

Maharaja Book Depot

Vs

State of Gujarat

Criminal Appeal No. 227 of 1977

(V. D. Tulzapurkar, O Chinnappa Reddy JJ)

24.10.1978

JUDGMENT

TULZAPURKAR, J. -

1. This appeal by special leave is directed against the judgment and order of the Gujarat High Court dated February 17, 1977 in Special Criminal Application 1 of 1977 filed under Articles 226 and 227 of the Constitution whereby the High Court reversed the order of the learned Sessions Judge, Broach in Criminal Appeal 39 of 1975 and sent the matter back to the learned Sessions Judge for passing an appropriate order in regard to the question as to whether the entire seized stock of exercise-books of the appellant or part thereof should be confiscated under Section 6A of the Essential Commodities Act, 1955. The question raised in the appeal is whether exercise books are covered by the item "paper" occurring in Section 2(a)(vii) of that Act as also in Entry 13 of Schedule I to the Gujarat Essential Articles Dealers' (Regulation) Order, 1971 ?

2. The question arises in these circumstances : The appellant Maharaja Book Depot is a partnership firm dealing in books and stationery articles at Rajpipla, District Broach. Its shop was inspected and searched by the Mamlatdar of Rajpipla on July 4, 1975 when certain alleged irregularities came to light. During the search 78 gross exercise-books of controlled variety and 97 gross exercise-books of non-controlled variety were seized on the ground that the appellant had committed breaches of Clauses 3, 9 and 11 of the Gujarat Essential Articles Dealers' (Regulation) Order, 1971 (hereinafter referred to as "the Regulation Order"), in that the appellant (a) did not display at any conspicuous part of the premises the opening stock of the exercise-books, (b) did not write the names of the customers on the bills issued to them for the sale of the exercise-books and (c) did not keep a register showing the stock of controlled and non-controlled exercise-books. A notice under Section 6B of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') was served by the Collector, Broach, calling upon the appellant to show cause why the seized stock of exercise-books should not be confiscated and after taking into consideration the explanation offered by the appellant the Collector by his order dated September 17, 1975 held that the appellant firm was guilty of the breaches of Clauses 3, 9 and 11 of the Regulation Order and directed that the entire seized stock be confiscated to the State Government under Section 6A of the Act. The appellant preferred an appeal to the Sessions Court at Broach being Criminal Appeal 39 of 1975 and the learned Sessions Judge by his judgment and order dated October 16, 1976 allowed the appeal and set aside the order of confiscation on the ground that the Act and the Regulation Order did not apply to the exercise-books inasmuch as an exercise-book which is a distinct commodity did not fall within the item "paper" enlisted as an essential commodity in Section 2(a)(vii) of the Act and in Entry 13 of Schedule I to the Regulation Order. This order was challenged by the State of Gujarat in Special Criminal Application 1 of 1977 under Article 227 of the Constitution. The High Court by its

judgment and order dated February 17, 1977 took the view that the item "paper" as enlisted both in Section 2(a)(vii) of the Act and Entry 13 in Schedule I to the Regulation Order was wide enough to cover an exercise-book which was nothing but collection of papers stitched together by a piece of string or pinned with pins of stapler and quashed the order of the learned Sessions Judge but instead of straightaway confirming the Collector's confiscation order it remanded the appeal back to the Sessions Judge for passing an appropriate order after deciding the question as to whether the entire seized stock or a part thereof should be confiscated under Section 6A of the Act. The appellant has challenged the legality and/or validity of the view taken by the High Court in this appeal.

