(1976) 09 PAT CK 0003

In the Patna High Court

Case No : Criminal W.J.C. No. 128 of 1976

Shri Darshan Sao and Shri Subhash Chand — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 23-09-1976

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1977) PLJR 419

Hon'ble Judges : Uday Sinha, J;Shivanugrah Narain, J

Bench : Division Bench

Advocate : I.T. Gaur, for the Appellant; Parmanand Sharan Sinha, for the Respondent

Final Decision : Allowed

Judgement

Shivanugrah Narain, J.—This is an application under Articles 226 and 227 of the Constitution for quashing the Bihar Shariff P.S. case no. 38(8) 76 dated 17.9.1976 instituted against the petitioners on the basis of a written report filed by Shri R.S. Dwivedi Supply Inspector, Bihar Sharif, on which the police drew up a formal first information report and instituted the aforesaid P.S. Case no. 38(8) 76. In this report Shri R.S. Dwivedi, Supply Inspector, Bihar Sharif, alleged that on 17.8.1976 at 11 A.M. he inspected the business premises of the petitioners in presence of the witnesses and found 441 Eveready torch dry battery cells in the shop but 101 dry battery cells had not been entered in the stock register and the stock position and the sale price of the torch batteries had not been displayed on the notice board. According to the report, the provision of the Bihar Essential Commodities--other than Foodgrains-Price and Stocks (Display and Control) Order, 1967 and the Bihar Essential Articles (Display of Price and Stocks) Order, 1975 (hereinafter referred to as ''the 1975 Order''), Section 3 of the Essential Commodities Act, 1955 and Rule 114 of the Defence of India Rules, 1971, had been contravened in the first information report, the offences are described as owe u/s 3 of the Essential Commodities Act, 1955 and Rule 114 of the Defence of

India Rules. While the investigation was proceeding, the petitioners filed the present application in this court. In my opinion, this application must be allowed. It is well settled that if the allegations in the first information report takes at their face value and accepted in their entirety do not disclose any offence, the investigation by the police in a case instituted upon such a report would be mala fide and an abuse of its powers and can be restrained by an appropriate writ. In (1) S.M. Sharma V. Bipen Kumar (A.I.R. 1970 S.C. 786) Bhargava J. speaking for the Supreme Court, pointed out that:

....In appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers" (at page 789 of the report).

In (2) A.K. Jain V. Government of India (1968 P.L.J.R. 179) a Beach of this court issued a writ of mandamus to the investigating officer not to take any further step or to do anything in the matter of investigation because that would have amounted to mala fide exercise and abuse of powers.

In (3) N.C. Banerjee V. State (1970 B.L.J.R. 766) S.P. Singh, J. quashed an investigation pending with Godda police on the ground that the allegations in the first information report even if they were taken at their face value and accepted in their entirety, did not make out an offence and, therefore, the police had no authority to proceed with the investigation and its proceeding with the investigation would amount to mala fide exercise or an abuse of powers.

2. In the present case also, the allegation in the first Information report, even if they are taken at their face value and accepted in their entirety, do not make out any offence and, therefore, the police, has no authority to proceed with the investigation and its proceeding with the investigation will amount to mala fide exercise and an abuse of powers. It is manifest and, indeed it is not disputed, that no offence under the Defence of India Rules 1971, is disclosed for on 17.8.1976 when the offence is alleged to have been committed, the failure to display the stock and prices of dry battery cells for torches was not a contravention of the 1975 Order, the Order framed under the Defence of India Rules, 1971 which, according to the first information report, is alleged to have been contravened. According to Clause 3 of the 1975 Order, the dealer is required to display the stock position and the price of articles specified in Schedule 1 or Schedule II. Dry cells for torches were originally specified as one of the articles in Serial No. 21 of Schedule I to the Order, but by the Bihar Essential Articles (Display of Prices and Stocks) Amendment order, 1976 promulgated by notification no. G.S.R. 6, dated the 20th February, 1976, dry battery cells of torches etc were deleted from schedule I of the said order with the result that after February, 1976, the dealer was not required to display the prices and stocks of dry battery cells of torches etc.

3. The question, however, remains if the allegation discloses an offence punishable u/s 7 of the Essential Commodities Act. Clause 4 of the Bihar Essential Commodities--other than Foodgrains--Prices and Stocks (Display and Control) Order, 1967 (hereinafter referred to as ''the 1967 Order'') requires a dealer to display the price list and stock position of the commodities specified in Schedules I and II to the order and dry cells for torches is listed under serial no. 12 of schedule I. The allegations, therefore, clearly disclosed a contravention of the 1967 Order.

