

Jan Mohammad Noor Mohammad Begban

Vs

State of Gujarat and Another

Writ Petition No. 11 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

18.08.1965

JUDGMENT

SHAH. J. –

By this petition the petitioner seeks to restrain the State of Gujarat from enforcing the Gujarat Agricultural Produce Markets Act 20 of 1964, on the plea that certain provisions of the Act infringe the fundamental freedoms guaranteed to the petitioner under Arts. 14, 19 and 31 of the Constitution.

The Bombay Agricultural Produce Markets Act 22 of 1939 was enacted by the Provincial Legislature of Bombay and rules were framed thereunder. By a notification issued under the Act, the whole area within a radius of 12 miles of Ahmedabad City was declared in respect of certain agricultural produce, a market area for the purpose of that act and a market yard and a market proper were established for transactions in specified commodities. A market committee was established under s. 5 of the act for the Ahmedabad market area. In 1959 a locality known as the Kalupur market was declared a sub market yard for the purposes of the Bombay Act, and traders carrying on business in the Kalupur market yard were required by the market committee to take out licences authorising them to carry on their trade, Certain traders in agricultural produce filed petition No. 129 of 1959 in this court under Art. 32 of the constitution challenging diverse provisions of the act and the rules and bye laws framed thereunder on the plea tha

When the petition in Mohammad Hussain's case was filed the town of Ahmedabad was part of the State of Bombay. Under the Bombay Reorganisation Act 11 of 1960 which became operative as from May 1, 1960 two States - Maharashtra and Gujarat were carved out of the territory of the former state of Bombay and the town of Ahmedabad was included within the state of Gujarat, but Bombay Act 22 of 1939 continued until it was altered to remain applicable by s. 87 of Act 11 of 1960 to the Gujarat region. After the decision of this court in Mohammad Hussain's case the Governor of Gujarat amended in certain matters the act, the rules and the bye-laws framed thereunder in their application to the Gujarat State by Ordinance 1 of 1961. The ordinance was intended to rectify the defects pointed out by this court in Mohammad Hussain's case. Four petitions were then filed under Art. 32 of the constitution challenging the constitutionality of the Amending Ordinance and especially the notification which amended r. 53 [specifying the

Therefore Writ Petitioners Nos. 71 of 1964 and 112 of 1964 were filed by three traders carrying on business at Baroda. The petitioners claimed a declaration that the bye-laws framed by the market committee were void in that they infringed the fundamental rights of the petitioners under Arts. 14 and 19 [1] [g] and also arts. 301 and 304 of the Constitution and that in any event the bye-laws were ultra vires the act and the rules. Those petitions were heard before this court on November 9, 1964

and after arguments were fully heard, the petitioners applied for leave to withdraw the petitioners.

In the meantime on September 25, 1964 the petitioner Jan Mohammad Noor Mohammad Bagban filed this petition for a declaration that the Gujarat Agricultural Produce Market Act 20 of 1964 was illegal ultra vires, unconstitutional and violative of Arts 14, 19 and 31 of the Constitution of India and therefore null and void, that the rules framed thereunder being the Bombay Agricultural produce Market Rules 1941 were also ultra vires, Unconstitutional illegal, null and void, and for a writ of mandamus or a writ in the nature of mandamus, direction or a writ in the nature of mandamus, direction or order forbidding the State of Gujarat from unfrozen any of the provisions of the act and the Rules. Numerous grounds were set up in the petition, but counsel for the petitioner restricted his arguments at the hearing to the following only:

- 1] that the powers conferred by ss. 5 and 6 of the act were unfettered, wide and unguided and on that account the fundamental rights of the petitioner were infringed;
- 2] that retail sales which were not regulated by the provision of the earlier act were sought to be regulated by the Gujarat Act 20, 1964.
- 3] that retail trade was completely prohibited by the act and the prohibition amounted to an unreasonable restriction upon the fundamental rights of the petitioner;
- 4] that s. 30 of the act gave wide powers to evict a person carrying on business without a licence from the market area;
- 5] that s. 27 [2] not having provided the maximum licence fee chargeable was illegal;
- 6] that the market committee had no power to function it was not constituted according to law. The period of office of the old committee which was to function for three years under Bombay Act 22 of 1939 had expired in 1961, but the committee continued to function and no fresh elections were held; and
- 7] that the rules pursuant to which the market committee was constituted and functioned not having been placed before the legislature in the first meeting after the rules were promulgated under the Bombay Agricultural Produce Market Act, 1939, as required by that act. The rules were unauthorised and there was complete absence of machinery for enforcement of the Act.