3. In order to appreciate properly the submissions of counsel for the appellant on the construction of the expression "paper" occurring in the concerned legislation it will be necessary to set out the purpose and the relevant provisions thereof. The Act was put on the Statute Book, as its preamble will show, with a view to provide, in the interests of the general public, for the control of production, supply and distribution of, and trade and commerce in certain commodities defined and enlisted as "essential commodities" in Section 2, which enlistment has been enlarged from time to time by Central Government notifications. In other words, the obvious purpose of the enactment is to control the production, supply and distribution of certain commodities which are essential for the society at large with a view to ensure that the common man gets them at fair prices without let or hindrance on the part of the trade. Section 3 confers powers on the Central Government to regulate or prohibit the production, supply and distribution of essential commodities and trade and commerce therein by issuance of orders in that behalf for maintaining or increasing supplies of such commodities or for securing their equitable distribution and availability at fair prices, etc. while under Section 5 the Central Government can delegate its powers in that behalf to an officer or authority subordinate to it or to any State Government. It appears that on December 8, 1971 in exercise of the powers conferred by sub-section (1) read with clauses (d), (e), (i) and (j) of sub-section (2) of Section 3 of the Act read with the Order of the Government of India, Ministry of Commerce No. SO 1844 dated June 18, 1966 and the Order of that Government in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of food) No. G.S.R. 1111 dated July 24, 1971, the State of Gujarat passed its order called "the Gujarat Essential Articles Dealers (Regulation) Order, 1971", for the purpose of maintaining supplies of essential articles and for securing their equitable distribution and availability at fair prices. Now, both the Act as also the Regulation Order contain an enlistment of items which are regarded as 'essential commodities' or 'essential articles'. Section 2(a) of the Act defines 'essential commodity' as meaning any of the classes of commodities enlisted in its various sub-clauses and sub-clause (vii) refers to the item "paper" while Clause 2(v) of the Regulation Order defines 'essential article' as meaning any of the articles specified in schedule I and Item 13 in that Schedule relates to "paper" but at both the places the item has been described in identical manner, viz. :

Paper, including newsprint, paper-board and straw-board.

4. It seems that the enlistment of the item "paper" in the above manner in Section 2(a)(vii) of the Act has not been amended, altered or changed but its enlistment in the Regulation Order has undergone a change, for by a Notification dated July 10, 1975, the Schedule of the Regulation Order was recast and more items were added. Schedule I so amended by the said Notification now includes the item "paper" at serial No. 14 which runs thus :

14. Paper, including newsprint, paper-board, straw-board and exercise note-books.

In other words, by the Notification dated July 10, 1975 exercise note-books have come to be

specifically added to the item "paper".

5. The main question is whether exercise-books are covered by the item "paper" as described in Section 2(a)(vii) of the Act and in Item 13 in Schedule I to the Regulation Order as it stood before its amendment by the Notification dated July 10, 1975. Counsel for the appellant raised two or three contentions before us in support of this appeal. He emphasized the fact that on July 4, 1975 when the stock of exercise-books was seized from the appellant's shop by the Mamlatdar both in Section 2(a)(vii) of the Act as well as under Entry 13 in Schedule I to the Regulation Order the item "paper" as an essential commodity was described in a particular manner without the addition of "exercise note-books" which was made in the Regulation Order after the seizure had been effected. On construction of the item "paper" he first contended that the expression "paper" ordinarily means a sheet or sheets of paper and an exercise-book being a distinct commodity was excluded from that item. Secondly, he urged that this would be so because even while providing for an inclusive description of the item the legislation has included only newsprints, paper-boards and straw-boards within it but not exercise-books and, therefore, the expression "paper" should be construed as excluding exercise-books. Thirdly, he urged that so far as the Gujarat Regulation Order is concerned the very fact that by Notification dated July 10, 1975 Item 14 in Schedule I was enlarged so as to include specifically exercise note-books within the expression "paper" clearly shows that the legislative intent was to exclude exercise-books from the expression "paper" under Item 13 in Schedule I as it stood prior to that date. Lastly, he urged that since the provisions of the Act as well as the Regulation Order were penal in character, the item "paper" should be construed narrowly in favour of the person proceeded against and as such the view taken by the learned Sessions Judge should be upheld. In support of these submissions Counsel relied upon a decision of this Court in *State of Bihar v. Bhagirath Sharma* (AIR 1973 SC 2198), where this Court, having regard to the legislative history and penal character of the concerned Order took the view that the item like "component parts and accessories of automobile", though of wide import did not cover tyres and tubes of motor cars and motor-cycles. According to him, therefore, the learned Sessions Judge was right in his view that the expression "paper" did not cover exercise-book and that the seized exercise-books were not liable to be confiscated under Section 6A of the Act.

