

Hanantram and ors. Vs. the State

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Court : Orissa

Decided On : Jan-27-1953

Reported in : AIR1953Ori233

Judge : Panigrahi and ;Narasimham, JJ.

Acts : Orissa Cotton Cloth Control Order, 1948; [Constitution of India](#) - Article 246; Essential Supplies Temporary Powers Act, 1946 - Sections 4 and 7; [Indian Penal Code \(IPC\), 1860](#) - Sections 40; Orissa Cotton Cloth Control Order, 1946

Appeal No. : Criminal Revn. Nos. 168 to 170 of 1951

Appellant : Hanantram and ors.

Respondent : The State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : A.L.J. Rao, Adv.

Disposition : Petition dismissed

Judgement :

Panigrahi, J.

1. In these petitions the petitioners, five in all, seek a revision of the judgment of the First Class Magistrate, Angul, convicting them under B. 7, Essential Supplies

(Temporary Powers) Act, 1946 (Act 24 of 1946), and sentencing them to various amounts of fine.

2. The first four petitioners namely, Hunan-tram, Sohan Lal, Bhani Bam and Kishan Ram, belong to a trading family carrying on business in cloth and yarn at Dhenkanal, under the name and style of Nandaram Hunantram. Petitioners 1 to 4 are the sons of Nandaram and are the proprietors of the firm. They have also a branch of their firm at Angul, and petitioner, Paramananda Misra, is their local agent at Angul. All the petitioners have been found guilty of having contravened an order passed under Clause 5, Orissa Cotton Cloth Control Order, 1948, read with Orissa Government Notification No. 29986 ST., dated 30-7-1949.

3. Three separate cases were started against the petitioners for alleged charging of a higher price for cloth than that permitted by the aforesaid Notification, under Clause 5, Orissa Cotton Cloth Control Order. The first case was that on 13-1-49 the firm at Angul had charged excess profit from the retail seller, Nagarmall Modi (P. W. 2) and that the cash memo issued by the firm in respect of this transaction, was seized by the Inspector of Civil Supplies on 13-4-50. The second charge was that on 17-4-50 the petitioner's firm had collected more than their margin of profit while selling cloth to P. W. 5. The cash memo relating to this transaction was seized by the Assistant Inspector of Civil Supplies (P. W. 1) on 2-5-50. The third case was that the petitioners charged excess profit from P. W. 6 on 8-2-50. The cash memo relating to this transaction was seized by P. W. 1 on 1-5-50.

4. The plea taken by petitioners 1 to 4 was that they were not personally aware Of the alleged transactions and that petitioners 2 to 4 in particular were not licensees under the Orissa Cotton Cloth Control Order. Petitioner 5, Paramananda Misra, denied that he was the agent of the petitioners' firm. His plea was that he was merely a scribe employed by the firm for writing out the cash memos at the shop at Angul.

5. Both the Courts below have held that all the four petitioners (petitioners 1 to 4) are in fact licensees and were carrying on business under the name and style of Nandaram Hunantram and also that petitioner 5, Paramananda Misra, is their Manager Agent at Angul. We are satisfied that this finding has been arrived at on

the basis of ample evidence. It was also found by both the Courts below that the notice fixing the maximum price and the margin of profit was served on the petitioners and that excess profit had been charged in the three specific cases for which the prosecution was launched. These findings are not seriously disputed before us, and we are bound to accept the same.

6. The main contention raised on behalf of the petitioners is that the Government Notification No. 299867 ST. dated 30-7-1949 is 'ultra vires' the State Government and that its contravention does not amount to an offence. This Notification was issued by the Controller of Supply and Transport, Orissa, directing that the maximum margin over the ex-mill price for wholesale and retail sale of cloth in the State of Orissa, should not exceed the amount fixed in the notification by the Controller. In respect of the Angul area the maximum margin of profit notified is 121/4 per cent over and above the excise duty and the sale-tax paid to the Government of the despatching Province. The Orissa Cotton Cloth Control Order, 1948, is an order passed under Section 3, Essential Supplies (Temporary Powers) Act, 1946, read with Notification No. 73(I)-T-A./46 dated 26-12-46, issued by the Government of India in the Department of Industries and Supplies. Clause 5 of that Order provides that

'the Controller may notify the margin over the ex-mill price of cloth at which cloth may be sold at the various stages of the sale and no person shall buy any cloth at a price higher than the margin so fixed for that class of transactions.'

It is in exercise of the power vested on the Controller under this Clause of the Orissa Cotton Cloth Control Order that the Controller fixed the margin of profit at 121/4 per cent for Angul area. Learned counsel for the petitioner contends that this vesting of power on the Controller amounts to a delegation of the power vested in the State Government which, in its turn, was only delegate of the Central Government. It is urged that a delegate cannot himself further delegate that power.

7. This reasoning appears to me to be fallacious. The Essential Supplies (Temporary Powers) Act of 1946 empowers the Central Government to make provision by an order for regulating the supply and distribution of essential commodities. Section 3 (2)(c) specifically- says that an order made under that

Section may provide for controlling the prices at which any essential commodity may be brought or sold. Section 4 of the Act says that the Central Government may direct, by a notified Order, that the power vested on it to make orders under S- 3 may be exercised also by a State Government. In exercise of this power of delegation the Central Government issued a Notification, No. 73(1)/T.A. of 1946 by-which the State Governments were authorised to make orders under Sub-section (1) of Section 3 to provide for matters specified in Clauses c, d, e, f, g, h, i, and j of Sub-section (2) thereof in relation to cotton textiles. By virtue of this delegation the Orissa Govt. passed an order known as the Orissa Cotton Cloth Control Order in the year 1948.

