

Delhi Cloth & General Mills Ltd.

Vs

S. Paramajit Singh and Another

With

Bank of India

Vs

Bharat Bhushan and Others

Civil Appeals No. 4043 and 1370 of 1987

(S. Ranganathan, Dr. T. K. ThommenP. B. Sawant JJ)

09.10.1990

JUDGMENT

T. K. THOMMEN J. -

1. Civil Appeal No. 4043 of 1987 The question which arises in this appeal is as regards the validity of clause (iii) of the sub section (3) of Section 1 of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 (hereinafter referred to as "the Act") The challenge against the clause on the ground of its alleged violation of Article 14 of the Constitution was rejected by the High Court of Jammu and Kashmir. That the High Court, following its earlier decision in J & K Bank Ltd. v. State of J & K (AIR 1987 J & K 18 : 1 Ren CR 614), upheld the validity of the clause.

2. The impugned provision, as it stood at the relevant time, reads :

1.(3) Notwithstanding anything contained in sub-section (2), nothing in this Act shall apply to -

#(i) \* \* \*##

(ii) omitted

(iii) any tenancy in respect of any house or shop where the income of the tenant, whether accruing within or outside the State, exceeds rupees 40,000 per annum.

Explanation : the words 'income means 'net income''.

3. The appellant, the Delhi Cloth and General Mills Limited, is the tenant of the building in question. Its claim for the protection of the Act was disallowed by the courts below on the grounds that clause (iii) of sub-section (3) of Section 1, read with the Explanation was attracted in respect of the appellant.

4. According to the appellant, the impugned clause is discriminatory and arbitrary because it drawn an artificial distinction between tenants on the basis of their income. Those tenants earning net income below Rs. 40,000 per annum are fortunate enough to be protected by the beneficial provisions of the Act, while a person like the appellants whose annual net income is undoubtedly in excess of the statutory limit of Rs. 40,000 is unreasonably and unfairly denied the protection of the Act. This statutory discrimination, it is contended, places person like the appellant at the mercy of the landlords who can easily evict them by recourse to the far less restrictive provisions of the Transfer of Property Act, 1882 and on the strength of their agreement of lease.

5. Counsel for the appellant submits that the impugned clause does not take into account the nature of the building, but only the income of the tenant. The income of the landlord himself is irrelevant. The protection of the Act is withheld or extended, dependent solely on the financial capacity of the tenant and without regard to the need of the landlord or the age or other conditions of the building or any other factor. Treating tenants differently with reference to their annual income is not an intelligible classification, for the income of a tenant may vary from year to year, depending upon the nature of his business and other factors. This variation in income may expose him to eviction in a particular year when business is prosperous but protects him from eviction when the business declines and income falls. Furthermore counsel says, "income" is not a clear and precise concept. Limiting it to net income does not make it clearer. What are the permissible deductions to arrive at the "net", the Act does not say, The Section is invalid because it is too broad of vague. Any classification based on such vague differentia is unintelligible and, therefore, violative of Article 14. In any view, counsel submits, the classification sought to be made between persons falling on either side of the specified income has no reasonable relation to the object sought to be achieved by the statute. Counsel relies on the observation of this Court in *Rattan Arya v. State of Tamil Nadu* ((1986) 3 SCC 385) declaring Section 30(ii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960 as unconstitutional. Counsel also relies upon the decision of this Court in *Motor General Traders v. State of Andhra Pradesh* ((1984) 1 SCC 222) declaring section 32(b) of the A. P. Buildings (Lease Rent and Eviction) Control Act, 1960 as unconstitutional.

6. These decisions, in our view, are easily distinguishable. In *Rattan Arya* ((1986) 3 SCC 385) this Court stated that a distinction between residential building leased on rent on exceeding Rs. 400 per month and all other building - whether residential or non-residential - was an unreasonable classification. There was no reason why non-residential building leased on rent of Rs. 400 per month or less should be treated differently from residential building of like rent or why in the case of residential building the limit should have been limited to Rs. 400 per month. To so restrict the protection of the Act was an unreasonable classification. In the *Motor General Traders* ((1984) 1 SCC 222) this court stated that to arbitrarily prescribe a cut off date i.e. August 26, 1957, for denying the protection of the Act, without regard to the age of the building or to the extent of realisation of the investment by the owner was an unreasonable classification. These decisions do not, in our view, support the contentions of the appellant.

7. On the other hand a classification with reference to economic realities was upheld by this court in *Kerala Hotel & Restaurant Association v. State of Kerala* ((1990) 2 SCC 502 : 1990 SCC (Tax) 309 : JT 1 SC 324). This Court stated (SCC p. 517 para 31) "... those who can afford the costlier cooked food, being more affluent, would find the burden lighter. This object cannot be faulted on principle and is, indeed, laudable." Though that principle was stated in a different context, significantly this Court accepted a classification based on financial capacity.

