

State of Andhra Pradesh and Another

Vs

Potta Sanyasi Rao and Others

Civil Appeal No. 1408 of 1974

(A.Alagiriswami,P.K. Goswami, N.L. Untwalia JJ)

26.08.1975

JUDGMENT

GOSWAMI, J. –

1. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court whereby the Andhra Pradesh Tyres and Tubes Dealers' Licensing Order, 1973 (briefly the Licensing Order) was struck down as illegal and ultra vires.

2. A few facts which are material may first be noted.

3. By Notification S.O. 1844 dated June 18, 1966, the Central Government in exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (briefly the Act) directed

that the powers conferred on it by sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in clauses (d), (e), (f), (g), (h), (i), (ii) and (j) of sub-section (2) thereof shall in relation to all commodities other than foodstuffs and fertilizers (whether inorganic, organic or mixed), be exercisable also by a State Government, or in relation to a Union territory, by the administrator thereof, subject to the following conditions

4. Section 2(a) of the Act defines "essential commodity" which means ten specified commodities and the residuary clause (xi) thereof refers to

any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

5. Tyres and tubes are not included in the ten specified commodities in Section 2(a). However, the Central Government by three notified orders, namely, S.O. No. 2511 dated August 17, 1966, S.O. No. 2878 of August 22, 1968 and S.O. No. 85 dated January 3, 1969, declared cycle tyres and tubes, car and tractor tyres and tubes and tubes and tyres of buses, vans, trucks, etc. as essential commodities under Section 2(a)(xi).

6. The impugned Licensing Order was passed by the Government of Andhra Pradesh on June 18, 1973 in exercise of the powers conferred by sub-section (2) of Section 3 of the Act read with S.O. No. 1844 dated June 18, 1966 and with the prior concurrence of the Central Government. The respondent, who were dealers in tyres and tubes of buses, trucks, jeeps, cars and other auto-vehicles,

challenged the validity of the Licensing Order on the ground that the State Government had no power to issue the same with regard to tyres and tubes which were declared by the Central Government to be essential commodities subsequent to the delegation of powers to the State Government under Section 5 which had been made earlier on June 18, 1966. Their contention was accepted by the High Court and the Licensing Order was struck down. Hence this appeal by special leave at the instance of the State Government.

7. The short question that arises for consideration is whether the order of delegation of power by the Central Government under Section 5 enabling the State Government to make orders or issue notifications under Section 3 would empower the State Government to promulgate orders with regard to commodities which were declared to be essential commodities by the Central Government subsequent to the order of delegation.

8. Section 5 of the Act reads as follows :

The Central Government may, by notified order, direct that the power to make orders or issue notifications under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -

(a) such officer or authority subordinate to the Central Government, or

(b) such state Government or such officer or authority subordinate to State Government,

as may be specified in the direction.

9. There is nothing in Section 5 to limit the power of delegation in favour of the State Government only to the commodities specified in Section 2(a) or to those commodities declared essential under Section general delegation and will inure in favour of exercise of power by the State Government with respect to commodities declared essential by the Central Government from time to time under Section 2(a)(xi) even subsequent to the order of delegation. It is not necessary that every time the Central Government declares an essential commodity it has also to pass an order of delegation under Section 5 with regard to that commodity. Reading Section 5 and Section 3 together there is no warrant for the view that the power of delegation is confined to essential commodities specified under the Act and such others as may be declared by the Central Government up to the order of delegation. Delegation of power to the State Government to act under Section 3 is not restricted to any specified essential commodity as such. It will be sufficient in law if on the date the State Government, answers the description of the clauses in Section 2(a) of the Act. The fact the a commodity is declared essential after the order of delegation under Section 3 of the Act. The High Court is, therefore, not right in narrowly construing the order of delegation under Section 5 of the Act. The Licensing Order is, therefore, not invalid on the ground that the tyres and tubes were declared to be essential commodities by the Central Government after the order of delegation under Section 5 of the Act.

10. In the result the appeal is allowed and the judgment of the High Court is set aside. There will be, however, no order as to costs.

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