
(1996) 09 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5613 of 1995

Tarsem Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-09-1996

Acts Referred:

Constitution of India, 1950 — Article 21
Essential Commodities Act, 1955 — Section 3(1)

Citation : (1997) 115 PLR 34 : (1996) 3 RCR(Civil) 468 : (1996) 3 RCR(Criminal) 633

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Dinesh Goyal, for the Appellant; J.S. Rathee and S.K. Sharma, for Respondent Nos. 1 and 2 and P.S. Chhinna, Sr. Dy. AG for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—Bunch of writ petitions, whose numbers have been given in Schedule "A" of this judgment and which will be considered as part of the judgment, are being disposed of by this judgment as common questions of law and fact are involved in all the writ petitions and for the purpose of facts I am taking these from C.W.P. No. 5643 of 1995 (Tarsem Singh v. Union of India and Ors).

2. Tarsem Singh, Sales Assistant, working in Indian Farmers Fertilizers Cooperative Ltd., Zira, District Ferozepur (for short "IFFCO"), has filed the writ petition under Articles 226/227 of the Constitution of India, for issuance of an appropriate writ/direction, especially in the nature of certiorari, for the quashment of the Government of India notification No. G.S.R. 758(E) dated 25.9.1985, issued by the Ministry of Agriculture and Rural Development, New Delhi, u/s 3(1) of the Essential Commodities Act, 1955, and called "Fertilizer (Control) Order, 1985, as illegal, ultra vires of the Constitution, and the petitioner

further prayed to issue the suitable directions to respondents No. 1 to 4, i.e the Union of India through the Secretary to Government of India, Ministry of Agriculture and Rural Development, New Delhi; Director, Agriculture, Punjab, Chandigarh; and the Chief Agricultural Officer, Ferozepur; not to take any action against the petitioner under the aforesaid notification and for quashing the F.I.R. registered u/s 7 of the Essential Commodities Act read with clause 19(1) of the Fertilizers Control Order, 1985, referred to above.

3. The case set up by the petitioner Tarsem Singh in the writ petition is that he is the employee of the IFFCO, which is a Government Undertaking dealing with the various types of fertilizers and was working as a Sales Assistant. At the relevant time he was posted at Tanda Urmar. He sells the f(sic)rt User of IFFCO Brand and the Indian Farmers Fertilizers Co-operative Limited (IFFCO) is the manufacturer of the fertilizer. u/s 3(1) of the Essential Commodities Act, 1955, the Central Government has been empowered to regulate or prohibit the production, supply, distribution of/and trade and commerce in any essential commodities with a view to maintaining of increasing the supplies thereof and for securing their equitable distribution and availability at fair prices or for securing any essential commodities for the defence of India or efficient conduct of military operation. In exercise of the powers u/s 3(1) of the Essential Commodities Act, 1955 (for short "the Act"), the Central Government issued the impugned notification dated 25.9.1985, which was published in the Gazette of India, whereby "The Fertilizers Control Order 1985" has been enacted and brought into force. According to Clause 19(1) of the said Control Order, no person shall himself or by any person on his behalf manufacture for sale, sell, offer for sale, stock or exhibit for sale or distribution any fertilizer, which is not of prescribed standard and further the specifications of the fertiliser have been defined in part-A of the Schedule of the said Control order. The petitioner further states that on 5.9.1990 a sample of DAP Fertilizer was drawn by the respondent-authorities from the premises of IFFCO Farmers Service Centre, Zira. The said sample was sent to the Fertilizer Quality Control Laboratory, Ludhiana, vide order dated 7.9.1990 and the Laboratory found the sample as of Non-Standard. According to the petitioner, the sample was taken by the respondent-authorities from the machine stitched bag, which was sealed by the manufacturing company of the said fertilizer, i.e., IFFCO, Kandla (Gujrat). At the time of the drawing of the sample three test samples were prepared. Out of these one test sample was given to the petitioner and one remained in the custody of respondent No. 4, whereas the third sample was sent to the Laboratory, which vide its report AR No. 2618 dated 25.10.1990 declared it as Non-Standard. Thereafter, respondent No. 4 vide letter dated 29.11.1990 informed the petitioner about the failure of the sample, to which the petitioner replied in detail on various grounds vide letter dated 4.12.1990 and he requested the authorities that he was not responsible in any manner for" any defect in the strength of the commodity since the fertilizer was received in packed and sealed condition and is stored and kept in proper conditions and that the alleged sample was taken from sealed bags. It was also requested by the petitioner that the

