

PUNJAB AND HARYANA HIGH COURT

Kehar Singh

Vs

State of Punjab

Civil Writ No. 2367 of 1968

(Daya Krishan Mahajan and Prem Chand Jain, JJ.)

17.10.1968

JUDGMENT

Prem Chand Jain, J.

1. This judgement will dispose of Civil Writs Nos. 2367, of 1968, 3368 of 1968 and 2369, of 1968, in all of which the vires of the Punjab Cattle Fairs (Regulation) Act, 1967, (Act No. 6, of 1968, as amended by the Punjab Cattle Fairs (Regulation) Amendment Act, 1968, (Act No. 18, of 1968), has been challenged.

2. In all the three cases before us it is alleged that the petitioners carry on the business of holding cattle fairs and markets on the land in their lawful possession within the State of Punjab on different dates at different places, that for the purpose of regulating cattle fairs within the State of Punjab, the Punjab Government issued ordinance No. 14, of 1967, which was replaced by the Punjab Cattle Fairs (Regulation) Act, 1967, (Punjab Act No. 6, of 1968), (hereinafter to be called the Act), and by virtue of section 3, of the said Act, the right to hold cattle fairs vested exclusively in the State Government and private individuals were debarred from holding cattle market and any contravention was made a cognizable offence. Civil Writ No. 2761 of 1967, was filed by Bhagwant Singh, one of the petitioners, challenging the legality of Punjab Act No. 6, of 1968. This writ petition came up for hearing before Shamsher Bahadur and Gurdev Singh JJ and the learned Judges allowed the writ petition and declared the Act, *ultra vires* on the ground that it did not provide the definition of 'cattle fair'. According to the allegations in the petitions, the petitioners thereafter had been regularly holding cattle fairs and markets on their own land; now the Punjab Government has amended the Act and the definition of the 'cattle fair' has been provided in the amended Act, by virtue of "The Punjab Cattle Fairs (Regulation), Amendment Act, 1968, (Punjab Act No. 18, of 1968), (hereinafter to be called the 'Amending Act') and the effect of this amendment is to nullify the decision given by this Court, in Civil Writ No. 2761, of 1967. By way of these petitions, the petitioners have challenged the validity of the provisions of section 3 of the Act and the provisions of the Amended Act, on the grounds as mentioned in the petitions.

3. In the return filed by the Controller, Panchayati Raj Finances, Development and Panchayat

Department, Punjab, Chandigarh, on behalf of respondent No. 1, the decision of the earlier writ is admitted. It is further alleged that the amendment was made with a view to remove the lacuna pointed out by this Court in Civil Writ No. 2636, of 1967. It was further asserted that the State had a complete monopoly to hold cattle fairs as defined in the amending Act. It was also maintained that the Act was *intra vires* of Article, 19, of the Constitution and no fundamental right had been violated.

4. It is submitted by the learned counsel for the petitioners that the definition of 'cattle fair' introduced by the amending Act, is still vague and suffers from the vice of ambiguity. What now has been done by introducing this definition is that a restriction on the gathering of 25, or more than 25, persons has been placed. The result of this definition would be that even a private person would not be able to sell his cattle as there is a possibility that more than 25, persons may visit his place for the purpose of purchasing the cattle and thereby he would be committing an offence and be liable to penalty. By introducing this definition even the private sales by private individual are liable to be affected which could never be the intention of the legislature. The second contention of the learned counsel is that the Act is violative of Articles 19(1) (f) and 19, (1) (g) of the Constitution as restriction is being imposed on the freedom envisaged in these clauses of Article 19. It is submitted that this point can be urged by the petitioners as the same was left undecided in the earlier petition.

5. In order to test the validity of the first contention of the learned counsel for the petitioners, it is necessary to examine the definition of 'cattle fair' introduced by the amending Act, which is in the following terms :-

"(bb) 'Cattle fair' means a gathering of more than twenty-five persons for the purpose of general sale, purchase or exhibition for general sale or purchase of cattle."

According to the definition, any gathering of more than 25, persons collected for the purpose of general sale, purchase or exhibition for general sale or purchase of cattle would be covered by this provision. But the question that requires determination is as to whether this definition would include the sale by private individuals who may make a general sale or exhibit for general sale, cattle at their private places and for this purchase more than 25, persons may gather. To my mind, this definition of 'cattle fair' cannot be interpreted to mean to apply to sales by private individuals at their private places. The word 'fair' has not been defined in the Act, but the dictionary meaning of this word as given in Shorter Oxford English Dictionary, is

"A periodical gathering of buyers and sellers, in a place and at a time ordained by character or statute or by ancient custom." In Webster's dictionary, the meaning of fair is "A gathering of buyers and sellers at a particular place with their merchandise at a stated season or by appointment for trade." The real intention of the Legislature seems to be that where in general, people gather at some place for the purpose of buying and selling the cattle and the number of the persons exceeds twenty-five, then that would come under this definition. An individual is not expected and would not permit other persons to bring cattle to his place and sell or exhibit for sale their cattle. The learned Deputy Advocate General appearing on behalf of the State conceded in all fairness that the definition of 'cattle fair' would not cover the cases of the private individual who sell or exhibit for sale

their cattle at their own private places. In this view of the matter, there is no force in the contention of the learned counsel for the petitioners and the same is repelled.

