

State of T. N. and Others

Vs

Sanjeetha Trading Co. and Others

Civil Appeals Nos. 3253-3272 of 1990

(P. B. Sawant, N. P. Singh JJ)

24.09.1992

JUDGEMENT

N. P. SINGH, J.:-

1. These Appeals have been filed on behalf of the State of Tamil Nadu, for setting aside the judgment of the High Court, holding that the amendment introduced by notification dated 22nd September, 1983 in clause 3 of the Tamil Nadu Timber (Movement Control) Order, 1982, was violative of Art. 19(1)(g) and Article 301 of the Constitution and as such unconstitutional and invalid.

2. The Tamil Nadu Timber (Movement Control) Order, 1982 (hereinafter referred to as 'Movement Control Order') was notified in exercise of the power conferred by S. 3 of the Tamil Nadu Essential Articles Control and Requisitioning Act, 1949 (hereinafter referred to as 'the Act'). The Act aforesaid was originally entitled "Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949". The preamble of the Act says that it was to provide "powers to control the supply, distribution, transport and prices of essential articles and trade and commerce therein Section 2(a) defines "essential article" to mean any of the articles specified in the schedule to the said Act and "any other article which may be declared by the State Government by notified order to be an essential article". Under S. 3 the State Government for "maintaining, increasing or securing supplies of essential articles or for arranging for their equitable distribution and availability at fair prices may by notified order provide for regulating or prohibiting the supply, distribution and transport of essential articles and trade and commerce therein". From time to time the life of the said Act was being extended. It came to an end on 25-1-1956. In April, 1956 Tamil Nadu Act VI of 1956 was passed to re-enact the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949. Ultimately by Tamil Nadu Act X of 1979, the Act was made permanent and the words "Temporary Powers" in the title of the Act were deleted. It appears that before the High Court it was an admitted position that the Act shall be deemed to be a post-Constitution Act in view of the enactment aforesaid. That position was not challenged even before this Court. However, it was pointed out on behalf of the appellant-State that the Act was made a permanent Act, by Tamil Nadu Act X of 1979, which had been reserved for the consideration of the President and has received his assent.

3. By a notification dated 2nd November, 1982 issued in exercise of powers conferred by clause (a) of S. 2 of the Act, timber was declared to be an essential article. In view of notification of the same date issued in exercise of powers under S. 3 of that very Act, the aforesaid Movement Control Order

came in force. Clause 2 of the Movement Control Order defines "timber" saying, unless the context otherwise requires, "timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not. Clause 3 of the said Order prescribed the condition for transport of timber -

"Prohibition of transport of timber:- No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or and or abet in the transport, movement or otherwise carrying of timber from any place within the State of Tamil Nadu to any place outside the State except under and in accordance with the terms and conditions of a permit issued under the Tamil Nadu Timber Transit Rules, 1968."

(Emphasis added)

In view of clause 3 aforesaid no person was entitled to transport timber from any place within the State of Tamil Nadu to any place outside the State except under and in accordance with the terms and conditions of a permit issued under the Tamil Nadu Timber Transit Rules.

4. By the impugned notification dated 22nd September, 1983, the expressions "except under and in accordance with the terms and conditions of a permit issued under the Tamil Nadu Timber Rules, 1968" were omitted. The effect of the amendment is that clause 3 of Movement Control Order now prohibits transport and movement of timber "from any place within the State of Tamil Nadu to any place outside the State". By that very notification certain types of wood (a) sandalwood sold in auctions conducted by. Forest Department, (b) rosewood of export quality, (c) red sanders intended for export, (d) timber belonging to other States passing through Tamil Nadu, (e) casuarina, and (f) finished produce such as doors, windows, articles of furniture and boxes, were excluded from the definition of "timber".

5. After amendment of clause 3 aforesaid now there is a complete ban on the movement of the timber from the State of Tamil Nadu to any place outside the said State. The constitutionality of the amendment aforesaid was questioned by the writ petitioners before the High Court saying that total ban on the movement of the timber from the State of Tamil Nadu to any other State was not only violative of Article 19(1)(g) of the Constitution but also of Article 301 of the Constitution, which ensures every citizen, subject to the provisions of Part XIII of the Constitution, free trade, commerce and intercourse throughout the territory of India.

6. The reasons disclosed on behalf of the State before the High Court for imposing a complete ban on the movement of the timber outside the State, are (i) to prevent the indiscriminate felling of trees in the Hill Regions for ecological reasons; (ii) to prevent the abnormal rise in the prices of timber in the market within the State; (iii) to make available timber for local consumption, by the common man as well as industries and that (iv) if ban is imposed on the movement of timber outside the State it would help the development of small scale industries within the State.