requisite intimation regarding the commodity having been found as non-standard ought to have been sent to the Head Office from the manufacturing unit and their concerned officials. In spite of the reply given by the petitioner, respondent No. 4 submitted a written complaint to the S.S.P. to register a case against the petitioner under the provisions of Section 7 of the Act read with Clause 19(1) of the Fertilizer Control Order, 1985 (for short "the Control Order"). On the basis of this letter F.I.R. No. 53 dated 7.4.1993 was registered at Police Station, Zira, District Ferozepur. The petitioner further alleges that in view of Clause 24 of the Control Order, Shri A.S. Parmar, Manager (Production), was nominated vide letter dated 22.9.1989, issued by the Manufacturing Unit of Ministry of Agriculture and Rural Development, New Delhi, and the same nomination letter was also delivered to the Chief Agricultural Officer in which it was clearly specified that Shri A.S. Parmar will be treated as Compliance Officer and he would be responsible for the compliance of the provisions of the Control Order, as per clause 24 thereof for the purposes of manufacturing operation at Kandla Plant. The petitioner submits that on the date of the registration of F.I.R. No. 53 dated 7.4.1993, if the sample of the fertilizer has been found Non-standard, in that eventuality Shri A.S. Parmar was responsible for the contravention of the impugned order. The impugned order has been sought to be quashed by the petitioner on the grounds that no provision has been enacted in the Control order or in the Act to send the sample for re-testing from any independent Laboratory in spite of the fact that three sample were prepared at the time of the drawing of the sample. The petitioner has been left with no remedy to challenge the report of the Government Laboratory regarding the non-standard sample. His right has been prejudiced and in the absence of any provision for sending the sample for retesting, he cannot produce any defence to challenge the report of the Government Laboratory. It has also been pleaded that such provisions existed in every enactment, like Section 24(3) of the Insecticides Act, Section 13(2) of the Prevention of Food Adulteration Act, and Section 25(3) of the Drugs and Cosmetics Act. With the non-inclusion of such provisions of law in the impugned order, it cannot survive as it contravenes the provisions of Article 19(1)(g). of the Constitution of India. Further it was pleaded that the impugned sample was taken from the stitched bags of the manufacturer, therefore, the liability, if any, is not of the petitioner till it is established that he had any source of information about the sub-standard of the fertilizer. Since there is no allegation against him that the sample was found sub standard with his consent, knowledge or connivance, therefore, his prosecution is bad, more so when no provision has been made out in this regard in the Control Order itself or under the provisions of the Act. A challenge has also been given to Clause 19(1) of the impugned Control Order on the plea that a dealer/employee of the manufacturing company is not liable for the contravention as he was selling the fertilizer in the machine stitched bags supplied by the licenced manufacturers like IFFCO. According to the petitioner, if a bag of fertilizer is kept for a long time by the manufacturer or any other person and if the sample is taken after a long time from the date of its manufacture, then due to increase/fall of moisture in the fertilizer, the nutrient

contents must be deficient and in this eventuality to prosecute person other than the one who has kept the fertilizer for a long time would be against the spirit of the impugned control order. With these allegations, which have been summarised above, Tarsem Singh petitioner made the prayers which have been incorporated in the earlier portion of this judgment.

