

MD. MURTAZA & ORS.

v.

STATE OF ASSAM & ORS.
(Civil Appeal No. 7517 of 2011)

AUGUST 29, 2011

**[MARKANDEY KATJU AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Constitution of India, 1950 – Article 19(1)(g) and 19(6) – Appellants and other wholesale vegetable and fruit vendors engaged in selling vegetable and fruits at market in the city – Problem of traffic congestion, health and hygiene, pollution caused – Proposal to remove the appellants and others and shift them to a new market – Pursuant to the order by the High Court they had to vacate the possession of the premises – On appeal, held: Right to do business is a fundamental right guaranteed under Article 19(1)(g) but is subject to reasonable restrictions under Article 19(6) – Reasonableness of the restriction has to be determined in an objective manner and has to be seen from the point of view of the interest of the general public and not merely from the point of view of the persons upon whom the restrictions are imposed – Thus, the action of the Authorities cannot be faulted with – Shifting of the wholesale markets to the outskirts of the city or beyond was clearly reasonable – Public interest prevails over the private interest – Executive is free to recognize degrees of harm – State must be left with wide latitude in devising ways and means of social control and Regulation, and the court should not, unless compelled by the law, encroach into this field – Thus, the appellants and other wholesale traders should shift to the wholesale traders markets at the outskirts or outside the city limits.

Administrative law – Policy decision – Interference by the courts – Held: In the matters of policy, the courts have a

A *limited role and it should only interfere with the same when it is clearly illegal – On facts, the shifting of the wholesale markets to the outskirts of the city was not illegal – It was a salutary step for undoing a mischief – Thus, interference by the court not called for.*

B *Friends Colony Development Committee vs. State of Orissa AIR 2005 SC 1: 2004 (5) Suppl. SCR 818; Sales Tax Officer vs. Shree Durga Oil Mills (1998) 1 SCC 572: 1997 (6) Suppl. SCR 488; Hanif Quareshi v. State of Bihar AIR 1958 SC 731; State of Gujarat v. Shantilal AIR 1969 SC 634: 1969*

C *(3) SCR 341; Laxmi Khandsari v. State of UP. AIR 1981 SC 873: 1981 (3) SCR 92; Divert v. State of Gujarat AIR 1986 SC 1323: 1986 SCR 479; State of Madras v. Row 1952 SCR 597; Peerless v. Reserve Bank AIR 1992 SC 1033: 1992 (1) SCR 406; Harakchand v. Union of India AIR 1970 SC 1453:*

D *1970 (1) SCR 479; Jyoti Pershad v. Union Territory of Delhi AIR 1961 SC 1602: 1962 SCR 125; Puthumma v. State of Kerala AIR 1978 SC 771: 1978 (2) SCR 537; P.P. Enterprises v. Union of India AIR 1982 SC 1016: 1982 (3) SCR 510 - referred to.*

E *American Federation of Labour v. American Sash and Door Co. 335 US 538 (1949); New State Ice Co. v. Liebemann 285 U.S. 262 (1932) – referred to.*

Case Law Reference:

F	2004 (5) Suppl. SCR 818 Referred to	Para 7
	1997 (6) Suppl. SCR 488 Referred to	Para 8
	AIR 1958 SC 731	Referred to Para 10, 13
G	1969 (3) SCR 341	Referred to Para 10
	1981 (3) SCR 92	Referred to Para 10
	1986 SCR 479	Referred to Para 10

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1952 SCR 597	Referred to	Para 10	A
1992 (1) SCR 406	Referred to	Para 10	
1970 (1) SCR 479	Referred to	Para 10	
1962 SCR 125	Referred to	Para 11	B
1978 (2) SCR 537	Referred to	Para 11	
1982 (3) SCR 510	Referred to	Para 11	
1959 SCR 629	Referred to	Para 14	C
335 US 538 (1949)	Referred to	Para 16	
285 U.S. 262 (1932)	Referred to	Para 17	

CIVIL APPELLAE JURISDICTION : Civil Appeal No. 7517 of 2011.

From the Judgment & Order dated 28.04.2008 of the Gauhati High Court in Writ Petition (C) No. 8081 of 2005.

WITH

C.A. No. 7518 of 2011.

Jayant Bhushan, Nagendra Rai, Vijay Hansaria, Pradip K. Ghosh, Parthiv K. Goswami, S. Hariharan, Rajiv Mehta, Manish Goswami (for Map & Co.), T. Mahipal, Shantanu Sagar, Ranjan Kumar Pandey, Arun K. Sinha, Rakesh Singh, Sumit Sinha, Avijit Roy, Deepika Ghatowar (for Coporate Law Group) for the appearing parties.

