

State Of M.P. & Ors vs M/S. Chhotabhai Jethabhai Patel & Co. & on 10 December, 1971

Equivalent citations: 1972 AIR 971, 1972 SCR (2) 838, AIR 1972 SUPREME COURT 971, 1972 2 SCR 838, 1972 MPLJ 641, 1972 2 SCJ 653

Bench: S.M. Sikri, J.M. Shelat, I.D. Dua, Hans Raj Khanna

PETITIONER:

STATE OF M.P. & ORS.

Vs.

RESPONDENT:

M/S. CHHOTABHAI JETHABHAI PATEL & CO. &

DATE OF JUDGMENT 10/12/1971

BENCH:

MITTER, G.K.

BENCH:

MITTER, G.K.

SIKRI, S.M. (CJ)

SHELAT, J.M.

DUA, I.D.

KHANNA, HANS RAJ

CITATION:

1972 AIR 971

1972 SCR (2) 838

1972 SCC (1) 209

ACT:

Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 Section 5-Whether restrictions on transport of tendu leaves imported from outside the State is violative of Part XIII of the Constitution.

HEADNOTE:

The respondent, a partnership firm of which the second respondent was a partner, carried on business as manufacturers of bidis at various places in the State of Madhya Pradesh. Being unable to secure sufficient tendu leaves locally, the firm took leases for the collection of such leaves in Bihar & Maharashtra. They actually imported tendu leaves under two railway consignments from Bihar. They informed the Divisional Forest Officer about the same and asked permission for transport of the leaves and to

utilise them in their factories. By letter, the D.F.O. informed the respondents that the leaves must not be moved for bidi manufacture until permission is given. Respondents obeyed the order; but in spite of that, the Sub-divisional Forest Officer seized two quantities of such leaves and filed a complaint alleging contravention of s. 5 of Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964.

The respondent filed a petition under Art. 226 of the Constitution for a writ of certiorari quashing the complaint. The contention of the respondents was that the Act did not prohibit import of tendu leaves from outside nor- was there any restriction on a manufacturer to consume the same for the manufacture of bidis or the Rules made under the Act did not regulate the transport of the tendu leaves imported from outside.

The State however, contended that transport of tendu leaves whether grown locally or imported from outside was completely prohibited under s. 5 of the Act, except by a license-holder in terms of a permit issued. S.5(1) provides that no person other than the State Government or an Officer of the State Government etc. shall purchase or transport tendu leaves. Further, the Act did not prohibit import of tendu leaves and so the Act is not violative of Arts. 31, 301 and 304 of the Constitution and the control of movement of tendu leaves after their import was in no way repugnant to Arts. 301 and 304 of the Constitution. The State contended that unless the State had the power to check the purchase of tendu leaves from outside the State and to restrict the transport thereof within the State, the monopoly of State trading in tendu leaves would not be effective. The High Court rejected these contentions of the State and hence the appeal. Dismissing the appeal,

HELD : (1) All the relevant provisions of the Act and the rules made thereunder show that the legislature intended that everybody growing leaves within the State should offer the same to it to its agents in different units for sale and the State was bound to purchase every single lot of usable tendu leaves. Prima facie trade in tendu leaves could consist of dealing in those leaves, i.e., their purchase and sale but transport 'of the leaves once purchased or sold would not prima facie be an organic or integral part of dealing in those leaves. [842 D]

839

Vrajlal Manilal v. M.P. State [1970] 1 S.C.R. 400, followed. (ii) In the present case, the transport of tendu leaves purchased outside but consigned to places within the State to be used for the manufacture of bidis is not integrally connected with the State monopoly as envisaged in the Act. The Act ought not to be construed so as to ban import of tendu leaves from outside the State or restrict their movement once they are within the State unless clear language was used in that behalf. [844 C]

Akadasi Padhan v. State of Orissa, [1963] Supp. 2 S.C.R.

691, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 684 of 1968. Y. S. Dharmadhikari, Advocate-General for the State of Madhya Pradesh and 1. N. Shroff, for the appellants. M. C. Setalvad, Rameshwar Nath and S. K. Dholakia, for respondent No. 1.