4. It is however contended by the learned Advocate for the petitioners that on 17.9.1976 clause 4 of the 1967 Order was not in force as it stood repealed by the 1975 Order. In my opinion this contention is correct and must prevail. The 1975 Order does not expressly repeal the 1967 Order or any part thereof. The question is whether clause 4 of the earlier order is repealed by implication. In my opinion, the same principles as applied in determining whether a later enactment repeals by implication an earlier enactment, must apply in determining whether a later statutory order repeals another and earlier statutory order. Now the principles for determining repeal by implication of an earlier statute by later statute are well settled. Speaking for the Supreme Court in (4) Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, Shelat, J, observed:

The rule of construction is that where a statute provides in express terms that its enactment will repeal an earlier Act, by reason of its inconsistency with such earlier Act, the latter may be treated as repealed. Even where the later Act does not contain such express words, if the co-existence of the two sets of provisions is destructive of the object with which the later Act was passed, the court would treat the earlier provision as impliedly repeated. A later Act which confers a new right would repeal an earlier right if the fact of the two rights co-existing together produces inconvenience, for, in such a case it is legitimate to infer that the legislature did not intend such a consequence. If the two Acts are general enactments and the later of the two is couched in negative terms, the inference would be that the earlier one was impliedly repealed. Even if the later statute is in affirmative terms, it is often found to involve that negative which makes it fatal to the earlier enactment. But repeal by implication is not generally favoured by Courts. (at page 1584 of the report).

His Lordship also quoted with approval the following observations of Dr. Lushington, in the India (1864) 33 LJ Adm 193 (as quoted in Craies on Statute Law, 6th Ed. 371):--

What words" will establish a repeal by implication it is impossible to say from authority or decided cases. The prior statute would, I conceive, be repealed by implication if its provisions were wholly in compatible with a subsequent one: or if the two statutes together would lead to wholly absurd consequences; or if the entire subject matter were taken away by the subsequent statute.

It is in the light of these principles that we must proceed to determine this question.

5. Now, undoubtedly, the 1975 Order is the later statutory order as it is made in exercise of the powers conferred under rule 114 of the Defence of India Rules, 1971 which was made under the Defence of India Act, 1971 and the 1967 order was made in exercise of the powers u/s 3 of the Essential Commodities Act, 1955, an earlier enactment, Section 37 of the Defence of India Act, 1971, runs thus:

37. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

The Defence of India Act which is later enactment, therefore, clearly evidences on intention that the provisions of any order made under any rule of the Defence of India Act will override any provision inconsistent therewith contained in any instrument made under any other enactment. In view of this declaration of the legislative intent, the chief objection against implied repeal is removed. We have, however, still to determine whether the provisions of the 1975 Order are repugnant to the provision of clause 4 of the 1967 Order. For that we have to analyse the provisions of the two Orders. The 1967 Order is made in exercise of the powers conferred by Section 3 of the Essential Commodities Act 1955 which provides for making of orders for, among other things, regulating trade and commerce in essential commodities for the purpose of maintaining or increasing supply of any essential commodity or for securing their equitable distribution and availability at fair prices etc. under Rule 114 Sub-rule (2), the State Government is authorised to make rules for regulating among other things trade and commerce in articles for maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, and the 1975 order recites that the order was being made for maintenance and increase of supplies and services essential to the life of community and for securing equitable distribution and availability of any articles or thing at fair prices. Clause 1 of both the orders deal with their title, extent and commencement and it shows that both the orders extend to the whole of the state of Bihar. Clause 2 of both the orders is the definition clause. Clause 2(e) of the 1975 Order defines ''List of prices'' which runs thus:

2(e) "List of prices" means the list maintained from time to time by a dealer in Form "A" of schedule III to this order indicating the sale price and stock of the articles specified in schedule 1 in which the dealer carries on business.

Form "A of Schedule III shows that the list of prices has not merely to indicate the sale-price, but also the stock. Clause 4 of the 1967 Order runs thus:

4. Every dealer shall display at a conspicuous part of the premises where he

carries on this business the price-list and stock position of the scheduled commodities specified in schedules I and II annexed to this Order, held in stock by him for sale in a manner so as to be easily accessible for consultation by any customer

The corresponding clause of the 1975 Order is clause 3 which reads thus:

3. Every dealer, whether wholesaler or retailer of a scheduled commodity, shall obtain a price list showing the wholesale price and the retail price of the commodity purchased by him or obtained by him from every manufacturer, importer or distributor where such prices are fixed by the manufacturers.

