

The State of M. P. and Others

Vs

M/S. Chhotabhai Jethabhai Patel and Co. and Another

Civil Appeal No. 684 of 1968

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, I.D. Dua, H.R. Khanna JJ)

10.12.1971

JUDGMENT

MITTER, J. -

1. This is an appeal from a judgment of the Madhya Pradesh High Court quashing the proceedings initiated on the complaint filed by the Divisional Forest Officer, Saugor in the Court of the Magistrate of the First Class, Saugor for imposition of a penalty on the respondents.
2. The matter arises thus. Chhotabhai Jethabhai Patel, a partnership firm of which the second respondent, Jhaverbhai Bhulabhai Patel is a partner, carried on business on a fairly large scale as manufacturers of bidis at various places in the State of Madhya Pradesh including Saugor. Being unable to secure sufficient quantities of tendu leaves grown in the forest units in the State, the firm took leases for the collection of such leaves in the States of Bihar and Maharashtra. They actually imported tendu leaves under two railway consignments from Bihar to Saugor. They informed the Divisional Forest Officer about the same had asked for permission for transport of the leaves and to until the said leaves for manufacture of bidis in their factories. By letter, dated July 27, 1965, the said Forest Officer intimated the firm that the imported leaves were not to be moved for bidi manufacture until permission was accorded for so doing. The respondents' grievance was that notwithstanding the above communication and in spite of the fact that they had not moved the imported leaves from their godowns, the Sub-Divisional Forest Officer, Saugor seized two quantities of such leaves of 9,007 bags imported from Garwah Road, Bihar and 256 bags of tendu leaves imported from Bindoumaganj, Bihar and followed the same up by filing a complaint alleging contravention of Section 5 of the Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, hereinafter referred to as the Act. The respondents filed a petition under Article 226 of the Constitution before the High Court for the issue of a writ of certiorari quashing the complaint. The contention of the respondents (importers of the leaves) before the High Court was that the Act did not prohibit the import of tendu leaves from places outside the State nor was there any restriction on a manufacturer importing such leaves with the express object of consumption of the same in his factory for the manufacture of bidis and in any event the Act or the rules made thereunder did not purport to regulate the transport of tendu leaves imported from places outside the State.
3. On behalf of the State it was contended that support of tendu leaves whether grown in the State or outside the State was completely prohibited by Section 5(2) of the Act and regulation and control of transport of such imported leaves was necessary for the successful working of the State monopoly in the trade of tendu leaves envisaged by the Act. Further the Act did not prohibit the import of tendu leaves and was not therefore violative of Articles 31, 301 and 304 of the Constitution and the control of movement of tendu leaves after their import from another State was in no way repugnant

to Articles 301 and 304.

4. The High Court rejected the contentions of the State. Hence the appeal.

5. In order to find out whether the action of the Forest Officer was justified, we have to take into the relevant provisions of the Act and the rules framed thereunder. The Act as its preamble shows is one to make provision for regulating in the public interest the trade of tendu leaves by creation of State monopoly in such trade. By Section 1(2) it was to extend to the whole of the State and under sub-section (3) of Section 1 it was to come into force in such area or areas and no such date or dates as the State Government may, by notification, specify. The broad scheme of the Act appears to be as follows. Under Section 3 the State Government was empowered to divide every specified area defined in clause (h) of Section 2 into such number of units as it may deem fit. Section 4 empowered the State Government to appoint agents in respect of different units for the purpose of purchase of and trade in tendu leaves on its behalf. Under Section 5(1) :

"On the issue of a notification under sub-section (3) of Section 1 in any area, no person other than, -

(a) the State Government;

(b) an officer of State Government authorised in writing in that behalf; or

(c) an agent in respect of the unit in which the leaves have grown;

shall purchase or transport tendu leaves."

The two Explanations to this sub-section show that purchase of tendu leaves from the State Government or its officers or agents was not to be deemed to be a purchase in contravention of the Act and a person having no interest in a holding but acquiring the right to collect tendu leaves grown on such holding was to be deemed to have purchased such leaves in contravention of the Act. Sub-section (2) of the section allowed a grower of tendu leaves to transport them from any place within the unit wherein such leaves had grown to any other place in that unit and tendu leaves purchased from the State Government or any officer or agent of the Government by any person for manufacture of bidis within the State or by any person for sale outside the State could be transported by such person in accordance with the terms and conditions of a permit to be issued in that behalf. Section 7 empowered the State Government to fix prices at which tendu leaves were to be purchased by it or its agent and under Section 9 the State Government or their authorised officer or agent was to be bound to purchase at the price fixed under Section 7 leaves offered for sale at the depot, subject to the right of rejection of such leaves as were not fit for the manufacture of bidis. Under Section 11 all manufacturers of bidis and all exporters of tendu leaves had to get themselves registered in such manner as might be prescribed. Section 12 enabled the State Government to sell or dispose of tendu leaves purchased by it or its agent as therein prescribed. Under Section 15 any person contravening any of the provisions of the Act or of rules thereunder was liable of punishment, both with imprisonment and fine and tendu leaves in respect of which such contravention took place were liable to forfeiture by Government. Section 19 gave the Government power to make rules to carry out the provisions of the Act.

