Supreme Court of India
Amrit Banaspati Co. Ltd vs Union Of India And Ors on 10 February, 1995
Equivalent citations: 1995 AIR 1340, 1995 SCC (3) 335
Author: K Paripoornan
Bench: Paripoornan, K.S.(J)

PETITIONER:
AMRIT BANASPATI CO. LTD.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT10/02/1995

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
VERMA, JAGDISH SARAN (J)

CITATION:
1995 AIR 1340 1995 SCC (3) 335
JT 1995 (2) 359 1995 SCALE (1)809

ACT:

HEADNOTE:

JUDGMENT:

1. The appellant, petitioner in Civil Writ Petition No. 144 of 1972, High Court of Delhi, has filed this appeal, on a certificate granted by the High Court under Article 133(1)

(a), (b) & (c) of the Constitution of India, against the Judgment of the High Court dated 15.9.1972. The appellant - company has its registered office at Ghaziabad in the State of Uttar Pradesh. It carries on the business of manufactur-

ing and dealing in Vanaspati and its products. It has a factory at Ghaziabad. The products are carried on by railway and/or by road into the Union Territory of Delhi. The Delhi Municipal Corporation Act, 1957 (Act 66 of 1957), hereinafter referred to as 'the Act', was enacted by Parliament and it came into force on 28.10.1957. Section 178 of the said Act provides for the levy of terminal tax at the rates specified in the Tenth Schedule to the Act on all goods carried by railway or road into the Union Territory of Delhi from any place outside Delhi. Under the said provision, the

Delhi terminal tax agency realised a sum of Rs. 2,95,396.01 for the years 1969, 1970 & 1971 as terminal tax from the petitioner on vanaspati products carried by railway and/or road into the Union Territory of Delhi. Alleging that section 178 of the Act directly and immediately impedes the movement of goods from one place to another, restricts trade, commerce and intercourse and also discriminates between goods manufactured within the Union Territory of Delhi and the goods manufactured outside the said territory, the appellant - company prayed for a declaration that section 178 of the Act is ultravires of Article 301 of the Constitution of India, and for the issuance of a writ of prohibition or direction directing the respondents to forebear from realising any terminal tax from the petitioner, and for a refund of the aforesaid sum of Rs. 2,95,396.01 realised by the respondents as terminal tax from the petitioner. The petitioner stated that the terminal tax chargeable under Section 178 was not referable to any service rendered or to be rendered by any railway or road transport and was not protected by Articles 302, 303 and 304 of the Constitution of India. It is alleged that the peti- tioner wrote letters on 18.11.1971 and 20.12.1971, requesting the respondents the Union of India and others, to refrain from levying and/or collecting any terminal tax under Section 178. Since there was no response, the appellant was constrained to file the writ petition and seek appropriate reliefs.

2.A Division Bench of the Delhi High Court by Judgment dated 15.9.1972, held that the levy of tax under section 178 of the Act is a direct and immediate restriction on trade and offends Article 301 of the Constitution of India, It further held that the levy is neither regulatory nor compensatory. The Division Bench also held that the said provision is saved by Article 302 of the Constitution of India. Though the scope of Articles 303 and 305 was also discussed, the Court did not consider it necessary to express any final view on the various pleas raised in that behalf. The Court held that though section 178 of the Act contravened Article 301, it is saved by Article 302 and the writ petition was dismissed. It is from the aforesaid Judgment dated 15.9.1972, the petitioner has filed this Civil Appeal by certificate granted by the High Court.

3.We heard counsel for the appellant Sri, S. Ganesh and also counsel for the respondents Sri. N. N. Goswami. Counsel for the appellant referred to the averments in paragraphs 3 and 7 of the writ petition and the reply thereto by the respondents in paragraph 8 of its counter, and contended that Section 178 of the Act discriminates between goods manufactured within the Union Territory of Delhi and the goods manufactured outside the said territory. The goods manufactured outside the said territory alone has to pay the terminal tax under the Act. This, according to counsel for the appellant, is an impediment on the movement of goods from the State of Haryana into the Union Territory for Delhi and discrimination is writ large in the aforesaid provision. On the other hand, counsel for the respondent vehemently contended that apart from a vague and general plea that the appellant is placed in a position of great disadvantage as compared to other manufactures of vanaspati in Delhi, there is no proper pleadings and proof or particulars on that score. It was also submitted that even on the hypothesis that section 178 of the Act contravenes Article 301 of the Constitution, it is saved by Article 302 and there is no infirmity as alleged.

4. It is only appropriate to quote Section 178 of the Act which is as follows:

> 178. Terminal tax on goods carried by railway or road. (1) On and from the date of the establishment of the Corporation under section 3, there shall be levied on all goods carried by railway or road into the Union Territory of Delhi from any place outside thereof, a terminal tax at the rates specified in the Tenth Schedule.

2. The Central Government may, by declaration in the Official Gazette, vary from time to time, the rates specified in that Schedule, in relation to any goods or classes of goods so, however, that where the rates are increased, the increased rate shall not be more tha n treble the rates so specified.

3.The Central Government may by Re notification declare that with effect from such date as may be specified in the noti-

fication, the terminal tax levied in relation to any goods or class of goods shall, for reasons specified in the notification, cease to be levied."

The said legislation is one enacted by Parliament. Article 301 and 302 of the Constitution of India may also be quoted.