7. It was neither disputed nor could have been disputed on behalf of the appellant-State that after deletion of the expression "except under and in accordance with the terms and conditions of a permit issued under the Tamil Nadu Timber Transit Rules, 1968" from clause 3 of the Movement Control Order by the aforesaid notification dated 22nd September, 1983, there has been a complete prohibition on the transport and movement of timber from any place within the State of Tamil Nadu to any place outside the State. Earlier any such transport or movement of timber was permissible

under and in accordance with the terms and conditions of a permit issued under the Tamil Nadu Timber Transit Rules.

8. The question is whether this infringes in any manner Article 301 of the Constitution which ensures that trade, commerce and intercourse throughout the territory of India shall be free. The framers of the Constitution thought such intercourse necessary, so that there should be an economic unity of India and there should not be regional or territorial barriers. At the same time, being conscious of the fact that such freedom of trade, commerce and intercourse throughout the territory of India may require to be curbed or curtailed under certain situations taking into consideration the public interest, liberty was given to the Parliament as well as to the Legislatures of the States under Arts. 302, 303 and 304 of the Constitution to impose reasonable restrictions on such freedom of trade and commerce or intercourse between one State and another, by following the procedures prescribed in the aforesaid Articles.

9. In the facts and circumstances of the present case, as no law has been made by the Parliament imposing any restriction in respect of timber within the State of Tamil Nadu, we are not concerned with Article 302 or 303; we are concerned only with the question as to whether the prohibition on transport of timber outside the State of Tamil Nadu is in any way hit by Article 304 of the Constitution, But before Article 304 comes into play, It has to be held that the prohibition introduced by the amendment on movement and transport of timber amounts to restriction.

10. It cannot be disputed that by complete prohibition on the transport of timber from the State of Tamil Nadu to any other State, the trade and commerce in timber grown in the State of Tamil Nadu has been affected and till the prohibition continues there is no inter-State trade in timber as conceived by Art. 301 of the Constitution. What is the object of ensuring the free movement of trade and commerce has been examined by this Court from time to time. In the well known case of *Atiabari Tea Co. Ltd. v. State of Assam*, AIR 1961 SC 232, it was said (para 34):-

"In drafting the relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom which had been won and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union and that may conceivably give rise to local and regional pulls and pressures in economic matters."

11. However, in the case of *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*, AIR 1962 SC 1406, the majority judgment approved the judgment in the case of *Atiabari Tea Co. Ltd.* (AIR 1961 SC 232) (supra) subject to this clarification (para 17):-

"Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Art. 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution."

12. On behalf of the appellant-State it was pointed out that as the Act has been framed to provide for powers "to control the supply, distribution, transport and prices of essential articles and trade and

commerce therein" after issuance of aforesaid notification dated 2nd November, 1982 by the State Government, declaring "timber" to be an "essential article", it was open to the State Government to prohibit the movement or transport of timber outside the State taking into consideration the interest of people of the State. The stand of the appellant-State is that although a complete ban has been imposed on the movement and transport of a timber, said ban shall not be deemed to be a restriction because it amounts only to regulation of trade in timber. Reference in this connection was made to the judgments of this Court in the cases of State of Tamil Nadu v. M/s. Hind Stone, AIR 1981 SC 711 and K. Ramanathan v. State of Tamil Nadu, AIR 1985 SC 660. In the case of M/s. Hind Stone (supra), the validity of Rule 8-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 came up for consideration. The said Rules had been framed in exercise of the power under S. 15 of the Mines and Minerals (Regulation and Development) Act, 1957. By aforesaid Rule 8-C, leases for quarrying black granite in favour of private parties were banned. Leases were to be granted in favour of the corporation wholly owned by the State Government. The validity of Rule 8-C was questioned on various grounds including the ground of being violative of Article 301 of the Constitution. In that connection it was said (AIR 1981 SC 711, para 11):-

"The submission of the learned counsel that the impugned rule contravened Arts. 301 and 303 of the Constitution is equally without force. Now, "the restrictions freedom from which is guaranteed by Art. 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade".

Rule 8-C aforesaid did not contain any provision in respect of transport of black granite.

13. From the case of K. Ramanathan (AIR 1985 SC 660) (supra) it will appear that in exercise of the power conferred under S. 3 of the Essential Commodities Act, 1955 read with Government of India, Ministry of Agriculture (Department of Food) Order dated June 9, 1978, with the prior concurrence of the Government of India the State Government promulgated the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 on October 22, 1982. Clause 3(1) of the Order originally was as follows:-

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the State by road, rail or otherwise except under and in accordance with the conditions of a permit issued by an authorized officer."

On June 20, 1983, the State Government introduced an amendment in clause 3 which is as follows :-

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the Thanjavur District, Chidambaram and Kattumannarkoil Taluks in South Arcot District and Musiri, Kulithalai, Lalgudi and Tiruchirapalli Taluks in Tiruchirapalli District."

