

RAJASTHAN HIGH COURT

Prabhudas Swami

Vs.

State of Rajasthan

C.W.P. No. 772 of 2000, 5559, 6361 of 1999 and 936 of 2001
(Shiv Kumar Sharma and Khem Chand Sharma, JJ.)

11.02.2003

JUDGEMENT

Shiv Kumar Sharma, J.

1. Meaningful question that arises for our consideration in the instant matters is whether provisions contained in Section 79 of the Rajasthan Public Trusts Act 1959 are open to attack on the ground of excessive delegation.

2. The prayer of the petitioners in D.B. Civil Writ Petition No. 772/2000, is as under:

(i) to declare the provisions of Section 79 of the Rajasthan Public Trusts Act, 1959 (in short 1959 Act) to be *ultra vires* of the Constitution.

(ii) to declare the appointment of the Managing Committee consisting of respondents 2, 3, and 4 to be illegal and null and void and action of the managing committee be struck down.

(iii) to restrain the respondents 2, 3 and 4 from interfering in the management affairs of Sri Dadu Dayalu Mahasabha and its elected managing committee consisting of respondents 6 to 16.

3. Three other writ petitions related to management of Sri Dadu Dayalu Mahasabha bearing Nos. 5559/99, 936/2001 and 6361/2002 pending before the single Bench were also ordered to be tagged together.

4. Section 79 of the Rajasthan Public Trusts Act, 1989 (for short 1959 Act) authorizes the State Government to provide by order for removal of difficulties in giving effect to the provisions of the Act, It reads as under :-

"If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, by order, give such directions, not inconsistent with such provisions, which appear it to be necessary for the purpose of removing the difficulty."

5. The main grounds of challenge of the validity of Section 79 of 1959 Act are -

(i) The provisions of Section 79 of 1959 Act are nothing else but abdication of legislative power by the State Legislature which under the Constitutional law is not permissible.

(ii) It amounts to exercise of Legislative powers which cannot be delegated.

(iii) This section, by providing that the order must not be inconsistent with the other provisions of the Public Trusts Act, is not saved by the vice of the delegation of the legislative authority.

(iv) This section authorizes the State Government to determine for itself what purpose of the Act is and to make provisions for removal of doubts and difficulties, normally such functions is of the Legislature to remove any difficulties or doubts.

(v) Exercise of the legislative authority cannot be delegated to executive authority.

(vi) Wordings of Section 79 conferring such a wide power on the State Government so as to act in any manner it may think necessary even though the same may not be inconsistent.

6. Mr. B. P. Agrawal, learned Senior Counsel appearing for the petitioners canvassed that Section 79 is *ultra vires* to the Constitution as it amounts to excessive delegation. Reliance is placed on *M/s. Jalan Trading Co. Private Ltd. v. Mill Mazdoor Sabha* ¹ and *State of Tamil Nadu v. K. Sabanayagam* ²

7. Constitution Bench of Hon'ble Supreme Court in *M/s. Jalan Trading Co. Private Ltd. v. Mill Mazdoor Sabha* (supra) has occasion to consider the validity of Section 37 of Payment of Bonus Act, 1965 which authorizes the Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act. It was observed by their Lordships of the Supreme Court that it is for the Legislature to make provisions for removal of doubts and difficulties but Section 37 of the Act contains a provision that the order must not be inconsistent with the purposes of the Act and

another provision in the section made the order of the Government final. Their Lordships therefore held that there was the vice of delegation of legislation to executive authority. Two reasons were given by their Lordships. First, the section authorized the Government to determine for itself what the purpose of the Act were and to make provisions for removal of doubts or difficulties. Secondly, the power to remove the doubt or difficulties by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority.

8. In *State of Tamil v. K. Sabanayagam* (supra) it was indicated by the Hon'ble Supreme Court that in case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfillment of certain conditions and what is delegated to an outside authority is the power to determine according to its own judgment whether or not those conditions are fulfilled. Whereas in case of delegated legislation proper, some portion of the legislative power of the Legislature is delegated to the outside authority in that the Legislature though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter i.e. the ancillary function of laying down details in favor of another for executing the policy of the statute enacted. According to their Lordships the distinction between the two exists in this that whereas conditional legislation contains not element of delegation of legislative power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation.