Clause 5 of both the orders prohibit dealer unless previously authorised by the officers in the 1967 Order and by the State Government in the 1975 Order, from withholding from sale of any stock of articles specified in Schedule II of the 1967 Order and displayed in accordance with Clause 3 of the 1975 Order. Clause 4 of the 1975 Order is new and it prohibits a dealer from selling to any person any articles mentioned in schedules I and II at a price higher than that displayed in accordance with Clause 3 or to refuse to sell at that price and also obliges him to issue a cash memo or bill of which a duplicate has to be maintained by him. Clause 7 of the 1967 Order and clause 6 of the 1975 Order deal with the powers of entry inspection, search seizure etc. of the officers specified thereunder. The power of the State Government to exempt any person or class of person from the provisions of the orders is conferred by clause 8 of the 1967 Order and clause 7 of the 1975 Order. There is no provision in the 1975 Order corresponding to clause 6 of the 1967 Order which confers a general power on the State Government to regulate the distribution and supplies of the essential commodities specified in schedule II.

6. It would thus be seen that not only the object of both the Orders is the same but the subject matter dealt by clause 4 of the 1967 Order and by clause 3 of the 1975 Order is also the same; the subject matter being the display of prices and stocks of essential commodities. The 1967 Order read along with the schedules and title of the Act shows that the subject matter of the Order was laying down the rule regarding display of a stocks and prices in respect of commodities other than food-grains. Clause 3 of the 1975 Order read along with schedules shows that the intention of the 1975 Order was to lay down the rule regarding the display of stocks and prices of every commodity which, in the opinion of the authority making the Order, required to be displayed, or in other words, clause 3 of the 1975 Order covers the entire subject matter of the display of stocks and prices of the commodities in regard to which an order should, in the opinion of the authority, be made. In my opinion, the entire subject matter of display of stock and prices was intended to be observed by the 1975 Order, and therefore as the entire subject matter was taken away by the subsequent Order, the case falls within the last circumstances in which, according to Dr. Dushington the prior statute would be repealed by implication.

7. Further, it must be remembered that a law passed is intended to be obeyed by the persons to whom it is addressed. The commodities in respect of which the price and stock position has to be displayed are not the same in both the orders. According to the 1967 Order, the dealer would not be obliged to display the stock position and price of wheat, rice, gram, maire etc, by the 1975 Order, he is required to do so. In the 1975 Order, a dealer is not required to display a price of dry cells of torches, he is required to do so by the 1967 Order. It would be very difficult for the dealer to ascertain which of these conflicting orders he should follow and it would be equally inconvenient for the law enforcing authority. The co-existence of the two Statutes or provision on the same subject would undoubtedly produce great inconvenience and, therefore, in such a case to use the words of Shelat J, it is legitimate to infer that the legislature did not intend such a consequence and, therefore, the court would treat the earlier provision as impliedly repealed. Shelat, J, spoke of the inconvenience resulting from the co-existence of the two rights leading to the inference of implied repeal of the earlier enactment. But the co-existence of two Orders (Sic) producing inconvenience will also on a parity of reasoning, lead to an inference of an implied repeal of the earlier enactment or statutory order.

8. Shri Parmanand Sharan Singh the learned Advocate for the State drew our attention to the observations of Shelat, J. in the case referred to above to the effect that when the later enactment is worded in affirmative terms without any negative, it does not impliedly repeal the earlier law and, argued that clause 3 of the 1975 Order is worded in affirmative terms without any negative, it does not impliedly repeal the earlier law and; argued that clause 3 of the 1975 Order is worded in affirmative terms. But as pointed out by Shelat, J. in the passage quoted above even if the later statute is in affirmative terms, it is often found to involve that negative which makes it fatal to the earlier enactment. Clause 3 says that the dealer shall display a list of all articles mentioned in schedule I and specify the price of every articles mentioned in schedule II in I the manner prescribed therein. It involves the negative that no dealer need maintain a list of prices of articles other than the articles mentioned in schedules I and II. I, therefore, hold that clause 4 of the Bihar Essential Commodities other than Foodgrains-Price and Stock (Display and Control) Order, 1967 is impliedly repealed or rendered inoperative by clause 3 of the Bihar Essential Articles (Display of Prices and Stocks) Order, 1975.

9. It follows, therefore, that on the relevant date, that is on 17.8.76, the provisions of clause 4 of the 1967 Order were not in force and failure to display the stock position and price of dry battery cells for torches was not a contravention of the 1967 Order or any other legal provision and did not therefore, constitute any offence. In these circumstances, investigation by the police would amount to an abuse of their powers of investigation and this court must step in to prohibit such an abuse of powers by issue of a writ of mandamus.

10. I would, accordingly; allow the application and pass an order in the nature of

mandamus restraining the Bihar Sharif police from taking any further steps or doing anything in the matter of investigation of Bihar Sharif P.S. case no. 38(8) 76 instituted in the written report dated 17.8.1976 of the Supply Inspector, Bihar Sharif. On the facts and circumstances of the case, I will make no order for costs.

Uday Sinha, J.

I agree.