The following Order of the Court was delivered

O R D E R

1. Leave granted.

2. These appeals have been filed against the impugned judgment and order dated 28.4.2008 passed by the Gauhati

A High Court in Writ Petition (Civil) No. 8081 of 2005.

3. The appellants are wholesale vegetable and fruit vendors and were engaged in selling vegetables and fruits at Machkhowa market, Gauhati in the State of Assam since 1995.

B However, they had to vacate their respective possession of the premises in pursuance to the orders of the Gauhati High Court. Machkhowa market is situated close to the railway station and is inside the city and the land thereon has been allotted to the Department of Handloom and Textiles, Government of Assam for the purpose of construction of an administrative building. For
C this purpose it was proposed to remove the appellants and other wholesale vendors from the Machkhowa market, and instead a new market has been constructed at Ganeshguri. It was submitted by the appellants and others that there is not enough space in the Ganeshguri municipal market for the
D appellants and others. We are not referring to the various orders issued by the Gauhati High Court from time to time.

4. In one of the counter affidavits filed before us it has been stated that all parts of the city of Gauhati, including Machkhowa
E is very congested and hence the appellants and other wholesalers should not be allowed to do business of wholesale fruits and vegetables inside the city limits as a large number of heavy and medium goods vehicles have to enter the city to go to that wholesale market and consequently the area
F becomes very congested causing serious traffic problems and also hazard of health and hygiene and pollution. It is stated that the government of Assam has initiated steps to develop the fruits and vegetables wholesale market at the outskirts of Gauhati at Garchuk near the bypass on an area of 8 bighas of land and the foundation stone of the project market was laid
G by the Chief Minister on 25.2.2011. It has been further submitted that development work is taking place at a high speed at Garchuk.

5. We are of the opinion that the wholesale market of fruits
H and vegetables for supplying of these goods to Gauhati and

elsewhere should be at the outskirts or outside the city limits of Gauhati to avoid problems of traffic congestion, health and hygiene, pollution etc.

6. Citizens ordinarily do not go to wholesale markets, but they go to retail markets. Hence if the wholesale market is not situated within the city limits it will not cause any inconvenience to the public in general. On the other hand, if such wholesale market is situated within the city limits, there will be everyday hazards of traffic congestion because of hundreds of vehicles entering the city carrying goods for the wholesale markets resulting in traffic congestion, air and noise pollution etc., apart from posing health and hygiene problems. A large number of these goods will be dumped on the roads causing huge collection of waste and garbage. The rotting goods may spread diseases. They may also attract stray animals.

7. Ordinarily everywhere in the world wholesale markets are situated at the outskirts or outside the city limits. No doubt, the shifting of the shops of the wholesalers will cause some hardships to some individuals, but it is well settled that public interest prevails over the private interests. Thus, in *Friends Colony Development Committee vs. State of Orissa* AIR 2005 SC 1 (vide para 22) this Court observed :

"The private interest stands subordinated to the public good".

8. Similarly, in *Sales Tax Officer vs. Shree Durga Oil Mills*, (1998) 1 SCC 572 (vide para 21) this Court observed:

"Public interest must override any consideration of private loss or gain".

9. It is true that right to do business is a fundamental right guaranteed under Article 19(1)(g) of the Constitution, but this right is subject to reasonable restrictions under Article 19(6).

10. It may be mentioned that to test the reasonability of a

- A restriction we have to see the subject matter, extent of restriction, the mischief which it seeks to check, etc. The reasonableness of the restriction has to be determined in an objective manner and has to be seen from the point of view of the interest of the general public and not merely from the point of view of the persons upon whom the restrictions are imposed
- B vide *Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731. Moreover, the impugned action of the authorities cannot be said to be unreasonable merely because in a given case, they may operate harshly, vide *State of Gujarat v. Shantilal*, AIR 1969 SC 634 (vide Para 52). As observed by the Supreme Court in
- C *Laxmi Khandsari v. State of UP.*, AIR 1981 SC 873; *Divert v. State of Gujarat*, AIR 1986 SC 1323; *State of Madras v. Row*, 1952 SCR 597; *Peerless v. Reserve Bank*, AIR 1992 SC 1033; and *Harakchand v. Union of India*, AIR 1970 SC 1453 etc., the nature of the right alleged to have been infringed, the
- D underlying purpose of the restriction imposed and the extent and urgency of the evil sought to be remedied thereby, disproportion of the imposition, prevailing conditions at the time etc., are the relevant considerations for determining whether the restriction is reasonable.

