
with his small Kirpan which proved fatal. P.W.1 Dr. S.P. Singh while appearing in the witness box has described the injury as under :—

1. An incised stab wound 4 cm. X 1—1/2 cm on the front of the chest just left to the mid line, 8 cm from the left nipple and at 7 O' Clock position and was placed obliquely.

(9) The death, in the opinion of the doctor, was due to shock and haemorrhage as a result of injury to the heart which was sufficient to cause death in the ordinary course of nature. The death was immediate and the injury was ante-mortem in nature.

(10) Due to the relentless act of the appellant there is a loss of valuable human life for which there is no fault of the legal heirs of deceased. In my opinion, the legal heirs of the deceased are entitled to some compensation. The appellant is, therefore, directed to pay a compensation of Rs. 10,000 to the legal heirs of the deceased over and above the fine imposed by the learned trial Court.

(11) This order is conditional. If the appellant fails to deposit the compensation amount of Rs. 10,000 to be paid to the legal heirs of the deceased, within a period of two months from the date of receipt of a copy of this order, the judgment/order of the trial Court shall stand restored and the appeal shall be deemed to have been dismissed. In that eventuality, the appellant shall undergo the remaining period of his sentence.

(12) On the deposit of the compensation amount of Rs. 10,000 the learned trial Court will issue notice to the legal representatives of the deceased and pay them the said sum on proper identification.

(13) This appeal and the connected Criminal Revision are disposed of in the manner indicated above.

J.S.T.

Before G.S. Singhvi, H.S. Bedi & Iqbal Singh, JJ

THE DIRECTOR, AGRICULTURE, PUNJAB &
OTHERS,—*Appellants*

versus

NARINDER PATHAK & OTHERS,—*Respondents*

L.P.A. NO. 273 of 1997

13th October, 1999

*Constitution of India, 1950—Arts. 19 & 21—Essential
Commodities Act, 1955—S. 7—Fertilizers Control Order, 1985—C1.*

19—Code of Criminal Procedure, 1973—S. 293—1985 Order does not provide for an opportunity to the dealer to seek an independent analysis of the sample collected by the prosecution—An accused person has a right to set up defence in terms of S. 293 Cr. P.C. and he can prove his innocence by adducing evidence—The procedure established by law is neither arbitrary nor unfair—Clause 19 of the 1985 Order does not suffer from any constitutional infirmity—Order of learned Single Judge striking down clause 19 of the 1985 Order set aside.

Held that, the view taken by the Division Bench on the constitutional validity of Clause 19 of the 1985 Order, which is based on the law laid down by the Supreme Court, is correct and there is no warrant for us to take a different view. The absence of a specific provision in the 1985 Order giving right to the dealer to seek an independent analysis of the sample collected by the prosecution does not violate the procedure established by law and the person, who is prosecuted can set up his appropriate defence in accordance with the provisions of Section 293 of the Code of Criminal Procedure.

(Para 6)

Further held that, Clause 19 of the 1985 Order does not suffer from any constitutional infirmity. The appeal is allowed. The order dated 16th September, 1996 passed by the learned Single Judge is set aside.

(Para 8 & 9)

Shri Rupinder Khosla, Deputy Advocate General, Punjab, *for the appellants*

Shri Dinesh Goyal, Advocate *for the respondent No. 1*

JUDGMENT

G.S. Singhvi, J

(1) This appeal has been placed before us in view of the order dated 8th October, 1997 passed by the Division Bench for deciding the following question of law :—

“Whether Clause 19 of the Fertilizers Control Order, 1985 is violative of Articles 19 and 21 of the Constitution of India ?”

(2) At the hearing, learned Deputy Advocate General pointed out that the order dated 16th September, 1996 passed by the learned Single Judge (with the title case-*Tarsem Singh vs. Union of India and*

others (1) vide which he allowed a bunch of writ petitions including C.W.P. No. 7566 of 1966 *Narinder Pathak vs. Union of India & others* filed by respondent No. 1 and struck down Clause 19 of the Fertilizers Control Order, 1985 (hereinafter described as 'the 1985 Order') by declaring it to be *ultra vires* to Articles 19 and 21 of the Constitution of India and also quashed the criminal cases registered against the writ petitioners under Section 7 of the Essential Commodities Act, 1955 (for short, the Act) has been reversed by the Division Bench in L.P.A. No. 1039 of 1996—*The Director, Agriculture, Punjab and others vs. M/s Gurmukh Mal Shibba Mal (2)* and as the judgment of the Division Bench has become final, the question relating to vires of Clause 19 of the 1985 Order should be treated as purely academic. He then argued that Clause 19 cannot be declared unconstitutional simply because it does not provide for an opportunity to the dealer to seek an independent analysis of the sample collected by the prosecution or on the ground that it is vague or unreasonable. Learned counsel representing respondent No. 1 supported the impugned order and argued that the declaration granted by the learned Single Judge should be restored and the proceedings pending against his client should be quashed because he will not get an effective opportunity of defence.

