Firm Mystery Rajibhai Savjibhai and Bros. and anr. Vs. State of Gujarat and ors.

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Court : Gujarat

Decided On : Jul-13-1965

Reported in : AIR1967Guj111

Judge : P.N. Bhagwati and; N.G. Shelat, JJ.

Acts : Factories Act, 1948 - Sections 85; Constitution of India - Articles 14 and 245

Appeal No. : Special Civil Appln. No. 409 of 1962

Appellant : Firm Mystery Rajibhai Savjibhai and Bros. and anr.

Respondent : State of Gujarat and ors.

Advocate for Def. : J.M. Thakore and; K.L. Talsania, Advs.

Advocate for Pet/Ap. : V.J. Desai, Adv.

Judgement :

Bhagwati, J.

(1) The main question arising in this petition is for all practical purposes concluded by a decision of the Supreme Court and but for the unbounded optimism and enthusiasm of Mr. V.J. Desai, appearing on behalf of the petitioners, it is difficult to see how the petition should have gone on. The petition challenges the vires of S. 85 of the Factories Act, 1948, and also the validity of a certain Notification issued by the State Government under that Section on certain grounds which are all without substance but in order to understand the grounds it is necessary to state briefly the facts giving rise to the petition.

(2) The petitioners are a partnership firm carrying on business of preparing and selling furniture in Houses Nos. 875 and 876 at PHJ Bhagol in Nadiad. The business of the petitioners consists of four departments, namely Bandsaw Section, Kharadi Section, Furniture Section and Polishing Section and in each department the number of persons working is less than twenty. Out of these four departments power is used only in the Bandsaw Section where the number of persons working is less than ten. In each of these departments work is given on contract basis and there is no contract of employment between the petitioners and the persons working in the department. One of the partners of the petitioners, namely, Mohandas Savjibhai Mistry (hereinafter referred to as the partner) was prosecuted in the Court of the Judicial Magistrate, First Class, Nadiad, for contravention of Rule 4 of the Bombay Factories Rules, 1950, punishable under S. 92 of the Act on the ground that on 22nd January 1959 when the

Inspector of Factories visited the premises of the petitioners, 24 persons were found working in the premises and that the premises, therefore, constituted a factory and the partner was running the factory without obtaining the requisite registration and licence under the Act. The defence of the partner was that there was no contract of employment between the petitioners and the persons found working in the premises and the latter were, therefore, not workers within the meaning of S. 2(1) and the premises were not a factory within the meaning of S. 2(m) so as to attract the applicability of R. 4 of the Bombay Factories Rules, 1950. The learned Magistrate accepted the prosecution case and convicted the partner and sentenced him to pay a fine of Rs. 200. The partner thereupon preferred a Revision Application to the Sessions Court, Kaira at Nadiad. The learned Sessions Judge on a consideration of the evidence was of the view that the persons found working in the premises were not workers within the meaning of S. 2(1) since there was no contract of employment between them and the petitioners and the premises could not, therefore be regarded to be a factory within the meaning of S. 2(m) and the conviction of the partner was accordingly unwarranted and being of that view he made a reference to the High Court of Bombay. The reference was heard by Naik J., who by a judgment dated 18th March, 1960 accepted the reference and set aside the conviction recorded against the partner. Thereafter, the State of Bombay was bifurcated and the premises where the petitioners carry on business came within the State of Gujarat. Nothing transpired thereafter until 27th February 1962 when the Government of Gujarat by a notification issued in exercise of the powers conferred on it by S. 85 of the Act shall apply to the premises, wherein the manufacturing process of cutting and planing of wood and making of wooden furniture and Kharadi work articles was being carried on by the petitioners. The notification was signed by the Under Secretary to the Government of Gujarat, Education and Labour Department by order and in the name of the Governor of Gujarat. Consequent upon the issue of the notification the petitioners were called upon to apply for registration under R. 4 of the Bombay Factories Rules, 1950, on the footing that the provisions of the Act applied to the premises where they carry on business. The petitioners thereupon preferred the present petition challenging the vires of S. 85 as also the validity of the notification issued under that Section.