The Judgment of the Court was delivered by Mitter, J. This is an appeal from a judgment of the Madhya Pradesh High Court quashing the proceedings initiated on the complaint filed by the Divisional Forest Officer, Saugor in the Court of the Magistrate of the First Class Saugor for imposition of a penalty on the respondents. The matter arises thus. Chhotabhai Jethabhai Patel, a partnership firm of which the second respondent, Jhaverbhai Bhulabhai Patel is a partner, carried on business on a fairly large scale as manufacturers of bidis at various places in the State of Madhya Pradesh including Saugor. Being unable to secure sufficient quantities of tendu leaves grown in the forest units in the State, the firm took leases for the collection of such leaves in the States of Bihar Maharashtra. They actually imported tendu leaves under two railway consignments from Bihar to Saugor. They informed the Divisional Forest Officer about the same and asked for permission for transport of the leaves and to utilise the said leaves for manufacture of bidis in their factories. By letter dated July 27, 1965 the said Forest Officer intimated the firm that the imported leaves were not to be moved for bidi manufacture until permission was accorded for so doing. The respondents' grievance was that notwithstanding the above communication and in spite of the fact that they had not moved the imported leaves from their godowns, the Sub Divisional Forest Officer Saugor seized two quantities of such leaves of 9007 bags imported from Garwah Road, Bihar and 256 bags of tendu leaves imported from Bindoumaganj, Bihar and followed the same up by filing a complaint alleging contravention of s. 5 of the Madhya Pradesh Tendu Patta Wyapar Viniyaman) 84 o Adhiniyam, 1964, hereinafter referred to as the Act. The respondents filed a petition under Art. 226 of the Constitution before the High Court for the issue of a writ of certiorari quashing the complaint. The contention of the respondents (importers of the leaves) before the High Court was that the Act did not prohibit the import of tendu leaves from places outside the State nor was there any restriction on a manufacturer importing such leaves with the express object of consumption of the same, in his factory for the manufacture of bidis and in any event the Act or the Rules made thereunder did not purport to regulate the transport of tendu leaves imported from places outside the State. On behalf of the State it was contended that transport of tendu leaves whether grown in the State or outside the State was completely prohibited by s. 5(2) of the Act and regulation and control of transport of such imported leaves was necessary for the successful working of the State monopoly in the trade of tendu leaves envisaged by the Act. Further the Act did not prohibit the import of tendu leaves and was not therefore violative of Arts. 31, 301 and 304 of the Constitution and the control of movement of tendu leaves after their import from another State was in no way repug- nant to Arts. 301 and 304.

The High Court rejected the contentions of the State. Hence the appeal.

In order to find out whether the action of the Forest Officer was justified, we have to look into the relevant provisions of the Act and the rules framed thereunder. The Act as its preamble shows is one to make provision for regulating in the public interest the trade of tendu leaves by creation of State monopoly in such trade. By s. 1(2) it was to extend to the whole of the State and under sub-s. (3) of s. 1 it was to come into force in such area or areas and on such date or dates as the State Government may, by notification, specify. The broad scheme of the Act appears to be as follows. Under s. 3 the State Government was empowered to divide every specified area defined in cl. (h) of s. 2 into such number of units as it may deem fit. S. 4 empowered the State Government to appoint agents in respect of different units for the purpose of purchase of and trade in tendu leaves on its behalf. Under s. 5(1);

"On the issue of a notification under sub- section (3) of section 1 in any area no person other than-

(a) the State Government;

(b) an officer of State Government authorised in writing in that behalf; or

(c) an agent in respect of the unit in which the leaves have grown;

shall purchase or transport tendu leaves." The two Explanations to this subsection show that purchase of tendu leaves from the State Government or its officers or agents was not to be deemed to be a purchase in contravention of the Act and a person having no interest in a holding but acquiring the right to collect tendu leaves grown on such holding was to be deemed to have purchased such leaves in contravention of the Act. Sub-s. (2) of the section allowed a grower of tendu leaves to transport them from any place within the unit wherein such leaves had grown to any other place in that unit and tendu leaves purchased from the State Government or any officer or agent of the Government by any person for manufacture of bidis within the State or by any person for sale outside the State could be transported by such person in accordance with the terms and conditions of a permit to be issued in that behalf. S. 7 empowered the State Government to fix prices at which tendu leaves were to be, purchased by it or its agent and under s. 9 the State Government or their authorised officer or agent was to be, bound to purchase at the price fixed under s. 7 leaves offered for sale at the depot, subject to the right of rejection of such leaves as were not fit for the manufacture of bidis. Under s. 11 all manufacturers of bidis and all exporters of tendu leaves had to get themselves registered in such manner as might be prescribed. S. 12 enabled the State Government to sell or dispose of tendu leaves purchased by it or its agent as therein prescribed. Under s. 15 any person contravening any of the provisions of the Act or the rules thereunder was liable to punishment, both with imprisonment and fine and tendu leaves in respect of which such contravention took place were liable to forfeiture by Government. S. 19 gave the Government power to make rules to carry out the provisions of the Act.

Rule 4 framed under the Act lays down the kinds of transport permits which may be issued. They are to be, of four types

(i) for transport from collection depot to storage godown;

(ii) for transport from one storage godown to another or to distribution centre; (iii) for transport from a distribution centre to Sattedars or Mazdoors' and (iv) for transport outside the State. The application for a transport permit is to be under rule 9 in form 'M' and the permit to be issued is to be in form 'M'. Form 'M' gives the quantity of tendu leaves purchased, the place or places where they were stored, the destination to which they were to be transported and the place or places where transported leaves were to be stored. Similar particulars are to be contained in a permit in form 'N'.