4. There are two sets of written statements-one filed by respondents Nos. 1 and 2 and the other by respondents Nos. 3 and 4. The stand of respondents Nos. 1 and 2 is that the Control order is perfectly constitutional, legal and affords full opportunity to those who come within the provisions of the Control Order, and it does not suffer from any vice of unconstitutionality. The Control Order has been promulgated by the Central Government in exercise of the powers conferred u/s 3(1) of the Act as the fertilizer has been declared as an essential commodity by the Central Government u/s 2(a)(xi) of the Act. Having been declared as essential commodity, the Central Government is empowered u/s 3(1) of the Act to issue rules/regulations/orders for regulating or to prohibit the production, supply and distribution of the trade and commerce in the fertilizer so as to maintain or increase its supply or for securing its equitable distribution and availability at fair price shops. The petitioner has been found to be in possession of Sub-Standard fertilizer and he has thought it easy to challenge the validity of the Control Order to evade the liability of availing himself of the alternative remedies provided in the Control Order itself and since he has not availed of those remedies, therefore, the writ petition is liable to be dismissed. It was also pleaded that the prayer of the petitioner for quashing the F.I.R. is not entertainable in the civil writ petition. He ought to have filed a petition on the criminal side to invoke the criminal jurisdiction of the High Court. Respondents Nos. 1 and 2 submitted that as per clause 19 of the Control Order the petitioner could not even offer for sale, stock or exhibit for sale or distribute the fertilizer, which is not of prescribed standard. The petitioner from whose possession the sub standard sample was taken, nevertheless is liable for action as per the Control Order and the Act. The provisions of the Control Order are perfectly constitutional. The Control Order has stood the test/scrutiny of the Courts. The challenge to the validity of the order has given on highly vague and unfounded and baseless allegations. The plea taken by the petitioner for challenging the validity of the order is not tenable as the petitioner has full right of his defence in the Court of Law if he challenges the validity of the report of the analyst. Even otherwise the Court is competent to pass any order so as to protect the rights of the accused and that no prejudice would be caused to the petitioner, who has, in fact, filed the present writ petition to save himself from the action to which he is liable under the Fertilizer Control Order read with Section 7 of the Act. The reliance of the petitioner on the provisions of other enactments is misplaced. The provisions of Clause 19 of the Control Order only impose reasonable restrictions and is in no manner violative of the provisions of Article 19(1)(g) of the Constitution of India. With the above defence, these two respondents have prayed for the dismissal of the writ petition.

5. In the return filed by respondents Nos. 3 and 4, the only additional ground which has been taken by way of supplementing the pleas of respondents Nos. 1 and 2 is that some questions of facts are involved in the writ petition which cannot be decided under the extraordinary jurisdiction vested in the High Court under Articles 226 and 227 of the Constitution of India.

6. I have even perused the averments of the other writ petitions which are more or less the same which have been incorporated in C.W.P. No. 5643 of 1995. Even the stand of the respondent-authorities is common and for that reason I need not incorporate the pleadings of other writ petitions in the present judgment.

7. Assistance has been rendered by the counsel appearing on behalf of the petitioners and also by the counsel who appeared on behalf of the Union of India and the State of Punjab in disposing of the controversies involved in the present writ petitions.

8. Part VI of the impugned Control Order deals with the restrictions on manufacture, sale etc. of fertilizers and clause 19 of the said Order reads as follows:-

"19. Restriction on manufacture, sale and distribution of fertilizers -

(1) No person shall himself or by any other person on his behalf -

(a) manufacture for sale, sell, offer for sale, stock or exhibit for sale or distribution any fertilizer, which is not of prescribed standard;

(b) manufacture for sale, sell, offer for sale, stock or exhibit for sale, or distribute any mixture of fertilizers (or mixture of NPK fertilizers, mixture of micro-nutrient, fertilisers and combination thereof) which is not of prescribed standard (subject to such limits of permissible variation as may be specified from time to time by Central Government) or special mixture of fertilisers which (* * *) does not conform to the particulars specified in the certificate of manufacture granted to him under this order in respect of such special mixture:

(c) sell, offer for sale, stock or exhibit for sale or distribute -

i) any fertiliser the container whereof is not packed and marked in the manner laid down in this Order;

ii) any fertiliser which is a limitation or a substitute for another fertiliser under the name of which it is sold;

iii) any fertiliser which is adulterated: Explanation - A fertiliser shall be deemed to be adulterated, if it contains any substance the addition of which is likely to eliminate or decrease its nutrient contents or make the fertiliser not conforming to the prescribed standard;

iv) any fertiliser the label or container whereof bears the name of any individual firm or company purporting to be manufacturer of the fertiliser, which individual,

firm or company is fictitious or does not exist;

v) any fertiliser, the label or container whereof or anything accompanying therewith bears any statement which makes a false claim for the fertiliser or which is false or misleading in any material particular;

vi) any substance as a fertiliser which substance is not, in fact, a fertiliser;

or

vii) any fertiliser without exhibiting the minimum guaranteed percentage by weight of plant nutrient."