Counsel submitted that the petitioner fundamental right under Arts. 14, 19 and 31 of the Constitution were infringed by enactment of the Act and the promulgation of the rules and bye-laws and the exercise of the authority by the State of Gujarat and the market committee pursuant thereto. It may at once be observed that the president of India having declared in the month of December 1962 a state of emergency in exercise of the powers reserved under the Constitution, the right to enforce the fundamental rights guaranteed, under art. 19 of the Constitution remains suspended by virtue of art 358 for the duration of the period of the emergency. On this ground alone, a large majority of the contentions raised by counsel for the petitioner may fail. But we have heard full arguments on the petition and as the petitioner has attempted to urge that by the act and the rules and the Bye-laws the guaranteed freedoms under arts. 14 and 31 are also infringed, we propose to decide this petition on the merits, part from the

We may usefully refer in the first instance to certain provisions of the Act which are material for the

purpose of this petition. The act is enacted to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat. Section 2 defines various expressions in the Act. Agricultural produce is defined as meaning all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule, [Cl. [i] Licence means a licence granted under s. 6, or, as the case may be a general or special licence granted under s. 27 [cl. [ix]] market means a market declared or deemed to be declared under the act, [cl. [xii]] market area means any area declared or deemed to be declared to be a market area under the act, [cl. xiii] market committee means a market committee established or deemed to be established under the act, [cl. [xiv]] : market proper means any area declared

[cl. [xvii]; retail sale means a sale of any agricultural produce not exceeding such quantity as a market committee may by bye-law determine to be a retail sale in respect of such agricultural produce, [cl. [xviii]] and trader means any person, who carries on the business of buying or selling of agricultural produce or of processing agricultural produce for sale [c] [xxiii]; section 5 authorises the Director [appointed by the State Government] to declare his intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified therein. Section 6 authorises the Director to declare an area specified in the notification as market area. It provides that after the expiry of the period specified in the notifications issued under s. 5 and after considering the objections and suggestions received before its expiry and holding such inquiry as may be necessary, the Director may, by notification in the Officer Gazette declare the area specified in the notification or any portio

This Court in *M. C. V. S. Arunachala Nadar etc. v. The State of Madras and Ors* was called upon to deal with the validity of the Madras Commercial Crops Market Act 20 of 1933. In that case certain traders had challenged the validity of Madras Act 20 of 1933 on the ground that the provision of the Act imposed unreasonable restrictions upon their right to do business, and the court on an exhaustive review of the provisions of the act held that the provision which imposed liability to take out a licence for carrying on trade in commercial crops and the restrictions relating to the place where the business may be carried on were reasonable and did not infringe the right guaranteed by Art. 19 [1] [g] of the Constitution. In *Mohammad Hussain's* case this court held following the judgment in *Arunachala Madras* case that the impugned provision viz. ss. 4, 4A, 5, 5A and 5AA of the Bombay Agricultural Produce Markets Act 22 of 1939 were not unconstitutional. It was pointed out by this court that the provisions impugned i

Section 5 of the Gujarat Act authorises the Director to declare his intention to regulate purchase and sale of agricultural produce in a specified area after inviting objections or suggestions from the local authorities functioning in the area, and from other persons. By s. 6 of the Director after considering the objections and suggestion received within the period specified in the notification is authorised to declare the area or part thereof a market area for the purposes of the act in respect of all or any of kinds of produce specified in the notification. The object of the act being to ameliorate the condition of agriculturists and to do away with the middlemen, who, it is a matter of common knowledge, make large and unconscionable profits out of the transactions carried out through them, declaration of intention to regulate trade in agricultural produce in a specified area, after hearing the objections and suggestions of interested [parties, cannot be regarded as imposing unreasonable restrictions on th

The argument that the authority conferred upon the Director is wide and arbitrary, because no principles are indicated for guidance has no force. The Director is appointed by the state

Government to exercise such powers and perform such functions and duties as are conferred or imposed on him by or under the Act, and the exercise of the powers and the performance of the duties is for the purpose of regulating the purchase and sale of agricultural produce and thereby doing away with malpractices in the trade. The preamble to the act and the scheme of the act clearly indicate that the powers conferred upon the Director are to be exercised for the purpose of regulating buying and selling of agricultural produce and for that purpose to establish markets for sale and purchase of agricultural produce. The powers under s. 6 are to be exercised after giving an opportunity to persons interested to raise objections or to make suggestion to the proposed introduction of control on sale and purchase of agricultural produce

It was urged on behalf of the petitioner that in Mohammad Hussain's case this court had upheld the validity of provisions in the Bombay Act 22 of 1939 analogous to ss. 5 and 6 of the Gujarat Act only on the ground that by the Bombay act retail trade was not intended to be controlled, whereas under the Gujarat Act authority is given to control the retail trade also, and on that account the provisions of ss. 5 and 6 would be regarded as infringing the fundamental right to carry on trade and business. The question whether by the provisions of the act and the rules framed thereunder the legislature has attempted to impose restrictions upon retail trade in agricultural produce will be presently considered when we deal with the second and the third contentions advanced by the petitioner. But assuming that such a power is conferred, we fail to appreciate how solely on that account it can be said that the provisions of the Act infringe Art. 19 [1] [g] of constitution or may be regarded as conferring an arbitrary aut

