

State of Madhya Pradesh

Vs

Ranojirao Shinde & Another

Civil Appeals Nos. 1730 and 1731 of 1966

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidialingam, A. N. Grover, K. S. Hegde JJ)

21.03.1968

JUDGMENT

HEGDE, J.-

In these connected appeals by certificates the question that arises for decision is whether the Madhya Pradesh Abolition of Cash Grants Act of 1963 (Act No. XVI of 1963) is ultra vires the provisions of the Constitution. The respondents in these appeals were entitled to receive cash grants from the Government of Madhya Pradesh. The impugned Act abolished such grants but provided for the payment of certain compensation to the grantees. The respondents challenged the vires of the Act before the High Court of Madhya Pradesh in Miscellaneous Petitions Nos. 21 and 22 of 1963, on various grounds. The High Court rejected all the contentions advanced on behalf of the respondents excepting one namely that the Act is ultra vires of Art. 19(1)(f) of the Constitution and is not saved by sub-Art. (5) thereof. After obtaining from the High Court certificates under Art. 133(1)(c) the State of Madhya Pradesh has filed these appeals. The State is challenging the correctness of the decision of the High Court to the extent it went against it. The respondents on their part, in addition to supporting the findings of the High Court which are in their favour, relied also on the other pleas taken by them before the High Court. As we are of the opinion that the impugned Act is either violative of Art. 31(2) or, in the alternative, Art. 19(1)(f) of the Constitution, we have not thought it necessary to go into the other contentions taken on behalf of the respondents.

Before the impugned Act was enacted, the State of Madhya Bharat which forms part of the new State of Madhya Pradesh, purported to abolish the cash grants payable by it by means of an executive order. That order was unsuccessfully challenged by Madhorao Phalke and others before the High Court. But in appeal this Court in *Madhorao Phalke v. State of Madhya Bharat* [[1961] 1 S.C.R. 957.] quashed the order in question, holding that the grants in question were recognised by the kalambandis of 1912 and 1935 issued by the Rulers of Gwalior and those kalambandis are existing laws within the meaning of Art. 372 of the Constitution and consequently the same could not be abrogated by means of an executive order. It may be noted that in that appeal, the appellant challenged the order in question on two grounds, namely - (1) that as his right to receive the cash grant had been statutorily recognised by the State of Gwalior, it was not open to the Government of Madhya Bharat to extinguish that right merely by an executive order, and (2) that that right being property the same could not be divested without payment of compensation under Art. 31 of the Constitution. This Court allowed the appeal on the first ground and consequently it did not deal with the second. After the decision of this Court in that case, the impugned Act was enacted by the Madhya Pradesh legislature on April 5, 1963. It received the assent of the President on July 25, 1963 and was published in the Madhya Pradesh Gazette Extraordinary on August 2, 1963. The Act comes into force on such date as the Government may by notification appoint. Even before that

notification was issued, the petitions from which these appeals arise were instituted in the High Court. We are given to understand that in view of those petitions, the Act has not yet been brought into force.

The long title of the Act says that it is an Act to provide for the discontinuance of cash grants in Madhya Pradesh and to make provisions for other matters connected therewith. It contains twelve sections. Section 1 sets out the short title, extent and commencement of the Act. Section 2 defines some of the expressions found in the Act. Section 3 is the most important section. It purports to abolish certain cash grants. Section 4 provides for statement of claims by the grantees. Section 5 provides the manner of determining the compensation payable. Section 6 prescribes that appeal, revision and review under the Act to be in accordance with Madhya Pradesh Act No. 20 of 1959. Section 7 provides for the determination of disputes as regards the title of any grantee. Section 8 bars the jurisdiction of civil courts to issue an injunction against any person in respect of any proceedings pending before the competent authority under s. 5 which shall have the effect of staying the proceedings. Section 9 prescribes the quantum of compensation payable. Section 10 deals with the mode of payment of compensation. Section 11 empowers the State Government to make rules for carrying out all or any of the purposes of the Act. Section 12 says that if any difficulty arises in giving effect to the provisions of the Act, the State Government may by order make such provisions not inconsistent with purposes of this Act as appears to be necessary or expedient for removing the difficulty.

