Shobha and anr. Vs. State

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Court : Allahabad

Decided On : May-02-1962

Reported in : AIR1963All29; 1963CriLJ35

Judge : Jagdish Sahai and ;T. Ramabhadran, JJ.

Acts : Uttar Pradesh Paddy (Restriction on Movement) Order, 1958; Essential Commodities Act, (1955) - Sections 3; Constitution of India - Articles 301, 302, 303 and 304

Appeal No. : Criminal Revn. No. 605 of 1961

Appellant : Shobha and anr.

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : C.S. Saran and ;T.N. Sinha, Advs.

Judgement :

Jagdish Sahai, J.

1. On being convicted under Section 7 of the Essential Commodities Act, 1955 for contravening Rule 3 of the U.P. Paddy (Restriction on Movement) Order, 1958 (hereinafter referred to as the Order) by a Magistrate, the petitioners appealed

before the learned Sessions Judge, Varanasi but their appeal was dismissed on 14th of April, 1961 by Sri P.S. Varma, II Temporary Civil and Sessions Judge, Varanasi. Thereafter the present revision application was filed in this Court under Section 439 Cri.P.C.

The matter came up before our brother Broome. The submission that was made before him on behalf of the petitioners was that the provisions of the Order and specially those of Clause 3 are ultra vires. On behalf of the State reliance was placed upon State of U.P. v. Ram Charan : AIR1962 All359 where a Division Bench of this Court had held the provisions of the U.P. Wheat (Restriction on Movement) Order, 1949 to be intra vires. Broome; J. was of the opinion that there was a suggestion in : AIR1962 All359 (supra) that the matter requires further consideration. He also considered the instant case to be, to some extent, distinguishable, from : AIR1962 All359 . He, therefore, directed the record of this case to be placed before the Hon'ble the Chief Justice so that there may be directions for the listing of the case before a larger Bench. This is how the case has come up before us.

2. Mr. C.S. Saran, who has appeared for the petitioners, has not made any submissions on the merits of the case but has confined his arguments only to the question regarding the vires of Clause 3 of the Order. He has contended that the provisions of that clause are hit by Articles 301 to 304 of the Constitution of India (hereinafter referred to as the Constitution). One of the grounds taken in the revision application was that the provisions of Clause 3 of the Order are hit by Article 14 of the Constitution but that ground has now been withdrawn and no submission has been made in respect of it.

3. The only question that has, therefore, to engage our attention is whether in view of the provisions of Articles 301 to 304 of the Constitution, the provisions of Clause 3 of the Order are ultra vires. This Order was framed by the Central Government purporting to exercise powers conferred by Section 3 of the Essential Commodities Act, 1955 and was published in the U.P. Gazette Extraordinary, Part II, dated the 24th of December, 1958. Clause 3 of the Order reads as follows :

'No person shall move or attempt to move or abet the movement of paddy from any place in any of the districts specified in the Schedule to this Order to any place outside the said districts, except under and in accordance with a permit issued by the State Government or any officer authorised by the State Government in this behalf: Provided that nothing contained herein shall apply to the movement of paddy,-- (i) not exceeding five seers in weight by a bona fide traveller as part of his luggage; or

(ii) on Government account; or

(iii) under and in accordance with Military Credit Notes.'

4. The argument addressed on behalf of the petitioners is that Article 301 of the Constitution guarantees free trade throughout the territory of India subject only to the other provisions in Part XIII. That Article reads as follows :

'Subject to the other provisions of this Part, trade, commerce and intercoure throughout the territory of India shall be free.'

Article 303 of the Constitution prescribes the restrictions on the legislative powers of the Union and the States with regard to trade and commerce and Article 304 prescribes restrictions on trade, commerce and intercourse amongst the various States in India. Article 302, however, confers on Parliament the power to impose restrictions on trade, commerce and intercourse and reads as follows :

'Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.'

5. A study of the provisions mentioned above clearly reveals that the freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution is subject to any law framed by the Parliament under Article 302. The impugned Order has been framed under Section 3 of the Essential Commodities Act, 1955. That Act was passed by Parliament. The Preamble of that Act runs as follows:

'An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.'