> "301. Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free.
>
> "302. parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

5. We may usefully refer to some basic principles to be borne in mind before evaluating the plea that section 178 of the Act violates Article 301 of the Constitution of India and is also discriminatory. A Constitution Bench of this Court in VS. Rice and Oil Mills and others vs. State of Andhra Pradesh etc. (AIR 1964 SC 1781), at p. 1788 stated thus:

> "This Court has repeatedly pointed out that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Art. 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute."

6. Again in G.K Krishnan etc. v.State of Tamil Nadu and anr. etc. (AIR 1975 SC 583), at p. 592 in paragraph 36, this Court observed:

> "...A person who challenges a classification as unreasonable has the burden of proving it. There is always a presump-

tion that a classification is valid especially in a taxing statute. The ancient proposition that a person who challenges the reasonableness of a classification an d therefore the constitutionally of the law making the classification, has been reiterated by this Court recently."

7. Still later a Constitution Bench of this Court in R.K. Garg v. Union of India ors. (AIR 1981 SC 2138), at pp. 2146 & 2147 in paragraph 7 & 8, stated the law as follows:

> "Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the Courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people. its laws are directed to problems made manifest by experience and its discrimination are base on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it the Court may take into consideration matters of common knowledge matters of common reports the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.
>
> "Another rule of equal importance is that that its laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech religion etc. It has been said by no less a person than Holmes J., that the legislature should be allowed some play in the joints because it as to deal with complex problems which do not admits of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.

It is settled law that the allegations regarding the violation of constitutional provision should be specific, clear and unambiguous and should give relevant particulars, and the burden is on the person who impeaches the law as violative of constitutional guarantee to show that the particular provision is infirm for all or any of the reasons stated by him. In the recent decision of this Court Gauri Shanker and ors. v. Union of India ors. etc. (1994 (6) SCC 349), to which both of us were parties, it was reiterated that-

(a) there is always a presumtion in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(b) it must be presumed that the Legislature understands and correctly appreciates the need of its own people to problems made manifest by experience and that its discriminations are based on adequate grounds ;

(c) in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

9. We scanned the entire pleadings in this case. Tested in the light of the above principles, we are of opinion that there is no sufficient or specific or definite pleadings with particulars, to state that section 178 of the Act violates Art. 301 of the Constitution or is discriminatory. Moreover, on facts, the presumptions which are applicable in the instant case as stated above, have not been rebutted. On this short ground, the writ petition filed in the High Court by the appellant should fall.

10. The scope and content of Article 301 of the Constitution of India has been laid down in innumerable decisions of this Court beginning from Atiabari Tea Co. Ltd. v. Me State of Assam & Anr.(AIR 1961 SC 232 = 1961 (1) SCR 809). Suffice it to say that it is only when the intra- State or inter-State movement of the persons or goods are impeded directly and immediately as distinct from creating some indirect or inconsequential impediment, by any legislative or executive action, infringement of the freedom envisaged by Article 301 can arise. Without anything more, a tax law, per se, may not impair the said freedom. At the same time, it should be stated that a fiscal measure is not outside the purview of Article 301 of the Constitution. It is unnecessary to refer to all the decisions on the point. We shall only refer to a few important decisions of this Court on this aspect-- Automobile Transport Lid. etc. v. State of Rajasthan & Ors. (AIR 1962 SC 1406), Andhra Sugars Lid. & anr. vs. State of Andhra Pradesh and- Ors. (AIR 1968 SC 599), State of Madras vs. N.K. Nataraja Mudaliar (AIR 1969 SC 147) and a recent decision which has surveyed the entire case law on the subject -M/s. Video Electronics Pvt. Ltd. v. State of Punjab & anr. (AIR 1990 SC 820).

11. Even proceeding on the basis that section 178 of the Act directly immediately impedes the movement of the goods (vanaspati) from the State of Haryana into the Union Territory of Delhi, we are of the view that the statutory provision aforesaid is saved by Article 302 of the Constitution of India. It is true that a tax may in certain cases, directly and immediately impede the movement of flow of trade, but the imposition of a tax does not do so in every case. It depends upon the context and circumstances. Shah, J., on behalf of the Constitution Bench, in the State of Madras v. N.K Nataraja Mudaliar (AIR 1969 SC 1 47), at p. 1 5 5, stated thus:

> "There is also no doubt that exercise of the power to tax may normally be presumed to be in the public interest

12. In this case the impugned tax law is enacted by Parliament. There is a presumption that the imposition of the tax is in public interest. That has not been offset by any contra material. So viewed, section 178 of the Act is saved by Art. 302 of the Constitution of India. It was so held by the High Court and we concur with the said view. In this connection it is only appropriate to quote what Mathew, J. observed on behalf of the bench in G.K Krishnan v. State of Tamil Nadu (AIR 1975 SC

583),in paragraph 39:

> "39. Judicial deference to legislature in instances of economic regulation is sometimes explained by the argument that rationality of a classification may depend upon 'local conditions' about which local legislative or administrative body would be better informed than a court. Consequently, lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification irrational (see Carmichael v. Southern Coal & Coak Co., (1936) 301 US 495) Tax Laws, for example, may respond closely to local needs and court's familiarity with these needs is likely to be limited. Therefore, the Court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent on peculiar needs and specific difficulties of the community, The needs and the difficulties of a community are constituted out of facts and information beyond the easy ken of the court."

The above perspective has been restated by the Constitution Bench in R.K Garg v. Union of India and Ors. (AIR 1981 SC 2138), at paragraph 2147,paragraph 8, which we have adverted to,in the earlier portion of this Judgment.

13. There is no merit in this appeal. It is dismissed. There shall be no order as to costs.