

Supreme Court of India

Indian Oil Corporation Ltd. And ... vs Executive Officer And Anr. on 11 November, 1997

Equivalent citations: JT 1998 (8) SC 33, (1998) 9 SCC 384

Bench: M Punchhi, M Srinivasan

ORDER CA No. 4207 of 1992

1. The appellant Municipal Corporation of Greater Bombay, is aggrieved against the judgment and order of the High Court of Judicature at Bombay in having explained away and deviated from its earlier decision in *Lalji Mulji v. State of Maharashtra*, (1965) 67 Bom LR 484 .

2. The instant case, as also *Lalji Mulji* case, arose in the context of Section 31 of the Petroleum Act, 1934, which reads as follows:

"31. Power to limit powers of local authorities over petroleum.--Where any enactment confers powers upon any local authority in respect of the transport or storage of petroleum, the Central Government may, by notification in the Official Gazette,--

(a) limit the operation of such enactment, or

(b) restrict the exercise of such powers, in any manner it deems fit."

3. A plain reading of the provision establishes that the provision can be employed to limit the operation of an enactment of the kind or restrict the exercise of powers conferred on a local authority under it in respect of the transport or storage of petroleum. Equally it does not require much effort to observe that inter alia the subjects petroleum and petroleum products are comprehensively within the scope of Entry 53 of List I of the Seventh Schedule to the Constitution. It also does not require much effort to connect the Entry with the provisions above-quoted.

4. Now in the two cases, which engage our attention, notifications respectively stand issued by the Central Government, in exercise of power under Section 31 of the Petroleum Act whereas, in contrast, in *Lalji Mulji* Case (Supra) the positive finding recorded by the High Court was that the commodity on which the Corporation had taken action was outside the scope of the notification. In the instant case undeniably the commodities are within the scope of the notifications.

5. The principal plea of the Corporation is that it has the power to regulate transport and storage of petroleum and will only permit the activity of its transport or storage on payment of a licence fee. The point which arose thus for consideration in *Lalji Mulji* Case (Supra) was whether in that fact situation there was any conflict between Section 394 of the Bombay Municipal Corporation Act and Section 31 of the Petroleum Act. The answer then given was that both the statutes could independently go along together; neither was there any question of vires nor of constitutionality or conflict between the two. *Lalji Mulji* Case (Supra) thus stands explained away by the judgment under appeal on applying the well-known tests of repugnancy by holding that it would have to be held that to the extent of a notified category of petroleum there would be a conflict between the two enactments and therefore to the extent of a notified category Section 394 of the Corporation Act

would have no application. The High Court has also held that there was undoubtedly conflict between the two enactments and therefore the Petroleum Act will supersede the provisions of the Corporation Act. This view of the High Court is under challenge.

6. We see no difficulty in resolving that dispute. Once we bear in mind the sweep of Entry 53 of List I of the Seventh Schedule of the Constitution petroleum products unrestricted within the area to which the Corporation Act extends, Section 31 of the Petroleum Act coupled with the notification issued thereunder, would not as a legislative measure supersede the provisions of the Corporation Act but only recede or subordinate them as long as the notification remained operative. Understood in this manner we see no conflict between the two provisions.

7. We, therefore, dismiss this appeal but without any order as to costs. CANo. 3025 of 1991

8. An identical provision as was explained in *Lalji Mulji v. State of Maharashtra* (Supra) is Section 290 of the Orissa Municipal Act which stand explained away hereby as has been done in that case and on that basis this appeal would stand allowed, the judgment and order of the High Court of Orissa being set aside but without any order as to costs. Criminal Appeal No. 241 of 1990

9. In view of the decision in Civil Appeal No. 4207 of 1992 and Civil Appeal No. 3025 of 1991 it is undisputed that the conviction of the appellant cannot be sustained. The prosecution launched by the Municipality under Sections 290 and 383 of the Orissa Municipal Act was not maintainable in law. Therefore, this appeal stands allowed, the judgment and order of the High Court of Orissa and all preceding orders of the subordinate courts are hereby upset. Ordered accordingly.