

Harishankar Bagla and Another

Vs

The State of Madhya Pradesh

Criminal Appeal No. 7 of 1953

(CJI M.C. Mahajan, B.K. Mukherjea, Vivian Bose, N.H. Bhagwati, T.L. Venkatarama Ayyar JJ)

14.05.1954

JUDGMENT

MEHR CHAND MAHAJAN C.J. -

The facts giving rise to this appeal are these : The appellant, Harishankar Bengal, and his wife, Smt. Gomti Bagla, were arrested at Itarsi, by the Railway Police on the 29th November, 1948, for contravention of section 7 of the Essential Supplies (temporary Powers) Act, 1946, read with clause (3) of the Cotton Textiles (Control of Movement) Order, 1948, having been found in possession of "new cotton cloth" weighing over six maunds which cloth, it was alleged, was being taken by them from Bombay to Kanpur without any permit. After various vicissitudes through which the chalan passed the case was eventually withdrawn by the High Court to itself on the 3rd of September, 1951, as it involved a decision of constitutional issues. By its order dated the 15th September, 1952, the High Court upheld the provisions of sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946, as constitutional. It also upheld the constitutionality of the impugned Order. Section 6 of the Act was held to be inconsistent with the provisions of the Railway Act but it was held that its unconstitutionality did not affect the prosecution in this case. The High Court directed that the prosecution should proceed and the records sent back to the trial Court for being dealt with in accordance with law Leave to appeal was given both to the appellants and the respondent and requisite certificates under articles 132 and 134 of the Constitution were granted. This appeal along with the connected appeal No. 6 of 1953 is before us on the basis of the said certificates.

Mr. Umrigar, who appeared in this and the connected appeal, urged the following points for our consideration and decision :

- (1) That section 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946, and the provisions of the Cotton Cloth Control Order contravened the fundamental right of the appellants guaranteed by article 19(1)(f) and (g) of the Constitution;
- (2) That section 3 of the Essential Supplies (Temporary Powers) Act, 1946, and in particular section 4 were ultra vires, the Legislature on the ground of excessive delegation of legislative power;
- (3) That section 6 having been found ultra vires, section 3 was inextricably connected with it and that both the sections should have been declared ultra vires on that ground; and
- (4) That the impugned Control Order contravened existing laws, viz., the provisions

of sections 27, 28 and 41 of the Indian Railways Act, and was thus void in its entirety.

The respondent challenged the judgment of the the High Court that section 6 of the Act was unconstitutional.

In our judgment, none of the points raised by Mr. Umrigar have any validity. On the other hand, we are of the opinion that the High Court was in error in declaring section 6 of the Act unconstitutional.

Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act. 1946, provide as follows :-

"3. (1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.....

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide -

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;.....

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;.....

4. The Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government as may be specified in the direction."

Section 6 runs thus :

"6. Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

Under powers conferred by section 3 the Central Government promulgated on 10th September, 1948, Cotton Textiles (Control of Movement) Order, 1948. Section 2 of this order defines the expressions "apparel," "carrier," "hosiery," "cloth" and "textile commissioner." Section 3 of the order runs as follows :-

"3. No person shall transport or course to be transported by rail, road, air, sea or inland navigation any cloth, yarn or apparel except under and in accordance with -

(i) a general permit notified in the Gazette of India by the Textile Commissioner, or

(ii) a special transport permit issued by the Textile Commissioner."

Section 8 provides that the Textile Commissioner may, by notification in the Gazette of Indian, prescribe the manner in which any application for a special transport permit under this Order shall be made. The Central Government has prescribed forms for application for obtaining permits and the conditions under which permits can be obtained.

The first question canvassed by Mr. Umrigar was that the provisions of section 3 of the Control Order infringed the rights of a citizen guaranteed in sub-clauses (f) and (g) of article 19(1) of the Constitution. These sub-clauses recognise the right of a citizen to dispose of property and to carry on trade or business. The requirement of a permit to transport by rail cotton textiles to a certain extent operates as a restriction on the rights of a person who is engaged in the business of purchase and sale of cotton textiles. Clause (5) of article 19 however permits such restriction to be placed provided they are in the public interest. During the period of emergency it was necessary to impose control on the production, supply and distribution of commodities essential to the life of the community. It was for this reason that the Legislature passed the Essential Supplies (Temporary Powers) Act authorising the Central Government to make orders from time to time controlling the production, supply and distribution of essential commodities. Clause 3 of the Control Order does not deprive a citizen of the right to dispose of or transport cotton textiles purchased by him. It requires him to take a permit from the Textile Commissioner to enable him to transport them. The requirement of a permit in this regard cannot be regarded as an unreasonable restriction on the citizen's right under sub-clauses (f) and (g) of article 19(1). If transport of essential commodities by rail or other means of conveyance was left uncontrolled it might well have seriously hampered the supply of these commodities to the public. Act XXIV of 1946 was an emergency measure and as stated in its preamble, was intended to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities. The number of commodities held essential are mentioned in section 2 of the Act, and the requirement of a permit to transport such commodities by road or rail or other means of transport cannot, in any sense of the term, be said, in a temporary Act, to be unreasonable restriction on the citizen's rights mentioned in clauses (f) and (g) of article 19(1). The High Court was therefore right in negating the contention raised regarding the invalidity of the Control Order as abridging the rights of the citizen under article 19(1) of the Constitution.