The constitutional validity of clause 3(1 A) of the Order aforesaid placing a complete ban on the transport, movement or otherwise carrying of the paddy outside Thanjavur District and other Talukas mentioned therein was challenged. One of the grounds of the challenge was that it violated Arts. 301 and 304 of the Constitution inasmuch as it cannot be held to be a reasonable restriction either within the meaning of Art. 304(b) or Article 19(6) of the Constitution. The stand of the State was that it did not amount to restriction but only regulation. In that connection it was said (AIR

1985 SC 660, Paras 18 and 23): -

"The word 'regulation' cannot have any rigid or inflexible meaning as to exclude 'prohibition'. The word 'regulate' is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some Courts giving to the term a somewhat restricted, and others giving to it a liberal construction. The different shades of meaning are brought out in Corpus Juris Secundum, Vol. 76 at p. 611."

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"One of the ways in which such regulation or control over the production, supply and distribution of, and trade and commerce in, an essential commodity like foodstuffs may be exercised by placing a ban on inter-State or intra-State movement of foodstuffs to ensure that the excess stock of foodstuffs held by a wholesale dealer, commission agent or retailer is not transported to places outside the State or from one district to another with a view to maximise the procurement of such foodstuffs from the growers in the surplus areas for their equitable distribution at fair prices in the deficit areas. The placing of such ban on export of foodstuffs across the State or from one part of the State to another with a view to prevent outflow of foodstuffs from a State which is a surplus State prevents the spiral rise in prices of such foodstuffs by artificial creation of shortage by unscrupulous traders."

(Emphasis added)

14. However, on behalf of the writ petitioners reliance was placed on the judgment of a Constitution Bench of this Court in the case of State of Mysore v. H. Sanjeeviah, AIR 1967 SC 1189. The Mysore Forest Act, 1900 empowered the State Government to make Rules. The Rules so framed prohibited transportation of Forest Produce between sunset and sunrise. In that connection it was said (paras 5 and 8): -

"The power which the State Govt. may exercise is the power to regulate transport of forest produce, and not the power to prohibit or restrict transport. Prima facie, a rule which totally prohibits movement of forest produce during the period between sunset and sunrise is prohibitory or restrictive of the right to transport forest produce."

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"Article 301 in terms prohibits the imposition of any restriction on trade, commerce and intercourse throughout the territory of India, and by the enactment of the two provisos clearly a restriction is imposed upon the freedom of trade. The provisos to the rule enacted by the State Government must therefore be deemed to be invalid as infringing the guarantee under Art. 301 on the freedom of trade, commerce and intercourse."

But about aforesaid H. Sanjeeviah's case (AIR 1967 SC 1189) (supra) it was said in the case of K. Ramanathan (AIR 1985 SC 660, para 17) (supra):

"In Sanjeeviah case, the question arose whether two provisos framed by the State

Government under S. 37 of the Mysore Forest Act, 1900 which empowered the making of rules to regulate the transit of forest produce which placed absolute prohibition against transportation of forest produce between sunset and sunrise and a qualified prohibition in certain circumstances, was beyond the rule making power of the State Government. The contention on behalf of the State was that two provisos were regulatory and not prohibitory. In repelling the contention, the Court observed:

"The power which the State Govt. may exercise is the power to regulate transport of forest produce, and not the power to prohibit or restrict transport. Prima facie, a rule which totally prohibits movement of forest produce during the period between sunset and sunrise is prohibitory or restrictive of the right to transport forest produce."

These observations do not lay down any rule of universal application."

The view expressed by this Court in the case of K. Ramanathan (*supra*) supports the appellant-State to a great extent inasmuch as even "timber" has been declared to be an essential article in accordance with S. 2(a) of the Act. The Movement Control Order has been made under S. 3 of the Act which vests power in the State Government "for maintaining, increasing or securing supplies of essential articles or for arranging for their equitable distribution and availability at fair prices" to issue order "for regulating or prohibiting the supply, distribution and transport of essential articles". The notification aforesaid dated 2nd November, 1982 by which the Movement Control Order was notified says that "the Government of Tamil Nadu are of the opinion that for securing the supply of timber an essential article, to the various small scale industries within the State of Tamil Nadu and also to the common man as well as industries, it was necessary to provide for prohibiting the transport of timber".

15. In the cases of M/s. Bishamber Dayal Chandra Mohan v. State of U.P., AIR 1982 SC 33 and Krishan Lal Pravaeen Kumar v. State of Rajasthan, AIR 1982 SC 29, also this Court held that complete prohibition on movement of wheat from one State, to another under cl. (d) of sub-sec. (2) of S. 3 of the Essential Commodities Act was regulatory in character and does not amount to restriction within Art. 301 or 304 of the Constitution.

