B. Viswanathiah And Company And Ors vs State Of Karnataka And Ors on 11 February, 1991

Equivalent citations: 1991 SCR (1) 305, 1991 SCC (3) 358, 1991 AIR SCW 455, 1991 (3) SCC 358, 1991 UJ(SC) 2 3, (1991) 1 SCR 305 (SC), (1991) 1 JT 386 (SC)

Bench: Kuldip Singh, N.M. Kasliwal

PETITIONER:
B. VISWANATHIAH AND COMPANY AND ORS.

Vs.

RESPONDENT:
STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT11/02/1991

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1991 SCR (1) 305 1991 SCC (3) 358
JT 1991 (1) 386 1991 SCALE (1)174

ACT:
Constitution of India, 1950: Seventh Schedule-List I Entry 7,52 List II Entry 24/27/List III, Entry 33-Declaration of ascertain industry to be within the purview of Parliamentary legislation-Raw materials, production, and distribution of the products thereof-Legislation-Competence of State Legislature.
Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1959: Sections 6, 7, 8, 9 and 10- Enactment of-Competence of State Legislature in the context of Cent-ral Act-Whether repugnant to the provisions of Central Silk Boards Act, 1948.

HEADNOTE:
The Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1959 provided

for the regulation of production, supply and distribution of silk worm seed and cocoon in the State of Mysore. The said Act was amended in 1969 and 1979. The 1979 amendments imposed restrictions on the production, distribution and sale of silk yarn, and were analogous to the restrictions imposed earlier in respect of silk worm seeds and cocoons.

The appellants filed Writ Petitions before the High Court challenging the validity of the provisions of the Act on several grounds, Including lack of legislative competence since the Central Silk Boards Act, 1948 has already been passed by the Parliament- The High Court negatived the contentions and dismissed the Writ Petitions. The present appeals challenged the correctness of the said judgment.

The Writ Petitions filed directly in this Court also challenged the validity of the Provisions of the said Act.

The main contention raised in these matters was that the Provisions of the Act lack legislative competence after the enactment by Parliament of the Central Silk Boards Act, 1948 which contained a declaration contemplated under Entry 52 of List I in the Seventh

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Schedule to the Constitution of India, taking the Silk industry within the purview of Parliamentary legislation.

Dismissing the matters, this Court,

HELD: 1. Legislation in regard to raw materials would be permissible under Entry 27 of List II, notwithstanding a declaration of the industry under Entry 52, to be one within the purview of parliamentary legislation. The process of manufacture or production can be legislated on by States under Entry 24 of List II so long as the industry is not a controlled industry within the meaning of Entry 7 or Entry 52 of List 1. So far as the distribution of the products of the industry is concerned, the State Legislature would be quite competent to legislate under Entry 27 of List II. However, when the industry is also a controlled industry, legislation in regard to the products of the industry would be permissible by both the Central and the State Legislatures by virtue of Entry 33 of List III. [314A-C]

Calcutta Gas Co. (P) Ltd. v. State, [1962] Supp. 3 S.C.R. 1, relied on

2. It is true that the Central Silk Boards Act purpots to control the raw silk industry in the territory of India. But the control of the industry vested in Parliament was only restricted to the aspect of production and manufacture of silk yarn or silk. It did not obviously take in the earlier stages of the industry, namely, the supply of raw materials. Even in regard to the silk industry, the reeling, production, development and distribution of silkworm seeds and cocoons was regulated by the Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1959. These items can perhaps be

legitimately described as the raw materials of the silk industry. The control being vested in Parliament under Entry 52, of silk industry, did not affect the control over the raw materials. That is perhaps the reason why the industry did not challenge the provisions of the Act, when it was originally enacted, on the ground that is now being put forward. The present legislation, as a result of the amendments, controls the supply and distribution of the goods produced by the industry. Though the production and manufacture of raw silk cannot be legislated upon by the State Legislature in view of the provisions of the Central Act and the declaration in section 2 thereof, that declaration and Entry 52 do not in any way limit the powers of the State Legislature to legislate in respect of the goods produced by the silk industry. To interpret Entry 52 otherwise would render Entry 33 in List III of the Seventh Schedule

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to the Constitution otiose and meaningless. In this view of the matter the limitation contained in Entry 52 does not affect the validity of the present legislation. [314H; 315A-F]

I.T.C. Ltd. & Ors. v. State of Karnataka & Ors., [1985] (supp.) S.C.C. 476, distinguished.