6. Rule 4 framed under the Act lays down the kinds of transport permits which may be issued. They are to be of four types (i) for transport from collection depot to storage godown; (ii) for transport from one storage godown to another or to distribution centre; (iii) for transport from a distribution

centre to sattedars or mazdoors; and (iv) for transport outside the State. The application for a transport permit is to be under Rule 9 in form 'M' and the permit to be issued is to be in form 'N'. Form 'M' gives the quantity of tendu leaves purchased, the place or places where they were stored, the destination to which they were to be transported and the place or places where transported leaves were to be stored. Similar particulars are to be contained in a permit in form 'N'.

7. It was contended on behalf of the State that the High Court had gone wrong in taking the view that the object of the Act was confined to trading in tendu leaves grown in the State as disclosed by the above provisions. It was urged that the embargo on purchase and transport of tendu leaves by Section 5 was necessary for creation and preservation of the State monopoly in tendu leaves. It was submitted that there was nothing in the Act which on the face of it showed that tendu leaves mentioned in the different provisions were to be confined to leaves grown in the State. It was further submitted that unless the State had the power to check the purchase or tendu leaves from outside the State and in any event to restrict the transport thereby within the State, the monopoly would not be effective. It was urged further that transport of goods within the State was so essentially integrated with the trade in the goods that the restriction on transport should be upheld in the interest of the State monopoly.

8. We find ourselves unable to accept the contentions put forward by counsel on behalf of the State. All the relevant provisions of the Act and the rules referred to above show that the Legislature intended that everybody growing leaves within the State should offer the same to it or its agents in different units for sale and the State was bound to purchase every single lot of tendu leaves unless the same could be said to be unfit for the manufacture of bidis. Prima facie trade in tendu leaves as was held by this Court in *Vrajlal Manilal v. M.P. State*, [(1970) 1 SCR 400 at 408 : 1969 (2) SCC 248] would consist of dealing in those leaves, i.e., their purchase and sale but "transport of the leaves once purchased or sold would not prima facie be an organic or integral part of dealing in those leaves". It was further held in that case :

".....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 not only be unreasonable but frustrating."

In that case there was no question of import of any tendu leaves from outside the State or the issue of any permits in that regard. What was objected to was the insistence upon transport permits for the leaves to be distributed by the manufacturer to his innumerable sattedars and mazdoors under Section 5 of the Act. It was held that though the section "is couched in apparently wide language, the very object of the Act, as disclosed by 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". Though the Court there upheld the provisions relating to the creation of the monopoly in the public interest in the matter of sale and purchase of tendu leaves, it was not disposed to uphold the restrictions on movement to the extent it was sought to be enforced by the State in that case.

9. In coming to the above conclusion the Court relied on the dictum in *Akadasi Padhan v. State of Orissa* [1963 Supp 2 SCR 691 : AIR 1963 SC 1047] :

"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.....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)."

10. It is settled law that where two constructions of a legislative provision are possible one consistent with the constitutionality of the measure impugned and the other offending the same, the Court will lean toward the first if it be compatible with the object and purpose of the impugned Act, the mischief which it sought to prevent ascertaining from relevant factors its true scope and meaning.

11. It was in the light of this principle that the High Court observed :

"If Section 5 of the Act or any of its provisions were to be construed as prohibiting the import of tendu leaves into the State or restricted within the State of imported leaves, then the provision would clearly be invalid as violative of Articles 301 and 304 of the Constitution."

12. Without expressing our views on the subject we hold that the entire provisions of the Act and the rules are consistent with and aim at the State monopoly in the trade of tendu leaves in case of leaves grown or produced in the State and the Legislature never intended that the monopoly should be operative even to the extent of banning import of tendu leaves from outside or stalling the tendu leaves once they found their way into the State from outside. The transport of tendu leaves purchased outside but consigned to places within the State to be used for the manufacture of bidis is not integrally connected with the State monopoly as envisaged in the Act. It stands to reason that manufacturers of bidis in the State of Madhya Pradesh would not think of importing tendu from distant places like Bihar and Maharashtra if they could help it and it must be the exigencies of the situation which drives a manufacturer of bidis to such course of action. In any event, the Act ought not to be construed so as to ban import of tendu leaves from outside the State or restrict their movement once they were within the State unless clear language was used in that behalf. If and when such express embargo is imposed, a question may arise as to whether it offends the different provisions of Part XIII of the Constitution.

13. In the result the appeal fails and is dismissed with costs.

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