(1990) 11 CAL CK 0014

In the Calcutta High Court

Case No : Appeal from Original Order No. 89 of 1987 and Matter No. 1212 of 1986

State of West Bengal APPELLANT

Vs

The Raymond Woolen Mills Ltd. and Others RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

Constitution of India, 1950 — Article 13(3), 226, 254, 254(1), 276
Essential Commodities Act, 1955 — Section 3, 6, 7(1)
Industries (Development and Regulation) Act, 1951 — Section 31

Citation : (1991) 1 CALLT 63 : 95 CWN 248

Hon'ble Judges : Padma Khastgir, J;Kalyanmoy Ganguli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kalyanmoy Ganguli, J.—This appeal is preferred against the judgment and order passed by a learned Single Judge in Matter No. 1212 of 1986 allowing the writ petition of the principal respondents in the instant appeal and quashing the first information report being No. 597 dated July 15, 1986 and the proceedings initiated thereon. The appellant authority was also directed to return the seized material, if any, till then lying in the appellant''s custody. There was also an order of permanent injunction restraining the present appellant authority from interfering with storage of non-levy cement in the godowns of the writ petitioners or taking any further step in terms of the West Bengal Licencing of Dealers of Cement and Distribution of Levy Cement Order, 1982, hereinafter referred to as the State Control Order of 1982.

2. The appellant authority initiated proceedings against the writ petitioners for the violation of paragraph 10(1) of the aforesaid State Contral Order of 1982 and paragraph 8(1) and paragraph 2(e) of West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977, hereinafter referred to as the 1977 Control Order. It is not necessary to enter in detail into the facts and the arguments made at the bar before the learned trial Judge.

3. The main contention of the writ petitioners was that the First Information Report did not disclose any offence and as such the same should be quashed. Such argument was based on the ground that the State Control Orders of 1977 and 1982 were not applicable in respect of non-levy cement which was virtually decontrolled by the amendment of Cement Control Order, 1967 in 1982. It may be mentioned here that the said Cement Control Order, 1967 was made by the Central Government in exercise of the powers conferred upon it under the provisions of Section 18G of the Industries (Development and Regulation) Act, 1951.

4. We are to confine ourselves to certain questions of law involved in the case.

5. The Central Government promulgated the Cement Control Order, 1967 for control of price and equitable distribution of cement. By a subsequent amendment effected into the aforesaid Cement Control Order, 1967, in 1982 the Central Government released non-levy cement from its operation with effect from February 28, 1982 as a result of which non-levy cement became a non-essential commodity within the meaning of the Central Control Order.

6. u/s 3 of the Essential Commodities Act, 1955 the Central Government is empowered to provide for regulating or prohibiting production, supply and distribution of any essential commodity. u/s 5 of the said 1955 Act the power to make orders or issue notifications u/s 3 can be delegated, inter alia, to the State Government and in such cases such power will be acquired by such State Government.

7. In parenthesis it should also be noted that as it was sought to be urged by the appellants that an order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said 1955 Act or any instrument having any effect by virtue of any enactment under any other Act.

8. We have already found that non-levy cement was virtually released from the restrictive provisions of the Cement Control Order, 1967, by its amendment in 1982 with effect from February 28, 1982 and in that very year the West Bengal Control Order of 1982 came into force.

9. Bereft of verbiage the main contention of the writ petitioners seems to be that as non-levy cement was virtually decontrolled by 1982 Amendment made in the Cement Control Order, 1967 the State Government lost its authority power and jurisdiction to bring such non-levy cement within the preview of the State Control Order of 1982 because of the intervention of Article 254(1) of the Constitution of India. The writ petitioners contended before the learned Trial Court that under the Central Order non-levy cement ceased to be an essential commodity as it was released from the operation of the Cement Control Order of 1967. In such a case, it was contended by the writ petitioners, that, the State Government loses its power to bring within the fold of the State Control Order, 1982 non-levy cement.

10. The respondents, on the other hand strongly urged that, first, cement as a commodity remains to be an essential commodity regardless of its classification into levy and non-levy cement and secondly, the Cement Control Order, 1967, and its amendment in 1982 were made by virtue of Section 18(G) of the Industries (Development & Regulation) Act, 1951 and not under the Essential Commodities Act. It was further contended by the appellants that virtual decontrol of non-levy cement under the provisions of the Central Control Order made u/s 18(G) of the Industries (Development & Regulation) Act, 1951 will not estop the State Government from making the aforesaid State Control Order of 1982 bringing within its fold non-levy cement. This argument was sought to be strengthened by contending that u/s 6 of the Essential Commodities Act, the Control Orders made under the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or any instrument made under such other enactment.

