

**Dalsukhbhai Pitambardas and Company and ors. Vs. Agricultural Produce Market Committee and anr.**

**LegalCrystal Citation :** [legalcrystal.com/736759](http://legalcrystal.com/736759)

**Court :** Gujarat

**Decided On :** Aug-12-1983

**Reported in :** AIR1985Guj38

**Judge :** N.H. Bhatt and; S.A. Shar, JJ.

**Acts :** Gujarat Agricultural Produce Markets Act, 1964 - Sections 6(1) and 6(5); Gujarat Agricultural Produce Market (Amendment and Validation) Act, 1979 - Sections 3; [Constitution of India](#) - Article 141

**Appeal No. :** Special Civil Appln. Nos. 2841 of 1979 and 476 of 1983

**Appellant :** Dalsukhbhai Pitambardas and Company and ors.

**Respondent :** Agricultural Produce Market Committee and anr.

**Advocate for Def. :** S.K. Zaveri,; R.R. Shah, Asstt. Govt Pleader, i/b.,; B.K

**Advocate for Pet/Ap. :** H.L. Patel, Adv.

**Judgement :**

Bhatt, J.

1. These two Special Civil Applications dealing with a common question of law can be taken up together and disposed of by this common judgment.

2. In order to understand the central question of law agitated by the learned counsel appearing in these two matter, a few facts are required to be stated The statute which has been called for consideration here is the Gujarat Agricultural Produce Markets Act, 1963, hereinafter referred to as the Act, the successor of the corresponding law of the erstwhile State of Bombay, being the Bombay Agricultural Produce Markets Act 19-19. The Commissioner of Baroda division lawfully entitled to exercise the powers conferred on him by sub-s. (3) of S. 4- A of the 19.19 Act was pleased to declare the area within the limits of the Godhra Municipality and the further area within the nadirs of 5 Miles of Godhra taluka as the Market proper. By the notification dated 16th September 1979 issued under the provision of sub-s (1) of S. 5 of the Act the competent Authority, namely the Director of Agricultural Marketing and Rural Finance Gujarat State. Ahmedabad was pleased to declare his intention to regulate the purchase and the sale of some more agricultural produces, namely, chilies, ginger, onion, eat in the said market area By issuing a notification in the official Gazette and publishing it in Gujarati alio in it newspaper having circulation in the area and in other manner prescribed by the Rules he had declared his intention as required

under S. 5(1) of the present Act. after considering the objections, if any, were received he on 16-2-1968 in exercise of powers conferred on him by sub-s. (5) of S. ( ) of the Act. declared, that with effect from the day of publication of the said notification in the official gazette, the Act would appeal also in respect of chilies both dry and green), onion, ginger, etc. Now, it so happened that this notification under S. 6(5) of the Act was not published in Gujarati in a newspaper having circulation in the said area and so, the petitioner of the first of the two petitions, Dalisukhabliai Pitamberdas and Company and I I others ignored the said Notification and did not obtain necessary licence under the Act. The respondent No.I-Market Committee, therefore, had passed its Resolution No. 2 dt. 7-4-1969 to file complaints against those persons for operating in the area without the licence under S, 8 of the Act. In aft such 12 complaints were filed in the Court of the Competent Judicial Magistrate First Class Godhra, who was pleased to acquit all of them on the ground that the said notification was abortive in regard to the inclusion of chilies ginger, onion etc., for want of its being not published in Gujarati in a newspaper having circulation in the said area, Obviously, the Market Committee was not satisfied with this of the learned Magistrate and therefore carried the matter to this High Court by preferring the Criminal Appeal No. 219 of 1979 filed against one of those 12 persons, namely Govindlal Chhaganlal. They wanted to have it as a test case. This High Court held that the requirement to publish the notification also in a Gujarati newspaper having circulation in the area was only directory and not mandatory. By its judgment dated December 3. 197 1, this High Court therefore, was pleased to allow the said appeal and convict the said Govindlal Chhaganlal and fine him Rs. 10/or in default to undergo imprisonment for seven days. Said Govindlal Chhaganlat however, took the matter: to the Supreme Court obviously contending that the said provisions regarding publication were mandatory. We have the reported ' decision of the Supreme Court in that matter. It is the case of Govindlal Chhaganlal v. Agriculture Produce Market Committee~ AIR 1976 SC 263. The Supreme Court discharged with the view expressed by the Gujarat High Court and held on interpretation of the relevant provision, of S. 6 of the Act that the notification in question was required to be published in Gujarati also in a newspaper having circulation in the said area.

3. The Gujarat Legislature intervened and purported to undo what the Supreme Court had done in the form of declaration law as per Art. 141 of the [Constitution of India](#). Ss. 6(1) and N 5) of the Act were amended and there was S. 3 of that Amending Act also specifically provided for. In order to understand what the controversy is we shall reproduce below the unamended Sections the amended Section and Statement of Objects and Reasons together with S, 3 of that Gujarat Agricultural Produce Markets (Amendment and Validation) Act, 1978. For convenience, we shall put these statutory provisions side by side.