The question, therefore is whether Clause 5 of this Order amounts to a second delegation of the powers vested in the State Government by the Notification of the Government of India. That notification empowers the State Government 'to provide for matters' specified in Clause (c), in relation to cotton textiles. The expression 'by Order provide' used in Section 3 of the Central Act (24 of 1946) is copied in the Notification and should be understood in the sense in which it is used in the parent Act.

As has been stated already, the order may provide for controlling prices at which any essential commodity may be brought or sold. It is, therefore, of the essence of the power, that provision should be made for regulating the supply, control and distribution of cloth, and this power would include the power to appoint officers to carry out the provisions of the Act. This power to regulate involves also the power to direct and control. The power to control the prices would also include the power to devise the machinery for controlling, such as the appointment of officers to check, inspect and seize. The Controller is an officer created by the Control Order for keeping a check on the wholesale licenses for dealing in mill-made cloth. Section 3 (2)(f) of the Central Act also enables Government to provide for 'incidental and supplementary matters' which, in my opinion would include the fixation of the margin of profit, as profits are incidental to dealing in cloth.

The Orissa Government accordingly appointed an officer known as the Controller of Supplies and vested in him such powers as are necessary for the discharge of

the power given to him by that order. Clause 5 of the Control Order, therefore, empowers the Controller to notify the margins over the ex-mill price of cloth at which cloth may be sold at the various stages of the sale. This clause also prohibits the buying and selling of cloth at prices higher than the margins so fixed. It is not, therefore, correct to say that the power to make an order vested in the State Government had been delegated to any officer. That power has been exercised by the State Government itself, and provision for the appointment of the Controller has been made in the Order itself. The administrative functions of Government are, however, entrusted to that officer and he is directed to fix the margin of price indifferent areas of the State in pursuance of the terms of that Order. The fixation of prices and margins of profit vary from time to time and depend largely on local factors. This can be regulated from time to time only through the agency of the Controller who is specially vested with the power to fix the margins of profit.

It is a well-recognised principle that the power to do an act includes every power necessary for the performance of that act. I would, therefore, overrule the contention and hold that Clause 5, Orissa Cotton Cloth Control Order, is not ultra vires.

8. Learned counsel for the petitioners then referred us to a decision of the Punjab High Court, reported in -- 'The State v. Amir Chand, AIR 1953 Punj 1 (A). That was a case in which the Rationing Controller issued an Order calling upon owners of establishments to submit a return in the form prescribed by him showing the stocks of rationed food-grains held by them. It was held that this amounts to a delegation of power, by the State Government, to an officer subordinate to them and was contrary to the provisions of Section 3 of the Act. It will be noticed that the power to require persons to produce for inspection such books of account and records relating to the business, and to furnish such information relating thereto, is a power that has to be exercised by the Central or the State Government under S. 3 (2)(i). The State Government alone can, therefore, prescribe forms and ask for such information as may be specified in the order promulgated by them. This power cannot certainly be left to an officer subordinate to Government.

It was accordingly held, in the circumstances of that case, that an order of the kind could only have been made by the Central or the State Government and could not be delegated to the Rationing Controller on the principle that delegated authority cannot be re-delegated. This case is, therefore, of no help to the petitioners as, in the present case there is no such delegation of the power of the Government to provide by an order for the regulation of the supply and distribution of cloth.

9. It was next contended that petitioners 1,2,3, and 4 should not be held guilty of contravention as there is no 'mens rea' on their part and that the transactions were entered into by their servant. Reliance was placed on -- 'Hariprasada Rao v. The State,' a decision of the Supreme Court reported in AIR 1951 SC 204 (B). That was a case under the Motor Spirit Rationing Order, 1941, by Clause 27-A of which, the supplier is made responsible for contravention of the Order, & the question that fell to be decided was whether a person supplying petrol on a particular occasion could come within the definition of the word 'supplier'. In the particular circumstances of that case it was held that the master was not present at the time, nor had he any knowledge of the supply of petrol by his servant, and that he was not vicariously liable for the act of his servant. There is no evidence in this case to indicate that petitioner 5 the agent of petitioners 1 to 4, acted solely on his own responsibility or in contravention of any directions issued by the firm asking him not to charge excess profit. On the other hand there is abundant evidence to show that the members of the firm clearly knew that such an act was prohibited and was contrary to law. If they had issued instructions to their: agent not to, charge excess profit, there may be a case for absolving them of their liability in the matter, but in the absence of any evidence pointing to such a fact, the only Inference that onecould possibly make is that they are responsible for the excess price collected by their agent.

10. We are satisfied that there is no illegality in the Notification issued by the Controller of Supply and Transport, Orissa, and that its contravention amounts to an offence under Act 24 of 1946. The petitioners have been rightly convicted and we see no reason to interfere either with the conviction or the sentence imposed on them.

11. These petitions are dismissed.

Narasimham, J.

12. I agree.

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