Messrs Virajlal Manilal and Co. and Others

Vs

State of Madhya Pradesh and Others

Civil Appeal No. 2262 of 1966

(J. M. Shelat, V. Bhargava, K. S. Hedge JJ)

25.04.1969

JUDGMENT

SHELAT, J. -

1. This appeal under certificate is directed against the judgment of the High Court of Madhya Pradesh dismissing the writ petition filed by the appellants in that Court.

2. The appellants are a partnership firm carrying on the business of manufacturing and selling Bidis and purchase, stock, transport and consume for that purpose a considerable quantity of Kendu leaves. In 1964, the State Legislature passed the Madhya Pradesh Kendu Patta (Vyapar Viniyaman) Adhiniyam, 29 of 1964 (hereinafter referred to as the Act). The Act received the President's assent on November 23, 1964, and was brought into force on November 28, 1964. The Act inter alia created a State monopoly in the trade of Kendu leaves and under Section 5(1) thereof prohibited anyone, excepting those mentioned therein, either to purchase or transport Kendu leaves. Sub-section (2) of Section 5, however, permitted a grower to transport them within the unit where they grow and a purchaser who has purchased them from the State Government, its authorised officers and agents for manufacturing Bidis or for exporting outside the State to transport them outside such unit under a permit and in accordance with the terms and conditions thereof. By virtue of Section 19 the State Government framed rules called the Madhya Pradesh Kendu Patta (Vyapar Viniyaman) Niyamavali, 1965 (referred to hereinafter as the rules). Rule 9 of the said rules provided for an application for a transport permit in Form M and the issuance of such permit in Form N. The appellants accordingly applied for and obtained permits authorising them to transport Kendu leaves purchased by them from the various forest units to their godowns situate outside those units. In the course of their business the appellants transport the said leaves first from the said units to their warehouses, from there to their branches and thereafter distribute them and tobacco to their sattedars, who are independent contractors, and who in their turn distribute the said leaves and tobacco to various mazdoors living in different villages for rolling the Bidis. According to the practice of the appellants, the said sattedars enter into contracts with them under which the appellants supply to them the said leaves and the tobacco and the sattedars deliver to the appellants Bidis rolled by the mazdoors in proportion to the quantity of the leaves and tobacco supplied to them. On June 4, 1965, the Divisional Forest Officer issued an order which forbade altogether movement of old Kendu leaves and as regards new leaves provided that their movement from one village to another had to be covered by a permit. It also provided that permits would be necessary for bulk transport from warehouses to branches and from there to sattedars, and that such permits would be issued by range assistants and range officers on receipt of applications therefor. The appellants thereupon made a representation to the Divisional Forest Officer mentioning the several difficulties which would result from the said order and the said officer, by his order, dated June 8,

1965, in partial modification of his said order, permitted branch managers of Bidi manufacturing firms themselves to issue transport permits to sattedars. Finding, however, that instead of distributing the said leaves to the sattedars, the branch managers were issuing permits for bulk transport, the said officer on October 12, 1965, rescinded his order of June 8, 1965. The result was that the appellants were required to obtain permits for moving the Kendu leaves from their branch offices to the sattedars. The appellants thereafter filed the said writ petition in the High Court claiming that under Section 5 and the said rules they were required to obtain permits only when moving the leaves purchased by them from units where they were grown to their warehouses and that once they were so moved to the warehouses there could be no restriction in their further movement from the warehouses to their branches and from there to their sattedars and the mazdoors. The appellants claimed a writ in the nature of mandamus for setting aside the said orders, dated June 4, 1965, and October 12, 1965, and also for striking down Section 5 if it was construed as prohibiting, except under permit, movement of the said leaves from their warehouses to the branches and from thence to the sattedars, and the mazdoors. The State Government, on the other hand, claimed that the restrictions against transport of the leaves were justified under Section 5 and the rules and were valid. The High Court held that on a proper construction of Section 5(2)(b) a permit was necessary for transport of the leaves by a purchaser not only when he move them from the units where they were purchased to a place outside but also when he moved them from one place to another outside the said unit, that Section 5(1), being a provision creating the State monopoly in the trade of Kendu leaves, was protected by the latter part of Article 19(6) of the Constitution, that the restriction imposed by Section 5(1) on transport was valid and that sub-section (2) being merely a relaxation against the said prohibition was valid. It further held that the restrictions on transport of Kendu leaves before and after the sale thereof by Government was an integral part of the trade monopoly intended to prevent surreptitious sales of Kendu leaves by persons other than Government, their officers and agents, that it was necessary to control the movement of the said leaves to prevent purchasers from surreptitiously purchasing and transporting them under cover of leaves purchased from Government by mixing the contraband with those lawfully purchased and that such control was basically and essentially necessary for creating the said monopoly. In the result, the High Court held that the said restrictions with regard to purchase as also transport were valid and the challenge against Section 5 and the said rules was not sustainable.

