Kalyan Bhadra Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : Nov-19-1973

Reported in : AIR1975Cal72

Judge : S.C. Ghose, J.

Acts : Constitution of India - Articles 19 and 123(1)

Appeal No. : Matter No. 873 of 1973

Appellant : Kalyan Bhadra

Respondent : Union of India (Uoi) and ors.

Disposition : Application dismissed

Judgement :

ORDER

S.C. Ghose, J.

1. This is an application made by the Secretary of the Automobile Association of Eastern India for inter alia the issue of a Rule nisi calling upon the respondents to show cause as to why a writ in the nature of mandamus to rescind or recall or withdraw the Ordinance enhancing the prices of inter alia Petrol, Kerosene and Cylinder Gas with effect from November 3, 19-73, should not be directed to be issued. The petitioner also prays for the issue of a Rule nisi directing the respondents to show cause as to why a writ in the nature of certiorari should not issue for quashing the said impugned Ordinance.

2. The petitioner prays for interim injunction restraining the respondents from giving any further effect to the provisions of the said impugned Ordinance.

3. When the application was moved ex parte on November 13, 1973 I directed the petitioner to serve copies of the petition on the respondents through their Solicitors in Calcutta. After serving the respondent Union of India as directed aforesaid, the petitioner moved application on November 16, 1973. The counsel for the respondent Union of India also appeared and made his submissions.

4. The petitioner is the Secretary of the Automobile Association of Eastern India herein after referred to as the said Association. The petitioner uses a motor car for attending to his place of work and coming back therefrom to his residence. The said car is used also by the members of the family of the petitioner. But for the said car. it

is stated in the petition, the petitioner or the members of his family would not be able to carry on their respective occupation and thereby would suffer irreparable prejudice.

5. From a press notification published in the Statesman on November 3, 1&73 the petitioner came to know that the Government had increased with effect from November 3, 1973, the prices of all refined Petroleum products except Naptha. The price of petrol was increased by 1.07 paise per litre, although the price of the crude by the suppliers was raised by only 7 paise per litre. The ostensible reason was as stated by the Government the reduction of the consumption of petrol. The additional amount of Re. 1.00 Der litre was levied by way of basic excise duty by the respondent No. 1. The respondent State of West Bengal also levied an additional sales tax of 10 paise per litre on such petrol in addition to the existing sales tax levied thereon.

6. In the case of Kerosene similarly although the increase in the price for crude was only 8 paise per litre by the suppliers the total increase' per litre to be payable by the consumer was fixed at 28 paise per litre. The basic excise duty was thus levied at 20 paise per litre. Since, November 3, 1973 the respondents have been giving effect to the said impugned Ordinance.

7. Because of the aforesaid enhancement of price of petrol, the petitioner has been unable to purchase the same. So has been the case also with regard to the Kerosene Oil. It has become impossible for the petitioner to purchase petrol or Kerosene Oil for the car or for doing the household cooking. This the petitioner states has infringed the fundamental right of the petitioner.

8. Mr. Shiva Senti Hajra appearing for the petitioner contended that:--

The Prime Minister of India declared what was published in the Statesman of October 30, 1973 that 'the worst is over in our country's economy'. Thus there was no reason or circumstances justifying the levy of further excise duty on petrol or the Kerosene as well as cooking gas in exercise of the extraordinary special power of legislation under Article 123 of the Constitution of India.

9. The order enhancing the price of petrol and Kerosene is colourable, arbitrary, discriminatory, excessive and prohibitive.

10. The impugned order of enhancing the prices of petrol and Kerosene by imposing taxes relates to the subject-matter of Article 110 of the Constitution and so requires the fulfilment of the provisions of Articles 109, 112, 113. 114. US, 116 and 117. In view of the provisions of Article 110(4) the price of Petrol and Kerosene could not be enhanced under Article 123 of the Constitution. The said impugned order is illegal attempt to saddle the people of India with dispro-portionate and prohibitive tax. The said imposition cannot be enforced inasmuch as same was not published in the Official Gazette or in any event was not made known to the people.

11. In support of his contention Mr. Hajra relied on certain decisions to which I shall advert presently. In the case of Harla v. The State of Rajasthan, : [1952]1SCR110 , the question was as to whether, a resolution passed on 11-12-1923 by the Council of Ministers appointed to look after the Government and administration of the Indian State of Jaipur during the minority of the Maharaja without proclamation or publication in the gazette or toy other means to make the act known to the public was

sufficient to make it law. The Supreme Court was of the opinion that the said resolution did not become part of the law of the State of Jaipur, in view of the aforesaid non-publication. The Supreme Court was of the opinion that in the absence of any special law or custom it was against the principle of natural justice to allow the subjects of the State to be planished or penalised by laws of which they had no knowledge and of which they could not, with the exercise of reasonable diligence even, have acquired any knowledge. The mode of publication may vary according to the Supreme Court but reasonable publication of some kind there must be. The law that was being considered by the Supreme Court in the aforesaid case was the Jaipur Opium Act. In the instant case it appears that the impugned Ordinance was published in the official gazette and it came into operation only upon such publication. No copy of the Ordinance was produced before me at the time of hearing. It was stated by Mr. Chakravarty appearing for Union of India that a copy of the relevant Gazette was being flown from Delhi end would reach Calcutta at 2 in the afternoon. A copy of the gazette however was shown at the time of passing the order. The said provisions of the impugned Ordinance in any event were duly published in the National and the Regional newspapers and were broadcast on the All India Radio in regional languages as well. The said provisions therefore received wide publicity and reached the people. There has been reasonable publication in regard to the provisions of impugned Ordinance as was required for an order or proclamation to be law by the Supreme Court in the above mentioned case.