(3) There were three grounds of attack against the constitutionality of S. 85 taken in the petition. The first ground was that the Section was violative of the equal protection clause contained in Art. 14 while the second ground challenged the vires of the Section as being contrary to Article 19(1)(g). Now both these grounds of attack must fail in view of the decision of the Supreme Court in B.Y. Kshatriya (Private) Ltd. V. Union of India : (1963)ILLJ270SC . The selfsame grounds were urged in this case which came before the Supreme Court by way of a petition under Article 32 and they were rejected by the Supreme Court. We need not, therefore, say anything more about them. Turning to the third ground of attack, the argument under this ground was that S. 85 conferred an unguided, uncanalised and uncontrolled power on the State Government to apply all or any of the provisions of the Act to any place it liked wherein a manufacturing process is carried on with or without the aid of power and this constituted an excessive delegation of legislative power. This argument also cannot for reasons which we shall presently state survive in view of the decision of the Supreme Court to which we have just referred and the reasons which weighed with the Supreme Court in rejecting the argument based on Article 14 must apply equally to negative this argument.

(4) It is well established by several decisions of the Supreme Court that the power of

delegation is a constituent element of the legislative power as a whole and that in modern times when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well settled. The Legislature cannot delegate its essential legislative functions in any case. It must lay down the legislative policy and principle and must afford guidance for carrying out that policy before it delegates its subsidiary powers in that behalf. As observed by Mahajan C.J., in Harishankar Bagla v. State of Madhya Pradesh, AIR 1954 SC 465 at p. 468:

'the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases, and must provide a standard to guide the officials or the body in power to execute the law'.

In dealing with the challenge to the vires of any statute on the ground of excessive delegation it is therefore necessary to inquire whether the impugned delegation involves the delegation of an essential legislative function or power or whether the Legislature has enunciated its policy and principle and delegated to the subordinate authority accessory or subordinate powers for the purpose of working out the details within the framework of that policy and principle. If it is the former, the delegation would be excessive but not so if it is the latter. Vide In re., Art. 143, Constitution of India and Delhi Laws Act, (1912), etc., AIR 1951 SC 332; Vasantlal Maganbhai v. State of Bombay, : 1978CriLJ1281 .

(5) Applying this principle to the facts of the present case, the question which we must ask ourselves is: has the Legislature laid down the legislative policy and principle and afforded guidance to the State Government in the exercise of its power under S. 85? Has the Legislature laid down the criteria or the principles which must guide the State Government in selecting any place or places for the application of the provisions of the Act? If the answer is in the affirmative, S. 85 would not be bad as suffering from the vice of excessive delegation of legislative power for in that event the power conferred on the State Government under the Section would be merely an ancillary or subsidiary power to be exercised for effectuating the legislative policy or principle laid down by the legislature and would not involve delegation of an essential legislative function or power to the State Government. If on the other hand, the answer is in the negative, S. 85 would be clearly ultra vires as the State Government would in that event be conferred with power to make the provisions of the Act applicable to such place or places as it thinks fit according to its own notions of policy and principle and would thus be enabled to lay down legislative policy and principle which obviously it cannot. The validity of S. 85 therefore depends on the true answer to be given to the question formulated above. The answer is, however, no longer open to doubt or debate and stands concluded by the decision of the Supreme Court in : (1963)ILLJ270SC (supra). In this case, as pointed out by us above, the vires of S. 85 was challenged on the ground that it violated Art. 14 of the Constitution and the ground on which the challenge was based was that the Section conferred an unguided and uncontrolled power on the State Government to select places to be deemed 'factories: ' for the purpose of applying the provisions of the Act. The ground was the same, namely, that no policy or principle was laid down by the Legislature to guide the State Government in the exercise of its power under S. 85 and that the

power conferred under that Section was so unguided and uncanalised as to permit the State Government to discriminate between different places similarly situated. Dealing with this argument, Shah J., delivering the judgment of the Supreme Court said at p. 1597 of the report:

