STATE OF MADHYA PRADESH & ORS. A

v.

GALLA TILHAN VYAPARI SANGH & ORS.

January 17, 1977

[S. MURTAZA FAZAL ALI AND P. S. KAILASAM, JJ.] B

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972, S. 37(5)(a), constitutional validity of—Whether unreasonable to commission agents.

The respondents challenged the constitutional validity of s. 37(5)(a) of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972, before the High Court on the ground that it places unreasonable restriction on the commission agent and puts a great burden on him for storing the goods given to him by his principal, without charging the commission for its safe custody. The plea was accepted and the High Court struck down the impugned provision as unconstitutional. C

Allowing the appeal by Special Leave, the Court,

HELD : Section 37(5)(a) is constitutionally valid and there is no hardship or unreasonableness in it. The provision prevents the commission agent from levying any additional charges from the farmer or the principal for safe custody of the goods, but s. 37(4) of the Act compensates him by authorising him to charge not only his commission from the principal trader, but also the expenses incurred by him for the purpose of storing the produce, and the services rendered by him. [620 D, E, G] D

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1912-1914 of 1976. E

(Appeal by special Leave from the Judgment and order dated 7-2-1975 of the Madhya Pradesh High Court in Misc. Petition No. 231/74 and 685 and 732/73 respectively.)

I. N. Shroff and *H. S. Parihar,* for the appellants.

S. K. Gambhir, for respondents Nos. 1 and 2. F

The Judgment of the Court was delivered by

FAZAL ALI, J. In this appeal by special leave, on an application filed by the respondents before the High Court of Madhya Pradesh, the High Court struck down the constitutional validity of sub-s. (5)(a) of s. 37 of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 —hereinafter referred to as 'the Act'—(No. 24 of 1973). The impugned sub-section runs as follows : G

"(5) Every commission agent shall be liable— H

(a) to keep the goods of his principal in safe custody without any charge other than the commission payable to him; and"

A The High Court thought that this statutory provision places unreasonable restriction on the commission agent and puts great burden on him for storing the goods given to him by the principal without charging the commission for its safe custody. The Act is a social piece of legislation and should have been liberally construed so as to advance the object of the Act and fulfil the aims to be achieved thereby. The main purpose of the Act is to secure a scientific method of storage, B sale, distribution and marketing of agricultural produce and cut out as far as possible middle-man's profit. The Act, therefore, contains provisions of a beneficial nature preventing profiteering tendencies. It is not, however, the hardship that can be termed unreasonable so as to make a statute unconstitutional. Moreover, the High Court does not appear to have looked to the scheme of the Act and has in fact completely overlooked the provisions of s. 37(4) which runs as C follows :

> "(4) The commission agent shall recover his commission only from his principal trader at such rates as may be specified in the bye-laws including all such expenses as may be incurred by him in storage of the produce and other services rendered by him."

D

This section clearly empowers the commission agent to charge such rates as may be specified by the bye-laws even for the storage of the Produce and other services rendered by him. This provision also does not prevent the commission agent from levying reasonable charges for the storage over and above his commission. All that the Act prevents is that the commission agent is prohibited from levying any E charges for safe custody from the farmer or the principal. This is done in order to attract and lure the farmers to place their goods with commission agents without additional payment of charges for safe custody. Section 37 (4), however, compensates the commission agent by authorising him to charge his commission and all expenses which may be incurred by the commission agent in connection with the storage of the produce and the services rendered by him. This F section, therefore, clearly authorises the commission agent not only to charge his commission from the principal trader but also expenses incurred by him for the purpose of the storage. That apart s. 2(e) of the Act which defines a "Commission agent" empowers him to charge any commission or percentage upon the amount involved in such transaction.

G For these reasons, therefore, we do not see any hardship or unreasonableness in the provisions of s. 37(5)(a) of the Act. The High Court, therefore, committed an error of law in striking down this provision as unconstitutional. In our opinion, therefore, s. 37 (5)(a) of the Act is constitutionally valid. In the view we take, it is not necessary to go into the question whether the law violates Art. 19 of the Constitution which stands suspended during the emergency.

H The appeal is accordingly allowed. The order of the High Court is quashed. In the circumstances, there will be no order as to costs.

M.R. *Appeal allowed.*