12. The next case cited was the case of Chintaman Rao v. State of M. P., : [1950]1SCR759 where C. P. and Berar

Regulation of Manufacture of Bidis (Agricultural Purposes) Act LXIV of 1948, came to be considered by the Supreme Court.

13. By and under provisions of Sections 3 and 4 of the said Act powers were conferred upon the Deputy Commissioner to fix by Notification period which would be the agricultural season with regard to the villages specified in the notification and prohibit manufacture of bidis during the said agricultural season by any person residing in such villages. No manufacturer during the said season could also employ any person, in the manufacture of bidis. The provisions were held to have imposed total prohibition of carrying on the business of manufacture of bidis during the agricultural season and could not be said to be reasonable restrictions on the fundamental rights conferred by Article 19(1)(g) of the Constitution,

14. In the case of State at Madras v. V. G. Row, Union of India, and the State of Travancore Cochin, interveners : 1952CriLJ966 the Supreme Court held that Section 15(2)(b) of the Criminal Law Amendment Act 1908 as amended in Madras by Madras Act XI of 1950 falls outside the scope of authorised restriction under Clause (4) of Article 19. The said provisions vested in the executive power to impose restrictions on the petitioners' right to form Association or Union without allowing ground of such imposition to be tested in judicial enquiry. They were not therefore reasonable restrictions on the exercise of the fundamental right by the petitioners granted under Article 19(1)(c) of the Constitution. In the case of the State of Maharashtra v. Himmat Bhai Narbheram Rao, , it was held by Supreme Court that even law designed, to abate grave nuisance and protect public health must be reasonable. The provisions of Sections 365. 366. 367, 368, 372 and 385 of Bombay Municipal Corporation, Act came to be considered by the Supreme Court in the said case. The said provisions compelled owner of the carcass of an animal to deposit the same at a place fixed by

the corporation and empowered the corporation to arrange for the disposal of the carcass and prevent the owner from selling, it. The said provisions involved the owner in expenditure for removing the said carcass or in the payment of fees for such removal. The said provisions were held to be reasonable restrictions upon the right of citizen to dispose of his property in order to, prevent hazard to public health arising, from adulteration of food of the people. It was held that the test of reasonableness wherever prescribed should be applied to each individual statute impugned. No abstract standard can be laid down as applicable to all cases. The nature of the right altered to have been infringed, underlying purposes of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, prevailing conditions at the time should all enter into consideration for testing whether the impugned statute is unreasonable or not. The aforesaid case also dealt with restrictions on fundamental rights guaranteed by Article 19(1)(f) and (g) to a citizen. Mr. Hajara relied on a passage from the judgment of Ramaswami J. of Supreme Court in Barakchand v. Union of India, : [1970]1SCR479 wherein his Lordship quoted with approval the observation of Patanjali Sastri C. J. in : 1952CriLJ966 . The said observations are set out here-under :

'It is in this context that the test for ascertaining the reasonableness of the restriction of the rights in Article 19 is of great importance. There are several decisions of this Court in which the relevant criteria have been laid down. It is, however, sufficient to refer to a passage in the judgment of Patanjali Sastri. C. 3. in : 1952CriLJ966 :'It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be ap-plied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict'.'

That case also relates to inter alia, the consideration as to whether the provisions of the Gold Control Act, 1968 stood the test of reasonable restrictions as provided for by Article 19(6) of the Constitution. All these cases cited by Mr. Hajara relate to reasonableness of restrictions imposed by the statutes considered in the said cases vis-a-vis the fundamental right guaranteed by the Constitution to Indian citizen tinder Article 19(1)W, (f) and (g). They have no bearing in my opinion on the issues involved in the instant case.

15. The petitioner has no fundamental right to get petrol at a price of ids choice. The question of reasonableness is immaterial in considering validity of tax or duty levied by statute. There can-not be any question of epuitable consideration in regard to levying of taxes or duties. For, all taxes may be assailed as unreasonable.

