The State of Rajasthan

Vs

Shri G. Chawla and Dr. Pohumal

Criminal Appeal No. 1 of 1955

(CJI S. R. Dass, S. K. Das, P. B. Gajendragadkar, K. N. Wanchoo, M. HidayatullahHidayatullah JJ)

16.12.1958

JUDGMENT

HIDAYATULLAH, J. -

This appeal was preferred by the State of Ajmer, but after the reorganisation of States, the State of Rajasthan stands substituted for the former State. It was filed against the decision of the Judicial Commissioner of Ajmer, who certified the case a fit for appeal to this Court under Article 132 of the Constitution.

The Ajmer Legislative Assembly enacted the Ajmer (Sound Amplifiers Control) Act, 1952 (Ajmer 3 of 1953), (hereinafter called the Act) which received the assent of the President on March 9, 1953. This Act was successfully impugned by the respondents before the learned Judicial Commissioner, who held that it was in excess of the powers conferred on the State Legislature under section 21 of the Government of Part C States Act, 1951 (49 of 1951) and, therefore, ultra vires the State Legislature.

The respondents (who were absent at the hearing) were prosecuted under section 3 of the Act for breach of the first two conditions of the permit granted to the first respondent, to use sound amplifiers on May 15 and 16, 1954. These amplifiers, it was alleged against them, were so tuned as to be audible beyond 30 yards (condition No. 1) and were placed at a height of more than 6 feet from the ground (condition No. 2). The second respondent was at the time of the breach, operating the sound amplifiers for the Sammelan, for which permission was obtained.

On a reference under section 432 of the Code of Criminal Procedure, the Judicial Commissioner of Ajmer held that the pith and substance of the Act fell within Entry No. 31 of the Union List and not within Entry No. 6 of the State List, as was claimed by the State.

Under Article 246(4) of the Constitution, Parliament had power to make laws for any part of the territory of India not included in Part A or B of the First Schedule, notwithstanding that such matter was a matter enumerated in the State List. Section 21 of the Government of Part C States Act, 1951, enacted :

> "(1) Subject to the provisions of this Act, the Legislative Assembly of a State, may undertake laws for the whole or any part of the State with respect of any of the matters enumerated in the State List or in the Concurrent List,

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(2) Nothing in sub-section (1) shall derogate from the power conferred on Parliament by t he Constitution to make laws with respect to any matter for a State or any part thereof."

Under these provisions, the legislative competence of the State Legislature was confined to the two Lists other than the Union List. If, therefore, the subject-matter of the Act falls substantially within an Entry in the Union List, the Act must be declared to be unconstitutional, but it is otherwise, if it falls substantially within the other two lists, since prima facie there is no question of repugnancy to a central statute or of an "occupied field".

The rival Entries considered by the Judicial Commissioner read as follows :

#Entry No. 31 of the Union List | Post and Telegraphs; Telephones, | wireless, broadcasting and other | like forms of communication. Entry No. 6 of the State List. | Public health and sanitation; | hospitals and dispensaries.##

The attention of the learned Judicial Commissioner was apparently not drawn to Entry No. 1 of the State List, which is to the following effect :

#Entry No. 1 of the State List. | Public order (but not including | the use of naval, military or air | forces of the Union in aid of | civil power.)##

Shri H. J. Umrigar relied upon the last Entry either alone, or in combination with Entry No. 6 of the State List, and we are of opinion that he was entitled to do so.

After the dictum of Lord Selborne in Queen v. Burah ((1878) 3 App. Cas. 889), oft-quoted and applied, it must be held as settled that the legislatures in out Country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this that the supremacy of the legislatures is confined to the topics mentioned as Entries in the Lists conferring respectively powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as enumeratio simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding. This was laid down by Gwyer, C.J., in Subramanyam Chettiar v. Muthuswamy Goundam ([1940] F.C.R. 188, 201), in the following words :

> "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that."

This dictum was expressly approved and applied by the Judicial Committee in Prafulla Kumar Mukherjee v. Bank of Commerce, Ltd., Khulna ((1947) L.R. 74 I.A. 23), and the same view has been expressed by this Court on more than one occasion. It is equally well-settled that the power to

legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.