3. Counsel for the appellants raised the following contentions : (1) that Section 5(2)(b) should be construed, though it is couched in wide language, to mean that it prohibits without permit movement of tendu leaves from the units where they are purchased to the warehouses of the purchaser outside such units, that that restriction alone was necessary for effectively implementing the State's monopoly in tendu leaves, and that once they were purchased and property in them had passed to the purchaser and the leaves were brought to his warehouse there could no longer be any necessity to restrict their movement from the stage of warehousing them to the stage of their consumption in manufacturing the bidis; (2) that neither Section 5(2)(b) nor the rules authorise restrictions on the movement of these leaves once they were brought under a permit to the warehouse, and therefore, the order, dated June 4, 1965, requiring the purchaser to obtain permits for transporting them from his warehouse to his branch and from there to the sattedars and the mazdoors was ultra vires the section and the rules; (3) that the restrictions as to transport were ancillary to and were for the effective enforcement of the trade monopoly and not an essential or integral part of the scheme of that monopoly, that they were, therefore, not protected by the latter part of Article 19(6), or Article 304(b), and have, therefore, to pass the test of reasonableness; and (4) that, if Section 5 were to be literally construed so as to mean that it authorises the restriction on movement after the leaves were warehoused requiring permits for their transport from stage to stage

until they reached the mazdoors, the entire system of permits would become unworkable and the restrictions would have to be held as unreasonable; that such a construction rendering Section 5 and the rules unconstitutional on the ground of being violative of Article 19(1)(f) and (g) and Articles 301 and 304 could not have been intended by the Legislature. Counsel for the State, on the other hand, maintained that the language of Section 5 was clear and unambiguous, that it forbade without permit transport at any stage right up to the stage of manufacture of the Bidis and that those restrictions were the essential part of the scheme of the State monopoly and therefore were protected by the latter part of Article 19(6); and further that even if they were not, they were reasonable restrictions and therefore permissible.

4. In support of their rival contentions counsel drew our attention to the various forms provided in the rules as also to Rule 4 of the new rules, dated February 14, 1966, which repealed the rules of 1965. We may, however, make it clear that the parties in the present appeal are governed by the rules of 1965, and therefore, anything that we say here would not govern either the construction or the effect of the new rules.

