

PUNJAB AND HARYANA HIGH COURT

Mohinder Singh Sawhney

Vs

State of Punjab

Civil Writ No. 2636 of 1967

(Shamsher Bahadur and Gurdev Singh, JJ.)

04.03.1968

ORDER

Shamsher Bahadur, J.

1. This judgment will dispose of five writ petitions, Civil Writs Nos. 2636, 2761, 2762, 2763 and 2270 of 1967, in all of which the common question relates to the vires of the Punjab Cattle Fairs (Regulation) Ordinance, 1967, Punjab Ordinance No. 14 of 1967, promulgated on 4th of November, 1967, the provisions of which have now been incorporated in the Punjab Cattle Fairs (Regulation) Act (Act No. 6 of 1968) (hereinafter called the Act). In the petitions, as originally filed, the constitutionality of the Ordinance was challenged, but after the arguments had been heard on 29th and 30th of January, 1968, the petitioners asked for amendment of the petitions for the purpose of diverting the challenge from the Ordinance to the Act itself, the provisions of both being identical.

2. In Civil Writ No. 2762 of 1967 (Lachman Singh v. State of Punjab and others) the admitting Bench on 7th of December, 1967, directed an early hearing of this petition as well as the others by a Division Bench and this is how these matters have been placed before this Bench for disposal.

3. In all the five cases before us, the petitioners have contended that they have been carrying on the business of sale and purchase of cattle in markets organised by them for this purpose. In each case the petitioners have taken lands on lease from the municipalities or other local authorities for the purpose of holding these markets for the convenience of prospective buyers and sellers. The cattle markets have been organised by the petitioners in various parts of the State on specified dates and the admitting Bench permitted them to hold these dispute the promulgation of the Ordinance "subject to any penalties incurred under the impugned Ordinance if the validity of the Ordinance is upheld". While petition No. 2636 of 1967 has been argued by Mr. Lakhanpal, the remaining petitions, except petition No. 2762 of 1967 have been argued by Mr. Kaushal, Mr. Chawla has addressed arguments in respect of petition No. 2762 of 1967.

4. Broadly speaking, the challenge to the validity of the Act is based on four grounds. It is submitted in the first instance that the provisions of the Act are vague and further that the vice of

ambiguity in the provisions especially when new offences are created is sufficient to enable this Court to declare the legislation to be *ultra vires*. Secondly, the Act is attacked on the ground that it is violative of Articles 19(1)(f) and 19(1)(g) of the Constitution. It is further assailed for its violation of Articles 20 and 21 of the Constitution. Finally, it has been suggested that while the provisions of the Act purport to seek State monopoly for cattle fairs, these can be pressed into service on account of the vagueness of the provisions, to bring in cattle markets and in some of the returns filed by the State 'fairs' and markets' have actually been equated so far as their legal status is concerned.

5. In order to test the validity of the first contention, it is necessary to examine in some detail the relevant provisions of the Act. The enactment has been made, according to the preamble. "to regulate the holding of cattle fairs and in Section (2) 'broker', 'cattle', 'Deputy Commissioner' 'fair area', 'fair officer' and 'prescribed' are defined. 'Cattle' according to clause (b) includes a vast variety of animals like buffalo, camel, cow, donkey, elephant, goat, horse, mule and sheep. While 'fair area' is defined to mean an area within a district as may be specified by a fair officer for the purpose of holding a cattle fair" and 'fair officer', is one who is appointed under Section 4, no attempt is made to define a fair itself.

6. Section 3, which is the substantive provision in the Act is to this effect :

"(1) The right to hold a cattle fair at any place in the State of Punjab and to control, manage and regulate such fair shall vest exclusively in the State Government and shall be exercisable by it, in accordance with the provisions of this Act and the rules made thereunder, through such persons or authorities as it may deem fit.

(2) Notwithstanding anything contained in any other law for the time being in force and save as provided by sub-section (1), it shall be unlawful for any person or local authority to hold, control, manage or regulate a cattle fair at any place in the State of Punjab."