It was contended on behalf of the State that the High Court had gone wrong in taking the view that the object of the Act was confined to trading in tendu leaves grown in the State as disclosed by the above provisions. It was urged that the embargo on purchase and transport of tendu leaves by s. 5 was necessary for creation and preservation of the State monopoly in tendu leaves. It was submitted that there was nothing in the Act, which on the face of it showed that tendu leaves mentioned in the different provisions were to be confined to leaves grown in the State. It was further submitted that unless the State had the power to check the purchase of tendu leaves from outside the State and in any event to restrict the transport thereof within the State, the monopoly would not be effective. It was urged further that transport of goods within the State was so essentially integrated with the trade in the goods that the restriction on transport should be upheld in the interest of the State monopoly.

We find ourselves unable to accept the contentions put forward by counsel on behalf of the State. All the relevant provisions of the Act and the rules referred to above show that the legislature intended that everybody growing leaves within the State should offer the same to it or its agents in different units for sale and the State was bound to purchase every single lot of tendu leaves unless the same could be said to be unfit for the manufacture of bidis. Prima facie trade in tendu leaves as was held by this Court in *Vrajlal Manilal v. M. P. State*(1) would consist of dealing in those leaves i.e. their purchase and sale but "transport of the leaves once purchased or sold would not prima facie be an organic or integral part of dealing in those leaves." It was further held in that case:

...a permit system which regulates the movement of leaves purchased by a manufacturer of bidis from the unit where they are purchased to his warehouse, then to the branches and to the sattedars cannot up to that stage be regarded as unreasonable in the light of the object of the Act, the economic conditions prevailing in the State, and the mischief which it seeks to cure. At the same time to expect the manufacturer to get permits issued to his sattedars for distribution by them to the innumerable mazdoors of comparatively small quantities of these leaves would not only be unreasonable but frustrating."

In that case there was no question of import of any tendu leaves from outside the State or the issue of any permits in that regard. What was objected to was the insistence upon transport permits for the leaves to be distributed by the manufacturers to his innumerable sattedars and mazdoors under s. 5 of the Act. It was held that though the section "is couched in apparently wide language, (1) [1970] 1

S.C.R. 400 at 408.

the very object of the Act, as disclosed by its long title, contains inherent limitations against an absolute or as strictly regulated a ban as it would at first reading of the section appear." Though the Court there upheld the provisions relating to the creation of the monopoly in the public interest in the matter of sale and purchase of tendu leaves, it was not disposed to uphold the restrictions on movement to the extent it was sought to be enforced by the State in that case.

In coming to the above conclusion the Court relied on the dictum in *Akadasi Padhan v. State of Orissa*(1) "A law relating to a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or no the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Art. 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the said part and their validity must be judged under the first part of Art. 19(6). In other words, the effect of the amendment made in Art. 19(6) is to protect the law relating to the creation of monopoly and that means that it is only the provisions of the law which are integrally and essentially connected with the creation of the monopoly that are protected. The rest of the provisions which may be incidental do not fall under the, latter part of Art. 19(6) and would inevitably have to satisfy the test of the first part of Art. 19(6)."

It is settled law that where two constructions of a legislative provision are possible one consistent with the constitutionality of the measure impugned and the other offending the same, the Court will lean towards the first if it be compatible with the object and purpose of the impugned Act, the mischief which it sought to prevent ascertaining from relevant factors its true scope and meaning. It was in the light of this principle that the High Court observed :

"If s. 5 of the Act or any of its provisions were to be construed as prohibiting the import of tendu leaves into (1) [1963] Supp. 2 S.C.R. 691.

the State or restricted within the State of imported leaves, then the provision would clearly be invalid as violative of Arts. 301 and 304 of the Constitution."

Without expressing our views on the subject we hold that the entire provisions of the Act and the rules are consistent with and aim at the State monopoly in the trade of tendu leaves in case of leaves grown or _produced in the State and the legislature never intended that the monopoly should be operative even to the extent of banning import of tendu leaves from outside or stalling the tendu leaves once they found their way into the State from outside. The transport of tendu leaves purchased outside but consigned to places within the, State to be used for the manufacture of bidis is not integrally connected with the State monopoly as envisaged in the Act. It stands to reason that manufacturers of bidis in the State of Madhya Pradesh would not think of importing tendu leaves

from distant places like, Bihar and Maharashtra if they could help it and it must be the exigencies of the situation which drives a manufacturer of bidis to such course of action. In any event, the Act ought not to be construed so as to ban import of tendu leaves from outside the State or restrict their movement once they were within the State unless clear language was used in that behalf. If and when such express embargo is imposed, a question may arise as to whether it offends the different provisions of Part XIII of the Constitution.

In the result the appeal fails and is dismissed with costs.

S.C.

Appeal dismissed.