

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and D. S. Tewatia, JJ.

SOHAN SINGH AND OTHERS—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS—*Respondents.*

Civil Writ Petition No. 2448 of 1973

November 7, 1978.

The Punjab Agricultural Produce Markets Act (23 of 1961)—Section 44(1) (vi) and (2) and bye-law 28(1)—Constitution of India 1950 Article 19(1) (g)—Private auctioneers eliminated by substituted bye-law 28(1)—Such elimination—Whether violative of Article 19(1) (g).

Held, that all regulatory measures do always place some curbs on the enjoyment by the citizens of their fundamental rights and in certain cases even may totally prohibit their enjoyment, and that such regulatory measures merely on that score cannot be struck down as constituting unreasonable restrictions on the fundamental rights of the citizens provided if it was considered necessary to impose such total prohibition and restrictions on the enjoyment of the fundamental rights of some of the citizens in order to carry out the objects of the legislation, rules, bye-laws or any executive order issued thereunder or such restriction was to subserve any general public interest. The role of the functionaries operating on commission basis is sought to be eliminated in order to curb the malpractices indulged in by them and the step was necessary in the interest of the producer. The substituted bye-law 28(1) of the Bye-laws framed by the Marketing Board under section 44(1)(vi) of the Punjab Agricultural Produce Markets Act 1961 eliminating the role of private auctioneers satisfies the test of reasonableness and is not violative of Article 19(1)(g) of the Constitution of India 1950.

(Paras 10, 11 and 14)

Case referred by Hon'ble Mr. Justice M. R. Sharma, on November 19, 1975 to a larger Bench for decision of important questions of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia. The Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice D. S. Tewatia, decided the case on 7th November, 1978.

Petition under Articles 226/227 of the Constitution of India praying as under:—

- (a) that a writ of certiorari or any other writ, direction or order be issued quashing the amendment, Annexure 'D' as confirmed by order Annexure 'F';

(b) that the record of this case be sent for;

(c) that any other writ, order or direction which may be deemed necessary in the circumstances be issued and costs of the writ petition be allowed.

It is further prayed that during the pendency of the writ petition the operation of the impugned order Annexure 'D' and 'E' be stayed.

Gian Chand Garg, Advocate, for the Petitioner.

I. S. Tiwana, Addl. A. G. Punjab, for respondent No. 1.

Kuldip Singh, Advocate with R. S. Mongia, Advocate, for respondents Nos. 2 and 3.

D. S. Tewatia, J.

(1) The petitioners, 15 in number claiming to be auctioneers by profession of foodgrains in the notified market yards of the concerned Market Committees—some of them i.e. petitioners 5 to 11 were said to be rendering professional service prior to the coming into force of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act) as paid employees of the Market Committees and continued to do so till 8th August, 1965 and thereafter did so under licence from the said Committees with their commission fixed at five paise per hundred rupees—have impugned in this writ petition the notification issued by respondent No. 2, annexed to the writ petition as annexure 'D', and the order, annexure 'E', passed by the Under-Secretary to the Punjab Government, exercising power of Government under section 42 of the Act, *inter-alia*, on the ground (1) that the said notification had been issued in violation of the procedure prescribed by section 44(2) of the Act, and (2) that to the extent it barred the petitioners, and their like, from carrying on their profession it violated their fundamental right guaranteed under article 19(1)(g) of the Constitution of India and was, therefore, *ultra-vires* the said provision of the Constitution.

(2) The petition, in the first instance, came up for consideration before Sharma, J. before whom only two contentions were advanced:—

(1) that the notification, annexure 'D', was issued in violation of the provisions of section 44(2) of the Act and that the

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order, annexure 'E', upholding the same, suffered from the same illegality; and

- (2) that by the said notification, annexure 'D', the petitioners were debarred from carrying on their trade or profession as auctioneers in their respective Market Committees, which violated their fundamental right under article 19(1)(g) of the Constitution of India and to that extent was *ultra-vires* of the said provisions.

While the learned Judge, in view of an authoritative decision of this Court in *Messrs Sohela Mal-Dayal Singh and others v. The State Agricultural Marketing Board, and another*, (1), repelled the first contention against the said notification; regarding the second contention he felt that the matter was not free from controversy and since his decision was as a matter of right challengeable in appeal, so he considered it desirable that the matter be decided by a larger Bench. That is how the case has been placed before us for decision. This Bench is, therefore, called upon to decide only the constitutional vires of notification, annexure 'D' to the writ petition.

(3) The facts that bear upon the point raised before us are only few and not in dispute. They are: that the petitioners had been rendering service in the concerned Market Committees as auctioneers of farm produce brought for sale in the notified market yards and were charging five paise per hundred rupees as their commission fixed by the Punjab State Agricultural Marketing Board (respondent No. 2)—hereinafter referred to as the Board,—*vide* notification annexure 'A'; and that the impugned notification has prescribed no such rates for the auctioneers which had the result of eliminating their role as auctioneers.