It would be manifest that in consequence of sub-section (1) of Section 3 a cattle fair in the State of Punjab has to be held exclusively by the State Government and the second sub-section of Section 3 makes it an offence for any person or local authority to hold, control, manage or regulate a cattle fair at any place in the State.

7. 'Fair officers' under Section 4 are to be appointed by the State Government or by the Deputy Commissioner, and under sub-section (2) they have the power of defining the fair area, making reservation of sites or places for conveniences, "exhibitions, shows, demonstrations" etc. in "connection with the cattle fair", "allotment of sites temporarily for commercial or other purposes in connection with the cattle fair", making "arrangements for watch and ward, lighting, medical first aid", etc. "in connection with the cattle fair", and construction of temporary offices for the purpose of collecting taxes and fees imposed and levied "in connection with the cattle fair", State Government has the power to impose taxes or duties in fair areas and local authorities under Section 6 are deprived of any competence to impose such tax in a fair area Section 7 enjoins every local authority, within whose jurisdictional limits a fair area is situated to render to the fair officer every assistance which may be required in connection with the cattle fair. Both the sellers and buyers of cattle are to obtain requisite certificates under Section 8 from prescribed

authorities. A broker, who is defined as a person who strikes a bargain between a seller and a purchaser of cattle, in any cattle fair, on payment of commission, has to obtain a licence under Section 9 before conducting his business in any fair area, and this licence which has to be obtained from a prescribed authority may be revoked by a fair officer under sub-section (4) of Section 9 if he is satisfied that the conditions of the licence have been breached. Such an order can be revised by the Deputy Commissioner. Sections 10 to 13 are regulatory and do not concern the decision of the questions before us. Section 14 empowers summary proceedings to be taken against defaulters, and Section 15 requires a Panchayat Samiti or Municipal Committee in whose jurisdiction the fair is to be held to make an initial deposit in the cattle fair fund of an amount not exceeding Rs. 1000/-. Section 16 establishes a cattle fair fund in which are to be credited all fees, rents or other sums of money received or realised under the provisions of the Act as well as the donations made to it by the State Government. Section 17 deals with the application of cattle fair fund for the various purposes enumerated therein.

8. Section 18 deals with the penalties which are incurred under sub-section (2) of Section 3 and is to this effect :-

"(1) Any person who contravenes the provisions of sub-section (2) of Section 3 shall,

(a) for the first offence, be punishable with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both; and (b) for a second or subsequent offence, be punishable with imprisonment which may extend to three years or with fine which may extend to five thousand rupees or with both."

Sub-section (2) deals with the minor offences created for breach of the provisions of Section 8 which prohibits a person from selling or purchasing cattle without a certificate, sub-section (1) of Section 9 which forbids any person to Act as a broker without a license, sub-section (3) of Section 9 which says that "no broker shall be entitled to claim from the seller or the purchaser or both a commission in respect of the sale or purchase of cattle at a cattle fair at a rate exceeding in the aggregate one per centum of the price of the cattle sold" and sub-section (1) of Section 10 which forbids a person to bring within a fair area any cattle, suffering from any contagious or infectious disease or to obstruct the sale or purchase of cattle, and the punishments to be imposed for these may extend to one months imprisonment or fine of Rs. 500/- or both. An offence punishable under sub-section (1) of Section 18 has been made cognizable under Section 19 and no Court can take cognizance of such an offence except on a complaint made by a fair officer or any other officer not below the rank of a gazetted officer. The offences under sub-section (2) of Section IS are compoundable. Section 21 relates to the power to make regulations, while Section 22 is the rule making power.