It becomes, therefore, necessary to examine closely how the Act is constructed and what it provides. The Act in its preamble expresses the intent as the control of the 'use' of sound amplifiers. The first section deals with the title, the extent, the commencement and the interpretation of the Act. It does not unfold its pith and substance. The last two sections provide for penalty for unauthorised use of sound amplifiers and the power of police officers to arrest without warrant. They stand or fall with the constitutionality or otherwise of the second section, which contains the essence of the legislation.

That section prohibits the use in any place, whether public or otherwise, of any sound amplifier except at times and places and subject to such conditions as may be allowed, by order in writing either generally or in any case or class of cases by a police officer not below the rank of an inspector, but it excludes the use in a place other than a public place, of a sound amplifier which is a component part of a wireless apparatus duly licensed under any law for the time being in force. In the explanation which is added, 'public place' is defined as a place (including a road, street of way, whether a thoroughfare or not or a landing place) to which the public are granted access or have a right to resort or over which they have a right to pass.

The gist of the prohibition is the 'use' of an external sound amplifier not a component part of a wireless apparatus, whether in a public place or otherwise, without the sanction in writing of the designated authority and in disregard of the conditions imposed on the use thereof. It does not prohibit the use in a place other than a public place of a sound amplifier which is a component part of a wireless apparatus.

There can be little doubt that the growing nuisance of blaring loud-speakers powered by amplifiers of great output needed control, and the short question is whether this salutary measure can be said to fall within one or more of the Entries in the State List. It must be admitted that amplifiers are instruments of broadcasting and even of communication, and in that view of the matter, they fall within Entry 31 of the Union List. The manufacture, or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus is one matter, but the control of the 'use' of such apparatus though legitimately owned and possessed, to the detriment of tranquillity, health and comfort of others is quite another. It cannot be said that public health does not demand control of the use of such apparatus by day or by night, or in the vicinity of hospitals or schools, or offices or habited localities. The power to legislate in relation to public health includes the power to regulate the use of amplifiers as producers of loud noises when the right of such user, by the disregard of the comfort of and obligation to others, emerges as a manifest nuisance to them. Nor is it any valid argument to say that the pith and substance of the Act falls within Entry 31 of the Union List, because other loud noises, the result of some other instruments, etc., are not equally controlled and prohibited.

The pith and substance of the impugned Act is the control of the use of amplifiers in the interests of health and also tranquillity, and thus falls substantially (if not wholly) within the powers conferred to preserve, regulate and promote them and does not so fall within the Entry in the Union List, even though the amplifier, the use of which is regulated and controlled is an apparatus for broadcasting or communication. As Latham, C.J., pointed out in Bank of New South Wales v. The Commonwealth ((1948) 76 C.L.R. 1, 186) :

> "A power to make laws 'with respect to' a subject-matter is a power to make laws which in reality and substance are laws upon the subject-matter. It is not enough that a law should refer to the subject-matter or apply to the subject-matter : for example, income-tax laws apply to clergymen and to hotel-keepers as members of the public; but no one would describe an income-tax law as being, for that reason, a law with respect to clergymen or hotel-keepers. Building regulations apply to buildings erected for or by banks; but such regulations could not properly be described as laws with respect to banks or banking."

On a view of the Act as a whole, we think that the substance of the legislation is within the powers conferred by Entry No. 6 and conceivably Entry No. 1 of the State List, and it does not purport to encroach upon the field of Entry No. 31, though it incidentally touches upon a matter provided there. The end and purpose of the legislation furnishes the key to connect it with the State List. Our attention was not drawn to any enactment under Entry No. 31 of the Union List by which the Ownership and possession of amplifiers was burdened with any such regulation or control, and there being thus no question of repugnancy or of an occupied field, we have no hesitation in holding that the Act is fully covered by the first cited Entry and conceivably the other in the State List.

The Judicial Commissioner's order, with respect, cannot be upheld, and it must be set aside. We allow the appeal and reverse the decision, and we declare the Act in all its parts to be intra vires the State Legislature. As the matter is four years old we do not order a retrial and we record that the State does not, as a result of the reversal of the decision under appeal, purpose to prosecute the respondents, and that a statement to this effect was made before us at the hearing.

Appeal allowed.

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