(4) The stage is now set to take note of the relevant provisions of the Act and the circumstances leading to the filing of the present writ petition.

(5) Section 3 of the Act empowers the State Government to establish and constitute a State Agricultural Marketing Board for the purpose of exercising superintendence and control over the Market Committees constituted under sections 11 and 12 thereof.

(1) 1973 P.L.J. 410.

Section 5 authorises the State Government to declare, by notification, its intention of exercising control over the purchase, sale, storage and processing of such agricultural produce and in such area as may be specified in the notification. Section 6 empowers the State Government, after hearing the objections to the notification under section 5, to declare the area notified herein to be a notified market area for the purposes of the Act in respect of the agricultural produce notified under section 5. Sub-section (3) of section 6 envisages that after the issue of notification under sub-section (1) of section 6 no person, unless exempted by rules made under the Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of the Act, the rules and bye-laws made thereunder and the conditions specified in the licence. Section 43 authorises the State Government to make rules for carrying out the purposes of the Act. Section 44 of the Act empowers the Market Committee to frame bye-laws, subject to any rule made by the State Government under section 43 thereof. Section 44(1)(vi) envisages fixing of remuneration by the Market Committee of different functionaries; not specifically mentioned in the Act, working in the notified market area and rendering any service in connection with the sale, purchase, storage and processing of agricultural produce. Sub-section (2) of section 44 authorises the Board, established under section 3 of the Act, to make such bye-laws where a Committee fails to make the same under sub-section (1) within six months from the date of its establishment or the date on which the Act came into force, whichever is later, and that such bye-laws shall remain in operation in that Committee. Section 44(4) states as to when a bye-law promulgated by the Board or amendment or rescission of an existing bye-law framed by the Market Committee is to take effect.

(6) Respondent No. 2 had framed bye-law 28(1), annexure 'A' to the petition, in exercise of its power under sub-section (2) of section 44 of the Act. The said bye-law, *inter alia*, fixed the remuneration of auctioneers at five paise per hundred rupees of the value of the commodity involved in the transaction of sale etc. Respondent No. 2, after following a due procedure, which has been, as already mentioned, upheld by Sharma, J., as would be clear from

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his reference order, promulgated the new bye-law 28(1), annexure 'D'. In this, besides changing the rate of remuneration for various functionaries there is an omission altogether regarding the remuneration of auctioneers.

(7) The position that thus emerged from the substitution of bye-law 28(1) by the new bye-law 28(1), annexure 'D', is that there is no bye-law, either framed by the Market Committee or by the Marketing Board, respondent No. 2, fixing the rate of remuneration of the auctioneers, with the result that the role of a private auctioneer as a licensed functionary rendering services on a given remuneration under the authority of Market Committee under section 13 of the Act stands eliminated.

(8) The learned counsel, in support of his submission that the newly promulgated bye-law by the notification, annexure 'D', imposed an unreasonable restriction on the fundamental right of the petitioners to carry on their trade and profession of auctioneers in the notified market yards and market areas and thus the same deserved to be struck down, placed reliance on three Supreme Court decisions reported in *Rashid Ahmed v. The Municipal Board, Kairana*, (2), *Chintamanrao and others v. The State of Madhya Pradesh*, (3) and *Tahir Hussain v. District Board, Muzaffarnagar*, (4).

(9) There is no gain saying the fact that the views propounded by their Lordships of the Supreme Court in the aforesaid decisions represent a valiant effort on the part of the highest judiciary of the land to guard and protect the citizens' fundamental rights against any encroachment by the concerned authorities.

(10) The position that emerges from the aforesaid decisions, as also the later decisions, some of which would be presently noticed, is that all regulatory measures do always place some curbs on the enjoyment by the citizens of their fundamental rights and in certain cases even may totally prohibit their enjoyment, and that such regulatory measures merely on that score cannot be struck down as constituting unreasonable restrictions on the fundamental rights of the citizens provided if it was considered necessary to impose such

(2) A.I.R. 1950 S.C. 163.

(3) A.I.R. 1951 S.C. 118.