'The Factories Act primarily applies to establishments in which tern or more persons are working where power is used and twenty or more persons where no power is used, thereby excluding from its operation small establishments. Presumably, the Legislature felt that uniform application of the Factories Act to all establishments in which a manufacturing process is carried on requiring even small establishments to comply with the elaborate requirements of the Factories Act may impose great administrative strain upon governmental machinery, and involve hardship ordinarily not commensurate with the benefit secured thereby. But the Legislature with a view to prevent circumvention of the provisions of the Factories Act, and to secure to the persons working in establishments where manufacturing process is carried on, adequate safeguards where necessity is felt has authorised the State Government by notification to declare any place which does not fall within the definition of `factory' to be a factory and to make all or any of the provisions of the Act applicable thereto. Similarly the Act is primarily intended to govern relations of persons standing as master and servant in connection with manufacturing processes in factories, and liberty of contract otherwise was not sought to be affected by the principal provisions of the Act. But here again the Legislature has authorised the State Government to issue Notification applying the provisions of the Act even to those establishments in which persons are working with the permission or under agreement with but not as employees of the owners. Exclusion from restrictions inherent in the definitions of 'factory' and 'worker' has its source not in any desire to afford special privileges to any class of owners. The policy underlying S. 85 authorising the State Government to extend the benefit of the Act is apparent on its face. The Section aims at making provision for securing the health and safety of persons engaged in hazardous employments, and for that purpose the Legislature has entrusted to the State Government in the case of establishments not falling expressly within the regulatory provisions of the Act, authority to extend those provisions where the necessity to regulate, having regard to the circumstances, is felt. The power to extend the regulatory provisions of the Act is therefore not intended to confer an arbitrary power to pick and choose between establishments similarly situate: it is granted with a view to secure the protection of persons engaged in industrial occupations in the light of special circumstances of a particular industry, a locality or an establishment, where circumstances justifying the extension of the protection exist. The conditions of small establishments in different parts of the country may and do widely vary. Control in respect of some industries or establishments not governed by the Factories Act may not be necessary, whereas necessity in that behalf may be acutely felt in others. It is to carry out effectively the object underlying the Act that power has been given to the State Government to decide with reference to local condition whether it is desirable that the provisions of the Act or any of them should be made applicable to any establishment which is not covered by the definition of 'factory' or to workers in a factory who are not entitled to the benefits of the Act, because of the definition of 'employment'.'

We have set out the entire passage from the judgment of the Supreme Court since it carries a complete refutation of the present argument based on excessive delegation. It is clear from what is stated in this passage that the power conferred on the State Government under S. 85 is not an unguided or uncanalised power but there is a policy

and purpose underlying S. 85 which is to guide and govern the State Government in exercising its power under that Section. The Legislative policy and principle is clearly laid down by the Legislature in the various provisions of the Act and the State Government is merely authorised under S. 85 to extend the beneficent provisions of the Act to persons engaged in industrial occupations in the light of special circumstances of a particular industry, locality or establishment, where circumstances justifying the extension of the protection exist. Since the conditions of small establishments may from place to place and from industry to industry and even from establishment to establishment, the State Government would be best in a position to inform itself regarding these different conditions and to decide when and where it is necessary in the interests of the workers and the public generally to extend the beneficent provisions of the Act for the purpose of effectively carrying out the object underlying the Act. It is precisely for this reason that power is conferred on the State Government to apply the provisions of the Act to any place where manufacturing process is going on and the power so conferred cannot be regarded as constituting excessive delegation. We may point out here that the objection based on excessive delegation is but another form of the objection based on violation of Art. 14 and the two constitute but different aspects of the same question. The decision of the Supreme Court negativing the challenge based on Art. 14 must, therefore, also operate to negative the attack based on the ground of excessive delegation.

