Kanshi Ram Jagan Nath and Others

Vs

The State

Civil Appeal No. 292 of 1958

(P. B. Gajendragadkar, K. Subha Rao, Raghuvar Dayal, J. C. Shah, M. Hidayatullah JJ)

28.07.1961

JUDGMENT

HIDAYATULLAH, J. -

The only question in this appeal, with certificate under Art. 133(1)(c) of the Constitution, against the judgment and decree of the High Court of Patiala and East Punjab States Union, is whether the levy of royalty at Rs. 50 per one lakh bricks under a Robkar issued by the Ijlas-i-Khas (Council of Regency), Patiala State, on February 6, 1919, is valid.

The Appeal arises out of a suit filed by the present appellants in the Court of the Subordinate Judge, Faridkot, for declaration and injunction. The suit was dismissed by the trial Judge, but on appeal to the District Court, the decision was reversed. On further appeal to the High Court, the decision of the Additional District Judge was set aside, and that of the trial Judge restored.

In this appeal, the only point argued is whether the order of the Ijlas-i-Khas continues to be effective, after the enactment of the Finance Act, 1950. The suit was filed on May 13, 1952, for junction against notices of demand issued to the appellants from the Tehsil Office, Faridkot, on or about April 20, 1951. The learned Solicitor-General concedes that the appellants' claim must be confined to the period after April 1, 1950, from which date the Finance Act, 1950, began to operate. He states that prior to that date the law could not be considered to be invalid because of Art. 277, which saved taxes, duties, cesses or fees which were being levied in any State prior to the commencement of the Constitution. He also concedes that the Finance Act, 1950, could not operate before April 1, 1950, and the question, therefore, is, what is the effect of the Finance Act, 1950, on the order impugned ? It may also be pointed out that the authority of the Regency Council to issue the impugned order and the validity of that order, unless affected by any Indian law, are not called in question.

The Finance Act, 1950, was passed to give effect to the financial proposals for the year commencing on April 1, 1950. Section 11 of that Act extended, amongst others, the Central Excises and Salt Act, 1944, to the whole of India including Part B States, except the State of Jammu and Kashmir. By s. 13(2), it was provided, inter alia as follows :

> "If immediately before the 1st day of April, 1950, there is in force in any State other than Jammu and Kashmir a law corresponding to, but other than an Act referred to in sub-section (1) or (2) of section 11, such law is hereby repealed with effect from the said date.....".

It if contended that by the extension of the Central Excises and Salt Act, 1944, there was repeal of any law imposing excise duty on the manufacture of any class of goods. Attention is, therefore, drawn to the provisions of the Robkar, where the royalty is charged as follows :

> "Mehsul (Royalty) at the rate of Rs. 50 per lac bricks be charged from all the kiln-owners irrespective of the fact whether they construct brick-kilns on the land belonging to Government or not. In case they construct brick-kilns on the land belonging to Government, cost (of the land) or damages thereof be charged (from them) in addition to the Mehsul (Royalty).....".

The provisions of s. 13(2) of the Finance Act, 1950, clearly show that only a law corresponding to the Central Excises and Salt Act, 1944, was intended to be repealed. If the law did not correspond to the Indian statute, it would be saved by virtue of Art. 277. We have thus to determine in this case whether the Robkar of the Ijlas-i-Khas, imposing a royalty on bricks can be said to be a law corresponding to the Central Excises and Salt Act, 1944, which was extended on April 1, 1950.

The argument of Mr. Daphtary proceeds on the assumption that the royalty is in the nature of an excise duty, and the Robkar is thus a law corresponding to the Indian statute. That, however, does not determine the question, because the words of sub-s. (2) of s. 13 of the Finance Act, 1950, are that the law repealed must be a law corresponding to the Indian statute. The argument in support of the contention that this is such a law is that the Central Excises and Salt Act, 1944, is, as its long title and preamble show, a consolidating and amending law relating to Central duties of excise on goods manufactured or produced in certain parts of India and to salt. It is urged that the Act is in the nature of a code, which not only provides for the levy of excise duty on the commodities specifically mentioned therein but by implication, exonerates other articles from the levy of excise duty, and that, therefore, the Indian statute is comprehensive enough to include not only such commodities as are mentioned in it but also other commodities on which there is no levy. It is conceded, however, that there is no negative provision under which other goods manufactured in India are expressly saved from the operation of any other law.

Section 3(1) of the Central Excises and Salt Act, 1944, lays down the charge of excise duty, and provides :

> "There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India..... at the rates, set forth in the First Schedule."

"Excisable goods" is defined by s. 2(d), and means "goods specified in the First Schedule as being subject to a duty of excise and includes salt". These two provisions read together limit the operation of the excise law to enumerated commodities and salt, and the ambit of the law is thus confined. The words "to consolidate and amend the law" have reference really to the Acts, which were repealed by s. 39. Prior to the enactment of this consolidating Act, there were no less than 17 Acts dealing with different commodities, and in 1944, all those laws were repealed, and a consolidated Act was passed to cover all those Acts and to include certain new commodities. The effect of consolidation was not to codify the law in such a way as to repeal other acts, which were not specifically mentioned in the Schedule dealing with repeals. No negative provision to save other commodities from the operation of any existing local law was either expressly included or even contemplated in the Act. The result, therefore, is quite clear that the Robkar, under which the royalty was imposed, cannot be said to be a law corresponding to the Central Excises and Salt Act,

1944, and is, therefore, not within the repeal created by s. 13(2) of the Finance Act, 1950.

In our judgment, the decision of the High Court is correct, and the appeal is dismissed with costs.

Appeal dismissed.

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