The impugned notification has been issued by the Government of India in exercise of the powers conferred upon it by Section 3 of the Essential Commodities Act. In other words it can be said that the notification is the legislation of the Government of India and it has the force of law, the violation of which is punishable under Regulation 19 read with Section 7 of the Essential Commodities Act, 1955. Some definitions would also be useful to be incorporated in this order and the first definition which I would like to take is that of a "dealer", who has been defined in Regulation 2(f), which runs as follows: -

"dealer" means a person carrying on the business of selling fertilizers, whether wholesale or retail, and includes a manufacturer and a pool handling agency carrying on such business and the agents of such person, manufacturer or pool handling agency."

"Manufacturer" has also been defined in Regulation No. 2(m), which is as follows: -

"manufacturer" means a person who produces fertilisers or mixtures of fertilisers (or mixtures of micro-nutrient fertilisers), and the expression "manufacture" with its grammatical variations shall be construed accordingly."

9. The present piece of legislation is a legislation of absolute liability with respect to a commodity, which is an essential commodity within the meaning of the Essential Commodities Act. The major point which survives for determination from the pleadings of the parties is whether the impugned Control Order can be held as a piece of legislation, which is visited with the vices of arbitrariness, unreasonableness, unjust and whether it imposes an unreasonable restriction over the right of a citizen to run his business properly as guaranteed to him under Article 19 of the Constitution of India. If this query is answered in the affirmative, the second point which arises for determination is whether the State authorities/functionaries would be justified in launching prosecution against the manufacturers/dealers on the basis of such piece of legislation, which does not provide a proper remedy of defence to such citizen/dealer/manufacturer.

10. Article 19(1) of the Constitution of India lays down that all citizens shall have right-

a) xx xx xxb) xx xx xxc) xx xx xxd) xx xx xxe) xx xx xx g) to practice any profession, or to Carry on any occupation, trade or business. According to clause (b) of the said Article nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particulars, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates, to, or prevent the State from making any law relating to,-

i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Thus it is clear that on the one hand the Constitution of India guarantees the citizens the right to practise any profession or to carrying on any occupation, trade or business, but at the same time a right has also been conferred upon the State which has the authority to make any law and impose in the interest of general public a reasonable restriction on the exercise of the right which has been conferred under Article 19(1)(g) of the Constitution of India. In these circumstances it will have to be seen whether the impugned Control Order is fair. Article 21 of the Constitution of India lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law." The violation of the impugned Control Order entails penal consequences as envisaged under Regulation 19 read with Section 7 of the Essential Commodities Act and in these circumstances it is to be seen whether the impugned Control Order is such a piece of legislation so that it may be said that it conforms to the norms of justice and fair play. The procedure prescribed by law for the deprivation of life or personal liberty under Article 21 must be just, fair and reasonable. Just as a mala fide act has no existence in the eyes of law, even so unreasonableness vitiates the law and procedure alike. It is, therefore, essential that the procedure prescribed by law for depriving a person of his fundamental right must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, there-fore, to be tested by the application of two standards, i.e., the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon

how fair is the procedure prescribed by it. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down. This is the dictum of the Apex Court reported as *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, . Therefore, the entire stress of the petitioner in the present case is that Regulation 18 of the impugned Control Order is such a piece of legislation which is most unreasonable because it has snatched away a valuable right of defence of the petitioner to give challenge to the report of the Public Analyst, who has declared at his back the sample as "non-standard/sub-standard". In other words, the acceptance of the report of a Public Analyst as a conclusive proof would amount to placing of an unreasonable restriction on the fundamental right of carrying on a business/trade either on the part of an agent or on the part of a manufacturer or on the part of a dealer of a manufacturer. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Ors.* AIR 1981 S.C. 746, it has been laid down that Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. In *State of Bihar Vs. Kamla Kant Misra and Others*, , the guidelines which has been given by the Hon"ble Supreme Court is:

"In order to be a reasonable restriction, the same must not be arbitrary or excessive and the procedure and the manner of imposition of the restriction must also be fair and just. Restriction opposed to fundamental principles of liberty and justice is not reasonable. In determining whether a restriction is reasonable, Court must see whether the aggrieved party has a right of representation against the restriction. Further it must see whether the restriction is imposed in an arbitrary manner."

In *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, , it was held:-

"When Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be "reasonable, fair and just"."