It is well settled that a Preamble is a key to the interpretation of an Act and can be used to know the aims and the objects of the legislation. (See Thangmal Kunju Musaliar v. Venkatachalam : [1956]29ITR349(SC) . The Supreme Court of India has on occasion more than one used the Preamble in order to decide the scope, the aim and the object of the legislation, (see Aswini Kumar v. Arabinda Bose : [1953]4SCR1). In Diwan Sugar and General Mills (Private) Ltd. v. Union of India : AIR 1959 SC626 the Supreme Court held as follows with regard to the Essential Commodities Act:

'The Preamble shows that it has been passed in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities, Section 3 of the Act gives power to the Central Government to pass orders under the Act if it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices.'

Other provisions in that Act also reveal the same thing. Consequently, the Essential Commodities Act is a piece of legislation contemplated by Article 302 of the Constitution and fully protected by it.

6. Mr. Saran has placed reliance upon Atiabari Tea Co., Ltd. v. State of Assam : [1961]1SCR809 . In that case the constitutionality of the Assam Taxation (on Goods carried by Roads or Inland Waterways) Act (Assam Act XIII of 1954) was challenged by means of a writ petition filed in the Assam High Court. That High Court dismissed the petition and upheld the validity of the Act (Assam Act XIII of 1954). The Supreme Court reversed the Assam High Court's judgment, granted the reliefs made in the writ petition under Article 226 and also allowed similar petitions made before it under Article 32 of the Constitution, The facts of the case before the Supreme Court were very different from those before us and what wascontended before the Supreme Court was that the. impugned statute did not fall within item 62 of the State List and was thus beyond the legislative

competence of the Assam Legislature and was also hit by Article 301 of the Constitution. There what the Assam Legislature had done was that it had provided for the levy of tax on certain goods carried by road or inland waterways in the State of Assam. We have carefully examined the majority judgment delivered by Gajendragadkar, J. as also the minority judgment delivered by Sinha, C.J. and in our opinion there is nothing in those judgments on the basis of which the provisions of the impugned Order or Clause 3 of it can be declared to be ultra vires. In fact Gajendragadkar, J. has clearly observed as follows :

'It is obvious that whatever may be the content of the said freedom, it is not intended to be an absolute freedom; absolute freedom in matters of trade, commerce and intercourse would lead to economic confusion, if not chaos and anarchy and so the freedom guaranteed by Article 301 is made subject to the exceptions provided by the other Articles in Part XIII.'

Ours is not a clase of an independent legislation. It is a case where an Order has been framed under an existing Act, i.e. the Essential Commodities Act. The Order merely carries out the purposes of that Act. (See : AIR 1959 SC626) (Supra). In other words, it is in the nature of delegated legislation. There was no argument before us and indeed none was possible that there has been a delegation of legislative functions in the instant case. The position of all the Orders framed under Section 3 of the Essential Commodities Act is to make those Orders a part of the Act itself. It would be a complete misconception to treat the impugned Order as independant of the Essential Commodities Act. Inasmuch as the Essential Commodities Act has been passed under Article 302 of the Constitution and fulfills all the requirements of that provision, it was not necessary that the Parliament should have passed another Act in order to give protection to the impugned Order. The position of the impugned Order and such other Orders is analogous to that of the rules or regulations framed under the statute which are treated to be a part of the statute itself. (See Khetsidas Girdhari Lal v. Pratapmull Rameshwar AIR 1946 Cal 197 and Saligram Singh v. Emperor, AIR 1945 Pat 69. It is trite that if and when the Essential Commodities Act is repealed, the impugned Order would also disappear and cannot be continued unless there is another Act passed making its continuance possible. Under these circumstances, we have no hesitation in rejecting the submission made by Mr. Saran that the Parliament has not passed any law under Article 302 of the Constitution which could give protection to Clause 3 of the Order.