8. The classic and oft-repeated test to be applied when the constitutionality of legislation is

questioned with reference to Article 14 of the Constitution is what is stated by this Court in *Ram Krishna Dalmia v. Justice S. R. Tendolkar* (1959 SCR 279 : AIR 1958 SC 538). S. R. Das, C.J. stated : (SCR pp. 296-97)

In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguish persons or things that are grouped together from other left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question.

9. The object of the enactment in question is undoubtedly to protect the weaker section of tenants from unreasonable eviction and unfair rent. The legislature, at the same time, did not desire to discourage persons from constructing buildings. The twin legislative objects is the protection of economically weaker tenants and encouragement of construction of buildings. While protection is thus afforded to deserving tenants, construction of new buildings is encouraged by exempting buildings occupied by richer classes of tenants from the provisions of the Act. While a building is covered by the Act when occupied by a tenant whose annual net income is less than the specified amount, the protection is withheld when the same building is occupied by a richer tenant whose annual net income is higher than the specified amount. Where a building is occupied by more than one tenant, the applicability of the Act to each of them would depend upon his net income. It is the tenant that the legislature intends to protect and not the landlord or his building. The test adopted by the legislature for this purpose is with reference to the tenant's net income, whether accruing inside or outside the State, as on the date of the landlord's application for eviction as well as on the date of the decree for eviction. The legislative object is, therefore, to protect tenants who are economically weaker in comparison to those affluent tenants falling outside the specified limit of income, and at the same time to encourage construction of new buildings which will result in better availability of accommodation, employment opportunity and economic prosperity. This is a reasonable classification which does not suffer from the vice of being too vague or broad. Classification based on income is well known to law. Such classification has a reasonable relation to the twin legislative objects mentioned above. We see nothing unreasonable or irrational or unworkable or vague or unfair or unjust in the classification adopted by the impugned provision.

10. Nor is there lack of clarity in the concept of "income" or "net income". Income is money or other benefit periodically received. It is profit or revenue and not capital. It is gain derived from capital or labour or both. Net income is income obtained after deducting all expenses incurred for the purpose of earning the income. It is income minus operating expenses. The concept of net income is what it is limited by the technicalities of any fiscal enactment. See in this connection the observation of the Jammu and Kashmir High Court in *Benarsi Das v. Jagdish Raj Kohli* (AIR 1960 J & K 5).

11. The legislature in its wisdom is presumed to understand and appreciate correctly the problems of the State and the needs of the people made manifest by experience. Absent blatant disregard of constitution provisions, legislative innovation by social and economic experimentation must be permitted to continue without judicial interference.

12. The High Court, as stated earlier, followed its earlier decision on the construction of the section in *J & K Bank Ltd. v. State of J & K* (AIR 1987 J & K 18 : (1987) 1 Ren CR 614). In that case speaking for the Division Bench, Anand, C.J., stated as follows : (AIR p. 19, Para 2)

"In our opinion, the challenge to vires of Section 1(3)(iii) of the Act is not well

founded. Undoubtedly, the Act is a piece of Social and beneficial legislation. The legislature knows and correctly appreciates the needs of its people. In its supreme wisdom it denied the protection of the Act to tenants whose annual income exceeds Rs. 40,000. Social legislation of this type is designed to protect the interest of a class of society who, because of their economic conditions deserves such protection against their arbitrary eviction. The legislation is intended to protect weaker and poorer classes of the tenants and there is, therefore, an intelligible differentia between the tenants whose annual income is Rs. 40,000 and those whose annual income is more than Rs. 40,000. In construing Article 14, the aid whereof has been pressed into service by the learned counsel, the Court is not required to adopt a doctrinaire approach which would choke the beneficial legislation. It is open to the legislature to recognise the degree of harm and while doing so it can always make reasonable classification. Article 14 forbids class legislation but not reasonable classification. With a view to pass the test of reasonable classification there must exist intelligible differentia between persons or things grouped together from those who have been left out and there must be a reasonable nexus with the object to be achieved by the legislation. Keeping in view the object which the legislation seeks to achieve, it can be safely said that there is reasonable nexus section and the object sought to be achieved. We also find that there is an intelligible differentia between the tenants who are sought to be protected by the Act from those who are denied the protection of the Act."

We are in complete agreement with what has been stated by the learned Chief Justice.

13. Accordingly, we see no merit in this appeal. It is dismissed with costs here and in the court below.

14. Civil Appeal No. 1370 of 1987 : This appeal is brought by a nationalised bank. In view of our judgment in Civil Appeal No. 4043 of 1987, we dismiss this appeal with costs here and in the High Court.

</html