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A. K. JAIN & ORS.

v.

UNION OF INDIA & ORS.

B

July 25, 1969

[S. M. SIKRI, G. K. MITTER AND K. S. HEGDE, JJ.]

C

Essential Commodities Act, 1955, s. 3—Sugarcane (Control) Order 1955 Rule 3(3)—Offence if purchaser does not pay price of sugarcane purchased, within 14 days—Validity of rule—Whether s. 3 of Act deals with food crops or only with foodstuffs—Competence of Parliament to pass s. 3—Effect of Bihar Sugar Factories Control Act, 1947—Fundamental right under Art. 19(1) of Constitution whether affected by impugned rule—Offence whether cognizable within meaning of s. 4(1)(f) Code of Criminal Procedure.

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The appellants were the office bearers of a sugar concern. A complaint with the police was registered against them under sub-rule 3 of Rule 3 of the Sugarcane (Control) Order, 1955 read with s. 7 of the Essential Commodities Act, 1955, on the ground that they had failed to pay to the sellers within the time prescribed the price of the sugarcane purchased by them. Objecting to the investigation of the alleged offence the appellants filed a writ petition under Art. 226 of the Constitution but the High Court refused to interfere. By special leave they came to this Court. The contentions urged on behalf of the appellants were (i) that sub-rule 3 of rule 3 could not have been validly issued under s. 3 of the Essential Commodities Act because the latter section applied only to foodstuffs and not to food crops, (ii) that the regulation of the price of sugarcane being expressly dealt with by the Bihar Sugar Factories Control Act, 1937 the same power could not by implication be spelt out from the provisions of the Order and the Act, (iii) that Parliament had no competence to enact any law relating to the control of sugarcane as that subject was within the exclusive legislative jurisdiction of the State, the same being a part of agriculture, (iv) that there was violation of the fundamental right under Art. 19(1) of the Constitution by the impugned order, (v) that in view of s. 11 of the Act no cognizance could have been taken of the offence, (vi) that the complaint made before the police did not disclose a cognizable offence and as such the police was not empowered to investigate the complaint.

G

HELD : (i) In view of the scheme of ss. 2 and 3 of the Act and the judgment of this Court in *Ch. Tika Ramji's* case the contention that food crops were outside the purview of s. 3 of the Act must be rejected. [675 B—G]

Ch. Tika Ramji & Ors. v. State of U.P. & Ors. [1956] S.C.R. 432. applied.

H

(ii) The power sought to be exercised in the present case was not an implied one for sub-rule (3) of rule 3 gives a specific mandate that unless there is an agreement in writing to the contrary between the parties the purchaser shall pay to the seller the price of the sugarcane purchased within 14 days. [676 G-H]

Even if the Bihar Sugar Factories Control, Act, 1937 provides anything to the contrary it must be held to have been altered by a competent authority namely Parliament, under Art. 372 of the Constitution. [677 A-B]

(iii) Parliament was competent to enact the Essential Commodities Act and to confer power on the Government under s. 3 of the Act as Entry 33 of List III of the Constitution empowers Parliament to legislate in respect of production, supply and distribution of foodstuffs. [677 C-D]

(iv) There was no contravention of Art. 19(1) because no fundamental right is conferred on a buyer not to pay the price of the goods purchased by him or to pay the same whenever he pleases. [677 E]

(v) The plea based on s. 11 of the Act was premature because no court had yet taken cognizance of the case. [677 F]

(vi) The offence complained of was punishable with three years' imprisonment and fell within the 2nd Schedule of the Code of Criminal Procedure. It was therefore a cognizable offence as defined in s. 4(1)(i) of the Code. [677 G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 189 of 1966.

Appeal by special leave from the judgment and order dated July 4, 1966 of the Patna High Court in Criminal W.J.C. No. 11 of 1966.

B. R. L. Iyengar and U. P. Singh, for the appellants.

V. A. Seyid Muhammad and S. P. Nayar, for respondent No. 1.

The Judgment of the Court was delivered by

Hegde, J. This appeal against the decision of the High Court of Patna in Criminal W.J.C. No. 11 of 1966 was brought after obtaining special leave from this Court. The principal question raised herein is whether the investigation which is being carried on against the appellants under sub-rule (3) of rule 3 of Sugarcane (Control) Order, 1955 (to be hereinafter referred to as the Order) read with s. 7 of the Essential Commodities Act, 1955 (to be hereinafter referred to as the Act) is in accordance with law.

The appellants are office bearers of M/s. S. K. G. Sugar, Ltd. (Lauriya). A complaint has been registered against them under sub-rule (3) of rule 3 of the Order read with s. 7 of the Act on the ground that they have failed to pay to the sellers the price of the sugarcane purchased by them, within the time prescribed. The said complaint is being investigated. The appellants are objecting to that investigation on various grounds. They unsuccessfully sought the intervention of the High Court of Patna under Art. 226 of the Constitution in Cr. W.J.C. No. 11 of 1966. Hence this appeal.

- A Mr. B. R. L. Iyengar appearing for the appellants challenged the validity of the investigation in question on various grounds. We shall now proceed to deal with each one of those grounds.