9. It is submitted by the learned counsel for the petitioners that the sweeping provisions of the Act and the comprehensive prohibition imposed on cattle fairs entailed an obligation on the legislature to define a fair and in its absence the enactment has to be struck down on ground of vagueness. 'Fair' has been defined in Shorter Oxford English Dictionary (1961 edition) as "a periodical gathering of buyers and sellers, in a place and at a time ordained by charter or statute or by ancient custom". According to Stroud's Judicial Dictionary, a 'fair' is a solemn or greater

sort of Market granted to any town by privilege for the more speedy and commodious provision of such things as the subject needeth, or the utterance of such things as we abound in above our own uses and occasions." Every fair, according to this definition, "is a market, but every market is not a fair". It is emphasised that the "two franchises of fair and market are separate and distinct, and of equal dignity, and may co-exist in the same place on the same day", as observed by Farwell J. in *New castle v. Worksop*¹,

10. The state has legislative competence to pass laws in respect of markets and fairs which is item 28 on the State List in Seventh Schedule of the Constitution. The counsel submits that according to the general concept of a 'fair' a periodical gathering of buyers and sellers is contemplated and it is held either under a special law or by special custom. A market organized for the sale and purchase of cattle, in his submission, is not covered by the popular concept of fair and indeed as pointed out by Stroud, every market cannot be regarded as a fair. Holding of a fair by individuals and local authorities is not only forbidden but has been made an offence and in such a situation it behoved the Legislature to lay down its scope and content. In paragraph 17 of the written statement filed on behalf of the State in Civil Writ No. 2636 of 1967, it is stated that:

"The Ordinance is unambiguous and clear. The terms which required definitions such as 'cattle, 'fair area' etc. stand defined in Section 2 of the ordinance. The word 'fair' is commonly known and according to Chamber's dictionary it means "a great periodical market for one "kind of merchandise or for general sales and purchases for a district".

In paragraph 19 of the written statement in Civil Writ No. 2761 of 1967, however, it is further stated that "in fact, cattle fair and cattle market are synonymous terms." A person wishing to sell his cattle may negotiate a deal with the buyer either directly or through an intermediary. He may do so at his own place or in a gathering of persons who have collected for that purpose in a market. Of necessity the purchase and sale of cattle has to be done in a fairly open space as the prospective buyers way like to inspect what they are going to purchase. By custom, understanding or publicity a market may be held and organised at an appointed customary or specified place and such an assembly may not constitute a fair according to the popular notion which also includes some side shows and amusements. It is also important to note that according to the popular concept of a fair it is to be held periodically. Under the provisions of the Act, cattle can only be sold or bought in a fair which may be held at the discretion and pleasure of the Government. Does it mean that sale of cattle at any other time is prohibited ? It does not need to be emphasized that in some cases the sale of cattle cannot be deferred Some cattle may have to be sold or purchased within a few hours or days. In the absence of any indication to the contrary the legislation cannot be taken to have forbidden the private sales of cattle in all circumstances.

11. It has been repeatedly said in the various provisions of the statute that the sale of cattle in the fair area alone is prohibited. It might legitimately be inferred that sales outside the fair area are not subject to the restrictions and restraints imposed by the statute. Some element of contradiction is involved in the definition of a 'fair area' and the prohibition of a right to hold a cattle fair "at any place in Section 3(2).

12. It is not denied that many persons like the petitioners have hitherto been carrying out private sales of cattle through what has been described as 'cattle market'. If the intention was to hit these markets by this legislation it should have been so stated and expressed, The power of the State Legislature to impose such a prohibition is not denied by the counsel for the petitioners. What is contended is that such a power cannot be spelled out from the provisions relating to regulation of cattle fairs which appears to be the primary aim of the impugned legislation.

