Supreme Court of India
Tirath Ram Rajindra Nath, Lucknow vs State Of U.P. And Anr. on 5 December, 1972
Equivalent citations: AIR 1973 SC 405, (1973) 3 SCC 585, 1973 31 STC 314 SC
Author: K Hegde
Bench: H Khanna, K Hegde, P J Reddy
JUDGMENT K.S. Hegde, J.

1. This appeal by certificate arises from the decision of the Allahabad High Court in Civil Miscellaneous Writ No. 6426 of 1971. The appellants are brick manufacturers in the district of Lucknow. They are registered dealers under the U. P. Sales Tax Act, 1948 (to be hereinafter referred to as "the Act"). They challenge the assessment proceedings under the Act for the assessment years 1968-69, 1969-70, 1970-71 and 1971-72 and contest the validity of Section 3-AB of the Act, which was incorporated into the Act by the U. P. Sales Tax (Amendment and Validation) Act, 1971 (No. 20 of 1971). They contest the validity of that provision on various grounds. The High Court rejected those contentions and dismissed the writ petition. Hence this appeal.

2. Though the questions of law arising for decision in this case are fairly simple, this case has a long history. It is necessary to refer briefly to the struggle that went on between the State and the brick manufacturers, culminating in the enactment of the impugned provision, Section 3-AB. The Act was enacted in 1948. Section 3 therein imposes multi-point sales tax on the sale of certain goods. Section 3-A was inserted in the Act in that very year. That section empowered the Government to levy sales tax on some of the goods "at such single point in the series of sales by successive dealers" as may be prescribed by the State Government. Several notifications were issued under Section 3-A. The first notification with which we are concerned is ST-906/X dated March 31, 1956. Under that notification, sales tax was imposed on the turnover of the sale of bricks at the point of sale by the manufacturer. That notification was superseded by Notification No. ST-1365/X-990 dated April 1, 1960. That notification was again superseded by Notification No. ST-1362/X-105 dated April 5, 1961, which in its turn was superseded by Notification No. ST-6438/X-1012 dated December 1, 1962. These notifications, inter alia, varied the rate of tax to be levied over the turnover relating to bricks. The validity of these notifications was challenged before the High Court of Allahabad in Gurna Mal v. State of U. P. [1970] 26 S.T.C. 270. During the pendency of the case, the Governor of U. P. issued the U. P. Sales Tax (Amendment and Validation) Ordinance, 1970. This Ordinance purported to amend Section 3-A(1) with retrospective effect and validate the notifications already issued. It also purported to validate the assessments made and the tax recovered under the said notifications. That Ordinance sought to substitute the words "at such single point in the series of sales by successive dealers as the State Government may specify" by the words "at such single point of sale as the State Government may specify". But the court held that the notifications did not fall within the purview of Section 3-A as in the State of U. P., bricks were sold directly to the consumers by the manufacturers. The court opined that before Section 3-A can be attracted, the goods in question must have been the subject-matter of multiple sales. It further held that the amendment effected by the 1970 Ordinance was ineffective to save the notifications. Thereafter the U. P. Legislature passed the U. P. Sales Tax (Amendment and Validation) Act, 1970. That Act substituted Sub-section (1) of Section 3-A. The substituted section read :

Notwithstanding anything contained in Section 3, the State Government may, by notification in the official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point of sale as the State Government may specify, and such declaration may be made notwithstanding that the goods or class of goods are not capable of being sold, or according to prevalent commercial practice are not ordinarily sold, at more than one point.

3. Under that Act, the assessments made were sought to be validated and the tax recovered protected. The validity of that amendment came up for consideration before the Allahabad High Court in Krishna Brick Field v. State of U. P. [1972] 29 S.T.C. 15. A Full Bench of that High Court held that Section 3-A(1) was unconstitutional inasmuch as it delegated essential legislative functions to the State Government and further the power conferred under Section 3-A to the Government was an arbitrary power and consequently it was violative of Article 14 of the Constitution. After that decision, the U. P. Legislature again amended the Act by the U. P. Sales Tax (Amendment and Validation) Act, 1971 (Act 20 of 1971). The said amending Act incorporated into the Act Section 3-AB(1) which reads :

Notwithstanding any judgment, decree or order of any court, any tax imposed, assessed, levied or collected, or purporting to have been imposed, assessed, levied or collected before the commencement of the U.P. Sales Tax (Amendment and Validation) Act, 1971, under any of the notifications specified in the Second Schedule shall be deemed to have been validly imposed, assessed, levied or collected in accordance with law, as if the said notifications had been included in and formed part of this section and this section had been in force at all material times when such tax was imposed, assessed, levied or collected.