(3) We have given serious thought to the respective submissions. Clause 19 of the 1985 Order reads as under :—

“Restriction on manufacture, sale and distribution of fertilizers :—

- (1) No person shall himself or by any other person on his behalf —
 - (a) manufacture for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertilizer, which is not of prescribed standard ;
 - (b) manufacture for sale, sell, offer for sales stock or exhibit for sale or distribute any mixture of fertilizers (or mixture of NPK fertilisers, mixture of micro-untrient fertilizers and combinationn thereof)which is not of prescribed standard (subject to such limits of permissible variation as may be specified from time to time by Central Government) or special mixtures of fertilizers which (xxx) does not conform to the particulars specified in the certificate of manufacture

(1) 1996(3) Recent Criminal Reports 633

(2) 1997 (4) R.C.R. 780

granted to him under this order in respect of such special mixture ;

(c) sell, offer for sale, stock or exhibit for sale or distribute—

- (i) any fertilizer, the container whereof is not packed and marked in the manner laid down in this order ;
- (ii) any fertilizer which is a limitation or a substitute for another fertilizer under the name of which it is sold ;
- (iii) any fertilizer which is adulterated ;

Explanation :—A fertilizer shall be deemed to be adulterated, if it contained any substance addition of which is likely to eliminate or decrease its nutrient contents or make the fertilizer not conforming to the prescribed standard ;

- (iv) any fertilizer of the label or container whereof bears the name of any individual firm or company purporting to be manufacturer of the fertilizer, which individual, firm or company is fictitious or does not exist ;
- (v) any fertilizer, the label or container whereof or anything accompanying therewith bears any statement which makes a false claim for the fertilizer or which is false or misleading in any material particular ;
- (vi) any substance as a fertilizer which substance is not, in fact, a fertilizer ;
- (vii) any fertilizer without exhibiting the minimum guaranteed percentage by weight of plant nutrient.”

(4) Respondent No. 1 and other writ petitioners challenged the constitutional validity of Clause 1 on the ground that it is vague and unreasonable, in-as-much as, it does not provide for an opportunity to the dealer to get the sample tested in a laboratory of his choice. Learned Single Judge referred to some of the provisions contained in the Insecticides Act, 1968 ; Prevention of Food Adulteration Act and Drugs and Cosmetics Act and held that Clause 19 of the 1985 Order is vague and unreasonable and is violative of Article 19 read with Article 21 of the Constitution of India. The observations made by the learned Single Judge in this respect are extracted below :—

“Summing up, Regulation 19 of the impugned Fertilizer Control Order, 1985 is a piece of unfair legislation. It has given an

arbitrary power to the Government to prosecute a person, who cannot show in a Court of Law that the report of the Public Analyst who has declared the sample of the fertilizer as 'sub-standard', could possibly fall in an error leading to his conclusions while testing the sample. It has also snatched a valuable right of a person who deals in the trade of fertilizer and sells the sealed and stitched bags as supplied to him by the manufacturer. Even this piece of legislation has made such dealer punishable who has properly stored the essential commodities as such 'Fertilizer'. I am of the opinion that Regulation 19 of the impugned Fertilizer Control Order, 1985 is violative of Article 19 read with Article 21 of the Constitution of India and in its present shape cannot be allowed to operate/stand and as such Regulation 19 of the Control Order is hereby struck down. Thus the first proposition is answered in the affirmative."

(5) While reversing the order of the learned Single Judge in *M/s Gurmukh Mal Shibba Mal's case* (Supra), the Division Bench extensively referred to the provisions of the Act, the 1985 Order and judicial precedents and then held that Clause 19 could not have been declared unconstitutional on the ground that it is vague or unreasonable. While summing up the case, the Division Bench observed as under :—

