

# GUJARAT HIGH COURT

Nanalal Navalnathji

Vs.

Collector of Bulsar

Special Civil Appln. No 748 of 1976

(S.H. Sheth and S.L. Talati, JJ.)

25.04.1980

## JUDGMENT

### **S.L. Talati, J.**

1. The petitioner is the owner of a Motor-truck bearing registration No. GTD. 5657. The firm of Chandrakant Champaklal approached the petitioner as that firm had a desire to transport 93 bags of rice and, therefore, ultimately on 29-4-1975 the truck left Ahmadabad with 93 bags of rice. The case of the petitioner is that these rice bags were to be delivered to one Sahebchand Surajmal at vapi. Such a transport from Ahmadabad to vapi was legal according to the petitioner. The petitioner had not accompanied the truck but the driver of the petitioner drove the trucks and driver did not take turn towards vapi. The truck was intercepted near Nandigam which is a small village and it is within five miles of the border of Maharashtra. It was suspected that the rice bags were being carried across the said border and thus it was suspected that 93 bags of rice were being exported without the permit from Gujarat to the State of Maharashtra. The driver was questioned but he could not produce the permit for export. The result was that the rice bags and the truck were seized. The driver was prosecuted for the breach of clause (3) of the Gujarat Rice (Export - Control) and Paddy (Movement-Control) Order, 1966. He was convicted and he did not prefer and appeal against his conviction.

2. The petitioner was served with a show-cause notice under Section 6 of the Essential Commodities Act, 1955 on 23-5-1975. At that time it was alleged that there was a breach of clause (3) of the Gujarat Rice (Export-Control) and Paddy (Movement-Control) Order, 1966. After reply to that notice was received another show-cause notice dated 29-7-1975 was served on the petitioner where it was alleged that there was also a breach of clause (5) of the Gujarat Rice (Export - Control) and Paddy (MovementControl) Order, 1966. The order confiscating the truck was passed on 1-9-1975. Against that order Criminal Appeal No. 84 of 1975 was filed in the Court of Sessions Judge at Bulsar. By an order dated 28-10-1975 the learned Sessions Judge,

Bulsar dismissed the appeal and the order confiscating the truck was confirmed. That order is now challenged by filing this petition.

3. The learned Advocate Shri Shah who appeared on behalf of the petitioner raised the following three contentions :-

(1) Section 5 of the Essential Commodities Act, 1955 is *ultra vires* Article 301 of the Constitution read with Article 304 of the Constitution in as much as it permits the imposition of restrictions on freedom of trade in disregard to Articles 302 and 304(b) of the Constitution;

(b) The Gujarat Rice (Export-Control) and Paddy (Movement-Control) Order, 1966 is *ultra vires* the Section 3(1) of the Essential Commodities Act, 1955 and Section 3(6) of the Essential Commodities Act, 1955 as the order was not laid before both Houses of the Parliament; and

(c) The notification issued by the Government of India, being No. G.S.R. 906, dated 9-6-1966 under Section 5 of the Essential Commodities Act, 1955 suffers from excessive delegation and therefore it is bad.

4. Taking the first contention it may be stated that Section 5 of the Essential Commodities Act, 1955 is the Section by which the powers are delegated. That section reads as under :-

"5. The Central Government may by notified order, direct that the power to make orders 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 a State Government, as may be specified in the direction."

Article 301 of the Constitution of India is in Part XIII of the Constitution of India and that Chapter deals with trade commerce and intercourse within the territory of India. Article 301 reads as under :-

"301. Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free."

5. In order to appreciate the contention raised it would be necessary to reproduce Articles 302, 304 and 307 also.

6. Article 302 reads as under :-

"302. Parliament may by law 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."