13. The learned Deputy Advocate-General, realising the cogency of the arguments advanced by the learned counsel for the petitioners, felt obliged to concede that an ordinary market for the sale and purchase of cattle was not intended to be hit by the enactment, and gave it as his own opinion that the State Government would not be well-advised to embrace private markets within the concept of a fair. This submission, however, is not in consonance with the plea adopted by the State in the written statement in Civil Writ No. 2761 of 1967 where it is unequivocally averred that a cattle fair and a cattle market are synonymous terms. It seems axiomatic that what is aimed to be hit and forbidden and made into an offence ought not only be defined in precise language but placed, so far as possible, beyond the pale of controversy. In this situation, it appears to us that as the infirmity of vagueness goes to the root of the matter, legislative enactment has to be struck down as a whole even if some of its provisions are unexceptionable in themselves. Support is sought for this contention in a Division Bench authority of Chief Justice Falshaw and Grover J. in *Harbans Singh v. The Pepsu Land Commission*², , where rule 30 of the Pepsu Tenancy and Agricultural Lands Rules was found to be too vague to help persons who wished to claim exemption on the ground that they were keeping sheep breeding farm, no breeds having been specifically mentioned in the rule as standard breeds. If the fair is what is so regarded in dictionaries and legal parlance, a distinction has to be made between a cattle market and a cattle fair and owing to the specific assertions made by the State Government in its return a subject cannot be left to the mercy and vagaries of the executive Government in the absence of any clear definition of 'fair'.

14. This conclusion would be sufficient to decide this case but on account of the lengthy arguments addressed before us on the other submissions, brief reference may be made to these as well.

15. It has been very strenuously urged by Mr. Lakhanpal that the ostensible object of this legislation is to create a monopoly of cattle trading in the State Government and not only individuals but local authorities are liable to prosecution if they undertake the business of sale and purchase of cattle. The counsel has invited our attention to clause (1) of Article 20 of the Constitution which says that :-

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence...."

while Article 21 protects the life and personal liberty of a person "except according to procedure established by law". It is not denied that conviction should be based as a result of trials which are held in due process and such a process will be held to be denied if there is no "ascertainable standard of guilt". As pointed out by Basu in the Second Volume of the Constitution of India (4th edition) at page 70 :-

"A statute is vague within the meaning of this rule if a man of common intelligence is unable to determine whether or not he is committing the offence. If a statute, fails to give notice of what acts will be punished, the statute itself will be unconstitutional, and a specification of the details of the offence in the charge will not serve to validate the statute."

The language of a statute should convey a sufficiently defined warning regarding the action which is sought to be made a guilt. The gist of the offence in the instant case is the holding of a cattle fair by an individual or a local authority and the term not having been specified or defined and a contradictory position having been adopted, as already pointed out, with regard to the central concept of 'fair' the argument of the counsel appears to be plausible.

16. Though Mr. Lakhnupal has submitted that the legislation offends both Articles 19 (1) (f) and 19 (1) (g) Mr. Kaushal has confined the attack on the legislation only on the ground that it violates the freedom envisaged in sub-clause (f) of clause (1) of Article 19. The seven freedoms enumerated in sub-clauses (a) to (g) of clause (1), of Article 19 constitute the fundamental rights under this provision. Sub-clauses (f) and (g), to which all citizens shall have the right, are :-

"(f) to acquire, hold and dispose of property; and

(g) to practice any profession, or to carry on any occupation, trade or business."

It seems to us that the First Amendment of the Constitution in 1951 which introduced clause (6) to Article 19, according to which sub-clause (g) of clause (1) was not to prevent the State from making any law relating to "the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether, to the exclusion, complete or partial, of citizens or otherwise", would put the seal of validity on the prohibition for the individuals to carry on private cattle trading if a clear intention could be spelled out from the impugned Act. Clause (6) of Article 19, however, imposes an obligation on legislation which deprives a person of his right embodied in sub-clause (f) to satisfy the test of reasonableness, this provision being to this effect :-

"19 (5). Nothing in sub-clauses (d), (e), and (f) shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

Mr. Kaushal has cited the Supreme Court decision in *Ganpati Singh ji v. State of Ajmer*³, for the proposition that the right to hold fair on one's own land is a fundamental right under Article 19(1) (f) which can only be restricted in the manner permitted by sub-clause (5). It is, therefore, to be expected that the restriction which is imposed on that right is reasonable and in public interest. It is not denied by Mr. Kaushal that such a person has also a right under clause (g) and such an exercise of right can be totally restricted under the provisions of clause (6). It is, however,

submitted by him on the basis of *Sakal Papers (P) Ltd. v. Union of India*⁵, that if some legislation curtails two freedoms one of which can be abridged and the other not, the unbridgeable freedom remains intact. In the words of Mr. Justice Mudholkar, speaking for the Court, at page 313 :-

"It may well be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgment on the same grounds as are set out in clause (6) of Article 19. Therefore, the right of freedom, of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen."