Section 3 of the amending Act No withstanding any judgment decree or order of any Court, no notification issued under sub-s. (5) of & 6 of the principal Act before the commencement of this Act shall be deemed to be or ever to have been invalid merely on the ground that such notification was not also published in Gujarati in a newspaper and in other prescribed manner as required by sub, s. (1) of that section and accordingly no exclusion of any area from a market area or inclusion, of any area in a market area or exclusion from or addition to the kinds of agricultural produce any kind of agricultural produce~ made before such commencement by such notification shall be deemed to be ever to have been illegal merely on the ground that such notification was not published in Gujarati in a newspaper and in the other prescribed manner, as required by sub,s (1) of S. 6 of the principal Act'

## 'Statement of Objects and Reasons

In *Govindlal Chhaganlal, v. Agricultural Produce Market Committee* reported in AIR 1976 SC 263, the Supreme Court has held Government notification No, BNN/77/ D dated the 16th February 1968 issued by the Director of Agricultural Marketing and Rural Finance under sub S. (5) of S. 6 of the Gujarat Agricultural Produce Market Act 1983 adding Ginger' as an additional agricultural produce to the kinds of agricultural and produce in respect of market area of Godhra Shetra Taluka. of Panchmahals District to be invalid on the ground that the said notification was not published also in Gujarati in a newspaper as required by sub S. (1) of S. 6 of that Act. It is, therefore, considered necessary to validate the said notification and other notifications issued under the said sub S. (5) which might not have been published also in Gujarati in a newspaper and in the other prescribed manner, and also to amend S. 6 of that Act to 'provide that a notification under sub, s, (5) of the said S. 6 shall be published also in a Gujarati newspaper and in the other prescribed manner.

## Unamended Sections

### 6. Declaration of market areas:-

(1) After the expiry of the period specified in the notification issued under S. 5 (hereinafter referred to in this section as the said notification) and after considering the objections and suggestions received before the expiry and holding such inquiry as may be necessary, the Director may, by notification in the Official Gazette, declare the, area specified in the said notification or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this section shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner, as may be prescribed.

(5) After declaring in the manner specified in S, 5 his intention of so doing, and following the procedure therein, the Director may, at any time by notification in the Official Gazette exclude any area from a market area specified in a notification issued under sub-s. (1) or include any area therein and exclude from or add to the kinds of agricultural produce so specified any kind of agricultural produce.

## Amended Section

(1) After the expiry of the period specified in the notification issued under S. 5 (hereinafter referred to in this section as 'the said the notification) and after considering the objections and suggestions received before its expiry and holding such inquiry as may be necessary, the Director may, by notification, in the Official Gazette, declare the area specified in the said notification or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. a notification (under this subsection) shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner, as may be prescribed.

(5) After declaring in the manner specified in S. 5 his intention of so doing, and following the procedure therein, the Director may, at any time by notification in the official gazette exclude any area from a market area specified in a notification issued under sub-s. (1) or include any area therein and exclude from or add to the kinds of

agricultural produce so specified any kind of agricultural produce. (A notification under this sub-section shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner as may be prescribed). (Underlined portion - amendment)

4. Thus there is above mentioned S. 3 which purports to validate the notification which was issued earlier as per the unamended S. 6(5) of the Act. The petitioner of the first of these two petitions, namely, the Special Civil Application No, 2,341/79, therefore prays that the Gujarat Agricultural Produce Markets (Amendment and Validation) Act, 1978 be declared ultra vires null and void and the writ of mandamus should be issued restraining the respondent Market Committee from taking any action against the petitioner under the provision of the said Amending Act No. 3 of 1979. In the second of the two petitions, namely, the Special Civil Application No. 476 of 1983, the same conditions are there, but challenge is to the notice Annexure-A issued by the very Market Committee on 15-01-1983 calling upon the petitioners on that petition 10 in number, to procure licence because the earlier Notification issued under S. 6(5) of the Act in the case of this Agricultural Produce Market Committee was sought to be validated by the State Legislature and it was assumed that because of that validation the trafficking in those goods added in the list of agricultural produce covered by the Act was prohibited unless a licence under the Act was procured.