Many Orders similar to the impugned Order were framed under Section 3 of the Essential Commodities Act and so far it has not been held by any Court that they or any one of them is invalid because of the provisions of Articles 301, 303 and 304 of the, Constitution. In C. Naurang Rai Chirangi Lal v. State of Bihar : AIR1959 Pat268 the validity of the Bihar Milled Rice Procurement (Levy) Order, 1958 had been challenged on the ground of Article 19(i)(f) of the Constitution. The PatnaHigh Court, however, held the Act to be intra vires.In Thanmal Surana v. Union of India the validity of Sections 3 and 5 of the Essential Commodities Act and the provisions of theGram (Rajasthan) Price Control Order, 1958 waschallenged on the ground of Article 19(r)(f) and (g)of the Constitution as also on the ground of delegation of essential legislative functions but withoutsuccess. It was not considered worthwhile to raiseany question regarding the invalidity of the impugned provisions on the ground of Articles 301 to304 of the Constitution and even though a largenumber of similar Orders have been passed underSection 3 of the Essential Commodities Act, we are not aware of a single case where an attack was launched on its validity on the basis of Articles 301 to 304 of the Constitution. Even in the case of Harishanker Bagla v. M.P. State : 1954 CriLJ1322 where the validity of the Cotton Textitle (Control of Movement) Order, 1948 was challenged, the attack was confined to the alleged infringement of Article 19(1) of the Constitution.

We have no hesitation in saying that theOrder having been framed under Section 3 of the Essential Commodities Act, any argument regarding thenon-existence of restriction imposed under Article 302of the Constitution is misconceived. It is difficult to understand how the provisions of Article 304of the Constitution can be attracted to this case.That provision applies to State and not to Centrallegislation which is the case before us. Besides, itis not an exception to Article 302 of the Constitution. Mr. Saran had in the end to concede thatthat provision has no applicability to the facts before us. We have already said above that Mr.Saran withdrew the argument with regard to discrimination between one State and another eitheron the ground of Article 14 or Article 303 of the Constitution. We may also add that Clause 3 of theimpugned Order regulates the, movement of paddywithin the State of U.P. and on facts also wedo not see that there is any discrimination betweenone State and another. It is true, that the firstpart of Article 303 is in terms an exception or a proviso to Article 302 as is indicated by the non-obstante Clause (1). Clause (2) of Article 303 is, however, an exception to Clause (1) and empowers theParliament to make a law giving or authorising togive any preference, or making any discriminationsubject to the condition that it is declared by lawmade by the Parliament that it is necessary so todo for the purpose of dealing with a situation arising from the scarcity of the goods in any part ofthe territory of India. Therefore, even if Article 303applied to the facts of the present case, Clause 3 ofthe impugned Order would be protected by Clause (2)of Article 303 inasmuch as the impugned Order hasbeen framed under Section 3 of the Essential Commodities Act. That Act was passed because the Parliament was dealing with the situation arisingfrom scarcity of goods in some parts of this country and was thus meeting an emergency createdby the scarcity of goods. For these reasons, inour judgment, Clause 3 of the impugned Order is not hit by Article 303 of the Constitution also.

7. No other point was urged before us.

8. We are, therefore, of the opinion that there is no substance in the submission of the learned counsel for the petitioner.

9. The petitioners have been sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs. 100/- each, in default to undergo rigorous imprisonment for two months each. They have served the sentence of imprisonment for eight days. It was only about 31 maunds of paddy that was sought to be transported. We, are, therefore, of the opinion that the petitioners can reasonably be let off on the sentence already undergone. We remit the sentence of fine passed against them as also the remaining period of imprisonment. We are also satisfied that in this case it is not necessary to maintain the order of forfeiture of the paddy for the reasons already given above.

10. The result is that the application in revision is allowed in part. The petitioner's conviction is affirmed but they are let off under thesentence already undergone. They need not surrender to their bail. Their bail bonds are cancelled. The fine, if, paid, shall be refunded. In case the confiscated paddy has been sold, the auctionsale price thereof shall be paid to the petitioners.