- The 1st contention of Mr. Iyengar was that sub-rule (3) of rule 3 could not have been validly issued under s. 3 of the Act.
- B According to him the said s. 3 cannot be used for controlling the payment of the price of food crops; it can only deal with food-stuffs; food crops are outside its scope. This contention has been negatived by the High Court. We agree with the High Court that there is no merit in this contention. Section 2(a) of the Act defines "essential commodity". Sub-cl. (v) of that clause brings
- C foodstuffs within the definition of essential commodity. Clause (b) of s. 2 provides that food-crops include sugarcane. The next important provisions in the Act are cls. (b) and (c) of s. 3(1). Section 3(1) provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by
- D order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-s. (2) of that section says that without prejudice to the generality of the powers conferred by sub-s. (1) an order made thereunder may provide.

- E "(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;"

- F Clause (c) provides for controlling the price at which any essential commodity may be bought or sold. From the scheme of cls. (b) and (c) of s. 2 and s. 3 of the Act, it is clear that the Parliament intended to bring under control the cultivation and sale of food-crops. In view of these provisions it is idle to contend that sugarcane does not come within the ambit of the Act.
- G The question whether the cultivation and sale of sugarcane can be regulated under s. 3 of the Act came up for the consideration of this Court in *Ch. Tika Ramji and Ors. v. The State of U.P. and Ors.*⁽¹⁾ At pages 432 and 433 of the report it is observed :

- H "Act X of 1955 included within the definition of essential commodity foodstuffs which we have seen above would include sugar as well as sugarcane. This Act was enacted by Parliament in exercise of the con-

(1) [1956] S.C.R. 432.

current legislative power under Entry 33 of List III as amended by the Constitution Third Amendment Act, 1954. Foodcrops were there defined as including crops of sugarcane and section 3(1) gave the Central Government powers to control the production, supply and distribution of essential commodities and trade and commerce therein for maintaining or increasing the supplies thereof or for securing their equitable distribution and availability at fair prices. Section 3(2)(b) empowered the Central Government to provide *inter alia* for bringing under cultivation any waste or arable land whether appurtenant to a building or not for growing thereon of foodcrops generally or specified foodcrops and section 3(2)(c) gave the Central Government power for controlling the price at which any essential commodity may be bought or sold. These provisions would certainly bring within the scope of Central legislation the regulation of the production of sugarcane as also the controlling of the price at which sugarcane may be bought or sold, and in addition to the Sugar Control Order, 1955 which was issued by the Central Government on 27th August, 1955, it also issued the Sugarcane Control Order, 1955, on the same date investing it with the power to fix the price of sugarcane and direct payment thereof as also the power to regulate the movement of sugarcane.

Parliament was well within its powers in legislating in regard to sugarcane and the Central Government was also well within its powers in issuing the Sugarcane Control Order, 1955 in the manner it did because all this was in exercise of the concurrent power of legislation under Entry 33 of List III."

It is needless to say anything more on this question.

It was next contended by Mr. Iyengar that the regulation of the price of sugarcane is expressly dealt with by the Bihar Sugar Factories Control Act, 1937 and therefore we should not impliedly spell out the same power from the provisions of the Order and the Act. Mr. Iyengar is not right in contending that the power that is sought to be exercised in the instant case is an implied one. Sub-rule (3) of rule 3 specifically provides that unless there is an agreement in writing to the contrary between the parties the purchaser shall pay to the seller the price of the sugarcane purchased within 14 days from the date of the delivery of the sugarcane. This is a specific mandate. If the Bihar Act provides anything to the contrary the same must be held to have been

- A altered in view of Art. 372 of the Constitution which provides that all laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority. Quite clearly the Bihar Act is a pre-Constitution Act and it could have continued to be in force only till it was altered, repealed or amended by a competent legislature or other competent authority. We shall presently see that the authority that altered or amended that law is a competent one.

- C The next contention of the learned Counsel for the appellants was that the Parliament had no competence to enact any law relating to the control of sugarcane as that subject is within the exclusive legislative jurisdiction of the State, the same being a part of agriculture. This contention is again unsustainable in view of Entry 33 of List III of the Constitution which empowers the Parliament to legislate in respect of production, supply and distribution of foodstuffs. It is not disputed that the Parliament had declared by law that it is expedient in public interest that it should exercise control over foodstuffs. That being so it was well within the competence of Parliament to enact the Act and hence the power conferred on the Government under s. 3 of the Act cannot be challenged as invalid.

- E There is no substance in the contention that the impugned order contravenes the fundamental right guaranteed to the citizens under Art. 19(1). No fundamental right is conferred on a buyer not to pay the price of the goods purchased by him or to pay the same whenever he pleases.

- F The contention that in view of s. 11 of the Act, no cognizance could have been taken of the offence alleged is premature. This question does not arise in this case. No court has yet taken cognizance of the case. That stage has still to come.

- G There is no substance in the contention that the complaint made before the police does not disclose a cognizable offence and as such the police could not have taken up the investigation of that complaint. The offence complained of is punishable with three years' imprisonment and as such it falls within the 2nd Sch. of the Cr. P.C. and consequently the same is a cognizable offence as defined in s. 4(1)(f) of the Cr. P.C. Hence it was open to the police to investigate the same.

- H For the reasons mentioned above we are unable to accept any of the contention advanced on behalf of the appellants. In the result this appeal fails and the same is dismissed.

G.C.

Appeal dismissed.