16. Article 109 provides for special procedure for introduction and passing of a money bill by the Parliament. Article 110 defines what a money bill is and provides that the certificate of the Speaker of the House of People that it is a money bill has to be endorsed upon every money bill when it as transmitted to the Council of State. Article 111 provides for the assent to be given to bills if they are passed by the Houses of Parliament after they are presented to the President. The President may also withhold his consent to a bill under Article 111 and return it to Houses of Parliament for reconsideration of the bill or any specified provision thereof. The President also may recommend in his message when a bill is so returned the

desirability of introducing amendments that the President may recommend. Article 112 of the Constitution provides for Laying of 'annual financial statement' before both the Houses of Parliament. Such annual financial statement is a statement of the estimated receipts and expenditures of the Government of India for that particular year. Article 113 lays down procedure that a Parliament adopts in regard to such estimates. Article 114 provides for introduction of appropriation bills for appropriation out of the Consolidated Fund of India of the money required to meet the grants made by the Houses of People and expenditure charged on the Consolidated Fund of India. Article 115 provides for laying of supplementary statements showing demand for excess grant and provisions for such grants by the Parliament. Article 116 provides for vote on account, votes of credit and exceptional grants to be made in and by the Parliament. Article 117 lays down special provisions in regard to financial bills. All the aforesaid provisions relied on by Mr. Hajara as the only modes by which a tax or duty has to be imposed are totally irrelevant and have no application whatsoever in considering the validity or otherwise of an Ordinance as the impugned one in the present case. Article 369 similarly is of no assistance to Mr. Hajara.

17. The legislative power of the President has been provided for in Article 123 of the Constitution. The said article reads as follows:--

'123. (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, be may promulgate such Ordinance as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance--

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.'

At the time when the impugned Ordinance was promulgated by the President neither of the Houses of Parliament was in Session. Mr. Hajara contended that the existence of circumstances which rendered it necessary for the President to promulgate the Ordinance is justiciable and must be investigated by the Court. The said existence of the said circumstances was condition precedent to the exercise by the President of the powers conferred by Article 123. On the basis of the statement of the Prime Minister quoted Mr. Hajara submitted that there were no circumstances existing at the time of promulgating the order for levying additional excise duty on petrol or Kerosene. Mr. Hajara relied on the case of Re : R. C. Cooper v. Union of India, : [1970]3SCR530 and in particular on paragraphs 21 and 22 of the said judgment. It should be noted, however, that in the said case it was contended on behalf of the petitioner that existence of the circumstances necessitating the making of the order under Article 123 was justiciable but it was contended on the contrary on behalf of

the respondents that satisfaction as to the existence of such circumstance of the President was final. The Supreme Court noted the respective contentions of the parties but did not decide the question as it was not necessary to do so.

18. In Jnanprosanna v. Province of West Bengal, AIR 1949 Cal 1 (FB) it was held by a Full Bench of this Court that the Court could not go into the question whether such circumstance existed as to render it necessary for the Governor to promulgate the West Bengal Security (Amendment) Ordinance of 1948 under special powers under Sub-section (1) of Section 88 of Government of India Act, 1935. The satisfaction under the said sub-section was the satisfaction of the Governor and there was nothing to suggest that courts would be entitled to question the grounds upon which the Governor was satisfied. Whether circumstances existed requiring immediate action was a matter upon which the Governor was the sole judge. For the same reason, the Court could not also go into the question as to whether the Ordinance was passed in good faith. In coming to the said opinion the relevant observations on the question by Harries. C. J. are set out hereunder;

'It appears to me however that the Court cannot go into the question whether such circumstances exist as to render it necessary for the Governor to promulgate this Ordinance. By Sub-section (1) of Section 88, Government of India Act, it is provided that if the Governor is satisfied that such circumstances exist he may promulgate an ordinance if at the time the Legislature is not in session. The satisfaction must be the satisfaction Of the Governor and there is nothing to suggest that the Courts would be entitled to question the grounds upon which the Governor was satisfied. The position is very similar to that of an emergency which entitled the Governor-General to make ordinances. It was expressly held by their Lordships of the Privy Council in King-Emperor v. Benoarilal Sarma, 72 IA 57 = (AIR 1945 PC 48) that whether an emergency existed at the time an ordinance was made and promulgated was a matter of which the Governor-General was the sole judge. His view that there was an emergency justified and authorised the ordinance. In this case their Lordships followed an earlier decision of the Privy Council, Bhagat Singh v. King-Emperor, 58 IA 169 = (AIR 1931 PC 111). In my view these cases apply with equal force to Section 88(1), Government of India Act, and therefore whether circumstances existed requiring immediate action was a matter upon which the Governor was the sole judge.'

19. The provisions of Section 88(1) of the Government of India Act. 1935 and Article 123 of the Constitution are in similar terms. In my view the aforesaid observations of Harries, C. J. apply equally to the facts of the present case, it was also held by the Federal Court in Lakhi Narayan v. The State of Bihar, AIR 1950 FC 59 that the Court cannot question the validity of Ordinance made by Governor on the ground that there was no sufficient reason for promulgating the Ordinance or that it was made mala fide. Only the legislative competence of the Governor or the President in promulgating an Ordinance can be gone into by the Court. For all the reasons aforesaid, none of the grounds urged by Mr. Hajara is tenable and there is no prima facie ground for issuing Rule nisi. The application therefore is rejected.