

Sardar Soma Singh and Others

Vs

The State of Pepsu and Union of India.

Petition No. 325 of 1953

(CJI M.C. Mahajan, B.K. Mukherjea, S.R. Dass, Vivian Bose, Ghulam Hasan JJ)

11.03.1954

JUDGMENT

DAS J. -

The short point raised on this petition filed in this court under article 32 of the Constitution is whether the Patiala and East Punjab States Union General Sales Tax Ordinance, 2006 (No. XXXIII of 2006) which was promulgated on the 6th November, 1949, has become void since the date of the commencement of the Constitution.

Article 286(3) of the Constitution of India runs as follows :-

"286. (3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 (Central Act No. LII of 1952) declared certain commodities as essential for the life of the community. In the schedule appended to the Act item 8 relates to "all cloth, woven on handlooms, coarse and medium cotton cloth made in mills or woven on power looms." Section 3 of the same Act provided as follows :-

"3. Regulation of tax on sale or purchase of essential goods :- No law made after the commencement of this Act by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

The petitioners are declares in coarse cloth and medium cloth and their contention is that these commodities having been declared as essential for the life of the community they are not liable to pay sales tax on them. In the petition an allegation has been made that section 3 of Act LII of 1952 is in direct contravention of article 286(3) of the Constitution. There does not appear to be any substance in this contention. Section 3 is in line with article 286(3) and there is no inconsistency between that section and the relevant provision of the Constitution. The petitioners are sought to be taxed under the Ordinance XXXIII of 2006, which, as an existing law, has been continued by article 372. The question is whether that Ordinance contravenes the provisions of article 286(3) or has

since been altered, repealed or amended by any competent legislative authority. It is quite clear that section 3 of Act LII of 1952 does not affect the Ordinance, for the Ordinance was not made after the commencement of that Act. The only question, therefore, is whether the Ordinance runs counter to clause (3) of article 286 of the Constitution. A perusal of that clause will at once indicate that clause contemplates a post-Constitution law, for it must be a law made by a "Legislature of a State" which must refer to the Legislature of a State created by the Constitution. Further, and what is more important, it contemplates a law which can be but has not been reserved for the consideration of the President and has not received his assent. This provision clearly points to post-Constitution law, for there can be no question of an existing law continued by article 372 being reserved for the consideration of the President for receiving his assent. As we are concerned in this application with a pre-Constitution law, it is not necessary for us to express any opinion as to the validity or otherwise of a law made after the commencement of the Constitution but before the coming into operation of Act LII of 1952.

The result, therefore, is that there is no substance in this petition and we dismiss it with costs.

Petition dismissed.

Agent for the petitioners : Sardar Singh.

Agent for the respondent No. 1 : R. H. Dhebar.

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