

Chinta Lingam and Others

Vs

Government of India and Others

And

M/s. Guggila Ramaiah Etc.

Vs

The Union of India and Others Etc.

Writ Petition No. 212 of 1969 and C.As. Nos. 1802 to 1805 of 1969

(A. N. Ray, J. C. Shah, K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

30.11.1970

JUDGMENT

GROVER, J. -

1. The points involved in the writ petition and the appeals by special leave relate to the constitutionality and validity of the provisions of three Control Orders issued under Section 3(2)(d) of the Essential Commodities Act, 1955 (Act 10 of 1955), hereinafter called the "Act". The validity of Section 3(2)(d) of the Act itself has also been assailed.

The Control Orders which were promulgated under Section 3(2)(d) of the Act were the following :

- (i) The Rice (Southern Zone) Movement Control Order, 1957;
- (ii) The Southern States (Regulation of Exports of Rice) Order, 1964; and
- (iii) The Andhra Pradesh Rice and Paddy (Restriction of Movement) Order, 1965.

In the appeals the appellants had moved the High Court of Andhra Pradesh under Article 226 of the Constitution. There the petitions were dealers in rice and rice products such as puffed, parched and beaten rice (beaten rice is known as 'Powa' while, parched and puffed rice is known as 'Murmura'). Some of the petitioners had applied for permits to export Powa, Murmura and Idli rava from the State of Andhra Pradesh to other States while others had applied for permits to transport one or other of the rice products to some places within Andhra Pradesh. The applications for permits were either rejected or were not disposed of by the authorities concerned. In the writ petitions the High Court examined all the contentions raised exhaustively and repelled the attack on the constitutionality of Section 3(2)(d) of the Act as also the relevant clauses of the Control Orders.

Section 3 of the Act provides :

"(1) If the Central Government is of opinion that it is necessary of expedient so to do

for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may provide -

#(a).....(b).....(c).....##

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;"

The 1957 Control Order extends to the State of Andhra Pradesh, Kerala, Madras, Mysore and Pondicherry which has been called the Southern Zone. According to clause 3(1) no person can export or attempt to export or abet the export of rice from any place within the Southern Zone except under the in accordance with a permit issued by the State Government concerned or any officer authorised in this behalf by that Government subject to the condition that such export shall be regulated in accordance with the export quotas fixed by the Central Government. Now this Control Order made a division into Southern Zone or regions in the matter of export of rice. By the Control Order of 1964 the Southern Zone or regions were further divided into four specified areas, i.e., States of Andhra Pradesh, Kerala, Madras and Mysore. Clause 3 of this Order prohibited the export by any person of rice from any place within a specified area to a place outside that area except under and in accordance with the permit issued by the State Government or an officer authorised by that Government in that behalf. The rice was defined by clause 2(b) to include broken rice and paddy as also broken rice and paddy products other than bran and husk. The Control Order of 1965 imposed further restrictions on the movement of rice and paddy. By Clause 3 restrictions were placed on the movement of these commodities from any place in any block to any place outside that block even within the State of Andhra Pradesh.

2. Mrs. Shyamala Pappu on behalf of the writ petitioners and the appellants before us made an attempt to raise the following contentions in respect of the Control Orders :

- (1) All the three Control Order offended Article 303 of the Constitution. They suffered from the vice of discrimination between one State and another and of preference to one State over another.
- (2) These orders were in the nature of executive instructions and did not fall within the meaning of subordinate legislation.
- (3) Even if the Control Orders could be regarded as subordinate legislation they were not saved by Article 303(2) in the absence of the declaration contemplated thereby.
- (4) The requisite opinion of the Central Government within Section 3(1) of the Act was not to be found in any of the Orders.
- (5) The Control Orders imposed unreasonable restrictions on the right of the petitioners to carry on trade as arbitrary powers had been conferred in the matter of issuing or withholding permits and there were no provisions for appeal or revision

against refusal to grant a permit.

Article 301 in Part XIII of the Constitution declares that subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free. Under Article 302 Parliament may by law impose such restrictions on freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Article 303 reads :

"(1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India."