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11. Further, as held in *Jyoti Pershad v. Union Territory of Delhi*, AIR 1961 SC 1602, the standard of reasonableness must also vary from age to age and be related to the adjustments necessary to solve the problems which
- F communities face from time to time. In adjudging the validity of the restriction the Court has necessarily to approach the question from the point of view of the social interest which the State action intends to promote, vide *Puthumma v. State of Kerala*, AIR 1978 SC 771; *P.P. Enterprises v. Union of India*,
- G AIR 1982 SC 1016 and *Jyoti Pershad v. Union Territory of Delhi* (supra), etc.

12. Judged by these standards the impugned action of the authorities cannot be faulted on the ground of lack of reasonableness. As stated in the counter-affidavits filed in these
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cases, the existing wholesale markets have become the cause of immense traffic congestion in the city, apart from causing diseases, pollution etc. Hence, shifting the wholesale markets to the outskirts of the City or beyond is clearly reasonable. A

13. It must be remembered that certain matters are by their very nature such as had better be left to the administrative authorities instead of Courts themselves seeking to substitute their own views and perceptions as to what is the best solution to the problem. The present is clearly an instance where this Court should not interfere with the steps taken by the respondents to resolve a pressing problem. In matters of policy the Courts have a limited role and it should only interfere with the same when it is clearly illegal. That clearly is not the case here. The impugned action is a salutary step for undoing a mischief, which was crying out for redress for a long time, and it is not illegal. B C D

14. As observed by the Supreme Court in *Mohd. Hanif Qureshi v. State of Bihar*, AIR 1958 SC 731, the Court must presume, that the legislature understands and correctly appreciates the need of its own people. The legislature is free to recognize degrees of harm, and may confine its restrictions to those where the need is deemed to be the clearest. In our opinion, the same principle would apply to executive action also, unless there is clear violation of a statute or a constitutional provision. E F

15. In our opinion, the State should not be hampered by the Court in dealing with evils at their point of pressure. All legislation, including delegated legislation (such as the kind we are examining) and executive action is essentially ad hoc. Since, social problems nowadays are extremely complicated, this inevitably entails special treatment for distinct social phenomena. If legislation or executive action is to deal with realities it must address itself to variations in society. The State must, therefore, be left with wide latitude in devising ways and H

- A means of social control and Regulation, and the Court should not, unless compelled by the law, encroach into this field.

B 16. As Justice Frankfurter of the U.S. Supreme Court observed in *American Federation of Labour v. American Sash and Door Co.*, 335 US 538 (1949) :-

C "Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a Court debilitates popular Democratic Government. Most laws dealing with social and economic problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. But, even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed by the legislature than that the law should be aborted by judicial fiat. Such, an assertion of judicial power defeats responsibility from those on whom in a democratic society it ultimately rests. Hence, rather than exercise judicial review Courts should ordinarily allow legislatures to correct their own mistakes wherever possible."

E In our opinion the same principle would apply to executive action too.

F 17. Similarly, in his dissenting judgment in *New State Ice Co. v. Liebemann*, 285 U.S. 262 (1932), Mr. Justice Brandeis, the celebrated Judge of the U.S. Supreme Court observed that the government must be left free to engage in social experiments. Progress in the Social Sciences, as in the Physical Sciences, depends on "a process of trial and error" and Courts must not interfere with necessary experiments.

G 18. Justice Brandeis also observed :-

H "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation."

19. On the facts of the case, we are of the opinion that the appellants and other wholesale traders should shift to the wholesale markets at the outskirts or outside the city limits of Gauhati. A

20. If the markets are not constructed yet, they will be constructed by the government, the municipalities and other authorities in consultation with the representatives of the wholesale traders of Gauhati and allotments made within a period of one year from today. For this purpose a Committee shall be set up under the Chairmanship of the concerned Secretary of Government of Assam and having members from the representatives of the Gauhati municipality and other authorities, and also representatives of the associations of wholesalers of fruits and vegetables and grains etc., as well as representatives from the electricity department, water department, telephone department, police etc. This Committee shall form a rational plan for allotment of the existing wholesale markets inside the Gauhati city to the new wholesale market (which will be constructed, if has not already been constructed). B C D

21. All wholesalers inside Gauhati city shall be allowed to apply for allotment for adequate land for the wholesale market at the outskirts of or beyond Gauhati city. If such applications are made the same will be decided in a fair and non-arbitrary manner without any pick and choose. The entire exercise including allotments must be completed within one year from today. E F

22. With the observations made above, the appeals stand disposed of. No costs.

N.J.

Appeals disposed of. G