11. Article 254(1) of the Constitution of India comes into effect not only when there is actual repugnancy or inconsistency between a law made by the Central legislature and the State legislature but also when the central legislature intends to occupy the field occupied by the State legislature. The mere intention by the Central Government to occupy the same field renders the State Law inoperative although it does not necessarily repeal the State law.

12. In the case of Safiqur Rahaman v. The State of West Bengal and Ors. reported in 1988 (2) CHN 257 a similar view was expressed by a learned single Judge of this Court. What is mere, I have to admit that a similar view was expressed by me in the case of In re : Goutam Roy reported in Cal L.T. 1990(1) HC 429 wherein it was held that whenever there is any repugnancy or inconsistency between the Central law and the State law, Article 254(1) of the Constitution springs in and renders that State law inoperative to the extent of such repugnancy and inconsistency.

13. Since the passing of the said judgment I had been rethinking about the proposition of law now in connection, with laws made by the legislatures of the Union of India and by a State but the delegated legislation made by the Central Government and a State Government. The question would then be as to whether Article 254(1) of the Constitution would also apply in the case of delegated legislation.

14. I had occasion to deal with this aspect of the matter in the case of Jagadamba Rao v. State of West Bengal and Ors. decided by me on August 28, 1990 in Matter No. 3347 of 1989. It was held in the above decision, inter alia, first that the meaning of word ''law'' would have to be understood in its proper perspective in case of delegated legislation, not in the jurisprudential, Savignian or Austinian sense but in the concept of Article 13(3)(a) of the Constitution of India.

Article 13(3)(a) of the Constitution of India provides as follows :-

" ''Law'' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

15. In a very recent decision of M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, it has been held by the Hon''ble the Chief Justice Sabyasachi Mukharji, as his Lordship then was, that even an order fixing the price of sugar became law under certain circumstances. Although the said observation was made in a somewhat different context but nevertheless we can say with some amount of certainty than even orders passed by an appropriate Government may assume the status and character of law although the order may be merely an exercise of administrative function, pure and simple, A similar view can also be gathered from the case of Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., . This Preamble is required for a definite purpose. In the case under consideration it has been urged that there is either direct repugnancy or conflict between the State Control Order and Central Control Order or that the Central Control Order intends to occupy the field hitherto occupied by the State Control Order. Article 254 of the Constitution of India was pressed into service by the writ petitioners for demonstrating that the State Control Order was rendered inoperative although not repealed by the Central Order coming into force and occupying the same field, to the extent of its application to non-levy cement.

16. Here a reference to Article 254 of the Constitution of India is required. Article 254 provides as follows : -

"Article, 254:

(1) If any provision of law made by the legislature of a State is rcqugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any 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 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 special language in Article 254 Clause (1), Clause (2) as also the proviso is not only ''law'' but law made by the "Legislature" of a State and the Law made by the "Parliament".

17. Admittedly neither of the Control Orders was enacted by the Legislature either of a State or of the Parliament. Furthermore it has been decided in the case of Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, that although sub-section (6) of Section 3 of the Essential Commodities Act, 1955 required the control orders made by the Central Government to be placed before the house of the Parliament, yet it has been decided that, that provision is merely directory and not mandatory. It was further held in the said decision that control orders promulgated by a State is not to be laid before both the houses of Parliament. It is needless to mention that Section 3 of 1955 Act nowhere requires any control order made by a State to be laid before the State Legislature.

18. From the above we find that although the control orders promulgated u/s 3 of 1955 Act, either by a State or by the Central Government arc ''laws'', yet for the purpose of pressing into operation the provisions of Article 254 they are not laws enacted by the Legislature of a State or the Parliament. So the question arises as to whether the test of repugnancy between two control orders, one promulgated by the State and the other by the Union of India, can be made on the anvil of Article 254. It has already been noted that Article 254 does not contemplate ''laws'' including subordinate and delegated legislation not enacted by the respective Legislatures.

19. In this connection a reference should be made to S.O. 681(E) dated November 30, 1974 by which, in exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955, the Central Government directed that all powers conferred on it (Central Government) 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 was delegated to the State Government. Section 5 of the 1955 Act confers the powers of delegation by the Central Government to State Government to make orders or issue notifications u/s 3. But Section 5 also provides that such delegation shall be subject to such conditions as the Central Government may think fit.

20. In the aforesaid S.O. 681(E) dated November 30, 1974 it had been stated in clause (iii) that no order shall be issued in pursuance of the powers hereby delegated if it is inconsistent with any order issued by the Central Government under the said Act. It is needless to remind oneself that the. State Control Order of 1982 in question was made by virtue of the aforesaid delegation contained in the said S.O. dated November 30, 1974.