It was urged by counsel for the petitioner that whereas retail sales were not regulated by the provisions of the Bombay Act 22 of 1939, those sales were sought to be regulated by the Gujarat Act, and as a result of the provisions enacted in that act retail trade was completely prohibited. It was urged that there was no provision for licensing retail trade in agricultural produce and in view of the prohibition contained in s. 6 [2] an unreasonable restriction was placed upon the right of the petitioner to carry on retail trade in agricultural produce. Section 6 [2] expressly provides that no place in any market area shall be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provision of the Act, and by sub-s. [3] it is provided that nothing in sub-s. [2] shall apply to the purchase or sale so any such agricultural produce, if its producer is himself its seller and the purchaser purchase it for his own private consumption. It may appear at fir

In this connection bye-law 35 [1] [a] of the Agricultural produce Market committee, Ahmedabad also indicates that no retail sales are intended to be regulated. That bye-law states that there will be two classes of licenced trader viz. A class traders and B class traders those holding A class traders licence shall be entitled to buy and/or sell agricultural produce in quantities not below 10 lbs. In the market yard : those holding B class traders licence shall be entitled to purchase agricultural produce in quantities not below 10 labs, in the market yard and to sell in retail to consumers anywhere in the market area. The B class traders licence is manifestly for purchasing agricultural produce.

It was then contended that s. 30 conferred power upon the market committee of summarily evicting from the market any person, if he is found in the market area without holding a valid licence. This, it was urged, made a large inroad upon the fundamental right guaranteed to the citizens to move freely throughout the territory of India, and to reside and settle in any part of the territory in India, and to reside and settle in any part of the territory in India. But s. 30 authorises the eviction from the market any person found to be operating in the market without holding a valid licence. The power of eviction by the market committee is limited to eviction from the precincts of the market. The

provision is apparently enacted for the purpose of imposing an additional penalty against infraction of the prohibition contained in s. 6 [2] Operating in the market area can in the context only mean using a place in the market area for the purchase or sale of agricultural produce specified in the notifications under S.

The Argument that S. 27 [2] does not provide fee in excess of the maximum licence fee may not be charged by the market committee is also without substance. In terms sub-s [2] provides that the licenses may be granted in such forms, for such periods, on such terms and conditions and restrictions as may be prescribed or determined by the bye-law and on payment of fees determined by the market committee within such maxima as may be prescribed. That clearly contemplated fixation of maxima by the rules made under s. 59.

It was then urged that the market committee was not lawfully constituted because no fresh elections had been held after the expiry of three years from September 18, 1958 for which the members of the committee were entitled to hold office under S. 6 [3] of Bombay Act 22 of 1939. Section 64 by the first sub section repeals the Bombay Agricultural Produce Markets Act 22 of 1939 and by the second sub section, notwithstanding the repeal, every market committee established for any market area under any of the Act so repealed shall, notwithstanding anything contained in s. 11 but subject to the other provisions of the Act, be deemed to be a market committee established for the said market area under act and the member thereof holding office immediately before the commencement of the act shall continue to hold office for the period for which they would have held office, had the act not been enacted or until the market committee is duly reconstituted under s. 11 whichever is earlier. A market committee constituted un

It may be noticed that there has been no deliberate refusal to hold elections. The period of the market committee was to end on September 18, 1961 and before that date the Collector of Ahmedabad had taken steps to hold elections to the market committee, but as a petition was pending in this court challenging the vires of the act and elections could not be held. This court declared certain provisions earlier referred to as invalid and an Ordinance had to be issued modifying or validating those provision of the Act. That ordinance was later replaced by The Bombay and Saurashtra Agricultural produce Markets [Gujarat Amendment and Validating Provisions] Act 21 of 1961. The constitutional validity of act 22 of 1939 as amended by Gujarat act 21 of 1961 was again challenged before this court and the elections had further to be postponed. This court upheld the validity of the impugned provisions by judgment dated March 15, 1962: see Mohammadbhai Khudabux Chhipa v. The State of Gujarat Steps were again taken to hold

Finally, the validity of the rules framed under the Bombay Act 22 of 1939 was canvassed. By s. 26[1] of the Bombay Act the State Government was authorised to make rules for the purpose of carrying out the provisions of the Act. It was provided by sub. s. [5] that the rules made under s. 26 shall be laid before each of the Houses of the Provincial legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Houses concur and such rules shall, after notification in the official Gazette, be deemed to have been modified or rescinded accordingly. It was urged by the petitioner that the rules framed under the Bombay act 22 of 1939 were not placed before the Legislative Assembly or the Legislative council at the first session and therefore they had no legal validity. The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no legislature in session, the Legislature having been suspended during

All the contentions raised by counsel for the petitioner must therefore fail and the petition is

dismissed with costs.

Petition dismissed.

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