17. The power to create a monopoly being envisaged under clause (6) it is submitted by the learned counsel that the phrase "law relating to" would cover all the provisions of the impugned enactment. Mr. Kaushal, however, urges that while sub-section (1) of Section 3 of the Act says that the right to hold a cattle fair at any place in the State of Punjab shall be exercisable by the State Government, sub-section (2), which is assailed by him, says something which is outside the scope of monopoly which is the kernel and the subject-matter of the impugned legislation. Now, sub-section (2) says that :-

"Notwithstanding anything contained in any other law for the time being in force and save as provided by sub-section (1), it shall be unlawful for any person or local authority to hold, control, manage or regulate a cattle fair at any place in the State of Punjab."

It is argued by him that sub-section (2) is not incidental to sub-section (1) and this being the offending provision can be struck down as *ultra vires* not being a law "relating to" the carrying on by the State any trade or business to the exclusion of citizens. Support for this proposition is sought from a Supreme Court decision in *Akadasi Padhn v. State of Orissa*⁵, In paragraph 17 at page 1954 Chief Justice Gajendragadkar said as follows :-

"In dealing with the question about the precise denotation of the clause 'a law relating to', it is necessary to bear in mind that this clause occurs in Article 19(6) which is, in a sense, an exception to the main provision of Article 19(1)(g). Laws protected by Article 19(6) are regarded as valid even though they impinge upon the fundamental right guaranteed under Article 19(1)(g). That is the effect of the scheme contained in Article 19(1) read with clauses (2) to (6) of the said Article 'A law relating to' a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion, the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should "enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19(6).

18. In the contention of Mr. Kaushal, the comprehensive prohibitions embodied in the statute cannot reasonably be deemed to be the basic and essential requirements of the monopoly created in respect of cattle fairs, particularly when the concept of cattle fair' itself has been left to the vagaries of the executive who would be free to construe what it means. Again, we do not find it necessary to develop at length the refinement involved in the argument and would be content to say that the legislation suffers from the basic infirmity of vagueness and on that ground is liable to be struck down.

19. It is submitted that the case for curtailment of the freedom envisaged in sub-clause (f) in the interest of general public has not been made out, the enactment itself being uncertain of what is sought to be made an offence. The counsel submits that the State in creating a monopoly in itself which though unchallengeable under clause (6), cannot justifiably curtail the freedom under sub-clause (f) when the citizens who have hitherto been conducting cattle markets are not only to be put out of business but are to be prosecuted if they continue to trade in the sale and purchase of cattle in ordinary markets in contradistinction to cattle fairs. It is pointed out that the enactment itself, according to the preamble, has been made to regulate the holding of cattle fairs and though virtually it creates a monopoly for the State in the holding of cattle fairs, there is a threat to private trading in cattle in markets which do not constitute fairs. It is not necessary to elaborate this argument further as in our opinion the petitions must succeed on the ground that the legislation is vague, uncertain and ambiguous. While in the course of his arguments Mr. Majithia, for the State, has projected a concept of conventional fairs to which alone the statute applies he had to concede frankly that the intention of the Legislature has not been made clear in the impugned enactment. The State Government not having concealed their object of encompassing cattle markets in the scope of cattle fairs, we see strength also in the fourth argument of the learned counsel that the impugned Act is one which may be utilised to eliminate private cattle markets which ostensibly do not come within the ambit of the statutory prohibition.

20. In the result, the petitions are allowed, but in the circumstances we make no order as to costs.

Gurdev Singh J.

21. I agree.

Petitions allowed.

Cases Referred.

- 1(1902)2 Ch. 156
- 2(1964)66 P.L.R. 1
- 3AIR 1955 SC 188
- 4AIR 1962 SC 305
- 5AIR 1963 SC 1047