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IN THE HIGH COURT OF AUSTRALIA

LOI AND ANOTHER

V.

THE TOBACCO LEAF MARKETING BOARD

RECEIVED
12 MAY 1959

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on TUESDAY, 12TH MAY 1959

LOI AND ANOTHER

v.

THE TOBACCO LEAF MARKETING BOARD

JUDGMENT

MENZIES J.

LOI AND ANOTHER

v.

THE TOBACCO LEAF MARKETING BOARD

This is an application by the plaintiffs in an action by an individual tobacco grower from South Queensland and the South Queensland Tobacco Growers' Co-operative Association Limited against the Tobacco Leaf Marketing Board of Queensland, which challenges the validity of part of the Primary Producers Organisation and Marketing Acts of Queensland and the Regulations made thereunder, or raises the question whether those Acts apply to the course of conduct that it is contemplated will be carried out pursuant to contracts that have been made between a large number of tobacco growers and the second named plaintiff.

The grounds of the challenge are constitutional and raise questions as to the application of both s. 90 and s. 92 of the Constitution to this Act and the Regulations and to the course of conduct to which I have referred, which, if and when it is carried out, will, it is claimed, constitute interstate trade. The action therefore involves matters of considerable importance to the plaintiffs, to the defendant, to the State of Queensland and to members of the public in Queensland.

The application is for a speedy trial, and although Mr. Gibbs does not limit himself to a trial that will result in a determination by the 1st June, a good deal of his argument was addressed to the hardship that will follow unless this action can be finally disposed of by this Court before that date.

The plaintiffs have delivered a comprehensive statement of claim to which the defendant has pleaded, and there are matters of fact which are in issue. The standing of the second plaintiff is also in issue.

It is not possible at the present time to come to any firm conclusion about just how much evidence will be necessary to determine the facts that are not admitted or which are denied, but the parties have not, up to the present, given consideration to the possibility of agreeing upon the facts and stating a case, so I have to dispose of this application on the footing that there will have to be a trial.

Mr. Gibbs indicated that it would not be his wish that at the trial the action should be disposed of, but that the Judge who conducts the trial should make the necessary findings of fact and then state a case for the Full Court, and his ambition would be that that should be not only argued but it should be decided by the 1st June so that the arrangements which the plaintiffs have in train can be carried out.

The action arises out of arrangements that have been made by the plaintiff Association with a number of growers, and it seems clear that the proposals which are at present being carried out were at least mooted as long ago as December last, and it is probable that some contracts were entered into last year, although it seems also probable that the bulk of the contracts were entered into some time early this year. Furthermore, Mr. Gibbs made no secret of the plaintiff's anticipation that the course of action which is now being carried out is one that would probably provoke legal challenge because as I follow him it could not be carried out lawfully if the Act to which I have referred does validly apply to the

transactions which it is proposed to undertake. He stated, however, that it was not clear that the plaintiffs would have to meet a challenge in Court because the Board had not shown its hand clearly until March. That, however, does not seem a very important circumstance to me because when the parties agree to follow a course of action which does involve some challenge to the validity of existing Acts, they do so with their eyes open and should be ready to meet the difficulties that arise.

But Mr. Gibbs placed particular reliance upon an intimation from a tobacco buyer that, as things stood, it would treat the existing law as applicable to the sale by the plaintiffs of the tobacco with which they are concerned. That the buyer should think it proper to observe the law as it stands is not unusual and it is hardly a matter that could have taken the plaintiffs by surprise. However, when it became apparent that that buyer might not attend the sales that the second named plaintiff hopes to carry out in June, the plaintiffs moved speedily to test the validity of the Act by commencing an action in the Queensland Registry of this Court, as I say challenging it on two grounds, and it is now sought to have that disposed of in Melbourne rather than in Brisbane when the High Court sits there.

It appears to me that the plaintiffs who are applicants here are asking what is quite impossible. The business of this Court in Melbourne has been arranged for months ahead, and until the end of next week there will be existing constitutional cases to engage the attention of all the Judges of this Court; then, there is a list of Full Court business that has to be disposed of. Altogether, it seems to

me that it would be quite impracticable to make any arrangements for the hearing of this case that could result in a determination during this month.

It seems to me that to attempt to dispose of a case of this importance, where there are ^{issues in} dispute, within a fortnight is to seek what cannot be granted. The application is, moreover, opposed by the defendant who wants the action heard in Queensland, and to the claim that this course will involve the plaintiffs in hardship it is said that the procedure that has been available for the sale of tobacco over the past ten years will be available during the coming year for those growers who take advantage of it.

That answer hardly touches the case of the plaintiff Association, which obviously desires to embark upon a new course of business, and I am conscious of the fact that because it seems impracticable to hear and determine this action by the 1st June, that plaintiff may not be able to carry on this year the business which it desires to carry on and which it hopes will constitute interstate trade. It, however, has moved slowly and now desires others to move with impossible speed and without regard to existing commitments.

Taking all these matters into consideration - the position of the Court, the claims of other litigants who have long standing proceedings before the Court, the fact that the plaintiffs have, while anticipating litigation, not proceeded with the expedition that might have been expected to bring their challenge to the Court earlier, the fact that what is alleged is opposed by the defendant, and the fact that the course of action which has been in force over the past ten years or so remains open to growers and to buyers - it seems to me that there is an altogether unanswerable case for refusing this application.

The application for a speedy trial is therefore refused with costs, and I certify for counsel.