11. In order to determine the first point formulated by the Court above, it is also necessary for me to make a comparative study about the other pieces of legislation of absolute liability, such as Insecticides Act, Prevention of Food Adulteration Act, Drugs and Cosmetics Act. Sub-section (4) of Section 24 of the Insecticides Act, 1968 has given right to a person who has notified his intention of adducing evidence in controversion of the Insecticide Analyst's report to send one sample to the Central Insecticides Laboratory for comparison. Even power has been conferred upon the Court to send the sample to the Central Insecticides Laboratory of its own motion and even in its discretion at the request either of

the complainant or of the accused. There was a purpose when the Legislature in its wisdom had incorporated such provisions like sub-section (4) of Section 24 of the Insecticides Act, 1968 and for the sake of convenience, I would like to reproduce the above provisions, i.e., sub-section (4) of section 24 of the Insecticides Act, 1968, which would help me in solving the present controversy:-

"(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the Insecticide produced before the magistrate under sub-section (6) of section 22 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or. under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

This legislation also is a legislation of absolute liability dealing with economic offences. However in the impugned Control Order no such provisions have been incorporated leaving a yawning gap which deprives of a valuable defence to a dealer/accused/person who has allegedly violated the provisions of Regulation 19 read with Section 7 of the Act. Sub-section (3) of Section 25 of the Drugs and Cosmetics Act, 1940, lays down as under:-

"(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under sub 18A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report."

A study of the above provision would show that the accused has been given a right to adduce evidence to contradict the report of the Public Analyst. A study of the Prevention of Food Adulteration Act, 1954 also confers a right of defence to an accused who was not satisfied with the report of the Public Analyst, who earlier tested the sample and in this regard I would refer to the provisions of Section 13, Sub-section (2) of the said Act. This Court does not dispute that the Government has the power to enact a piece of legislation nor this Court can sit over the legislative powers of the Government/Legislature, but every legislation must pass through the test of reasonableness, fairness and such legislation must be just sheet anchor of the Constitution as held by the Hon"ble Supreme Court in *Municipal Corporation of Delhi v. Ghisa Ram*, 1979 All India Prevention of Food Adulteration Journal 301, and it was held that "when a valuable right is conferred by section 13(2) of the Prevention of Food Adulteration Act, 1954, on the vendor to have the sample given to him analysed by the Director of the Central Food

Laboratory it is to be expected that the prosecution will proceed in such a manner that the right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by the court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold the conviction on the basis of the report of the public Analyst, even though that report continues to be evidence in the case of the facts contained therein." If the impugned order is scrutinised in the light of the above ratio of the Hon'ble Supreme Court, it would be clear that the above piece of legislation is a vague one and the law which is vague is void. The laws should give a person of ordinary intelligence, a reasonable opportunity to know what is permitted so that he may act according to law. Vague laws may lay a trap to the innocent by not providing fair warning. In these circumstances, this Court while exercising the extraordinary powers under Article 226 of the Constitution of India not only corrects the manifest error but also can exercise those powers for the sake of justice.

12. Summing up Regulation 19 of the impugned Fertilizer Control Order, 1985 is a piece of unfair legislation. It has given an arbitrary power, to the Government to prosecute a person, who cannot show in a Court of Law that the report of the Public Analyst who has declared the sample of the fertiliser as "sub-standard", could possibly fall in an error leading to his conclusions while testing the sample. It has also snatched a valuable right of a person who deals in the trade of fertilizer and sells the sealed and stitched bags as supplied to him by the manufacturer. Even this piece of legislation has made such dealer punishable who has properly stored the essential commodities as such "fertilizer". I am of the opinion that Regulation 19 of the impugned Fertilizer Control Order, 1985 is violative of Article 19 read with Article 21 of the Constitution of India and in its present shape cannot be allowed to operate/stand and as such Regulation 19 of the Control Order is hereby struck down. Thus the first proposition is answered in the affirmative.

13. The second proposition propounded above can also be answered with ease. When the foundation of the prosecution is based upon a piece of legislation, which has not been able to stand the test of scrutiny, all prosecutions launched by the authorities under Regulation 19 read with section 7 of the Essential Commodities Act are bound to be quashed and it is ordered accordingly.

14. Net result is that all the writ petitions mentioned in Schedule "A" of the judgment are hereby allowed.

[Schedule "A" omitted - Editor]