
(1997) 10 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 273 of 1997

The director, agriculture. Punjab and others

APPELLANT

Vs

Narinder Pathak

RESPONDENT

Date of Decision : 08-10-1997

Acts Referred:

Constitution of India, 1950 — Article 19, 21

Citation : (1997) 10 P&H CK 0068

Hon'ble Judges : Iqbal Singh, J;H.S. Bedi, J;G.S. Singhvi, J

Bench : Full Bench

Advocate : Rupinder Khosla, Deputy A.G., Punjab, for the Appellant; Dinesh Goyal, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Jain and Iqbal Singh, JJ.—The questions involved herein and more particularly one of vires of Clause 19 of the Fertilizer Control Order, 1985, in our considered view, deserve to be settled by a larger Bench, Admitted to Full Bench.

In view of the importance of the question, we are of the view that the matter should be decided at the earliest. Consequently, this appeal be listed for final hearing by a Full Bench in the month of November, 1997. The papers of the case be laid before Hon'ble the Chief Justice for constituting a Full Bench.

G.S. Singhvi, J.

This appeal has been placed before us in view of the order dated 8.10.1997 passed by the Division Bench for deciding the following question of law:

Whether Clause 19 of the Fertilizers Control order. 1985 is violative of Articles 19 and 21 of the Constitution of India?

2. At the hearing, learned Deputy Advocate General pointed out that the order dated 16.9.1996 passed by the learned Single Judge (with the title case- Tarsem Singh Vs. Union of India (UOI) and Others, vide which he allowed a bunch of writ

petitions including C.W.P. No. 7566 of 1996 Narindre Pathak v. Union of India and others filed by Respondent No. 1 and struck down Clause 19 of the Fertilizers Control Order, 1985 (hereinafter described as "the 1985 Order") by declaring it to be ultra vires to Articles 19 and 21 of the Constitution of India and also quashed the criminal cases registered against the writ Petitioners u/s 7 of the Essential Commodities Act, 1955 (for short, the Act") has been reversed by the Division Bench in L.P.A. No. 1039 of 1.996 - The Director, Agriculture and Another Vs. Gurmukh Mal Shibba Mal and Others, and as the judgment of the Division Bench has become final, the question relating to vires of Clause 19 of the 1985 Order should be treated as purely academic. He then argued that Clause 19 cannot be declared unconstitutional simply because it does not provide for an opportunity to the dealer to seek an independent analysis of the sample collected by the prosecution or on the ground that it is vague or unreasonable. Learned Counsel representing Respondent No. 1 supported the impugned order and argued that the declaration granted by the learned Single Judge should be restored and the proceedings pending against his client should be quashed because he will not get an effective opportunity of defence.

3. We have given serious thought to the respective submissions. Clause 19 of the 1985 Order reads as under;-

Restriction on manufacture, sale and distribution of fertilizers:(1) No person shall himself or by any other person on his behalf-(a)manufacturc for sale, sell, offer for sale, stock or exhibit for sale or distribute 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, fertilizers 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 mixtures of fertilizers which (xxx) 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 fertilizer the container whereof is not packed and marked in the manner laid down in this Order;

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

iii) any fertilizer which is adulterated;

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

iv) any fertilizer of the label or container whereof bears the name of any

individual firm or company purporting to be manufacturer of the fertilizer, which individual, firm or company is fictitious or does not exist;

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

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

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

4. Respondent No. 1 and other writ Petitioners challenged the constitutional validity of Clause 19 on the ground that it is vague and unreasonable, in-as-much-as, it does not provide for an opportunity to the defence to get the sample tested in a laboratory of his choice. Learned Single Judge referred to some of the provisions contained in the Insecticides Act, 1968; Prevention of Food Adulteration Act and Drugs and Cosmetics Act and held that Clause 19 of the 1985 Order is vague and unreasonable and is violative of Article 19 read with Article 21 of the Constitution of India. The observations made by the learned Single Judge in this respect are extracted below;

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 fertilizer 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.