3. The State legislation would be quite valid unless it is repugnant to the provisions of a Central legislation on the subject. A perusal Of the Central Act makes it clear that the pith and substance of the legislation is the constitution of a silk Board for research into the scientific, technological and economic aspects of the industry. It does not have anything to do with the aspects covered by Entry 33 in List III. There is, therefore, no infirmity in the State Legislation. [315G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2959-60 of 1980.

WITH Writ Petition Nos. 5548-50 of 1980.

From the Judgment and Order dated 9.9. 1980 of the Karnataka High Court in W.P. Nos. 20298 of 1979 and 1031 of 1980.

Soli J. Sorabjee, Rajinder Sachhar, H. Raghavendra Rao and Vineet Kumar for the Appellants/Petitioners.

M. Veerappa, K.H. Nobin Singh and P.R. Ramasesh for the Respondents.

The Judgment of the Court was delivered by RANGANATHAN, J. The two appeals and the three writ petitions challenge the validity of the provisions of the Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distributions) Act, 1959 (Act No. 5 of 1960), hereinafter referred to as 'the impugned Act'. The challenge was repelled by the Karnataka High Court by its common judgment dated 9.9. 1980 in two writ petitions, which is the subject matter of appeals. It is perhaps in view of this judgment that writ petitions no. 5548-5550 of 1980 have been filed directly in this Court raising a similar contention.

At the outset, it is necessary to clarify two important points. The first is that the validity of the Act above mentioned and certain notifications issued thereunder were challenged in Civil Appeal Nos. 450 and 451 of 1966 and 542 of 1964. These Civil appeals were disposed of by a judgment of this Court dated 6.1.1967 in State of Mysore & Ors. v. Hanumiah. By the said judgment this Court repelled the contentions then put forward. The validity of certain provisions of the impugned Act had then been challenged on the footing that the said provisions as well as the rules made and the notifications issued thereunder imposed unreasonable restrictions on the fundamental right of the petitioners to carry on trade or business under Article 19(1)(g) of the Constitution. Again, the Mysore High Court in Mohammed Hussain v. State of Mysore, (W.P. 45 of 1971) and this Court in Syed Ahmed Agha v. State, A. I. R. 1975 S. C. 1443 were called upon to consider contentions as to the validity of certain amendments effected by Mysore Act 29 of 1969 to the impugned Act, in the light of the provisions of Articles 301 to 304 of the Constitution of India. The contentions were repelled with the result that the statutory regulations providing for protection to readers by the establishment of regulated cocoon markets and forbidding the sale or purchase of silk worm cocoons except in such markets were held to be valid. The present challenge, however, is on different grounds. The contention now is that certain amendments effected to the impugned Act by Karnataka Act No. 33 of 1979 have to be struck down as the State Legislature was not competent to enact the same. Thus, the contention now addressed is different from those which were considered by this Court on the earlier occasions. The second aspect which we wish to clarify at the outset is that, though several grounds were raised before the High Court as well as in the writ petitions, the argument before us was limited to a single contention. This was that the impugned provisions lack legislative competence after the enactment, by Parliament, of the Central Silk Boards Act (Act 61 of 1948), (hereinafter referred to as 'the Central Act') which contains a declaration contemplated under Entry 52 of List I in the Seventh Schedule to the Constitution of India. We shall be addressing ourselves only to this argument.

Mysore Act 5 of 1960 was passed since it was considered expedient to consolidate the laws providing for the regulation of the production, supply and distribution of silk worm seed and cocoon in the State of Mysore. This Act contained several restrictions in regard to the production, supply and distribution of silk worm seed and cocoon. Basically, sections 3, 4, 5, 6, 7 and 8 of the Act required a person to obtain a licence for production, sale and distribution of silkworm seed, for rearing silkworms from silkworm seed, for possession of silkworm seed, for disposal of silkworm cocoons for reeling or for reproduction, for sale or purchase of silkworm cocoons for reeling, and for carrying on the business of reeling silk worm cocoons. Section 10 enabled the Government to specify the manner of marketing the above goods, the places at which cocoon markets, cocoon market yards and cocoon stores could be located, specify the sericultural areas to be served by each cocoon