6. In the second contention of the learned counsel, the vires of the legislation has been challenged on the ground that it offends both Articles 19(1)(f) and 19(1)(g) which read as under :-

"19(1) : All citizens shall have the right -

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

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

What is sought to be argued by the learned counsel is that by the impugned legislation, the petitioners have been deprived of their fundamental right to hold and enjoy their property and to carry on the trade or business and it is, therefore, void as being repugnant to Article 19 (1) (f) and (g) of the Constitution. On the other hand the learned Deputy Advocate General maintains that the provisions of the impugned legislation do not contravene Article 19 (1) (f) or (g) of the Constitution. It is urged by him that under Article 19(6), the State Legislature is empowered to create a State monopoly in any trade or business and a monopoly thus created cannot be successfully challenged either under Article 19(1)(f) or under Article 19(1)(g).

7. After giving my thoughtful consideration to the respective arguments of the learned counsel, I am of the view that there is no force in the contention of the learned counsel for the petitioners.

8. The first amendment of the Constitution in 1951 introduced clause (6) to Article 19 which, *inter alia*, provided that nothing contained in Article 19(1)(g) will prevent the State from making any law relating to the carrying on by the State of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. It clearly means that the State may make a law in respect of any trade, business, industry, or service whereby complete monopoly could be created by which citizens are wholly excluded from the trade, business, industry or service in question ; or are partially excluded from such trade, business, industry or service, and that would not in any way contravene the provisions of Article 19(1)(g). Mr. H.S. Wasu the learned counsel for the Petitioners also conceded that the State has a right to create monopolies. That being so can it be said that the creation of State monopoly in respect of the holding of cattle fair in any way contravenes the petitioners' fundamental rights under Articles 19(1)(f) and (g) of the Constitution ? For this purpose, it would be necessary to examine the broad features of the Act.

9. The enactment has been made, according to the preamble to regulate the holding of cattle fair. Section 2 gives definitions Under section 3, which is a substantive provision in the Act, it would be manifest that under sub-clause (1) a cattle fair in the State of Punjab, has to be held exclusively by the State Government and the second sub-section 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. Section 4 deals with the appointment of 'Fair Officers' and their respective duties. Under section 5 the 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 casts a duty on every local authority within whose jurisdictional limits a fair area is situated to render to the fair officers every assistance which may be required in connection with

the cattle fair. Section 8 talks of levy of fees on sellers and buyers for obtaining the requisite certificates, Section 9 relates to the procedure for obtaining licenses by the brokers. Sections 10 to 13 are regulatory. Section 14 empowers summary proceedings to be taken against defaulters while 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. 1,000. Section 16 establishes a cattle fair fund in which are to be credited all fees, rents or other sums of money received or realized under the provisions of the Act, Section 17 deals with the application of cattle fair fund for the various purposes enumerated therein. Section 18 deals with the penalties which are incurred under sub-section (2) of Section 3. Under section 19 offences falling under sub-section (1) of section 18 have been made cognizable. Under section 20 the offences under sub-section (2) of section 18 have been made compoundable, Section 21 relates to the power to make regulations while section 22 is the rule making power.

10. From the above-mentioned provisions of the Act it is clear that the entire control of holding cattle fair vests in the State Government. This enactment has been introduced to control, manage and regulate the cattle fair. What has been done now is that the right of holding of the cattle fair exclusively vests in the State Government. Under Article 19(1)(g) every citizen has a right to carry on any trade or business but this right can obviously be impaired if the State Government itself seeks to carry on a trade or business. Under the original clause (6) such action on the part of the State could be justified only if it was reasonable but the amendment of 1951 exempts the State from that condition of reasonableness, by laying down that the carrying on of any trade, business, industry or service by the State would not be questionable on the ground that it is an infringement of the right guaranteed by Article 19(1)(g). There are no limitations upon the power of the State to create a monopoly in its favour. The true legal position about the application of Article 19(1)(g) and the effect of clause 6 has been enumerated by their Lordships of the Supreme Court in *Akadasi Padhan v. State of Orissa*¹, in the following terms :-

"14. The amendment made by the Legislature in Article 19 (6) shows that according to the Legislature, a law relating to the creation of State monopoly should be presumed to be in the interests of the general public. Article 19 (6) (ii) clearly shows that there is no limit placed on the power of the State in respect of the creation of State monopoly. The width of the power conferred on the State can be easily assessed if we look at the words used in the clause which cover trade, business, industry or service. It is true that the State may, according to the exigencies of the case and consistently with the requirements of any trade, business, industry or service, exclude the citizens either wholly or partially. In other words, the theory underlying the amendment in so far as it relates to the concept of State monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which Socialism accepts. That is why we feel no difficulty in rejecting Mr. Pathak's argument that the creation of a State monopoly must be justified by showing that the restrictions imposed by it are reasonable and are in the interests of the general public. In our opinion, the amendment clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public, so far as Article 19(1)(g) is concerned."

