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Darwari Lal Gyaprasad Dubey and Another Vs State of Madhya Pradesh

Criminal Revision No. 501 of 1989

Court: Madhya Pradesh High Court

Date of Decision: July 19, 1994

Acts Referred:
Constitution of India, 1950 â€" Article 162#Essential Commodities Act, 1955 â€" Section 3, 7

Citation: (1994) 2 MPJR 105 : (1995) 40 MPLJ 521 : (1995) MPLJ 521

Hon'ble Judges: P.N.S. Chouhan, J; D.K. Jain, J

Bench: Division Bench

Advocate: S.L. Kochar, for the Appellant; N.S. Ruprah, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.N.S. Chouhan, J.

Special Judge, Chhatarpur, vide order dated 27-9-1989 passed in Special Case No. 2 of 1988 framed charges u/s 7 read with Section 3 of the

Essential Commodities Act against the two accused persons for having committed breach of certain clauses of the M. P. (Foodstuffs) Civil Supply

Distribution Scheme read with the relevant provisions of the M. P. Foodstuffs (Distribution Control) Order, 1960. They challenged the framing of

such charges and prayed for quashing of proceedings against them in Criminal Revision No. 501/1989. Their contention was that the aforesaid

Scheme having been made in exercise of the executive power of the State, it did not form part of the Control Order of 1960 made u/s 3 of the

Essential Commodities Act. As such, there was no legal basis for their criminal prosecution and the proceedings were liable to be quashed. To

support their contention, reliance was placed on Mohan v. State of M. P., Cri. Appeal No. 520/1987 decided on 14-8-1989, since reported in

1990 MPLJ 575. The learned Single Judge while deciding Mohan''s case (supra) had observed :

It is well settled that there can be no conviction u/s 7 of the Essential Commodities Act unless the prosecution is able to show that there is an

''order'' u/s 3 of the Act which has been contravened. See Bara Singh v. State of Punjab 1984 (I) Cri 402 (P and H) and Superintendent and

Remembrancer of Legal Affairs, West Bengal v. Problad Agarwalla AIR 1970 Cal. 187. Therefore, it has to be examined whether the ''Scheme''

is an ''Order'' within the meaning of Section 3 of the Act.

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On behalf of the State, it was contended that the Scheme was framed in exercise of the powers delegated to the State Government u/s 5 of the Act

read with Clause 2(d) of the ''Order''. The submission cannot be accepted. The validity of the ''Scheme'' was considered in Madhya Pradesh

Ration Vikreta Sangh, Jabalpur and Others Vs. State of Madhya Pradesh, Bhopal and Another, It was held that the scheme was not made in

exercise of any power conferred by the ''Order''. Clause 2(d) of the ''Order'' only defines the expression of ""government Scheme"". The definition

itself postulates the ''Scheme'' is one which is made in exercise of its executive power. The executive power of a State as provided in Article 162

of the Constitution extends to the matters with respect to which the Legislature of the State has power to make laws. The topic of distribution of

foodstuffs is covered by Entry 33 in List III of the Seventh Schedule and so the executive power of the State extends to this topic. The Division

Bench held that the Scheme was not made in exercise of the powers conferred by Section 3 read with Section 5 of the Act and was made only in

exercise of the executive power of the State. The decision of this Court was affirmed by the Supreme Court in Madhya Pradesh Ration Vikreta

Sangh Society and Others Vs. State of Madhya Pradesh and Another, The Supreme Court also held that the ''Scheme'' was designed by the State

by executive action under Article 162 of the Constitution with a view to ensuring equitable distribution of foodstuffs at fair prices.

Thus, there is no manner of doubt that the ''Scheme'' is not an ''Order'' u/s 3 of the Essential Commodities Act. That being so, for breach of any

clause of the ''Scheme'' the State could not launch prosecution u/s 7 of the Act. The convictions of the appellants so also the prosecution of

applicants u/s 7 of the Act for the breach of any provision of the ''Scheme'' cannot be sustained and must be held illegal, null and void.

The learned Single Judge hearing Criminal Revision No. 501/1989 felt that merely because the said Scheme was framed in exercise of the

executive power of the State Government under Article 162 of the Constitution it did not follow that the same could not be treated as part of the

Control Order of 1960. In the words of the learned Single Judge :

In spite of having been designed by executive action under Article 162 of the Constitution the effect of Sub-clause (d) of Clause (2) of the Control

Order was that the scheme got incorporated into the same and became part of it. The method of ''incorporation by reference'' is one of the well-

known methods in the field of making of laws. By providing in Sub-clause (d) of Clause (2) of the Control Order that from the term government

scheme was meant the scheme for distribution of foodstuffs to consumers through fair price shops set up by the Government in this behalf "it clearly

followed that any scheme for the said purpose even though designed by executive action under Article 162 of the Constitution got incorporated

and became part and parcel of the government scheme" within the meaning of the Control Order.

Therefore, it was concluded that there was nothing in M. P. Ration Vikreta Sangh, Jabalpur and Ors. v. State of M. P. case (supra), which was

affirmed by the Supreme Court in M. P. Ration Vikreta Sangh Society and Ors. v. State of M. P. and Ors. case (supra), on the basis of which it

could be inferred that the scheme was not part of the Control Order made u/s 3 of the Essential Commodities Act. Accordingly, on account of

disagreement with the view expressed by the learned Single Judge in Mohan''s case (supra), the case, was ordered to be placed before Hon''ble

the Chief Justice for constitution of a larger Bench to decide the point That is how this matter has come up before us.

Applicants'' learned counsel argued that there is no principle of incorporation by reference to permit incorporation of an order made in exercise of

the executive power of the State in any statute. The principle of incorporation by reference permits reading of a statutory provision as part of the

other statute. In the Principles of Statutory Interpretation by Justice G. P. Singh (Fifth Edition, 1992) this principle has been dealt with from page

176 to 204. Its perusal unmistakably shows that the principle of incorporation by reference is permissible in cases of two enactments which are

pari materia whether contemporary or not. There is not even a remote indication that by virtue of such a principle an order passed in exercise of

the executive powers of the State can be read as forming part of an order having the force of law. The learned Government Advocate was allowed

sufficient time to enlighten us on the subject. He, too, could not show us anything to the contrary.

We, therefore, hold that the view taken by the learned Single Judge in Mohan''s case (supra) is the correct view. The reference is answered

accordingly.