market, assign zones and markets in which any licensed buyer could carry on his business. It also provided that all transactions involving the sale or purchase of cocoons in a cocoon market shall be by weight, in open auction and in cash. The above Act, (and in particular the provisions contained in Sections 6 and 7), was amended by the Karnataka Act 29 of 1969. But these amendments are not relevant for our present purposes. There were further amendments effected to the Act by Karnataka Act 33 of 1979. The petitioner is challenging the amendments carried out by this Act. The principal amendments carried out were, briefly, these. References to 'Mysore' were replaced by references to 'Karnataka'. In the preamble, in addition to the 'silk worm seed' and 'cocoon', reference was added to silk yarn'. Definition of 'silk yarn' and various categories thereof were inserted Section 5A was introduced under which no person could be in possession of silk yarn in excess of a prescribed quantity unless he is a reeler, a licensed trader, a twister, a weaver or a person authorised in writing by the prescribed officer. Section 10A provided for the establishment of silk exchanges at specified places. It enabled the Government to appoint for each silk exchange, a silk Market Officer and also to constitute a marketing committee with the Market Officer as the Chairman and with representatives of reelers, twisters and traders for regulating the conduct of business in the exchange. It also provided that all transactions involving sale or purchase of silk yarn in a silk exchange should be by weight, by open auction and in cash. Section 8A placed certain restrictions on reelers, twisters and traders after the establishment of a silk exchange. It prohibits a reeler or twister from selling or agreeing to sell silk yarn reeled or twisted by him. It permitted only licensed traders to purchase or agree to purchase silk yarn from a reeler or a twister and that too only in a silk exchange and in accordance with such conditions and in such manner as may be prescribed. Sub-section (2) of section 8A provided that no person shall, except in such silk exchange, use, or permit the use or assist in the use of any building, room, tent, enclosure, vehicle, vessel or place for the sale of silk yarn by or purchase of silk yarn from a reeler or a twister or in any manner aid or abet the sale or purchase of silk yarn. To put it very shortly, the amendments of 1979 imposed on the production, supply, distribution and sale of silk yarn restrictions in a manner more or less analogous to those that earlier existed in respect of silk worm seeds and cocoons.

The short point made on behalf of the petitioners is that any legislation in respect of 'silk industry' can be enacted only by Parliament and the State Legislature is incompetent to legislate on this matter. This is because Section 2 of the Central Silk Board Act, which reads as follows:

> "It is hereby declared that it is expedient in the public interest that the Union should take under its control the silk industry."

enacts a declaration in terms of Entry 52. This removes the 'silk industry' from the purview of the State's legislative powers thus rendering the State legislature incompetent to legislate thereafter on this topic. In this context, it is emphasised that originally the Central Act and the declaration in S. 2 had been restricted to 'raw silk industry' but, by an amendment of 1953 effective from 25.3.1954, their scope was widened to include the entire 'silk industry'. The long title of the Central Act is that it is "an Act to provide for the development under Central control of the silk industry and for that purpose to establish a Central Silk Board". Under Section 4, the Central Government is empowered to constitute a Board to be called the Central Silk Board with a constitution as set out in sub-section (3). The functions of the Board are set out in section B, which may be set out:

"(1) It shall be the duty of the Board to promote the development of the silk industry by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for-

(a) undertaking, assisting or encouraging scientific, technological and economic research;

(b) devising means for improved methods of mulberry cultivation rearing, developing and distributing healthy silkworm seeds, reeling or, as the case may be, spinning of silkworm cocoons and silk waste, improving the quality and production of raw silk, if necessary, by making it compulsory for all raw silk to be marketed only after the same has been tested and graded in properly equipped raw silk conditioning houses:

(c) x x x x x

(d) improving the marketing of raw silk;

(e) the collection of statistics from such persons as may be prescribed;

(f) carrying out any other duties which may be vested in the Board under rules made under this Act."

The Board has also a duty to advise the Central Government on all matters relating to the development of the raw silk industry and to prepare and furnish such reports relating to the industry as the Central Government may call for from time to time. Two further provisions of the Central Act which need to be referred to are Ss. 10 and

13. S. 10 enables the Central Government to levy and collect as a cess, a duty of excise on all filature raw silk and on all spun silk reeled in the territories of India.