5. In examining the correctness of the contentions urged before us the first task is to ascertain what exactly the Legislature intended to do while enacting Section 5. The long title of the Act clearly says that it was passed for regulating trade in Kendu leaves in the public interest by creating the State monopoly in that trade, that is to say, in the purchase and sale of kendu leaves by the State alone and not for creating a monopoly in their transport. To that end the Act empowers Government to divide the specified area or areas to which the Act is applied into units and to appoint agents for different units, and gives a monopoly to Government, its authorised officers and agents to purchase these leaves from the growers at prices fixed by it and makes other provisions to achieve the said object. Under Section 5(1), from the date when the Act is brought into force in area or areas as may be notified, no person, except the Government, its authorised officer or agent in respect of the unit where these leaves are grown can purchase or transport them. Sub-section (1), thus, imposes a total ban against purchase, sale and transport of Kendu leaves except by the three categories of persons mentioned therein. Under Sections 7, 8 and 9, the Government has to fix the purchase price in consultation with an advisory committee appointed therefor and open depots where the growers would sell their leaves to it or to its authorised officers or agents at prices fixed as aforesaid. Though Section 5(1) clamps a ban against purchase except by those mentioned therein, Explanation 1 permits purchases from Government, its authorised officers and agents and such purchases are deemed not to be in contravention of the Act. Notwithstanding the ban against transport under sub-section (1), sub-section (2) permits two categories of persons to transport the said leaves; (a) a grower is allowed to move his leaves from one place to another within the unit where they are grown, and (b) a person who has purchased the leaves as aforesaid either for manufacturing bidis within the State or for their export outside the state is allowed to transport under a permit leaves so purchased from out of the unit where he has purchased in accordance with the terms and conditions thereof. The first exception is made to enable the grower to sell his leaves to Government and the second is made to enable the purchaser to utilise the leaves for the two purposes for which he has purchased them.

6. Under the rules, an exporter means a persons who sells Kendu leaves to one having business outside the State or who exports them for the manufacture by him of Bidis outside the State. A manufacturer of Bidis includes a person manufacturing them through mazdoors by advancing to them these leaves or tobacco or both. Rules 4 and 6 provide for registration of growers, manufacturers and exporters, and Rule 7 provides for the sale of leaves purchased under Section 5(1) by Government, its officers and agents. Under Rule 6 a manufacturer and an exporter has to

maintain accounts of his stock and submit periodical returns thereof in Forms H and I showing amongst other things the balance of stock at the date when the last return was made, the stock added and the manner of its disposal including the stock consumed, sold or rendered useless and destroyed. Rule 8 provides for a certificate of sale to be issued to the purchaser, by Government, its authorised officer and agent. Under Rule 9 an application for a transport permit is to be made in Form M and the permit issued must be in Form N. Form M provides for giving particulars such as the quantity of leaves purchased, the unit or units where they are purchased, the place or places where they are stored, the destination to which they are to be transported and the place or places where such transported leaves are to be stored. Similar particulars are to be mentioned in the permit as stated in Form N.

7. These elaborate provisions in conjunction with the provisions of Section 5 indicate the extreme jealousy of the draftsman not to leave any loopholes in the net-work of control enabling anyone to possess these leaves by illegitimate acquisition or their being smuggled out in violation of these provisions from out of the units where they are grown or from the place where they are warehoused after their purchase. It is clear from Section 5(2)(b), the rule and the said forms that the intention underlying them all is to prohibit, except under permit, the movement of leaves from the units where they are purchased to any place outside either for storing them or for their consumption in the manufacture of Bidis or for exporting them outside the State. The elaborate treatment and the clarity of the language of these provisions makes the argument, that they were intended to restrict only the movement from the purchasing unit to the place of storage and that the leaves would be free for subsequent movement, impossible. The first limb of Mr. Sen's argument consequently cannot be upheld.

8. Such a construction, however, raises the question as to the constitutional sustainability of Section 5 and Rule 9 which are the provisions seriously challenged before us. An identical question challenging the validity of Sections 3 and 4 of the Orissa Kendu Leaves (Control and Trade) Act, 28 of 1961, an Act almost similar in terms to the one before us, and the scope of the amended Clause 6 of Article 19 came up before this Court in Akadasi Padban v. State of Orissa. (1963 Supp 2 SCR 691). Dealing with Clause 6 of Article 19 and its impact on clauses (f) and (g) of Article 19(1) this Court laid down at page 707 of the report as follows :

> "In dealing with the question about the precise denotation of the clause "a law relating to", it is necessary to bear in mind that this clause occurs in Article 19(6) which is, in a sense, an exception to the main provision of Article 19(1)(g). Laws protected by Article 19(6) are regarded as valid even though they impinge upon the fundamental right guaranteed under Article 19(1)(g). That is the effect of the scheme contained in Article 19(1), read with clauses (2) to (6) of the said article. That being so, it would be unreasonable to place upon the relevant clause an unduly wide and liberal construction. "A law relating to" a State monopoly cannot in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the said part and their validity must be judged under the first part of

> Article 19(6). In other words, the effect of the amendment made in Article 19(6) is to protect the law relating to the creation of monopoly and that means that it is only the provisions of the law which are integrally and essentially connected with the creation of the monopoly that are protected. The rest of the provisions which may be incidental do not fall under the latter part of Article 19(6) and would inevitably have to satisfy the test of the first part of Article 19(6)."

