

A STATE OF ANDHRA PRADESH & ANR.

v.

POTTA SANYASI RAO & ORS.

August 26, 1975

[A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

B *Essential Commodities Act, 1955, Ss. 2(a)(xi) and 5—Delegation to State Government power to make Orders—Declaration of commodity as essential thereafter—State Government, if can exercise delegated power with respect to such commodity.*

C In June, 1966, the Central Government, in exercise of the powers conferred by s.5 of the Essential Commodities Act, 1955, delegated its power to make Orders to the State Governments with respect to certain matters specified in s.3(2) in relation to all essential commodities other than certain specified commodities. Tyres and Tubes were not essential commodities under s.2(a)(i) to (x), nor were they declared to be essential commodities by the Central Government under s.2(a)(xi) at the time of the delegation; but, subsequent to the delegation of the power to the State Governments, certain types of tyres and tubes were declared to be essential commodities under s.2(a) (xi).

D In exercise of the delegated power the State of Andhra Pradesh issued the Andhra Pradesh Tyres and Tubes Dealers' Licensing Order, 1973. The respondents, who are dealers in tyres and tubes, challenged the validity of the Order on the ground that the State Government had no power to issue an Order with regard to tyres and tubes which were declared by the Central Government to be essential commodities *after* the delegation of powers to the State Government. The High Court struck down the Order.

Allowing the appeal to this Court.

E HELD : There is nothing in s.5 to limit the power of delegation in favour of the State Government only to the commodities specified in s.2(a)(i) to (x) or to those commodities declared essential under s.2(a)(xi) up to the date of delegation. Delegation under s.5 is a general delegation and will enure in favour of exercise of power by the State Government with respect to commodities declared essential by the Central Government from time to time under s.2(a)(xi) even subsequent to the delegation. It is not necessary that every time the Central Government declares an essential commodity, it has also to pass an order of delegation with regard to that commodity. It will be sufficient in law if on the date the State Government, duly empowered under s.5, makes notification under s.3 with regard to an essential commodity within the meaning of s.2(a) including the residuary cl. (xi) thereof. [425D-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1408 of 1974.

Appeal by special leave from the Judgment and order dated the 27th December, 1973 of the Andhra Pradesh High Court at Hyderabad in Writ Petition No. 7413/73.

G *R. Ram Reddy and P. P. Rao*, for the appellant.

Govind Das and Girish Chandra, for the respondent.

The Judgment of the Court was delivered by

H GOSWAMI, J.—This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court whereby the Andhra Pradesh Tyres and Tubes Dealers' Licensing Order 1973 (briefly the Licensing Order) was struck down as illegal and *ultra vires*.

A few facts which are material may first be noted.

By Notification S.O. 1844 dated June 18, 1966, the Central Government in exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (briefly the Act) directed "that the powers conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clauses (d), (e), (f), (g), (h), (i), (ii) and (j) of sub-section (2) thereof shall in relation to all commodities other than foodstuffs and fertilisers (whether inorganic, organic or mixed), be exercisable also by a State Government, or in relation to a Union Territory, by the administrator thereof, subject to the following conditions . . ."

Section 2(a) of the Act defines "essential commodity" which means ten specified commodities and the residuary clause (xi) thereof refers to—

"any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution".

Tyres and tubes are not included in the ten specified commodities in section 2(a). However, the Central Government by three notified orders, namely, S.O. No. 2511 dated August 17, 1966, S.O. No. 2878 of August 22, 1968 and S.O. No. 85 dated January 3, 1969, declared cycle tyres and tubes, car and tractor tyres and tubes and tyres of buses, vans, trucks, etc. as essential commodities under section 2(a) (xi).

The impugned Licensing Order was passed by the Government of Andhra Pradesh on June 18, 1973 in exercise of the powers conferred by sub-section (2) of section 3 of the Act read with S.O. No. 1844 dated June 18, 1966 and with the prior concurrence of the Central Government. The respondents, who were dealers in tyres and tubes of buses, trucks, jeeps, cars and other auto-vehicles, challenged the validity of the Licensing Order on the ground that the State Government had no power to issue the same with regard to tyres and tubes which were declared by the Central Government to be essential commodities subsequent to the delegation of powers to the State Government under section 5 which had been made earlier on June 18, 1966. Their contention was accepted by the High Court and the Licensing Order was struck down. Hence this appeal by special leave at the instance of the State Government

The short question that arises for consideration is whether the order of delegation of power by the Central Government under section 5 enabling the State Government to make orders or issue notifications under section 3 would empower the State Government to

A promulgate orders with regard to commodities which were declared to be essential commodities by the Central Government subsequent to the order of delegation.

Section 5 of the Act reads as follows :—

B “The Central Government may, by notified order, direct that the power to make orders or issue notifications under section 3 shall, in relation to such conditions, if any, as may be specified in the direction, be exercisable also by—

C (a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction.”

D There is nothing in section 5 to limit the power of delegation in favour of the State Government only to the commodities specified in section 2(a) or to those commodities declared essential under section 2(a)(xi) upto the date of delegation. Delegation under section 5 is a general delegation and will enure in favour of exercise of power by the State Government with respect to commodities declared essential by the Central Government from time to time under section 2(a)(xi) even subsequent to the order of delegation. It is not necessary that every time the Central Government declares an essential commodity it has also to pass an order of delegation under section 5 with regard to that commodity. Reading section 5 and section 3 together there is no warrant for the view that the power of delegation is confined to essential commodities specified under the Act and such others as may be declared by the Central Government upto the order of delegation. Delegation of power to the State Government to act under section 3 is not restricted to any specified essential commodity as such. It will be sufficient in law if on the date the State Government, duly empowered under section 5, makes a notification under section 3 with regard to an essential commodity within the meaning of section 2(a) including the residuary clause (xi) thereof. All that is required is that the commodity, on the date of the order of the State Government, answers the description of the clauses in section 2(a) of the Act. The fact that a commodity is declared essential after the order of delegation does not affect the exercise of power by the State Government under section 3 of the Act. The High Court is, therefore, not right in narrowly construing the order of delegation under section 5 of the Act. The Licensing

Order is, therefore, not invalid on the ground that the tyres and tubes were declared to be essential commodities by the Central Government after the order of delegation under section 5 of the Act.

In the result the appeal is allowed and the judgment of the High Court is set aside. There will be, however, no order as to costs.

V.P.S.

Appeal allowed.