D Section 13 empowers the Central Government, by notification, to make rules to carry out the purposes of this Act. Sub-section (2) specifies certain enumerated matters in relation to which rules could be framed but these mostly relate to the functioning of the Board the only two topics on which such rules could be framed which may be relevant purposes are those contained in clause (xviii), (xix) and (xx) which read as follows:

"(xviii) the collection of any information or statistics in respect of raw silk or any product of silk;

(xix) the manner in which raw silk shall be graded and marketed;

(xx) any other matter which is to be or may be prescribed.

In the context of these provisions the short argument which has been pressed before us was dealt with by the High Court in paragraphs 13 and 14 which can be conveniently set out:

> 13. The first question to be examined in this context is, whether the amending legislations are beyond the legislative competence of the State Legislature. It was urged that silk industry is a controlled industry declared by Parliament by law to be expedient in the public interest under Entry 52 of List 1. By section 2 of the Central Silk Boards Act, 1948. Parliament has declared that it is expedient in the Public interest that the Union should take under its control the silk industry. Again, by Section 2 of the Industries (Development and Regulation) Act, 1951 Parliament has declared that it is expedient in the public interest that the Union should take under its control the industries specified in the first Schedule to the Act. Item 23(4) of the first Schedule thereunder specifies "textile (including those dyed, printed or otherwise processed) made wholly or part of silk, including silk yarn and hosiery". Having regard to these provisions and Entry 52 of List I of the Seventh Schedule, the State Legislature, as urged for the petitioners, has no power to enact the impugned Acts:
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> 14. It seems to us that this argument is bereft of substance. It is now well settled by a series of pronouncements of the Supreme Court commencing with Tika Ramji and Others v. State of Uttar Pradesh and Others, A.I.R. 1956 S.C. page 676 down to the decision in Ganga Sagar Corporation Ltd. v. State of Uttar Pradesh and Others, A.I.R. 1980 S.C. page 286 that merely because an industry is controlled industry as declared by Parliament under Entry 52 in List I, the State is not deprived of its legitimate power to legislate within its own sphere in respect of such industry.

Referring to the scope of Entry 52 of List 1, in the context of legislation dealing with regulation of supply and purchase of sugar cane required for use in sugar factories. Supreme Court in Tika Ramji's, A.I.R. 1956 S.C. page 676, case observed: [Ibid Note 12 pages 695-6961:

> "Industry in the wide sense of the term would be capable of comprising three different aspects:
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> (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List 2. The process of manufacture or production would be comprised in Entry 24 of List 2 except where the industry was a controlled industry when it would fall within Entry 52 of List 1 and the products of the industry would also be comprised in Entry 27 of List 2 except where they were the products of the controlled industries when they would fall within Entry 33 of List 3."

It is clear from the above observations that it is not all aspects of the industry (that) fall within the scope of Entry 52 of List 1. It is only one aspect of the industry, that is, the process of manufacture or

production that falls under Entry 52 of List 1. It does not include raw materials used in the industry or the distribution of the products of the industry. This view was reaffirmed by the Supreme Court in Harakchand Ratanchand Banthia and Others v. Union of India and Others, A.I.R. 1970 S.C. page 1453, and in the Kannan Devan Hills Produce Company Ltd. v. The State Of Kerala, A.I.R. 1972 S.C. 2301 and Ganga Sugar Corporation Ltd. v. The State of Uttar Pradesh, A.I.R. 1980 S.C.

286. The question that arose in those cases was the scope and effect of Entry 52 of List I in relation to Entries 24 and 27 of List 11 and Entry 33 of List III. The effect of these decisions is that though expressions in legislative entries refer to broad topics and fields of legislation and require a liberal construction, and though the particular expression 'industries' in Entry 52 of List I in its wide sense may comprise many aspects, however, having regard to the scope of other entries in the other lists, the ambit of Entry 52 of List I should be limited and confined only to the 'process of manufacture or production of an industry.' The impugned legislations do not fall into this category and we, therefore, reject the contention urged for the petitioners."

It will at once be seen that the point raised by the petitioners/ appellants has been repelled by the High Court on the basis of a series of decisions of this Court regarding scope of Entry 52 of List I in the Seventh Schedule to the Constitution. The High Court has pointed out that when Entry 52 talks of control of industry it does not mean all aspects of the industry in question. An industry comprises of 3 important aspects

(i) raw materials

(ii) the process of manufacture or production; and

(iii)the distribution of the products of the industry.