In that case Sections 3 and 4 of the Orissa Act were challenged on the ground that the monopolistic rights to purchase Kendu leaves under Section 3 and the right to fix purchase price of those leaves conferred by the two section impinged upon the right of the petitioners there under article 19(1)(f) and (g) and that the restrictions imposed by them were unreasonable and were not saved either under Clause 5 or Clause 6 of Article 19. The Court held that whereas the exclusive right of purchase conferred by Section 3 was an essential part of the trade monopoly which could validly be created under the latter part of Clause 6 and was therefore beyond the challenge of reasonableness of restrictions which it imposed, the exclusive right to fix the prices conferred by Section 4 was not, though it may be that such a power was necessary to effectually enforce the trade monopoly under Section 3. Therefore, though the latter did not have to pass the test of reasonableness, the former had to under Clause 5 and the first part of Clause 6, as it imposed a restriction not only on the right under clause (g) but also under clause (f). However, on examining the right of the State to fix the prices, the Court came to the conclusion that the restriction imposed by Section 4 on the growers of Kendu leaves was not only in their own interest but also reasonable and rejected the challenge of unconstitutionality of both Sections 3 and 4. As already stated, the challenge to Section 3, which provided the exclusive right to purchase and transport was confined only to the exclusive right of the State to purchase Kendu leaves. No question was raised regarding the exclusive right of transport under Section 3 which prohibited others, save the State, its authorised officers and agents, from transporting the leaves from one place to another, and therefore, the Court did not express any opinion as regards that part of Section 3. That question, therefore, is not concluded by that decision and is open for determination.

9. The impugned Section 5 raises in relation to the problem of transport two questions : (1) whether the restrictions are an integral part of the trade monopoly it seeks to create, and therefore, free from any challenge as to their reasonableness under the latter part of Article 19(6), and (2) as regards its interpretation and scope. It may be recalled that in the Orissa case the Court declined to treat Section 4 of that Act which conferred the exclusive right to fix the prices on the State as an integral and organic part of the trade monopoly in Kendu leaves but treated it only as effectively abetting its implementation. Can an embargo on transport by anyone, save those mentioned in clauses (a), (b) and (c) of Section 5(1) and the manufacturers of Bidis and exporters of these leaves under the permit, be regarded as an integral and organic part of the trade monopoly in them, i.e., a monopoly in purchasing and selling them in such area or areas to which the Act is applied ? It may be as stated in the State's counter-affidavit that the trade monopoly can be affectively implemented only if the movement of the leaves is checked and regulated by confining the right of free movement to the State and its agents and under permits to the manufacturers of Bidis and the exporters and that if free movement were allowed there would be loopholes which would suffer illegitimate acquisitions and sales in leaves smuggled through the areas where they grow, raising also difficulties in checking the stocks legitimately purchased from Government. If a person were to purchase a quantity of leaves and is allowed to move it freely from the unit where it is purchased to his warehouse outside that unit and from there to other points, it might be easy for such a purchaser to effect illegitimate sales and purchases and yet show at the same time the correct stock when checked by the authorities. It may also be that without the restrictions of movement it would become difficult, if not

impossible, to identify the stock of a manufacturer or an exporter when checked in his warehouse as the one which he had purchased from Government. All this may be true, but is the prohibition or regulation of transport an integral or essential part of the monopoly without which the monopoly which the Act seeks to create cannot come into being.