(4) A.I.R. 1954 S.C. 630.

total prohibition and restrictions on the enjoyment of the fundamental rights of some of the citizens in order to carry out the objects of the legislation, rules, bye-laws or any executive order issued thereunder, or such a restriction was to subserve any general public interest. To refer to only a few of the Supreme Court decisions wherein their Lordships upheld the legislations which placed curbs on the unrestricted enjoyment of such rights: in *M. C. V. S. Arunachala Nadar v. State of Madras and others*, (5), their Lordships held the provisions of the Madras Commercial Crops Market Act, 1933, to be reasonable on the ground that the Act was conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings: in *Jan Mohammad Noor Mohammad Baghan v. The State of Gujarat and another*, (6), their Lordships again highlighted the object of the enactment in the context of reasonableness thereof and held that the object of the Act being to ameliorate the conditions of the agriculturists and to do away with the middlemen the enactment in question regulating the trade in agricultural produce in a specified area could not be regarded as imposing unreasonable restrictions to carry on the trade; and in *Mohd. Faruk v. State of Madhya Pradesh and others*, (7), on which reliance has been placed on behalf of the petitioners as well, their Lordships, besides indicating the circumstances in the background of which the reasonableness of certain provisions has to be considered, pointed out that the expression 'restriction' in article 19(5) and (6) of the Constitution would include the cases of prohibition also and for this reliance was placed on *Narendra Kumar v. Union of India*, (8), as will be clear from the following observations:

"This Court in *Narendra Kumar v. Union of India*, (8 supra) held that the word 'restriction' in articles 19(5) and 19(6) of the Constitution includes cases of 'prohibition' also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering

(5) A.I.R. 1959 S.C. 300.

(6) A.I.R. 1966 S.C. 385.

(7) A.I.R. 1970 S.C. 93.

(8) A.I.R. 1960 S.C. 430.

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the question in the background of the facts and circumstances under which the order was made taking into account the nature of the evil that was sought to be remedied by such law, the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public”.

In *Manohar Lal v. The State of Punjab*, (9), their Lordships upheld the provisions of section 7(1) of the Punjab Trade Employees Act, 1940, which required every shop and commercial establishment to remain closed on a ‘close day’ in a week, not only on the ground that the Act regulated the business in the interest of health and welfare not merely of those employed in it including the owner and the members of his family, but also on the ground that the provisions in question prevented the evasion of provisions specifically designed for the protection of workmen employed. It was observed that acts innocent in themselves might be prohibited and the restrictions in that regard would be reasonable if they were necessary to secure an efficient enforcement of valid provisions and the inclusion of a reasonable margin to ensure effective enforcement would not stamp a law otherwise valid and within legislative competence with the character of unconstitutionality as being unreasonable.

(11) In *Narendra Kumar’s case* (8) (supra), provisions of clauses 3 and 4 of the Non-ferrous Metal Control Order, 1958, made under section 3 of the Essential Commodities Act, 1955, held not to be violative of article 19(1)(g) of the Constitution, even though the same resulted in the elimination of the middlemen altogether, on the ground that the elimination of the middlemen which would result from the commission being fixed at 3½ per cent was also under the circumstances justifiable.

(12) Respondent No. 2 in his return has averred that the role of the functionaries operating on commission basis was sought to be eliminated in order to curb the malpractices indulged in by them and the step was necessary in the interest of the producer. It was also mentioned that the respective Market Committees would employ as many of the auctioneers as would be considered necessary for the job as regular employees on fixed pay.

(13) The provision of sub-clause (2) of bye-law 28 (annexure 'A') itself makes it clear that it will not be necessary for any seller of agricultural produce to engage any of the functionaries entered under sub-clause (1) of bye-law 28 above, unless he wishes to do so and none shall pay or be required to pay for functionary, who has not in fact been engaged. Further, what is more, annexure 'A', which was never challenged by the auctioneers, itself assigned a role to them which, at best, can be considered tenuous, for the bye-law 28, Annexure 'A', envisages their role as auctioneers only by way of alternative to Kutcha Arhtiya's role as auctioneer, as would be clear from the following portion thereof:—

“Where the Kacha Arhtias do not conduct auction themselves, the auctioneers may be engaged by the Committee on the basis of commission fixed above as auction charges. The auction charges so collected by the Kacha Arhtia shall be paid to the auctioneers in the manner to be specified by the Market Committee.”

It is the case of the petitioners themselves in para 10 of the petition, though the Board (respondent No. 2) denied that assertion, that before 1965 petitioners 4 to 11 worked as the regular paid auctioneers of the Market Committee. As a result of the impugned notification, annexure 'D', they are again being reverted back to that role i.e. some of them would be employed on a fixed pay as regular employees of the Market Committee to conduct auctions. The Market Committee under section 20 of the Act has the power to employ servants and would employ auctioneers on its regular pay in accordance with the requirements and needs of a given Market Committee.

(14) The impugned notification, in our opinion, therefore, satisfies the test of the reasonableness and is not violative of article 19(1)(g) of the Constitution of India. In the result, we find no merit in the petition and dismiss the same. However, the parties are directed to bear their own costs.

S. S. Sandhawalia, C.J.—I agree.

S. C. Mital, J.—I agree.

N. K. S.