

1961

March 30.

M. A. RAHMAN AND OTHERS

v.

THE STATE OF ANDHRA PRADESH

(P. B. GAJENDRAGADKAR, A. K. SARKAR,
K. N. WANCHOO, K. C. DAS GUPTA
and N. RAJAGOPALA AYYANGAR, JJ.)

Motor Spirit—Registration of dealers—If ultra vires the Constitution—Constitution of India, Art. 19(1)(g)—The Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (Andhra Pradesh V of 1958)—The Madras Sales of Motor Spirit Taxation Act (VI of 1939) ss. 3 and 4, sub-ss. (1) and (4).

The Madras Sales of Motor Spirit Taxation Act (Mad. VI of 1939) was made applicable to the State of Andhra Pradesh by the Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (Andhra Pradesh V of 1958). The purpose and object of the Act was to levy and collect tax on retail sales of motor spirit and the liability for payment was placed upon the person effecting the sale. In order that the State may know the persons from whom tax was due s. 4(1) provided for registration of dealers and s. 4(6) provided for the suspension of such registration in the event of some contraventions. All that any one who wanted to carry on business had to do was to ask for registration which he would get under the rules. The petitioners who were dealers in motor spirit in Hyderabad filed writ petition challenging the provisions of the said s. 4 of sub-ss. (1) and (6) on the ground that such registration and cancellation were not reasonable restrictions on the fundamental rights of the petitioners to carry on business under Art. 19(1)(g) of the Constitution particularly as the cancellation of registration resulted in the total extinction of the business and was an unreasonable restriction and prayed that sub-ss. (1) and (4) of s. 4 of the Act and r. 14 framed under s. 26 of the Act be declared *ultra vires*.

Held, that the provisions of s. 4(1) of the Act were constitutional. Registration of dealers under s. 4(1) was an eminently reasonable provision in order to carry out the object of the Act, the purpose behind the registration being that those on whom the liability to pay tax under s. 3 of the Act lay, were known to the State, so that it could realise the tax from them.

The provision of s. 4(6) for cancellation of registration for failure to pay the tax or for fraudulently evading the payment of it was an additional coercive process which was expected to be immediately effective and enabled the State to realise its revenue. The fact that in some cases restriction might result in the extinction of the business of a dealer would not by itself

make the provision as to cancellation of registration an unreasonable restriction on the fundamental right guaranteed by Art. 19(1)(g) of the Constitution.

Narendra Kumar v. The Union of India, [1960] 2 S.C.R. 375, referred to.

ORIGINAL JURISDICTION: Petition Nos. 145 and 149 to 158 of 1959.

Writ Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

Sardar Bahadur, for the petitioners.

C. K. Daphtary, Solicitor-General of India, *R. Ganapathy Iyer* and *T. M. Sen*, for the respondents.

1961. March 30. The Judgment of the Court was delivered by

WANCHOO, J.—These eleven petitions raise a common point and will be disposed of together. The brief facts necessary for present purposes are these. The petitioners are dealers in motor spirit in Hyderabad. In 1949 the Hyderabad Sales of Motor Spirit Taxation Regulation, No. XXIV of 1358 Fasli (hereinafter called the Regulation) was passed and the petitioners were registered as retail dealers of petroleum products under the Regulation. In 1957 the petitioners and others filed writ petitions in the High Court of Andhra Pradesh questioning the validity of the Regulation. There was also a prayer for stay of the levy and collection of the tax and the High Court ordered that all further proceedings in the matter of levy, demand and collection of tax including cancellation of registration certificate and threatened attachment of property and the launching of criminal proceedings in pursuance of the Regulation be stayed. The petitioners allege that on this stay being granted by the High Court, they thought that s. 3 of the Regulation was suspended during the period of stay and therefore they stopped collecting the tax from consumers. While these petitions were pending in the High Court, the Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act, No. V of 1958 (hereinafter called the Act), was passed by which

