

specified period and cessation of membership of those members only who became member during that specified period the matter undoubtedly falls within Entry 28 in the State List, and not under Entry 33 of the Concurrent List, although incidentally the market committee is connected with trade and commerce. Applying the pith and substance rule, we hold that the impugned Ordinance, if it had been incorporated in an Act of the M.P. State Legislature, was not necessarily to be reserved for the assent of the President. When a subject-matter is within the competence of the State Legislature and it is not repugnant with any provision of a law made by Parliament within the meaning of Article 254 of the Constitution, assent of the President is not necessary. No such repugnant provision has been shown to us by the Learned Counsel for the petitioner.

Besides, the Learned Counsel for the petitioner has not shown us any provision in any Act of Parliament which provides for Constitution of a market committee. A provision in an Act of the State Legislature is not invalid by virtue of Article 254 of the Constitution unless and until it is shown that it is inconsistent with a provision in an Act of the Parliament. See, *M.P.S.R.T.C. Vs. Ramchandra and Others*, . On this short ground also the petitioner's contention cannot be upheld.

It must be remembered that the impugned provision in the Ordinance does not amend section 11 of the Act for all times. All that the amendment does is to set at naught what was done during the emergency. The committee which was constituted during the period of emergency has been dissolved and the members selected during that period have ceased to be members.

We are, therefore, of the opinion that the Madhya Pradesh Krishi Upaj Mandi (Tritiya Sanshodhan) Adhyadesh 1977, in so far as it effects the cessation of membership of a committee constituted within a particular specified period and the dissolution of the committee constituted during the period is not invalid.

The petition is dismissed. Parties shall bear their own costs. The amount of security shall be refunded to the petitioner.