In these appeals we are mainly concerned with the vires of s. 3 read with the definition of "cash grant" on s. 2(1). If section 3 read with s. 2(1) is held to be ultra vires of the Constitution, then the whole Act falls to the ground as the remaining sections of the Act are merely subsidiary or incidental provisions. Section 3 ["3. Abolition of certain cash grants - (1) Notwithstanding anything contained in any law, custom, usage, sanad or a decree or order of a court or other authority whatsoever, all cash grants shall be discontinued and cease to have effect from the commencement of this Act :

Provided that where the grantee is a person specified in column (1) of the Table below the cash grant may, at the option of the grantee exercised in such manner, within such period and in such form as may be prescribed, be continued subject to the conditions and during the period mentioned in the corresponding entry in column (2) of the said Table.

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TABLE

(1)

(2)

(i) A widow So long as she remains a widow

(ii) A minor

(a) in the case of a male . Till the date he attains 21 years of age.

(b) in the case of a female . Till the date of her marriage or till she attains 21 years of age, whichever is earlier.

(iii) A person above the age of 60 During his life time. Years

(iv) A person subject to physical During his life time. disability or mental infirmity owing to which he is incapable of earning his livelihood

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(2) Upon the discontinuance of a cash grant under sub-section (1), it shall not be obligatory on the grantee to perform the function or discharge the duty, if any attached to such grant".] provides that notwithstanding anything contained in any law, custom, usage, sanad or a decree or order of a court or other authority whatsoever, all cash grants shall be discontinued and cease to have effect from the commencement of this Act. But the proviso thereto makes certain exceptions with which we are not concerned in this case. The case of the respondents falls within the main part. They do not have the benefit of the proviso. A cash grant as defined in s. 2(1) ["2(1) - 'Cash grant' means a grant of money which is enforceable by the grantee against the State Government on the date of the coming into force of this Act but does not include -

(i) a grant of money for -

(a) services of public temples, mosque or church; or (b) worship of public temples, mosque or church; or (c) reading puran in public temples; or (d) performing Kirlan in public temples;

(ii) a grant of money to charitable or religious institutions;

(iii) a grant of money or pension or annuity or special or perpetual annuity sanctioned under -

(a) s. 5 of the Central Provinces and Bearar Revocation of Land Revenue Exemptions Act, 1948 (XXXVII of 1948);

(b) s. 77 or s. 81-A of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act, 1950 (1 of 1951);

(c) s. 41 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (XI of 1952);

(d) the orders relating to Jagirs in Bhopal 'Ihekam Khusravi, 1949, para 30' read with s. 45-A of the Bhopal Abolition of Jagirs and Land Reforms Act, 1953 (No. X of 1953); and

(e) sub-s. (2) of s. 160 of the Madhya Pradesh Land Revenue Code, 1959, (20 of 1959);"] includes a grant of money which is enforceable by the grantee against the State Government on the date of the coming into force of the Act but does not include those grants which are specifically excluded. This definition takes in all the

cash grants whatever may be the nature or origin of those grants. The definition of a cash grant is wide enough to include cash grants sanctioned by ex-Rulers in lieu of Jagirs or other properties resumed or even payments agreed to be made in lieu of loans given to the Rulers. Different considerations may arise if the grants abolished are gratuitous payments, grants in lieu of services to be rendered or other resumable grants. But as mentioned earlier, the definition of cash grants in s. 2(1) does not make any distinction between the various types of cash grants. Hence, the said definition will have to stand or fall as a whole, there being no basis for severing some out of the several grants included therein. It is impermissible for this Court to rewrite that clause and confine the definition only to such of the cash grants which the legislature might be competent to abolish.

The doctrine of severability is applicable only if it is possible to separate the legal from the unconstitutional portion of the provision. If it is not possible to do so, the entire provision has to be struck down as unconstitutional. see *Kamleshwar Prasad v. State of Bihar* [A.I.R. 1962 S.C. 1166].

The High Court has come to the conclusion that a "cash grant" is property within the meaning of that expression in Articles 19(1)(f) and 31. This conclusion was not challenged before us. It is obvious that a right to a sum of money is property.