10. The long title of the Act recites that the Act was enacted for regulating "the trade in Kendu leaves" by creating a State monopoly in such trade. Trade in Kendu leaves would consist of dealing in those leaves, i.e., their purchase and sale. Transport of the leaves once purchased or sold would not prima facie be an organic or integral part of dealing in those leaves. It is something extranuous to dealing in these leaves, something which takes place after the purchase or the sale thereof is completed and property in them has passed from the dealer to the purchaser and therefore does not form part of the trade in that commodity. That being so, the restrictions on their transport contained in Section 5 cannot be held to be the integral part of the trade monopoly but as ancillary or incidental thereto, made for its effective enforcement. If that be so, it affects the right of the purchaser under Article 19(1)(f) to hold and to dispose of the goods he has acquired, a right which is not co-related, as the right under clause (g) is, with the monopoly which the section seeks to create. It follows, therefore, that such a provision would have to pass the test of reasonableness under Clause 5 and the first part of Clause 6 of Article 19. That would also be the position in respect of Article 304(b). But since the requirement of these provisions is the same the yardstick of reasonableness would be common to all these cases. It is well recognised that when an enactment is found to infringe any of the fundamental rights guaranteed under Article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of Clause 5 or Clause 6 of that Article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid. (Cf. Saghir Ahmed v. The State of U. P. (1955 (1) SCR 707), and Khyerbari Tea Co. Ltd. v. The State of Assam. (1964 (5) SCR 975, 1003).

11. That leads us to the next question as to the scope of the embargo on movement imposed by Section 5. If read literally, sub-section (1) places a total ban on any and every person against transporting the leaves, except those only mentioned in clauses (a), (b) and (c) therein. Sub-section (2) also, if read literally, would mean that an exception is made only in the case of (a) a grower who can move his leaves freely but within the unit where they have grown, and (b) a purchaser who has purchased the leaves for manufacturing Bidis within the State or for their export outside the State, but under a permit and in accordance with its terms and conditions. Section 5 read thus, therefore, would mean that except for these two categories of persons, no one can apply for a permit to move the leaves from one place to another as if the Legislature intended that the leaves must remain where they are when purchased. Does it mean that a person who purchases these leaves for purposes other than manufacture of Bidis or export cannot move them even from the unit where he has purchased to his place of residence or business ? That would appear to be so because the provisions for a permit apply only to the manufacturer of Bidis and the exporter and to no other purchaser. That manifestly could not have been the intention of the Legislature, for, the leaves being perishable, they are liable to get destroyed if their movement is totally forbidden. Quite apart from this consideration, a mere literary or mechanical construction would not be appropriate where important questions such as the impact of an exercise of a legislative power on constitutional provisions and safeguards thereunder are concerned. In cases of such a kind, two rules of construction have to be kept in mind : (1) that courts generally lean towards the constitutionality of a legislative measure impugned before them upon the presumption that a Legislature would not deliberately flout a constitutional safeguard or right, and (2) that while construing such an enactment the court must examine the object and the purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning. The object of the Act clearly was to regulate