6. The question thus centres round the proper construction of the item "paper" as described in Section 2(a)(vii) of the Act and Item 13 of Schedule I to the Regulation Order. On this question the object or purpose of the Act and the Regulation Order as well as the manner in which 'essential commodity' or 'essential article' has been defined therein will have considerable bearing. As stated earlier, the object or purpose of both the pieces of legislation is to control the production, supply and distribution of essential commodities or essential articles with a view to ensure that the common man gets them at fair prices without any let or hindrance on the part of the trade and it is with this object that the item "paper" has been enlisted as an essential commodity or essential article in the Act and the Regulation Order. Further, though Section 2(a) of the Act and Clause 2(v) of the Regulation Order purport to define 'essential commodity' or 'essential article' that expression has no meaning of its own and in substance both under Section 2(a)(vii) of the Act and Clause 2(v) of the Regulation Order an enumeration or enlistment has been made of several items as constituting essential commodities or essential articles for the purposes of the Act and the Regulation Order and it will appear clear that items have been enumerated or enlisted under broad general heads and some of the items are stated to include certain things which may not in ordinary parlance fall within the broad general head. The item "paper" will have to be considered in the light of this position which emerges clearly on a consideration of several items enlisted as essential commodities or essential articles. The item "paper" is described thus :

Paper including newsprint, paper-board and straw-board.

According to the Concise Oxford Dictionary paper means :

A substance used for writing, printing, drawing, etc. made of interlaced fibres of rags, straw, woods, etc.

In Webster's New World Dictionary (1962 Edn.) the meaning of the word "paper" is given as follows :

Paper - thin flexible material in sheets or leaves, made from rags, wood pulp, or other fibrous material, etc.

In Black's Law Dictionary (Revised Fourth Edition 1968) the expression "paper" is explained thus :

Paper - a manufactured substance composed of fibres (whether vegetable or animal) adhering together in forms consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which flexible sheets are applicable.

In substance, therefore, paper, whether lined or blank, means a material on which writing, printing, drawing etc. can be done. In light of this meaning of the expression "paper" the question is whether an exercise-book would be covered by that expression or not ? It cannot be disputed that an exercise-book is nothing but a collection of sheets of paper (blank or lined) stitched together by a piece of string or pinned together with pins of a stapler and is a substance used for writing and, therefore, would clearly fall within the item "paper". The test would be whether because of stitching or pinning them together such a collection of sheets loses its identity as paper ? The answer must be in the negative. Looked at from this angle it is difficult to accept the contention that an exercise-book is a distinct commodity other than paper. It is true that an inclusive description has been given of the item "paper" in Section 2(a)(vii) of the Act and Item 13 in Schedule I to the Regulation Order, but if the inclusive part is carefully scrutinised it will appear clear that the things mentioned in the inclusive part may not ordinarily be regarded as paper and, therefore, by the inclusive part an extended meaning or description is given to the expression "paper". Since an exercise-book (which is nothing but a collection of sheets of paper intended to be used for writing) squarely falls within the dictionary meaning of the word "paper" there was no necessity to mention it in the inclusive part of the description. On a true and proper construction, therefore, we are clearly of the view that within its normal dictionary meaning the item "paper" as described in Section 2(a)(vii) of the Act and Item 13 in Schedule I to the Regulation Order covers an exercise-book. Moreover, such a construction would be in consonance with and carry out effectively the object or purpose of the Act and the Regulation Order.

7. Counsel for the appellant undoubtedly relied upon the fact that so far as the Gujarat Regulation Order is concerned it was by notification dated July 10, 1975 that the description of item "paper" (being Item 14 in the recast Schedule I) was enlarged so as to include specifically 'exercise-notebooks' and, according to counsel, this clearly shows that initially the legislative intent was to exclude exercise-book from the expression "paper" under Item 13 in Schedule I to the said Order as it originally stood. It is not possible to infer such legislative intent from the mere fact that the item "paper" has been amended and enlarged so as to include within it exercise-books by means of the subsequent Notification. In fact, as discussed earlier, since an exercise-book squarely falls within the

dictionary meaning of the expression "paper" we have held that it was unnecessary to mention it in the inclusive part of the description as it originally stood and in that inclusive part such things had been mentioned as could not in ordinary parlance be regarded as "paper". In our view the amendment and enlargement of the item "paper" so as to include specifically exercise-books was made ex majore cautela to make things abundantly clear and, therefore, no inference as regards the initial legislative intent of the type suggested can be drawn.