Mr. Umrigar further argued that the Textile Commissioner had been given unregulated and arbitrary discretion to refuse or to grant a permit, and that on grounds similar to those on which in *Dwarka Prasad v. The State of Uttar Pradesh* (A.I.R. 1954 S.C. 225; [1954] S.C.R. 803), this Court declared void section 4(3) of the Uttar Pradesh Coal Control Order, section 3 of the Control Order in question should also be declared void. This argument again is not tenable. In the first place, the appellants never applied for a permit and made no efforts to obtain one. If the permit had been applied for and refused arbitrarily they might then have had a right to attack the law on the ground that it vested arbitrary and unregulated power in the textile commissioner. The appellants were not hurt in any way by any act of the textile commissioner as they never applied for a permit. They were transporting essential goods by rail without a permit and the only way they can get any relief is by attacking the section which obliges them to take a permit before they can transport by rail essential commodities. It may also be pointed out that reference to the decision of this Court in *Dwarka Prasad's case* (A.I.R. 1954 S.C. 225; [1954] S.C.R. 803) is not very apposite and has no bearing on

the present case. Section 4(3) of the Uttar Pradesh Coal Control Order was declared void on the ground that it committed to the unrestrained will of a single individual to grant, withhold or cancel licences in any way he chose and there was nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same. Section 4(3) of the Uttar Pradesh Coal Control Order was in these terms :

"The Licensing Authority may grant, refuse to grant, renew or refuse to renew a licence and may suspend, cancel, revoke or modify any licence or any terms thereof granted by him under the Order for reasons to be recorded. Provided that every power which under this Order exercisable by the Licensing Authority shall also be exercisable by the State Coal Controller, or any person authorized by him in this behalf."

In the present Control Order there is no such provision as existed in the Uttar Pradesh Coal Control Order, Provisions of that Control Order bear no analogy to the provisions of the present Control Order. The policy underlying the Order is to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refuse of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power there is ample power in the Courts to undo the mischief. Presumably, as appears from the different forms published in the Manual, there are directions and rules laid down by the Central Government for the grant or refusal of permits.

The next contention of Mr. Umrigar that section 3 of the Essential Supplies (Temporary Powers) Act, 1946, amounts to delegation of Legislative power outside the permissible limits is again without any merit. It was settled by the majority judgment in the Delhi Laws Act case ([1951] S.C.R. 747) that essential powers of legislation cannot be delegated. In other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government in exercising its powers under section 3. Delegation of the kind mentioned in section 3 was upheld before the Constitution in a number of decisions of their Lordships of the Privy Council, vide *Russell v. The Queen* (7 A.C. 829) *Hodge v. The Queen* (9 A.C. 117), and *Shannon v. Lower Mainland Dairy Products Board* ([1938] A.C. 708) and since the coming into force of the Constitution delegation of this character has been upheld in a number of decisions of this Court on principles enunciated by the majority in the Delhi Laws Act case ([1951] S.C.R. 747). As already pointed out, the preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy. Mr. Umrigar could not very seriously press the question of the invalidity of section 3 of the Act and it is unnecessary therefore to consider this question in greater detail.