trade in Kendu leaves in the public interest and for that end to create a State monopoly so that the purchasers of these leaves may not exploit the need and the poverty of small growers and pay the least possible price. The Legislature thought that it was in the public interest to entrust the entire trade to the State who would fix reasonable prices in consultation with an advisory committee and make at the same time compulsory for the State to purchase the entire stock which the growers would offer for sale at those prices. Considering the object of the Act, it cannot be conceived that upon the assumption that such a monopoly was in the public interest the exclusive right of the State to purchase and sell these leaves is unreasonable. But the question as regards their transport is far from easy of solution. It may be that free movement of leaves even after they are sold to merchants would create difficulties in effectively implementing the intended monopoly in their trade or that such free movement would make checking of illegitimate transactions in the leaves difficult. But then it is difficult to conceive of a monopoly in this particular commodity, as in others, without any likely loopholes whatsoever. Can the State, therefore, to plug all such loopholes pass a measure which, according to the appellants, imposes unreasonable restrictions and which results in stultifying their business ? There is a strong school of thought which believes that monopolistic tendencies in economics spell stagnation and that pluralism is as much desirable in economics as in politics and other fields of life. That may or may not be correct, but take the present case as an illustration. According to the appellants, they manufacture as many as 1 1/2 crores of Bidis a day. They have established a net-work of branches in several areas of the State. Wherever they purchase the leaves they have to be moved to their warehouses outside and from there to their branches and then to the sattedars who undertake to have Bidis rolled through mazdoors to whom they in turn distribute tobacco and these leaves supplied to them by the appellants. Even according to the Divisional Forest Officer there were as many as 6 or 7 thousand sattedars in Saugor District alone with whom manufacturers of Bidis had contracts as mentioned above. The number of mazdoors whom these sattedars employ for rolling Bidis would certainly be considerable. We were told that practically every household in villages scattered from one another engages itself in Bidis-rolling labour. It is also conceivable that in some of the households, not only the adults but the minors also would be engaged in this work. If the movement of leaves from stage to stage were to be so regulated as to require permits at each stage it is not difficult to imagine that considerable inconvenience to all engaged in the business of manufacturing Bidis would inevitably ensue. The correspondence on record shows that at one time even the Divisional Forest Officer was of the view that it would be impossible for the staff under him to cope with the work of issuing permits at each stage of the movement of the leaves and therefore permitted the branch managers of the appellants to issue permits when leaves were moved from their branches to the sattedars. That relaxation was, however, cancelled as in his view the branch managers began to move the leaves in bulk contrary to his intention in granting that relaxation.

12. In spite, however, of the inconvenience which such a system might result in, there can, at the same time be little doubt, and even Mr. Sen agreed, that some kind of check on movement is necessary, for, without it the monopoly created by the Act would not effectively function. In our view a permit system which regulates the movement of leaves purchased by a manufacturer of Bidis from the unit where they are purchased to his warehouse, then to the branches and to the sattedars cannot up to that stage be regarded as unreasonable in the light of the object of the Act, the economic conditions prevailing in the State and the mischief which it seeks to cure. At the same time to expect the manufacturer to get permits issued to his sattedars for distribution by them to the innumerable mazdoors of comparatively small quantities of these leaves would be not only unreasonable but frustrating. The various checks imposed under the rules on the manufacturer by way of his having to maintain stock registers, submit periodical returns, the right of inspection of

the authorities, etc. are sufficient to reasonably check transactions contrary to the Act. But, considering the extraordinary inconvenience which would be caused to the manufacturer and balancing that with the mischief feared by the State, we think that when Section 5 was enacted the Legislature could not have intended that the manufacturer should also obtain permits in respect of the leaves distributed to the vast number of mazdoors for rolling the Bidis by the sattedars who are themselves considerable in number. Though, therefore, Section 5 is couched in apparently wide language, the very object of the Act, as disclosed in its long title, contains inherent limitations against an absolute or as strictly regulated a ban as it would at first reading of the section appear.

13. In our view, reading Section 5(2) along with Rule 9 of the said rules, what they are intended to require is that a manufacturer must have a permit to move the leaves purchased by him from the unit or units where he has purchased them to his warehouse outside and from there to his branches and also when he transports them to his sattedars. But, no such permit was intended to be necessary when the leaves are distributed for the manufacture of Bidis by these sattedars to the mazdoors whom he employs. A construction so limited in its sweep is commendable as it is consistent with the object of the Act and is also in harmony with Clauses 5 and 6 of Article 19(1) and clause (b) of Article 304. Regarding the ban against movement of old leaves contained in the order, dated June 4, 1965, there can be no difficulty as it is conceded that old leaves in the context mean those which were in stock when these rules came into force and not the balance of leaves left unconsumed from year to year. So construed, the restrictions against free transport cannot be held to be unreasonable and the validity of Section 5 and Rule 9 as also the order of June 4, 1965, except to the extent of its requiring a permit for distribution to the mazdoors, cannot be successfully challenged. So far as the order, dated October 12, 1965, is concerned, it was a mere cancellation of a concession and such cancellation cannot be challenged as a restriction, much less as an unreasonable restriction.

14. In the result, subject to the observations herein above made, the appeal is dismissed, but in the circumstances of the case we make no order as to costs.

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