5. While reversing the order of the learned Single Judge in M/s. Gurmukh Mal Shibha Mal's (supra), the Division Bench extensively referred to the provisions of the Act, the 1985 Order and judicial precedents and then held that Clause 19 could not have been declared unconstitutional on the ground that it is vague or unreasonable. While summing up the cause, the Division Bench observed as under: "In case under scrutiny, a sample of fertilizer was taken by the authorities as per provisions of Control Order which on analysis was found to be of non-standard grade. With a view to determine the guilty proceedings have been initiated according to law. Evidence is yet to be adduced by the complainant/the prosecution. It is thereafter Petitioner is to be given a right of defence. It indeed would be premature to judge the ultimate decision which the Court may take. An

accused person of course has a right to set up defence in terms of Section 293 Code of Criminal Procedure. What would be the nature of defence can again be a matter of sheer guess. In any case one could visualize that Petitioner would adduce all such evidence so as to prove his innocence. May be he examines another expert to cross-examine the official witness or makes reference to some celebrated authority on law relevant to the point in controversy to establish that the conclusion arrived at by the analyst is indeed impermissible and as a last resort can make out a case for the Court to send the third sample for its analysis by another laboratory. With these safeguards at his command it can be stated that procedure prescribed is neither arbitrary nor unreasonable nor unfair. On examining the matter on the touchstone of Articles 19(1) and 21 and various decision of the apex court, we are of the view that Fertilizer Control Order, 1985 has been enacted by competent Legislature and the same does not violate any express provision of Constitution of India. Resultantly, we accept these appeals, set aside the judgment of Shri R.L. Anand J. thereby order dismissing the writ petition."

6. In our opinion, the view taken by the Division Bench on the constitutional validity of Clause 19 of the 1985 Order, which is based on the law laid down by Supreme Court, is correct and there is no warrant for us to take a different view. We are further of the view that the absence of a specific provision in the 1985 Order giving right to the dealer to seek an independent analysis of the sample collected by the prosecution does not violate the procedure established by law and the person, who is prosecuted, can set up his appropriate defence in accordance with the provisions of Section 293 of the Code of Criminal Procedure.

7. Learned Single Judge has hinted at the possible misuse of Clause 19 of the 1985. Order and has made this one of the grounds for striking down the said Clause with great respect, we are unable to approve this approach because it is contrary to the law laid down by the Supreme Court in *Collector of Customs, Madras v. Nathella Sampathu Chetty and another*, 1996 (3) S.C.R. 786; *State of Rajasthan and Others Vs. Union of India and Others*, ; *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others*, and *R.K. Garg and Others Vs. Union of India (UOI) and Others*, . In the last mentioned case, there Lordships of the Supreme Court, while examining the constitutionality of the provisions of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, held as under:

Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes,J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in this joints has to be allowed to the legislature. The Court should feel more

inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved... The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract symmetry, that exact wisdom and nice adaptation of remedy are not always possible and that judgment is largely a prophecy based on meagre and uninterpreted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation, but on that account alone it can not be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in *Secy, of Agriculture v. Central Reig. Refining Co.* (1950) 94 L.ed. 381. be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or possibilities of abuse of any of its provisions, if any crudities, inequities or possibilities of abuse come to light the legislature can always step in and enact suitable and mandatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

8. On the basis of above discussion, we hold that Clause 19 of the 1985 Order does not suffer from any constitutional infirmity and the view taken by the Division Bench in *M/s. Gurmukh Mal Shihba Mal's case* (supra) is correct.

9. For the reasons mentioned above, the appeal is allowed. The order dated 16.9.1996 passed by the learned Single Judge is set aside and the writ petition filed by Respondent No. 1 is dismissed.

Sd/- H.S. Bedi, J.

Sd/- Iqbal Singh, J.