4. Dr. L. M. Singhvi, the learned Counsel for the appellants, sought to assail the decision of the High Court on three grounds, i. e., (1) in any event the purported validation does not cure the vice noticed by the High Court in the previous decision ; unless the vice is cured, there can be no validation ; (2) Section 3-AB, which seeks to validate the notifications, has merely removed the vice of excessive delegation but has not cured the judicially declared infirmity in respect of want of power ; and (3) the liability to be taxed arises only under the charging section ; Section 3-A is only prospective and not retrospective. Section 3-AB is not a charging section though it is both prospective and retrospective. It can assist the charging section only in its prospective operation.

5. We are unable to accept any of these contentions as correct. We have earlier noticed that the High Court struck down the levy in Krishna Brick Field's case [1972] 29 S.T.C. 15 on two grounds, viz., (1) that the Act delegated the essential legislative powers to the State Government, and (2) that the levy is violative of Article 14 of the Constitution. The latter conclusion was based on the ground that the discretion conferred on the Government is an arbitrary discretion. As seen earlier, the Legislature has now incorporated the impugned notifications as part of Section 3-AB. Those notifications have now ceased to be subordinate legislations. They are now part of the law enacted by the Legislature. Hence there is no question of any excessive delegation.

6. Now coming to the question of infringement of Article 14, the High Court earlier came to the conclusion that the notifications issued by the Government were violative of that article solely on the

ground that the power conferred on the Government is an arbitrary power. That question no more arises for consideration. It is well-settled that the Legislature has wide powers of classification in the case of taxing statutes. The question of the impact of Article 14 on taxing statutes has been elaborately discussed by us in Hira Lal Rattan Lal v. State of U. P. and Anr. Civil Appeals Nos. 821, 822, 1625 and 2008 of 1971 decided on 3rd October, 1972 ; since reported at . For the reasons mentioned therein we are unable to accept the contention that the vice noticed by the Allahabad High Court in Krishna Brick Field's case [1972] 29 S.T.C. 15 has not been removed.

7. Now coming to the second contention of Dr. Singhvi, we fail to see how the question of lack of power now arises in view of Section 3-AB. While developing his contention No. 2, Dr. Singhvi urged that the Legislature has unauthorisedly encroached on the judicial power. The amended Section 3-AB merely intradicts the decision rendered by the High Court and has not removed the want of power noticed by the High Court. We are unable to accede to this contention. The Legislature has not purported either directly or by necessary implication to overrule the decision of the Allahabad High Court in Krishna Brick Field's case [1972] 29 S.T.C. 15. On the other hand, it has accepted the decision as correct but has sought to remove the basis of the decision by retrospectively changing the law. This Court has pointed out in several cases the distinction between encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits. In the instant case, what the Legislature has done is to amend the law retrospectively and thereby remove the basis of the decision rendered by the High Court. Such a course cannot be considered as an encroachment on the judicial power.

8. Dr. Singhvi's contention that Section 3-AB is not a charging section cannot be accepted as correct. That section as it now stands incorporates into itself the impugned notifications. Those notifications have now become part of that section. To find out the scope and effect of that section, we have not only to read the section but we have also to read the concerned notifications. If so read, as it should be, it is clear that the section not only levies tax on the bricks at the prescribed rates, it also provides for the quantification of tax. The law is given retrospective effect. The fact that in those notifications it is mentioned that they were issued in pursuance of the power conferred under Section 3-A does not in any way take away the intended legal effect. The intention of the Legislature is clear.

9. For the reasons mentioned above, this appeal fails and the same is dismissed. But taking into consideration the course of litigation, we think it is appropriate to direct the parties to bear their own costs in this appeal.