21. The appellants, relying on this clause viz. Clause (iii) of the S.O. 681 (E), tried to urge that this clause only renders inoperative any State Control Order which is inconsistent with any control order issued u/s 3 of the 1955 Act by the Central Government but as the Cement Control Order of 1967 was not made u/s

3 of the Essential Commodities Act but u/s 18(G) of the Industries (Development & Regulation) Act, 1951, the repugnancy, if any, will not render the State Control Order inoperative. This, read with Section 6 of the 1955 Act, to the extent that provisions of the 1955 Act will prevail over the provisions of any other Act, protects the State Control Order of 1982 against the onslaught of the 1982 amendment of the Cement Control Order, 1967.

22. In this connection reference may be made Section 31 of the Industries (Development & Regulation) Act, 1951 which provides as follows :-

"Section 31-Application of other laws not barred-the provisions of this Act shall be in addition to and not, save as otherwise expressly provided in this Act in derogation of any other Central Act for the time being in force relating to any of the scheduled industries."

23. The Cement Control Order, 1967 does not expressly provide that the said order is in derogation of the State Control Order of 1982. On a reading of Section 6 of the Essential Commodities Act, 1955 and Section 31 of Industries (Development & Regulation) Act, 1951 it may safely be said that the West Bengal Government does not cease to have the power to enforce the State Control Order in question.

24. From the discussions above, it may seem that the State Control Order still holds the field even in respect of non-levy cement and the 1982 amendment of the Cement Control Order of 1967 does not make any inroad into the provisions of the State Control Order.

25. We have discussed in the above paragraph, the comparative validity under given circumstances, between a State law and the Central law in respect of an Essential Commodity viz., non-levy cement.

26. We have already seen that the State Government derives its power to make the 1982 Control Order by virtue of S.O. 681(E) dated November 30, 1974. The said statutory order firmly fixes or determines the boundary of the extent of the power which can be exercised by the State Government in making any Control Order u/s 3 of the Essential Commodities Act. 27. It seems strange that none of the parties has made any reference to sub-clause (i) of clause (a) of the said S.O. 681 (E) dated November 30, 1974 which provides as follows :-

That the delegation of powers under clause (d) (Section 3(2)(d) of the 1955 Act) shall not extend to inter-State Transport or distribution and the powers under that clause shall not be exercised so as to prejudicially affect such transport or distribution in pursuance of any order issued by the Central Government.

28. While in clause (iii) of the said S.O. 681 (E) we find the expression that any order issued by the Central Government under ''said Act'', meaning thereby the Essential Commodities Act, in clause (i) the words ''said Act'' is sadly and if I may say so, consciously, missing. It may be inferred that in inserting Cl. (i), the Central Government expressly retains, unto itself, the power to pass any order

under any Act to supersede and/or override any order made by a State Government. This is understandable as naturally the Central Government will want to preserve its superior efficacy in the matter of any delegated legislation. The said clause (i) of the S.O. 681(E) is nothing but a tiny reflection of Article 254 of the Constitution of India.

29. So under clause (i) any order made by the Central Government affecting transport or "distribution" of a commodity shall not be prejudicially affected by any order passed by a State Government.

30. This leads us to think that whether the relevant Central Control Order is passed under the Essential Commodities Act or the Industries (Development & Regulation) Act, 1951 or any Central Act, the provisions of the Central Order shall not be allowed to be prejudicially affected by any control order passed by the State Government although the State Government, by virtue of delegated authority, u/s 5 of the Essential Commodities Act, 1955, is empowered, otherwise to make any control order relating to any essential commodity.

31. This clause (i) of the S.O. 681 (E) takes the wind out of the sail of the arguments of the State Government to the effect that as the Cement Control Order, 1967 was passed u/s 18(G) of the Industries (Development & Regulation) Act, 1951, the State Control Order of 1982 is not at all affected by the central order seeking to operate on the same field and that the State Control Order having been promulgated u/s 3 of the Essential Commodities Act, 1955 read with Section 6 thereof, must prevail over the Cement Control Order, 1967 as amended in 1982.

32. On an interpretation of clause (i) of S.O. 681(E) dated November 30, 1974 we are constrained to hold that the Control Order of 1982 of the State Government, in respect of non-levy cement only, cannot survive the onslaught of the Cement Control Order, 1967 as amended in 1982.

33. We have held that neither the State Control Order of 1977 nor that of 1982 has any application to non-levy cement. If that be so, then the First Information Report does not disclose any offence and as such both the First Information Report and the proceeding initiated on the basis thereof, have, perforce, to be quashed and are hereby quashed.

34. In that view of the matter we have to dismiss the appeal preferred by the State Government and uphold the decision of the learned trial Judge, albeit, on a somewhat different ground.

35. In the circumstances, the appeal fails and is hereby dismissed. There will, however, be no order as to costs.

Padma Khastgir, J.

36. I agree.