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the Madras Sales of Motor Spirit Taxation Act, No. VI of 1939 was applied to Andhra Pradesh with some modifications and the Regulation was repealed. This Act, like the Regulation, had provisions for registration of dealers and in consequence fresh registration certificates were issued to the petitioners as well as to all other dealers in the State. In August 1958 the petitions challenging the validity of the Regulation were dismissed. In September 1958 notices were issued to the petitioners informing them that they had failed to submit returns showing sales of motor spirit from March 1957 to March 1958 and they were required to submit returns within seven days, failing which best judgment assessments would be made under the relevant provision of the Regulation. The petitioners made representations against this order and their main case was that they had not collected any tax from consumers during this period and it would therefore be harsh to demand tax from them in the circumstances. Thereupon it is said that best judgment assessments were made against the petitioners and they were required to pay the tax, though liberty to pay in instalments was granted to them for this purpose. As however the petitioners failed to deposit the tax even in instalments, the registration certificate of one of the petitioners was cancelled and other petitioners were threatened with cancellation of their registration certificates about October 1959. Consequently, the present petitions were filed soon after challenging the provisions of the Act relating to cancellation of registration certificates on the ground that such cancellation was not a reasonable restriction on the fundamental rights of the petitioners to carry on business under Art. 19 (1) (g) of the Constitution. The petitioners therefore pray for a declaration that sub-ss. (1) and (6) of s. 4 of the Act and r. 14 purported to be framed thereunder are *ultra vires* as being violative of Art. 19 (1) (g) of the Constitution and for consequential orders against the respondents, namely, the State of Andhra Pradesh and its officers, from enforcing the said provisions.

The petitions have been opposed by the respondents

and their case is that the provisions in question are reasonable restrictions on the right guaranteed under Art. 19 (1) (g) and are therefore perfectly valid and constitutional. The respondents also say that the allegation of the petitioners that they did not collect the tax during the period of the stay orders from consumers is false.

In order to decide the constitutionality of the provisions which have been challenged it is necessary to look into the purpose and object of the Act in which those provisions appear. The Act was passed in order to levy and collect tax on retail sales of motor spirit in the interest of the general revenues of the State. Section 2 of the Act is the definition section. Section 3 is the charging section and provides the rates at which the tax is to be levied on all retail sales of motor spirit. Section 4 (1) which is being challenged is in these terms:—

“No person shall, after the commencement of this Act, carry on business in motor spirit as an importer or as a wholesale or retail dealer at any place in the State unless he has been registered as such under this Act.”

Sub-sections (2) and (3) make certain ancillary provisions and sub-s. (4) is in these terms:—

“Registration may be made subject to such conditions, if any, as may be prescribed including in the case of an applicant for registration as a retail dealer, the making of such deposit or the furnishing of such security as the registering authority may consider necessary to ensure the due payment of the tax which may from time to time be payable by him.”

Sub-section (5) is unnecessary for our purpose, and sub-s. (6) is in these terms:—

“Any registration under sub-section (1) may be suspended or cancelled by such authority, for such reasons, and in such manner, as may be prescribed.”

It is not necessary to refer to other sections which make various provisions necessary for the enforcement of the Act till we come to s. 26 which gives power to

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the State Government to make rules to carry out the purposes of the Act. Rule 14 which has been attacked has been made under the power conferred under s. 26 and it is not being disputed that if the main provisions contained in s. 4 are constitutional, the rule is within the ambit of the Act and the rule making power of the State Government.

It will be clear from this analysis of the impugned provisions of the Act that the purpose and object of the Act is to levy and collect tax for purposes of the general revenues of the State and the liability for payment is placed under s. 3 upon the person effecting the sale. He is required by s. 5 of the Act to keep books of account in the prescribed form and to submit to the Commercial Officer and to such other officers as may be prescribed, a return in such form, containing such particulars and at such intervals, as may be prescribed. Along with the return, under s. 6 he is required to pay the amount of tax due in respect of the motor spirit sold by him in retail during the preceding month according to the return. In order therefore that the State may have a check on the person from whom the tax is due s. 4(1) provides for registration of dealers who carry on the business in motor spirit. Without such registration it would be impossible for the State to know the persons who are selling motor spirit and from whom the tax is due. The provision therefore under s. 4(1) for registration of dealers is an eminently reasonable provision in order to carry out the object of the Act, namely, the levy and collection of this tax for purposes of the State. It is really no restriction on carrying on business in motor spirit; any one who carries on such business is free to do so and all that he has to do is to ask for registration, which he will get subject to the provisions of sub-s. (4). That sub-section has not been challenged in these petitions and therefore we proceed on the assumption that it is constitutional. It follows therefore that all that anyone who wants to carry on business in motor spirit has to do is to ask for registration which he will get under the rules, and the purpose behind registration is that those on whom the liability to pay tax

under s. 3 of the Act lies, are known to the State so that it may realise the tax from them. The challenge therefore to the constitutionality of s. 4(1) must fail.