There was controversy before the High Court whether the abolition of cash grants under the Act can be considered as acquisition under Art. 31(2). It was urged before that Court on behalf of the State that that abolition of cash grant amounted to compulsory acquisition of property for public purpose and as the Act has prescribed the compensation payable to grantees the acquisition in question is completely protected by Art. 31(2). The High Court replied this contention opining that as the law in question cannot be considered as having transferred the rights of the grantees as provided in Art. 31 (2A) the State cannot seek the protection of Art. 31(2). This conclusion is debatable. It is possible to view the discontinuance of the payment of cash grants under s. 3 as a statutory transfer of rights of the grantees to the State. But there is no need to pursue this line of reasoning for reasons to be stated presently. Though the language of Art. 31(2) prima facie comprehends movable properties including choses in action and money there are valid grounds to hold that choses in action and money are outside the reach of Art. 31(2). In the United State of America, opinion is divided among the jurists whether money and choses in action can be acquired in the exercise of the power of eminent domain though the preponderance of opinion appears to be that it is impermissible. But so far as we are concerned, this question is concluded by the decisions of this Court. In *State of Bihar v. Kameshwar Singh* [[1952] S.C.R. 889.] this Court held that under Art. 31(2) of the Constitution, money and choses in action could not be acquired. Mahajan, J. (as he then was), speaking for the majority, after quoting with approval certain passages from Cooley's *Constitutional Limitations*, observed (at pp. 943-44 of the Report):

"It was not necessary to decide in this case whether under the compulsory acquisition power the State has the power to acquire choses in action or money, but it cannot be seriously disputed that such an acquisition amounts to a forced loan and that the desired result can be more appositely obtained in exercise of the police power of the State than of the power of eminent domain or compulsory acquisition of property and that compensation in such a case is the same amount of money that is being taken and in the case of a chose in action the amount of money that it would produce. In this situation it cannot be held that fifty per cent of the outstanding arrears was compensation in any sense of that expression for this acquisition. The true position is

that the State took over all the arrears and decided to refund fifty per cent of them and forfeit the rest. The validity of this acquisition has to be decided independently of the acquisition of the estates. It has no connection with land reform or with any public purpose. It stands on the same footing as other debts due to zamindars or their other movable properties, which it was not the object of the Act to acquire. As already stated, the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within any definition, however wide, of the phrase 'public purpose' and the law therefore to this extent is unconstitutional."

"In the same case, Mukherjea, J. (as he then was) observed :

"Taking money under the right of eminent domain when it must be compensated by money afterwards, could be nothing more or less than a forced loan and it is difficult to say it comes under the head of acquisition or requisitioning of property.... and is embraced within its ordinary connotation."

Chandrasekhar Aiyar J., in that very case held that though money and choses in action are movable property and would prima facie come under the power of compulsory acquisition the power under Art. 31(2) could not be used to support such acquisition "on the ground that generally speaking there would be no public purpose in their acquisition". The majority view in that case was followed by this Court in *Bombay Dyeing and Manufacturing Co. Ltd v. The State of Bombay* [[1958] S.C.R. 1122.]. That case considered the validity of s. 3(1) of the *Bombay Labour Welfare Fund Act* which provided that there should be constituted a fund called the *Bombay Labour Welfare Fund* and notwithstanding anything contained in any other law for the time being in force, the same specified in sub-s. (2) thereof shall be paid into the fund. Section 3(2) provided inter alia :

"The Fund shall consist of :-

(a) all fines realised from the employees;

(b) all unpaid accumulation."

The Court held following the decision of this Court in *State of Bihar v. Kameshwar Singh* [[1952] S.C.R. 889.] that the provision in question is invalid and is not protected by Art. 31(2).