Legislation in regard to raw materials would be permissible under Entry 27 of List 2, notwithstanding a declaration of the industry under Entry 52 to be one within the purview of parliamentary legislation. The process of manufacture or production can be legislated on by States under Entry 24 of List 2 so long as the industry is not a controlled industry within the meaning of Entry 7 or Entry 52 of List I. So far as the third aspect viz. the distribution of the products of the industry are concerned, the State Legislature would be quite competent to legislate thereto in regard thereto under Entry 27 of List II. However, when the industry is also a controlled industry legislation in regard to the products of the industry would be permissible by both the Central and the State Legislatures by virtue of Entry 33 of List 3. This in short is the decision of the High Court based, as already pointed out on a series of decisions of this Court. Observations by this Court to a like effect in Calcutta Gas Co. (P) Ltd. v. State, [1962] Supp. 3 S.C.R. 1 may also be seen. We entirely agree with this view.

On behalf of the appellants/petitioners, Shri Soli Sorabji contended that the validity of the enactment has now to be tested in the light of the decision of this Court in I.T.C. Ltd. & Ors. v. State of Karnataka & Ors., [19851 Supp. S.C.C. 476, where in, in a similar context, a State legislation was held to be ultra vires. He also brings to our notice that the correctness of this decision has been

doubted by a Bench of this Court and the matter has been referred to a larger Bench and is pending consideration by such a larger Bench. He, therefore, submits that we should either hold following the above decision, that the State legislation in this case is also incompetent or we should refer this matter also to a larger Bench.

We are of the opinion that it is unnecessary, for the purposes of the present case, to consider the contentions raised in the I. T. C. case (supra). That was a case in which the State enactment was held to be competent by the High Court on the narrow ground that the central legislation covered only virginia tobacco and did not deal with the industry in so far as it related to other varieties of tobacco. On a consideration of the provision of the Act, this Court came to the conclusion that this interpretation of the Act was not correct and that the central legislation did purport to regulate and control 'the entire tobacco industry. In the light of this conclusion the court declared the State law to be incompetent, having regard to the provisions of Entry 52 of List I and the declaration in the Indian Tobacco Act under that provision. In the present case, however, the matter is on a totally different footing. It is true that the Central Silk Board Act purports to control the raw silk industry in the territory of India. But, as pointed out by the High Court in the light of the earlier decisions of this Court therein referred to the control of the industry vested in Parliament was only restricted to the aspect of production and manufacture of silk yarn or silk. It did not obviously take in the earlier stages of the industry, namely, the supply of raw materials. For instance, as already pointed out, even in regard to the silk industry, the reeling, production, development and distribution of silkworm seeds and cocoons was regulated by Act 5 of 1960. These items can be perhaps legitimately described as the raw materials of the silk industry. The control being vested in Parliament under Entry 52 of silk industry did not in view of the earlier ruling of this Court affect the control over these raw materials. This is perhaps the reason why the industry did not challenge the provisions of the 1959 Act, when it was originally enacted, on the ground that is now being put forward. The present legislation, as a result of the amendments, controls the supply and distribution of the goods produced by the industry. As rightly pointed out by the High Court this is the third aspect of the industry which falls outside the purview of the control postulated under Entry

52. In other words, though the production and manufacture of raw silk cannot be legislated upon by the State Legislature in view of the provisions of the Central Act and the declaration in section 2 thereof, that declaration and Entry 52 do not in any way limit the powers of the State Legislature to legislate in respect of the goods produced by the silk industry To interpret Entry 52 otherwise would render Entry 33 in List 3 of the Seventh Schedule to the Constitution otiose and meaningless. In this view of the matter the limitation contained in Entry 52 does not affect the validity of the present legislation. This is an aspect which was not touched upon and which did not arise in the Indian tobacco case. There both the Central Act and the State Act purported to legislate in regard to the industry, namely, in regard to the production and manufacture of tobacco.

In view of our conclusion above, the State legislation would be quite valid unless it is repugnant to the provisions of a Central legislation on the subject. A persual of the Central Act makes it clear that the pith and substance of the legislation is the constitution of a silk Board for research into the scientific, technological and economic aspects of the industry. It does not have anything to do with the aspects covered by entry 33 in List III. There is, therefore, no infirmity in the legislation under

consideration.

In this view of the matter, we agree with the conclusion reached by the High Court. As this is the only point that was argued before us we dismiss the appeals and writ petitions but make no orders regarding costs. G.N. Appeals and Petitions dismissed.