15. The amendment made in Article 19(6) shows that it is open to the State to make laws

for creating State monopolies, either partial or complete, in respect of any trade, business, industry or service. The State may enter trade as a monopolist either for administrative reasons, or with the object of mitigating the evils flowing from competition, or with a view to regulate prices or improve the quality of goods, or even for the purpose of making profits in order to enrich the State exchequer. The Constitution-makers had apparently assumed that the State monopolies or schemes of nationalization would fall under, and be protected by, Article 19(6) as it originally stood ; but when judicial decisions rendered the said assumption invalid, it was thought necessary to clarify the intention of the Constitution by making the amendment. It is because the amendment was thus made for purposes of clarification that it begins with the words "in particular". These words indicate that restrictions imposed on the fundamental rights guaranteed by Article 19(1) (g) which are reasonable and which are in the interests of the general public, are saved by Article 19(6) as it originally stood, the subject-matter covered by the said provision being justiciable, and the amendment adds that the State monopolies or nationalisation schemes which may be introduced by legislation, are an illustration of reasonable restrictions imposed in the interests of the general public and must be treated as such. That is why the question about the validity of the laws covered by the amendment is no longer left to be tried in Courts. This brings out the doctrinaire approach adopted by the amendment in respect of a State monopoly as such."

11. In this view of the matter I hold that the provisions of the impugned legislation do not contravene the provisions of Article 19 (1) (g) as the State Government is empowered to create a State monopoly in any trade or business.

12. This conclusion, however, still leaves the next question to be decided whether the impugned legislation affects the petitioners' right under Article 19(1)(f) of the Constitution which provides that every citizen shall have the right to acquire, hold and dispose of property. To judge the validity of a law creating State monopoly on the ground that its provisions impinge upon the other fundamental rights guaranteed by Article 19(1), it would be necessary to decide the purpose of the impugned legislation and its direct effect.

13. From the provisions of the Act enumerated above it is clear that the legislation in question has been introduced to control, manage and regulate the cattle fair. Apparently from the impugned legislation the right to acquire, hold or dispose of the property has not in any way been directly affected. The petitioners can dispose of their property or hold the same but they cannot be permitted to defeat the object of the Act by taking refuge under Article 19(1)(f). The argument that the petitioners have a right to hold a fair on their property, if, accepted, would nullify the legislation. As observed earlier there is no restriction on the sale of cattle by an individual on his own property but under that garb he cannot be permitted to hold a cattle fair. The legislation does not directly impinge upon the right guaranteed by Article 19(1)(f) of the Constitution. It only incidentally affects his right, if any, of holding a cattle fair on his own property. All the provisions of the Act are basically and essentially necessary to achieve the object of the impugned legislation. On this point, the following observations of their Lordships of the Supreme Court in Akadasi Padhan's case may be read with advantage :-

"18. The next question to consider is : what is the effect of the amendment on the other fundamental rights guaranteed by Article 19(1) ? It is likely that a law creating a State monopoly may, in some cases, affect a citizen's rights under Article 19(1)(f) because such a law may impinge upon the citizen's right to dispose of property. Is the learned Attorney-General right when he contends that laws protected by the latter part of Article 19(6) cannot be tested in the light of the other fundamental rights guaranteed by Article 19(1) ? The answer to this question would depend upon the nature of the law under scrutiny. There is no doubt that the several rights guaranteed by the 7 sub-clauses of 'Article 19(1) are separate and distinct fundamental rights and they can be regulated only if the provisions contained in clauses (2) to (6) are respectively satisfied. But in dealing with the question as to the effect of a law which seeks to regulate the fundamental right guaranteed by Article 19(1)(g) on the citizen's right guaranteed by Article 19(1)(f), it will be necessary to distinguish between the direct purpose of the Act and its indirect or incidental effect. If the legislation seeks directly to control the citizen's right under Article 19(1)(g), its validity has to be tested in the light of the provisions contained in Article 19(6); and if such a legislation as for instance, a law creating a State monopoly, indirectly or incidentally affects a citizen's right under any other clause of Article 19(1) as for instance Article 19(1)(f), that will not introduce any infirmity in the Act itself."

"20. * * * * *

* * * *. Therefore, in dealing with the attack against the validity of a law creating State monopoly on the ground that its provisions impinge upon the other fundamental rights guaranteed by Article 19(1), it would be necessary to decide what is the purpose of the Act and its direct effect. If the direct effect of the Act is to impinge upon any other right guaranteed by Article 19(1), its validity will have to be tested in the light of the corresponding clauses in Article 19; if the effect on the said right is indirect or remote, then its validity cannot be successfully challenged."

Accordingly I hold that the impugned legislation does not in any way contravene the provisions of Article 19(1)(f) of the Constitution as well.

No other point has been raised.

14. For the reasons recorded above, I see no force in these petitions and dismiss the same. However, in the circumstances of the case, I leave the parties to bear their own costs.

D.K. Mahajan, J.

15. I agree.

Cases Referred.

1A.I.R 1963 S.C. 1047