9. Mr. S. M. Mehta, learned Advocate General on the other hand contended that Section 79 of 1953 Act does not amount to excessive delegation. In the instant matters ratio indicated in *M/s. Gammon India Ltd. v. Union of India*,³ is applicable wherein their Lordships of the Supreme Court distinguished the case of *M/s. Jalan Trading Co.* (supra) and held in para 38 as under :-

"Section 34 of the Act was challenged as unconstitutional, Section 34 of the Act provides that if any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by order, published in the official gazette, make such provisions not inconsistent with the provisions of the Act as appears to it to be necessary or expedient for removing the difficulty. Reliance was placed by petitioners on the decision of this Court in *Jalan Trading Co. v. Mazdoor Union reported in*,⁴ Section 37 of the the Act in that case authorized the Government

to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act. This Court held that it is for the Legislature to make provisions for removal of doubt or difficulties. The section in that case contained a provision that the order must not be inconsistent with the purposes of the Act. Another provision in the section made the order of the Government final. This Court held that in substance there was the vice of delegation to executive authority. Two reasons were given. First the section authorized the Government to determine for itself what the purposes of the Act were and to make provisions for removal of doubts or difficulties. Secondly, the power to remove the doubts or difficulties by altering the provisions of the Act would in substance amount to exercise of legislative authority and that could not be delegated to an executive authority. In the present case, neither finality nor alteration is contemplated in any order under Section 34 of the Act. Section 34 is for giving effect to the provisions of the Act. This provision is an application of the internal functioning of the administrative machinery. Difficulties can only arise in implementation of rules. Therefore, Section 34 of the Act does not amount to excessive delegation."

10. Reliance is also placed on *Commissioner of Income-tax, Hyderabad v. Dewan Bahadur Ramgopal Mills Ltd.*⁵

11. We have pondered over the rival submissions.

12. Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilized, but its disadvantages minimized. The doctrine of *ultra vires* envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules has no inherent power of its own to make rules, but derives such power only from the statute, it has necessarily to function within the purview of the statutes. Delegated Legislation should not travel beyond the purview of the parent Act. If it does, it is *ultra vires* and cannot be given any effect, Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act, or statute law or the general law, there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the Courts to keep all

authorities within the confines of the law by supplying the doctrine of ultra vires.

13. In *McEldowney v. Forde* ⁶ Lord Diplock explained the role of the Courts in this area in the following words :

"The division of functions between Parliament and the courts as respects legislation is clear. Parliament makes laws and can delegate part of its power to do so to some subordinate authority. The Courts construe laws whether made by Parliament directly or by subordinate authority acting under delegated legislative powers. The view of the Courts as to whether particular statutory or subordinate legislation promotes or hinders the common weal is irrelevant. The decision of the Courts as to what the words used in the statutory or subordinate legislation mean is decisive where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the Court has a three fold task; first, to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that authority is authorized to make, secondly, to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description....."

14. While adjudging the vires of delegated legislation, the Courts are not concerned with the underlying principles or policy. The Courts are concerned only with the limited question whether the impugned delegated legislation falls within the scope of the rule making power conferred on the delegate by the statute.

15. Section 79 of 1959 Act by the very nature of its intent and purpose confers on the State Government power to make an order to remove a difficulty which has already arisen. The true scope and effect of Section 79 seems to be that it is for the State Government to determine if any difficulty of the nature indicated in the section has arisen and then to make such order or give such direction, as appears to it to be necessary to remove the difficulty. Section 79 is necessarily for giving effect to the provisions of 1959 Act. In our opinion this provision is an application of the internal functioning of the administrative machinery. This section only authorizes the State Government to pass an order for giving effect the provisions of 1959 Act. It does not authorize the State Government to determine for itself what the purposes of the Act are and then to make provision for removal of difficulties. Wide powers to act in any manner have not been conferred on the State Government by Section 79. Therefore Section 79 of 1959 Act does not amount to excessive delegation and provisions

contained in this section are not *ultra vires* to the Constitution of India.

16. In the ultimate analysis looking to the reliefs sought by the petitioner we find that all the instant four matters require adjudication by the single Bench of this Court. We therefore, remit all these matters to the single Bench for adjudication. The Deputy Registrar (Judicial) is directed to forthwith list these matters before the single Bench.

Order accordingly.

Cases Referred.

1. AIR 1967 SC 691
2. (1998) 1 SCC 318: (AIR 1998 SC 344)
3. AIR 1974 SC 960
4. (1967) 1 SCC 15: AIR 1987 SC 691
5. AIR 1981 SC 338
6. (1971) AC 632