Then we turn to sub-s. (6), which provides that any registration under sub-s. (1) may be suspended or cancelled by such authority, for such reasons, and in such manner, as may be prescribed. The main attack of the petitioners is on this sub-section. They contend that this sub-section authorises the State to cancel a registration. The effect of such cancellation read with sub-s. (1) is that a person whose registration is cancelled cannot carry on business in motor spirit as he was doing before the cancellation. It is said that cancellation results in the total extinction of the business of the person whose registration is cancelled and thus the provision as to cancellation is an unreasonable restriction on the fundamental right to carry on business.

There is no doubt that if a registration is cancelled under sub-s. (6) it will not be possible for the person whose registration is so cancelled to carry on his business in motor spirit. Rule 14 provides conditions under which the registration may be cancelled and we are in the present case concerned with two of them, namely, where the holder of a registration certificate (a) fails to pay the tax or any other amount payable under the Act and (b) fraudulently evades the payment of the tax.

The reasonableness of this provision as to cancellation of registration certificate has to be judged in the background of what we have already said about the purpose of the levy and its liability on the seller. It is true that there are other provisions in the law for realisation of public dues from those who default in making payments; but generally speaking cancellation of registration in cases like these is one more method of compelling payment of tax which is due to the State. Collection of revenue is necessary in order that the administration of the State may go on smoothly in the interest of the general public. The State has therefore armed itself with one more coercive method in order to realise the tax in such cases. It is true

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that cancellation of registration may result in a dealer being unable to carry on the business, but the same result may even follow from the application of other coercive processes for realisation of dues from a trader, for his assets may be sold off to pay the arrears of tax and he may thereafter be not in a position to carry on the business at all. Therefore the provision for cancellation of registration for failure to pay the tax or for fraudulently evading the payment of it is an additional coercive process which is expected to be immediately effective and enables the State to realise its revenues which are necessary for carrying on the administration in the interest of the general public. The fact that in some cases restrictions may result in the extinction of the business of a dealer would not by itself make the provision as to cancellation of registration an unreasonable restriction on the fundamental right guaranteed by Art. 19(1)(g). We may in this connection refer to *Narendra Kumar v. The Union of India* (1), where it was held that:

“the word ‘restriction’ in Arts. 19(5) and 19(6) of the Constitution includes cases of ‘prohibition’ also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than was necessary in the interests of the general public.”

Applying these tests we are of opinion that the cancellation of registration will be justified even though it results in the extinction of business as such cancellation is in respect of a tax meant for the general revenues of the State to carry on the administration in the interest of the general public.

(1) [1960] 2 S.C.R. 375.

Besides, there is another consideration to which we may advert in the end, though even otherwise the cancellation is justified. Though there is no provision in the Act or the Rules specifically authorising the seller to pass on the tax to the consumer, what actually happens is that the seller includes the tax in the price and thus passes it on to the consumer. Then in his turn the seller pays the tax to the State. In effect by thus passing on the tax to the consumer through the price, the dealer has already collected the tax. Therefore the compulsion of payment which arises because of the provision for cancellation of registration is under the circumstances justified and there is no reason why he should fail to pay it to the State or evade payment thereof fraudulently. The fault for failure to pay the tax or fraudulent evasion in payment thereof lies in the circumstances entirely on the dealer and he cannot be heard to complain that cancellation of registration in such a case is a disproportionate restriction on the right to carry on business which cannot be justified in the interests of the general public.

Under the circumstances we are of opinion that the ratio of *Narendra Kumar's* case (1) applies fully to the present case and the provision contained in sub-s. (6) of s. 4 is a reasonable restriction within the meaning of Art. 19(6) of the Constitution. The petitions therefore fail and are hereby dismissed with costs; there will be one set of hearing costs only.

Petitions dismissed.

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