(6) Mr. V.J. Desai, however relied on the decision of the Supreme Court in Rajnarain Singh v. Chairman, P.A. Committee : [1955]1SCR290 but we do not see how this decision can at all help him. All that this decision lays down is that an executive authority cannot be authorised to modify an existing or future law in any essential feature and whatever be the precise connotation of what is an essential feature, it cannot in any event include a change of policy. The choice of the legislative policy must be with the Legislature and the executive authority cannot in exercising the power delegated to its effect any change in that policy. Within the framework of the legislative policy and for the purpose of carrying it out, power may be delegated to the executive authority and so long as that is done conferment of power cannot be attacked as amounting to excessive delegation but the choice of legislative policy can never be left to the delegate. This is the same principle which we have discussed and applied in the foregoing paragraph of this judgment and this decision, therefore, does not lay down anything different from what we have stated above. The only way in which this decision was sought to be invoked in support of the contention of the petitioners was by saying that S. 85 alters the essential character of the Act in so far as it permits the State Government to make the provisions of the Act applicable to places other than factories. But this is an argument which is difficult to understand. The Act primarily applies to factories which having regard to the definition of 'factory' in S. 2(m) would mean establishments in which ten or more persons are working where power is used and twenty or more persons are working where no power is used and small establishments are excluded from its operation presumably because the Legislature felt that the uniform application of the Act to all establishments in which a manufacturing process is carried on requiring even small establishments to comply with the elaborate requirements of the Act may impose great administrative strain upon governmental machinery and involve hardship on those concerns without securing commensurate benefit. The Legislature, however, 'with a view to prevent circumvention of the provisions of the Factories Act, and to secure to the persons working in establishments where manufacturing process is carried on, adequate safeguards where necessity is felt' authorized the State Government under S. 85 to make all or any of the provisions of the Act applicable to such establishments even

though they do not fall within the definition of 'factory' and the persons working in them do not fall within the definition of 'worker'. It is under the circumstances difficult to appreciate how the Notification under s. 85 can be regarded as having the effect of altering the essential character of the Act. Far from altering the essential character of the Act, it actually implements and carries out the legislative policy and principle laid down in the Act.

(7) Having failed in his attempt to attack the vires of S. 85, Mr. V.J. Desai then turned his attention to the notification issued by the State Government in exercise of its power under that Section. He challenged the validity of the notification on two grounds. The first ground was that the notification was mala fide since it was issued with a view to circumvent the acquittal of the partner of the petitioners. This ground is clearly unsustainable. It is difficult to see how the notification would become mala fide if it is issued by the State Government consequent upon the acquittal of the partner of the petitioners. The judgment of the High Court in the Criminal proceedings held that the persons working in the premises of the petitioners were not 'workers' within the meaning of S. 2(1) and the premises of the petitioners were, therefore, not a 'factory' within the meaning of S. 2(m) and the Act accordingly did not apply to the premises. It was precisely because of this that the State Government issued the notification applying the provisions of the Act to the establishment of the petitioners. The State Government felt that it was necessary to extend the beneficent provisions of the Act to the persons working in the premises of the petitioners and the State Government, therefore, issued the notification. This was e legitimate purpose for which the notification could be issued and the notification cannot, therefore, be successfully challenged as mala fide. The second ground of attack was that the Under Secretary to the Government of Gujarat, Education and Labour Department who signed the notification by order and in the name of the Governor of Gujarat had no authority to do so. But this ground stands negatived by R. 13 of the Gujarat Government rules of Business published in Part IV-A of the Gujarat Government Gazette under date 28th May 1960. Mr. V.J. Desai then tried to contend before us that the decision to issue the notification was taken by the Under Secretary who had no power to do so and that the notification was, therefore, bad, but this ground does not appear to have been taken in the petition and moreover having regard to the terms of Art. 166 of the Constitution it is not a ground which can be inquired into, once we find that there is authentication of the notification by a person duly authorized to do so.

(8) These were all the contentions urged before us and since in our view there is no substance in them, the petition fails and the Rule is discharged with costs.

(9) Petition dismissed