From the above decisions it follows that choses in action and money could not be acquired under Art. 31(2). If it is held that the State by the exercise of its power of eminent domain can acquire choses in action and money belonging to its citizens, by paying a fraction of the money taken as compensation, the fundamental right guaranteed under Art. 19(1)(f) would be deprived of all its contents and that Article will cease to have any meaningful purpose. The power conferred under Art. 31(2) is not a taxing power. That power cannot be utilised for enriching the coffers of the State. It is true that the abolition of the cash grants would augment the resources of the State but that cannot be considered as a public purpose under Art. 31(2). If it is otherwise it would be permissible for the legislatures to enact laws acquiring the public debts due from the State, the annuity deposits returnable by it and provident fund payable by it by providing for the payment of some nominal compensation to the persons whose rights are acquired as the acquisitions in question would augment the resources of the State. But nothing so bad can be said to be within contemplation of Art. 31(2). That article must be construed harmoniously with Art. 19(1)(f). If so construed, it is

obvious that the public purpose contemplated by that Article does include enrichment of the coffers of the State. Further the compensation referred to in Art. 31(2) is, as held by this Court in various decisions, is the just equivalent of the value of the property taken. If for every rupee acquired fifty paises or less is made payable as compensation the violation of Art. 31(2) would be patent and in those circumstances the exercise of the powers by the legislature would be considered as a fraud on its powers and consequently the legislation will be struck down as a colourable piece of legislation.

It is true that in *State of Bihar v. Kameshwar Singh* [[1952] S.C.R. 889.] and in *Bombay Dyeing and Manufacturing Co. Limited v. State of Bombay* [[1958] S.C.R. 1122.], this Court was considering the question of taking of money by the States that was in the hands of others, but in this case we are concerned with the abrogation of the liability of the Government. But we fail to see any difference in principle in these two sets of cases. In the former case the Government was compulsorily taking others' property and in the latter it seeks to appropriate to itself the property of others which is in its hands.

It was next urged that impugned Act, even if it is held not to be protected by Art. 31(2) is still valid under Art. 31(1). The said Article says that no person shall be deprived of his property save by authority of law. A law which authorises the State to deprive a person of his property must be a valid law. It must not violate Art. 19(1)(f) which means that it must satisfy the requirements of Art. 19(5). In *Kavalappara Kottarathi Kochuni v. State of Madras* [[1960] 3 S.C.R. 887.] this Court laid down that the word "law" used by Art. 31(1) indicates its limitations and refers back to Art. 19 and any law made under Art. 31(1) can be sustained only if the restrictions it imposes are reasonable and in the interest of the general public. The Act which empowers the State to appropriate some one else's property for itself solely with a view to augment the resources of the State, cannot be considered as a reasonable restriction in the interest of the general public. That conclusion of ours receives support from the ratio of the decisions of this Court in *State of Bihar v. Kameshwar Singh* [[1952] S.C.R. 889.] and in *Bombay Dyeing and Manufacturing Co. Limited v. State of Bombay* [[1958] S.C.R. 1122.] wherein Venkatarama Aiyar, J. speaking for the Court, observed :

"Assuming that the correct position is what the respondents contend it is that the case falls within Art. 19(1)(f), the question that has still to be determined is whether the impugned Act could be supported under Art. 19(5). There was some discussion before us as to the scope of this provision, the point of the debate being whether the words 'imposing reasonable restriction' would cover a legislation, which not merely regulated the exercise of the rights guaranteed by Art. 19(1)(f) but totally extinguished them, and whether a law like the present one which deprived the owner of his properties could be held to fall within that provision. It was argued that a law authorising the State to seize and destroy diseased cattle, noxious drugs and the like, could not be brought within Art. 19(5) if the word 'restriction' was to be narrowly construed, and that accordingly the power to restrict must be held to include in appropriate cases, the power to prohibit the exercise of the right. That view does find support in the observations of Lord Porter in *Commonwealth of Australia v. Bank of New South Wales* [[1950] A.C. 235.] : but the present legislation cannot be sustained even on the above interpretation of the word "restriction", as s. 3 (1) of the Act deals with moneys and money cannot be likened to diseased cattle or noxious drugs so as to attract the exercise of police power under Art. 19(5). It appears to us that whether we apply Art. 31(2) or Art. 19(5), the impugned Act cannot be upheld and it must be struck down."

If Article 19(5) is interpreted to mean that State can take by authority of law anyone's property for the purpose of increasing its assets or revenues, the guarantee given by Art. 19(1)(f) would become illusory, a proposition to which this Court cannot subscribe.

For the reasons the mentioned above we are unable to uphold the validity of Madhya Pradesh Abolition of Cash Grants Act. These appeals accordingly fail and are dismissed with costs with one set of hearing fee.

Appeals dismissed.##

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