"In case under scrutiny, a sample of fertilizer was taken by the authorities as per provisions of Control Order which on analysis was found to be of non-standard grade. With a view to determine the guilty proceedings have been initiated according to law. Evidence is yet to be adduced by the complainant/the prosecution. It is thereafter petitioner is to be given a right of defence. It indeed would be pre-mature to judge the ultimate decision which the Court may take. An accused person of course has a right to set up defence in terms of section 293 Cr. P.C. What would be the nature of defence can again be a matter of sheer guess. In any case one could visualise that petitioner would adduce all such evidence so as to prove his innocence. May be he examines another expert to cross-examine the official witness or makes reference to some celebrated authority on law relevant to the point in controversy to establish that the conclusion arrived at by the analyst is indeed impermissible and as a last resort can make out a case for the Court to send the third sample for its analysis by another laboratory. With these safeguards at his command it can be stated that procedure

prescribed is neither arbitrary nor unreasonable nor unfair. On examining the matter on the touchstone of Articles 19(1) and 21 and various decision of the apex Court, we are of the view that Fertilizer Control Order, 1985 has been enacted by competent Legislature and the same does not violate any express provision of Constitution of India. Resultantly, we accept these appeals, set aside the judgment of Shri R.L. Anand, J. thereby order dismissing the writ petition.”

(6) In our opinion, the view taken by the Division Bench on the constitutional validity of Clause 19 of the 1985 Order, which is based on the law laid down by the Supreme Court, is correct and there is no warrant for us to take a different view. We are further of the view that the absence of a specific provision in the 1985 Order giving right to the dealer to seek an independent analysis of the sample collected by the prosecution does not violate the procedure established by law and the person, who is prosecuted, can set up his appropriate defence in accordance with the provisions of section 293 of the Code of Criminal Procedure.

(7) Learned Single Judge has hinted at the possible misuse of Clause 19 of the 1985 Order and has made this one of the grounds for striking down the said Clause with great respect, we are unable to approve this approach because it is contrary to the law laid down by the Supreme Court in *Collector of Customs, Madras vs. Nathella Sampathu Chetty and another* (3) *State of Rajasthan vs. Union of India* (4) *Tamil Nadu Education Department Ministerial and General Subordinate Service Association vs. State of Tamil Nadu and another* (5) and *R.K. Garg vs. Union of India*, (6). In the last mentioned case, their Lordships of the Supreme Court, while examining the constitutionality of the provisions of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, held as under :—

“Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the

(3) 1996 (3) S.C.R. 786

(4) 1978 (1) S.C.R. 1

(5) 1980 (1) S.C.R. 1026

(6) 1981 (4) S.C.C. 675

nature of the problems required to be dealt with, greater, play in this joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field economic regulation than in other areas where fundamental human rights are involved... The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract symmetry that exact wisdom and nice adaptation of remedy are not always possible and that 'judgment is largely a prophecy based on meagre and uninterpreted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation, but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in *Secy. of Agriculture v. Central Reig Refining Co.* (1950) 94 L.ed. 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspite the legislature in dealing with complex economic issues."

(8) On the basis of above discussion, we hold that Clause 19 of the 1985 Order does not suffer from any constitutional infirmity and the view taken by the Division Bench in *M/s Gurmukh Mal Shibba Mal's case* (Supra) is correct.

(9) For the reasons mentioned above, the appeal is allowed. The order dated 16th September, 1996 passed by the learned Single Judge is set aside and the writ petition filed by respondent No. 1 is dismissed.

R.N.R.

Before V.K. Bali., J

BALWANT SINGH,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 16337 of 1997

The 30th November, 1999

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. II—Rls. 2.2(a), 3.17-A, 4.19(a) and 4.19(b)—Instructions dated 22nd November, 1991—Petitioner rendered service of more than 13 years in various Government departments—Petitioner tendered resignation with permission of the Health Department to join the Municipal Committee—Discharge from service of the M.C. during the period of probation—Petitioner entitled to post retiral benefits by virtue of instructions dated 22nd November, 1991—Claim of pension cannot be rejected only on the ground of delay—Writ allowed directing the respondents to determine the pension payable to the petitioner.

Held that, the petitioner joined Zila Parishad on 8th November, 1963 and continued to be the employee of the Zila Parishad upto 30th November, 1973. Thereafter he was absorbed in the Health Department and continued to be serving the said department upto 2nd February, 1977. He had resigned from Health Department with permission to take up an assignment in Municipal Committee, Shahbad Markanda. It is, thus, not a case where the petitioner might have resigned from service and would not be entitled to the grant of post retiral benefits. It is not disputed that by virtue of instructions dated 22nd November, 1991 the petitioner is entitled to post retiral benefits.

(Paras 11 and 15)

Further held that, the petitioner approached the authorities for the first time on 12th January, 1995 when he made representation but his claim was rejected on 10th July, 1997. So the petitioner lost no time in approaching this Court. That apart, claim of pension is a recurring cause of action and cannot be rejected on delay alone. The petitioner worked for a period of little less than 14 years in various