3. Now the Control Orders were made under Section 3 of the Act. The object essentially was not regulate the export and movement of rice and of rice and paddy products from the Southern States. These Control Orders were laid before both Houses of Parliament as required by subsection (6) of Section 3 of the Act. It has not been shown how this form of legislation would be mere executive instruction and would not constitute law made by Parliament within the meaning of Article 302. No foundation was laid in the pleadings either before the High Court or in the writ petition before us as to how the restrictions which were imposed by the Control Orders were not in the public interest. It is significant that even on the point of preference to one State over another or discrimination between one State and another State there is complete absence of pleading in the writ petition filed before us. The High Court adverted to the matter but we have not been shown that any proper or firm foundation was laid in the writ petitions before the High Court on the question of preference or discrimination within Article 303(1). No argument, therefore, can be entertained on these matters. We are unable to see the necessity of reciting the requisite opinion within sub-section 3(1) of the Act in the Control Orders. It is implicit in the recital in the Control Orders that they were being made under Section 3 of the Act that the Central Government had formed the requisite opinion within sub-section (1) of that section. This disposes of the first four contentions.

4. As regards the 5th point it is noteworthy that the permit is to be issued by the State Government concerned or any officer authorised in this behalf by that Government. It is common ground that the offices authorised by the State Government are the District Collector and the Deputy Commissioner of Civil Supplies. These officers cannot but be regarded as fairly high in rank who are expected to discharge their duties in a responsible and reasonable manner. In *Messrs. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh and two Others*, ((1954) SCR 803 : AIR 1954 SC 224 : 1954 SCJ 238) in which the provisions of Clause 14(3) of the U.P. Coal Control Order, 1953, which gave the licensing authority absolute power to grant or refuse to grant any licence were struck down on the ground that a law which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities must be held to be unreasonable. There the power could be exercised by any person to whom the State Coal Controller might choose to delegate the same. The matter which has been stressed before us relates generally to

the absence of any provision relating to appeal or revision in the Control Orders if the District Collector or the Deputy Commissioner of Civil Supplies refuses to grant a permit under Clause 3 of the Order. In Dwarka Prasad's case (supra) the delegation could be made to any one which was certainly a relevant factor in judging the reasonableness of the impugned provision. But in the case before us the permit is to be granted either by the State Government or by responsible officers of the rank of the District Collector or the Deputy Commissioner of Civil Supplies. Indeed, Mrs. Pappu quite properly agreed that if the State Government alone had the power to issue the permits the challenge on the ground of unreasonableness of the restrictions would not be available. We consider that there is no bar to any of the aggrieved parties approaching the State Government by means of a representation for a final decision even if the matter had been dealt with the District Collector or the Deputy Commissioner of Civil Supplies in the first instance and the permit has been refused or wrongly withheld by those officers. In these circumstances the absence of a provision for appeal or revision can be of no consequence. At any rate it has been pointed out in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment; (See *K. L. Gupta v. The Bombay Municipal Corporation and Others*). ((1968) 1 SCR 274 at p. 297 : AIR 1968 SC 303) It may also be remembered that emphasis was laid in *Pannalal Binjraj v. Union of India*, ((1957) SCR 233 at p. 257 : AIR 1957 SC 397) on the power being vested not in any minor official but in top-ranking authority. It was said that though the power was discretionary but it was not necessarily discriminatory and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law.

5. Lastly an effort was made to agitate the point that Section 3(2)(d) of the Act suffers from the vice of excessive delegation. This question is no longer at large. In *The Union of India and Others v. Messrs. Bhana Mal Gulzari Mal and Others*, ((1960) 2 SCR 627 : AIR 1960 SC 475 : 1960 SCJ 584) the attack on Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 which was similar in terms to Section 3 of the Act on the ground of excessive delegation was repelled. It was held that the Central Government had been given sufficient and proper guidance for exercising its powers in effectuating the policy of the statute.

6. In the result the writ petition and the appeals fail and they are dismissed with costs. One set of hearing fee.

</html