Article 304 reads as under :-

"304. Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law -

(a) impose on goods imported from other State or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest." Article 307 reads as under :-

"307. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of Articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary." Now it clearly appears that the Essential Commodities Act, 1955 is an Act of Parliament. Article 304(b) will not apply in this particular case. The Gujarat Rice (Export-Control) and Paddy (Movement-Control) Order, 1966 is not a legislation by the State. In view of the fact that it is not a legislation the question of applying Article 304 would not arise at all. In this view of the situation we have to go by Article 302 of the Constitution. Article 302 clearly empowers the Parliament to pass an enactment by which it can 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. The Parliament in view of that power under Article 302 passed an enactment known as the Essential Commodities Act, 1955 which is Act No. 10 of 1955. In this view of the situation it cannot be suggested that Section 5 of the Act is *ultra vires* Article 301 read with Article 304. We make it clear that in this particular case Article 304 is not required to be read at all. It may also be stated here that in Article 304 of the Constitution of India Article 302 is not mentioned at all. It only says "Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law...". We may repeat that the Gujarat Rice (Export-Control) and Paddy (Movement-Control) Order, 1966 is not a legislation made by the State.

7. Article 301 does not hit Section 5 because that Article is "subject to the other provisions of this part." Article 302 permits Parliament to enact such a legislation in the public interest imposing "such restrictions on the freedom of trade, commerce and intercourse between one State and another...". Therefore, Section 5 is *intra vires* Article 302 and can, for that reason, not be *ultra vires* Article 301. Article 304(b) does not come into the picture in this case because Article 302 is not subject to Article 304(b). If Parliament has validly exercised power under Article 302, Article

304(b) cannot be invoked to invalidate it, Article 302 and Article 304(b) confer two distinct powers upon two distinct legislative authorities. As long as one acts within the ambit of its own constitutional power, it cannot be hit by the constitutional power conferred upon another body - even though it may be concurrent. The first contention of Mr. Shah, therefore, fails and is rejected.

8. So far as second contention is concerned, two points are urged. Firstly, it is submitted that the Gujarat. Rice (Export-Control) and Paddy (MovementControl) Order, 1966 is *ultra vires* Section 3(1) of the Essential Commodities Act, 1955. Section 3(1) of the Essential Commodities Act, 1955 runs as under :-

"3. (1) If the central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defense of India or the efficient conduct of military operations it may, by order, provide for regulating or Prohibiting the production, supply and distribution thereof and trade and commerce therein."

The learned advocate Shri Shah contends that nowhere it is stated that it was necessary or expedient to maintain or increase the supplies of paddy or to secure their equitable distribution and availability at fair prices and, therefore, this particular order was passed. A mention is also required to be made to Section 3(2)(d) of the Essential Commodities Act, 1955 which runs as under :-

"3. (2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide -

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(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity."

9. Now so far as the Gujarat Rice (Export-Control) and Paddy (MovementControl) Order, 1966 is concerned, it is an order dated 29-6-1966. It starts as under :-

"No GTH/74-ECA-1466-5866-(ii)-B- In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10) of 1955) read with notification of the Government of India, Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) No. GSR. 906, dated the 9th June, 1966, and with the prior concurrence of the Central Government, the Government of Gujarat hereby makes the following Order, namely :-"

Therefore, on the face of the, order it appears that the order is passed in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955. Again it has been passed by the

Civil Supplies Department of the State of Gujarat because of the notification issued by the Government of India. Now what has been urged is that on the face of the order it does not appear that the Civil Supplies Department of the State of Gujarat formed the requisite opinion as required by Section 3(1) of the Essential Commodities Act, 1955 and, therefore, this order was passed. The contention was taken in the petition in paragraph 19 and in that paragraph it was stated as under :-

"From the original notification of the Government of Gujarat issuing the said order, it is abundantly clear that the State Government has also not recorded or reached the satisfaction required under Section 3. In absence of the condition precedent for the exercise of power being satisfied, the Government of Gujarat cannot issue any order. *Prima facie* on the face of the order or in any part of the order, there is nothing to say or suggest that the Government of Gujarat was satisfied that it is necessary or expedient to issue the order for maintaining or increasing supplies of rice or for securing its equitable distribution and availability at fair prices. Such satisfaction having not been recorded, the Gujarat Rice (Export-Control) and Paddy (Movement-Control) Order, 1966 is *ultra vires* Section 3 of the Essential Commodities Act, 1955."