8. Counsel also contended that since the Act as well as the Regulation Order contain penal provisions, the item "paper" should be construed strictly and narrowly in favour of the appellant-firm which was being proceeded against under the said pieces of legislation. The true rule of construction in that behalf has been set out in Maxwell on Interpretation of Statutes (12th Edn.) at page 246 where the following passage occurs :

The effect of the rule of strict construction might be summed up by saying that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. If there is no ambiguity, and the act or omission in question falls clearly within the mischief of the statute, the construction of a penal statute differs little, if at all, from that of any other.

It would thus appear clear that it is only when there is some equivocation or ambiguity about a word or provision that the rule of strict construction or narrow construction in favour of the subject is to be applied but if there is no ambiguity and the act or omission falls clearly within the mischief of statute then the construction of penal statute will not differ from that of any other. Applying this principle to the facts of the present case it is clear that there is no ambiguity or equivocation of the item "paper" occurring in Section 2(a)(vii) of the Act and Item 13 of Schedule I of the Regulation Order and since an exercise-book squarely falls within the dictionary meaning of "paper" as used in the said provisions, there will be no question of construing that item narrowly so as to exclude exercise-book therefrom and in favour of the appellant-firm.

9. That takes us to the decision of this Court in State of Bihar v. Bhagirath Sharma (supra) on which the appellant-firm strongly relied. In that case the question was whether motor tyres and motor tubes were covered by the item "Component parts and accessories of automobiles" occurring in Item 1 in Schedule I to the Bihar Essential Commodities Act - other than Foodgrains - Prices and Stocks (Display and Control) Order, 1947 and this Court undoubtedly took the view that though the said Item 1 was widely worded it did not include motor tyres or motor tubes and that no interference was called for in the order passed by the High Court acquitting the respondents of the charge that they had failed to display the price-list and the stock position of the motor tyres anywhere in their shop in contravention of clause (4) of the said order. In our view, the decision is clearly distinguishable on the ground that the drafting precedents furnished by several Notifications that obtained there warranted such a conclusion. From the inception along with Item 1 (component parts and accessories of automobiles) there was in the concerned Prices and Stocks (Display and Control) Order, 1947 another item being Item 5 which ran thus : "Cycle tyres and tubes (including cycle rickshaw tyres and tubes) which suggested that where "Tyres and Tubes" were intended to be included as the item in the Schedule these had actually been expressly so stated as distinct from the "component parts and accessories of automobiles"; further, by a Gazette Notification (No. GSR 82) dated September 18, 1970 published in the Bihar Government Gazette (Extraordinary) four items were added, one of them being Item 11, which ran thus : "Tyres and Tubes of cars, buses, jeeps,

vans, trucks automobiles of any category whatsoever, tractors and tractor-trollies."; even the Central Government had issued three Notification - a Notification dated January 11, 1968 (No. S.O. 218) issued by the Ministry of Commerce, in which "Tyres and Tubes of Scooters" were expressly mentioned as essential commodities distinct from the component parts and accessories of automobiles; a Notification dated August 22, 1968 (No. S.O. 2878) in which "Tyres and Tubes of Cars etc." were specifically mentioned as essential commodity and a Notification dated January 3, 1969 (No. S.O. 25) in which "Tyres and Tubes of Cars' were mentioned in the manner almost similar to the one found in the Bihar Government Gazette Notification No. GSR 82 dated September 18, 1970. It was in the background of these drafting precedents furnished by such Notifications that this Court took the view that the draftsman did not intend the scheduled item 1 in the Order as in force in May, 1969 to cover "Tyres and Tubes of Motor-cars". In the instant case before us there are no such drafting precedents of the type which obtained in the afore-mentioned case. As stated earlier, the item "paper' in Section 2(a)(vii) in the Act has all along remained the same without any modification, alteration or enlargement and it is only the item 13 in the Schedule to the Regulation Order (a subordinate piece of legislation) that has undergone a change and the item has been amended so as to include specifically "exercise note-books". We have no doubt in our minds that the said amendment to the item "paper" is declaratory or clarificatory in nature.

10. In the circumstances, in our view, the High Court was right in coming to the conclusion that the exercise-books of the appellant-firm that were seized were liable to confiscation and the remand order made by the High Court was proper.

11. The appeal is accordingly dismissed.

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