16. The framers of the Constitution while saying under Art. 301 of the Constitution that trade, commerce and intercourse throughout the territory of India shall be free were quite conscious of the fact that public interest may require such freedom to be curbed or curtailed and that is why under Art. 302 of the Constitution, Parliament was empowered to "impose such restrictions on the 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" by law. However, the expression 'reasonable' did not precede the word 'restrictions'. Same thing was provided so far State Legislatures were concerned under Article 304(b), vesting them with power to impose "such reasonable restrictions" on freedom of trade, commerce or intercourse with or within that State as may be required in the public interest by law. It need not be pointed out that in Art. 304(b) the expression 'reasonable' precedes 'restrictions' and a further check has been provided by saying in the proviso to the said Article that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

17. It has been rightly said that "there is such a mix up of exception upon exception in the series of Articles in Part XIII that a purely textual interpretation may not disclose the true intendment of the Articles." The framers of the Constitution neither wanted to ensure the freedom of trade and

commerce on the pattern of the freedom guaranteed by S. 92 of the Australian, Constitution nor they thought it proper that the different States should have unfettered and unrestricted power while imposing prohibitions on inter-State trade. In the larger interest of the Nation, there must be free flow of trade, commerce and inter- course both inter-State and intra-State but at the same time the regional problems cannot be ignored altogether. Whenever there is a clash between the national interest and the interest of the State because of which any crisis is created, the Union has power of intervention. According to us, the expression "free trade" cannot be interpreted in an unqualified manner. Any prohibition on movement of any article from one State to another has to be examined with reference to the facts and circumstances of that particular case - whether it amounts to regulation only, taking into consideration the local conditions prevailing, the necessity for such prohibition and what public interest is sought to be served by imposition thereof. Privy Council in *Hughes and Vale Proprietary Ltd. v. State of New South Wales*, (1956) AC 241 said:-

"Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free.

Whenever such prohibitions are introduced in exercise of the powers, conferred by the Essential Commodities Act or any parallel or similar Act including the Act with which We are concerned in the present case, the scope of enquiry or scrutiny can only be to a limited extent because such Acts exist for maintaining, increasing or securing supplies of essential articles and for arranging equitable distribution and availability thereof at fair prices to the common man under emergent situations. The Essential Commodities Act conceives the larger welfare of the largest numbers and contemplates measures to control the essential commodities or articles which are vital to human existence in the society. With that object in view, framers of the Act vested wide powers of control over the essential articles in the State Governments. The situations prevailing in any particular State may require complete prohibition on the movement of any essential article or commodity outside the State. That is why in the context of the provisions of the Essential Commodities Act, it has been said by this Court that imposition of complete prohibition on the movement of the essential commodities from one State to another may in some circumstances amount to regulation of trade in such commodities and it need not always amount to restriction.

18. The matter may be different where total prohibition has been imposed on the movement of goods or articles from one State to another which have not been declared to be essential commodities or articles. In those cases the State, which has imposed such ban, has to satisfy the Court that in spite of total prohibition it amounts only to regulation of the trade in such articles or that even if it was a restriction it was reasonable within the meaning of Art. 304(b) of the Constitution and has been imposed by law as required by Art. 304(b). Sometimes it is being said that many artificial barriers on movement of produce of a particular State are being contemplated or imposed only on the consideration of "My-State-My-people". This will only amount to the protection of regional interests for political end and not of public interest. This was not conceived by Chapter XIII of the Constitution. In *Charles H. Baldwin v. G.A.F. Seelig, Inc.*, (1934) 294 US 511, while dealing with the commerce clause in the American Constitution, Cardozo, J. observed:-

"This part of the Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together and that in the long run prosperity and salvation are in union and not division."

19. So far the present case is concerned first the timber was declared as an essential article within the meaning of the Act. Thereafter a notified order was promulgated first restricting the transport and movement of timber outside the State except on the basis of permit to be granted, in accordance with Tamil Nadu Timber Transit Rules. Later that part was deleted and a complete ban on movement of timber from that State to any other State has been imposed. In the counter affidavit filed before the High Court, it was stated that there was shortage of timber and the total export of timber outside the State was only 2% to 4% Of the total timber. It was also impressed that in order to satisfy the local requirement of timber and to make timber which is an essential article available to the common man' at a reasonable price it was necessary to impose impugned prohibition on the movement and transport of timber outside the State. The writ-petitioners did not challenge the declaration of timber as an essential article. It was not suggested that the declaration of timber as an essential article has been made on extraneous considerations and not in public interest. As such it has to be assumed that for arranging the supply of timber at fair prices and for equitable distribution thereof the prohibition has been imposed. In such a situation there is no escape from the conclusion that prohibition shall be deemed to be regulatory in nature and not restrictive so as to attract Articles 301 or 304 or 19(1)(g) of the Constitution.

20. The appeals are accordingly allowed and the judgment of the High Court is set aside. However, in the circumstances of these cases, there shall be no order as to the costs. Appeals allowed.

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