Now, it may be stated that this petition was filed in the year 1976. In the affidavit- which is filed by the Government of Gujarat - a vague denial is found in paragraph 10 of that affidavit. In that paragraph it is only stated that the contention of the petitioner is not tenable. It is also stated that the order has been issued by the Government of Gujarat under Section 3 of the Essential Commodities Act and that the Essential Commodities Act has received the assent of the President of India on 1st April, 1955 and was published in the Gazette. Thus though there was ample opportunity for the Civil Supplies Department of the State of Gujarat to put on record the material which could show satisfactorily that the requisite opinion was in fact formed and that in view thereof it was necessary and expedient for the purpose of maintaining the supplies of paddy that this particular order was required to be passed.

10. It may be stated that it cannot be denied that for the purpose of regulating, transport and distribution of any essential commodity Section 3(2)(d) of the Essential Commodities Act indisputably gave ample power to the Parliament. That power is delegated to the State Government. The State Government, therefore, had authority to issue the Gujarat Rice (Export-Control) and Paddy (Movement-Control) Order, 1966. The only challenge is that on the face of that order it is not mentioned that the State Government who issued the order was satisfied in regard to the requisite conditions which are mentioned in Section 3(1) of the Essential Commodities Act, 1955. Before deciding this question we may refer to the two decisions of the Supreme Court.

11. The first case is a case of. *The Hamdard Dawakhana (Wakf), Delhi v. The Union of India reported in*<sup>1</sup> The argument in that case was similar to the argument which is advanced in this case. The learned advocate Shri Pathak in that case contended that the condition prescribed by

the first part of Section 3(1) of the Act is a condition precedent and it is only when and after the said condition is satisfied that the power to issue a regulatory order can be exercised by the Central Government. The Supreme Court answered that contention in the following terms :-

"This contention again cannot be allowed to be raised for the first time in appeal, because if it had been raised before the High Court, the respondents would have had a chance to meet it. It is true, as Mr. Pathak contends, that in the absence of any specific averment made by the Fruit Order that the Central Government had formed the necessary opinion, no presumption can be drawn that such opinion had been formed at the relevant time; but it would have been opened to the respondents to prove that such an opinion had been formed at the relevant time; and it cannot be suggested that the failure to mention that fact expressly in the fruit Order itself would preclude the respondents from proving the said fact independently. That is why we think Mr. Pathak cannot be permitted to urge this contention at this stage." Now, therefore, so far as this ruling is concerned the contention was not allowed to be raised in the Supreme Court as it was not raised in the high Court. The ground mentioned was that if the contention would have been raised the respondents would have been able to meet with the same. But it is clear that merely because on the face of the order the necessary facts showing that the opinion was formed was not mentioned no presumption can be made one way or the other. That is where the matter stood.

<sup>1</sup> AIR 1965 SC 1167

12. In another case *Chinta Lingam v. Government of India*, reported in<sup>2</sup> this Question was directly in issue. Several contentions were raised. One of the contentions raised was as under :-

"The requisite opinion of the Central Government within Section 3(1) of the Act was not to be found in any of the Orders."

The Supreme Court answered that question as under :-

"We are unable to see the necessity of reciting the requisite opinion with in Section 3(1) of the Act in the Control Orders. It is implicit in the recital in the Control Orders that they were being made under Section 3 of the Act that the Central Government had formed the requisite opinion within sub-section (1) of the section. This disposes of the first four contentions."