Section 4 of the Act was attacked on the ground that it empowers the Central Government to

delegate its own power to make orders under section 3 to any officer or authority subordinate to it or the Provincial Government or to any office or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorized to further delegate its powers in respect of the exercise of the powers of section 3. Mr. Umrigar contended that it was for the Legislature itself to specify the particular authorities or officers who could exercise power under section 3 and it was not open to the Legislature to empower the Central Government to say what officer or authority could exercise the power. Reference in this connection was made to two decisions of the Supreme Court of the United States of America - *Panama Refining Co. v. Ryan* (293 U.S. 388) and *Schechter v. United States* (295 U.S. 495). In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. These decisions in our judgment do not help the contention of Mr. Umrigar as we think that section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself. The decision of their Lordships of the Privy Council in *Shannon's case* ([1938] A.C. 708), completely negatives the contention raised regarding the invalidity of section 4. In that case the Lt. Governor in Council was given power to vest in a marketing board the powers conferred by section 4A(d) of the *Natural Products Marketing (British Columbia) Act, 1936*. The attack on the Act was that without constitutional authority it delegated legislative power to the Lt.-Governor in Council. This contention was answered by their Lordships in these terms : "The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lt.-Governor in Council, or to give him powers of further delegation. This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relating to within the Constitution has granted legislative powers. Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act."

The next contention that the provisions of the *Textiles Control Order* operate as an implied repeal of section 27, 28 and 41 of the *Indian Railways Act* and are therefore invalid is also not well founded. The requirement of a permit by clause (3) and provisions of clause (4) of the Order which empower the *Textile Commissioner* to direct a carrier to close the booking or transport of cloth, apparel, etc., are not in direct conflict with sections 27, 28 and 41 of the *Railways Act*. The *Railways Act* does not exclude the placing of a disability on a railway administration by the Government or any other authority. This clause merely supplements the relevant provisions of the *Railways Act* and does not supersede them. Similar observations apply to clause (5) which enables the *Textile Commissioner* to place an embargo on the transport of certain textiles from one area to another. There is nothing in the provisions of the order which in any way overrides or supersedes the provisions of the different sections of the *Railways Act* referred to above.

The last contention of Mr. Umrigar that section 6 having been declared invalid, section 3 is inextricably mixed with it and should also have been declared invalid is also not valid, because apart from the grounds given by the High Court for holding that the two sections were not so interconnected that the invalidity of one would make the other invalid, the High Court was in error in holding that section 6 was unconstitutional. Section 6 of the Act cited above declares that an order made under section 3 shall have effect notwithstanding anything inconsistent therewith

contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act. In other words it declares that if there is any repugnancy in an order made under section 3 with the provisions of any other enactment, then notwithstanding that inconsistency the provisions of the Order will prevail in preference to the provisions of other laws which are thus inconsistent with the provisions of the Order. In the view of the High Court the power to do something which may have the effect of repealing, by implication, an existing law could not be delegated in view of the majority decision of this Court in *In Re : Delhi Laws Act* ([1951] S.C.R. 747), where it was held that to repeal or abrogate an existing law is the exercise of an essential legislative power. The learned Judges of the High Court thought that the conferment of power of the widest amplitude to make an order inconsistent with the pre-existing laws is nothing short of a power to repeal. In our opinion the construction placed on section 6 by the High Court is not right. Section 6 does not either expressly or by implication repeal any of the provisions of pre-existing laws; neither does it abrogate them. Those laws remain untouched and unaffected so far as the statute book is concerned. The repeal of a statute means as if the repealed statute was never on the statute book. It is wiped out from the statute book. The effect of section 6 certainly is not to repeal any one of those laws or abrogate them. Its object is simply to by-pass them where they are inconsistent with the provisions of the Essential Supplies (Temporary Powers) Act, 1946, or the orders made thereunder. In other words, the orders made under section 3 would be operative in regard to the essential commodity covered by the Textile Control Order wherever there is repugnancy in this Order with the existing laws and to that extent the existing laws with regard to those commodities will not operate. By-passing a certain law does not necessarily amount to repeal or abrogation of that law. That law remains unrepealed but during the continuance of the order made under section 3 it does not operate in that field for the time being. The ambit of its operation is thus limited without there being any repeal of any one of its provisions. Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under section 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any Act of the delegate, but the repeal is by the legislative Act of the Parliament itself. By enacting section 6 Parliament itself has declared that an order made under section 3 shall have effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislature itself has declared its will that way in section 6. The abrogation or the implied repeal is by force of the legislative declaration contained in section 6 and is not by force of the order made by the delegate under section 3. The power of the delegate is only to make an order under section 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein the Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act. Parliament being supreme, it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the Act of the Parliament itself. There is no delegation involved in the provisions of section 6 at all and that section could not be held to be unconstitutional on that ground.

The result therefore is that in our opinion the provisions of sections 3, 4 and 6 of the Essential Supplies (Temporary Powers) Act, 1946, are constitutional and the impugned order is also constitutional. Accordingly this appeal is dismissed, and the trial Court is directed to proceed expeditiously with the case in accordance with law.

Appeal dismissed.

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