5. Mr. H. L. Patel for the petitioner in both the petitions urged that the Validation Act was invalid, but he made it clear that what was being challenged by the petitioner was only S. 3 of the Amending Act which has been reproduced above. As far as the amendment of Ss. N 1) and 06) is concerned, there is no scope for any challenge because the legislature has tried by those respective amendments to put the law in line with the law enunciated by the Supreme Court in the case of Govindlal Chhaganlal(AIR 1976 SC263) (supra). Even a bare look at the above two columns reproducing the amended. and unamended Section would show that the Supreme Court interpreted unamended Ss. N 1) and 6(5) to mean that a notification in Gujarat was required to be published in a newspaper having circulation in the area. The word -Section (as contradicted with the word 'Sub, section ( B)' was interpreted by the Supreme Court in the case to mean covering the notification both under the Ss. 6(1) and 6(5). By the amendment, the Legislature accepts this position and puts the law in line with the law enunciated by the Supreme Court. In other word what was treated by the Supreme Court as implicit has been made explicit by the State Legislature, but it is to be remembered that these amendments are not made retroactive either expressly or by necessary implication they are brought forth on the statute book as amendments, pure and simple and so, the normal and natural inference that could be drawn would be that according to the State Legislature also, a notification under S. 6(5) was required to be published in Gujarati in a newspaper having circulation in the area. That was exactly what the Supreme Court also said in its judgment in the case of Govindlal Chhaganlal. That is why we say that what was implicit as per the interpretation placed on S. 0(5) by the Supreme Court has been made explicit by the State Legislature. In other words, there is appreciable or substantial change effected in the provisions of S. 6(5). Prior to the amendment a notification under S. 6(5) was not purportedly required to be published in Gujarati in newspaper having circulation in the area as per the law declared by the Supreme Court On and from the date of amendment it will be required to be published so as per the amended portion added to sub-s. (5) of S. 6. There is nothing to show that the Legislature tried to amend S. 6(5) retroactively. That is why we say that the Supreme Court's interpretation of the

law has been given legislative recognition and that is so because what is expected to be done in a system where three wings of Government are expected to function in the respective fields here with mutual regard for one another is done by the Legislature.

6. This brings us to S. 3 of the amending Act and here we find that the Legislature seems to have been not properly assisted and its attempt to achieve its objective has unfortunately failed. We have already elaborated above that the law in respect of S. 0(5) prior to the amending Act has been retained in the Act. The law about legislature's competence to undo the effects of a valid binding judgment is too well entrenched to call for any elaboration. The Supreme Court in the case of *Shri Prithvi Cotton Mills Ltd v. Broach Borough Municipality*, AIR 1979 SC 192 in para 4 has made the position expressly clear. Though before the Supreme Court there was a taxation statute, the Supreme Court has examined the question on general principles. The following words are reproduced by us below in order to place succinctly the ratio in this case.

'..... A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstance. Some times this is done by re-enacting retrospectively a valid and legal taxing provision.....

We have elaborated above that the amendment of S. O (S) has not amended the law in any way whatsoever. On the contrary, it has made the law clear in conformity with the Supreme Courts judgment. In other words, the Legislature has respected that the Supreme Court had said in respect of the requirement of a notification to be published in Gujarati in a newspaper having circulation in the area. There is no alteration in the law and there is no change in the conditions on which the Supreme Court judgment was based. Much less there is fundamental alteration to such an extent that had this amended law would have been before the Supreme Court the Supreme Court would not have given that decision. We are therefore having no alternative, but to say that S.3 of the Amending Act which is impugned in the first of these two petitions is beyond the legislative competence and is, therefore, required to be declared ultra vires, but before we say so we would like to examine one argument advanced by Mr. Zaveri on behalf of the respondent- Market Committee. Mr. Zaveri stated that the legislature by amending S. 6(1) by putting the word 'sub-section' instead of the word 'section' clarified its intention and, therefore, it should be understood that according to the legislature, from the date of the enactment the word 'Section' was to be read as 'sub-section (1)'. It is for the court of law to read the mind of the legislature and it is not for the legislature retroactively to say what was in its mind there in the past. The only way the legislature can do this is to amend the law retroactively. If the legislature wanted to do so this it could have very well said that the word 'section' was to be read as 'sub-section (1)' right from the beginning i.e. from the stage of the enactment had they done so the purpose sought to be achieved by these abortive attempts would have been certainly achieved but it is not for us to advise the legislature because it is up to them to do what they think fit. Mr. Zaveri had invited our attention to the judgment of the Supreme Court 'in the case of *L N. Saksena v. State of Madhya Pradesh* AIR 1976 SC 22-50. The law is only reiterated there and what is reiterated is what we have observed above and not what Mr. Zaveri wanted us to have. Even in this judgment the Supreme Court has said that the validity of the validating law is to be judged by three tests one of which is whether by validation the legislature has removed the defect which Court had found in the previous law. In the case on hand the Supreme Court said that the 'word' 'Section' occurring in S. 6(1) was

meant to cover not only S. 6(1) but S. 6(5) also. The legislature by amendment also says that same thing namely, the requirement of issuance of a notification in Gujarati in a newspaper having circulation in the area it is because of that we have said that the legislature has acknowledged the requirement found by the Supreme Court.

7. In above view of the matter we allow both the petitions, In the Special Civil Application No 2841/79 we allow the petition to the extent that S. 3 of the Gujarat Agricultural Produce Markets (Amendment and Validation) Act, 1978 is invalid. As a consequence the prayer (b) of para 10 of the %aid petition stands granted Rule is accordingly made absolute in that petition with cost.

8. In the Special Civil Application No. 476/83 we make the rule absolute by granting the prayer(a) of para 10 of the petition, Rule is accordingly made absolute in that petition also with costs.

9. Order accordingly.

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