Now this Order also recites that this Order is made in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955). It also recites that the Government of India issued a particular notification and in view of that notification and after obtaining prior concurrence of the Central Government, the Government of Gujarat made that order. In this view of the situation, it is clear that reference to Section 3 of the Essential Commodities Act, 1955 and further reference to the notification which the Government of India

issued clearly imply that the State Government had formed a requisite opinion within the meaning of Section 3(1) of the Act otherwise such an order could not have been passed. The ratio of the ruling in *Chinta Lingam v. The Government of India*. (AIR 1965 Supreme Court 1167) (supra), we are bound to follow and, therefore, we hold that the Government of Gujarat by the recitals made in the Order itself made it clear that it had formed a requisite opinion and it is implicit in the Order itself. The contention therefore, raised by Mr. Shah in this behalf is rejected.

13. Another contention raised was in regard to Section 3(6) of the Essential Commodities Act, 1955 which runs as under :-

"3.(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be after it is made."

The order in question viz. The Gujarat Rice (Export-Control) and Paddy movement-Control) Order, 1966 is not made by the Central Government or by any officer or authority of the Central Government. It is, therefore not necessary that it should have been laid before both Houses of Parliament. This contention, therefore, fails and is rejected.

14. The third contention raised by Mr. Shah is that the notification in question issued under Section 5 of the Act suffers from excessive delegation. That notification is issued by the Government of India. Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) on 9-8-1966. It is notification No. G.S.R. 906. It runs as under :-

<sup>2</sup> AIR 1971 SC 474

"G.S.R. 906.- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs -

(a) 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 (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof shall, in relation to foodstuffs, be exercisable also by a State Government subject to the conditions-

(1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf; and

(2) that before making an order relating to any matter specified in the said clauses (a), (c) in regard to regulation of transport of any food-stuffs under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government.

(b) that the orders of the Government of India in the Ministry of Food and Agriculture (Department of Food) specified in the Schedule below shall stand rescinded :-

Provided, that, notwithstanding such rescission, any order made by a State Government or any officer subordinate to that Government in pursuance of the orders so rescinded and in force immediately before the commencement of this order shall be deemed to have been

made in pursuance of this order and under the relevant provisions of Section 3 of the said Act and shall continue in force according to its tenor, and accordingly any appointment made, license or permit granted or direction issued under the order aforesaid and in force immediately before such commencement shall continue in force according to its tenor until and unless it is superseded by any appointment made, license or permit granted or direction issued under any other order made in pursuance of this order and under the relevant provisions of Section 3 of the said Act."

The above notification is issued by the Central Government under Section 5 of the Essential Commodities Act, 1955. In view of that notification the State Government got all the powers which the Central Government had under Section 3 of the Essential Commodities Act, 1955. Reading Section 5 of the Essential Commodities Act, 1955 it becomes clear that the Parliament itself delegated the power to the State Government through the Central Government and, therefore, there is no question of excessive delegation. This question is decided in a case : *Harishankar Bagla v. The State of Madhya Pradesh reported in*<sup>3</sup> In that case Section 4 of the Essential Supplies (Temporary Powers). Act, 1946 was attacked. The Supreme Court observed as under :-

"Section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself. The section, therefore, cannot be attacked on the ground that it empowers the delegate to further delegate its powers in respect of the exercise of its powers under Section 3."

Section 4 of the Essential Supplies (Temporary Powers), Act, 1946 was reproduced in that ruling. That section ran as under :-

<sup>3</sup> AIR 1954 SC 465

"4. The Central Government may by notified order direct that the power to make orders 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 a State Government as may be specified in the direction".

It is sufficient to say that Section 4 of that Act is *pari materia* with Section 5 of the Essential Commodities Act, 1955. It is clear that the Parliament itself delegated the powers to the State Government through the Central Government and, therefore, there is no question of excessive delegation. The notification issued under Section 5, therefore does not suffer from excessive delegation. The third contention of Mr. Shah fails and is rejected.

15. No other points are raised.

16. In view of the above findings the petition fails and is dismissed. Rule is discharged with costs.

Petition dismissed.