(1991) 09 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 5051 of 1991

Ade Babu Rao	APPELLANT
Vs	
State of Andhra Pradesh and another	RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:
Constitution of India, 1950 — Article 134, 14, 19, 19(1), 19(6)

Citation : AIR 1992 AP 284 : (1992) 1 ALT 183 : (1992) 1 APLJ 71

Hon'ble Judges : Sivaraman Nair, J;Eswara Prasad, J

Bench : Division Bench

Advocate : R. Subhash Reddy, N. Subbareddy, M. Rama Rao, P. Laxma Reddy, P. Murali, D. Sudhakara Rao, B.D. Maheswara Reddy, K. Ramakrishna Reddy, S. Lakshma Reddy, K. Venkataramayya, V. Rejendrababu, J. Venugopala Rao, B. Chandramouli, L. Prabhakar Reddy, C.B. Ramamohan Reddy, K. Jayakumar, V. Ravikiran Rao, A. Gopala Reddy, M. Sai Reddy, S. Venkateswara Reddy, S.N. Satyanarayana Swamy, Ch. Ganesh, B.S.A. Swamy, B. Subhashan Reddy and G. Ranapratap, for the Appellant; A.G. and Govt. Pleader, for L.A., G.P. for F and A, D. Setharami Reddy and T. Ram Mohan Raj, Standing Counsel, for A.M.C.S., for the Respondent

Judgement

Petitioners in all these writ petitions are aspirants for becoming commission agents in the market establishments under A. P. (Agricultural Produce and Livestock) Markets Act, 1966. At the time when the writ petitions were filed, they had not applied or obtained licences to act as Commission agents. Had they applied, their applications would have been considered u/s 7 of the above Act. Sub-section (4) provides the circumstances under which an application may be rejected. It is the case of the petitioners that had they applied, their applications would not have been rejected by the market committee u/s 7(4) of the Act. But the Government issued G.O.Ms. No. 289 dt. 2-5-1989 to the following effect:

"O R D E R :

In pursuance of the policy announced by the Government in the G.O. read above, the following notification will be published in the A. P. Gazette.

NOTIFICATION

In exercise of the powers conferred by Section 32 of the A. P. (Agricultural Produce and Livestock) Markets Act, (1966) (Act No. 16 of 1966) the Governor of Andhra Pradesh hereby directs that in Agricultural Market Committees where Commission Agents are permitted, no new licence need be given in future for functioning as Commission Agents, unless it is a case of transfer of business by way of inheretance etc."

The result of that order is to deny any power to the market committee to grant licences u/s 7 of the Act. Petitioners submit that the above Government Order is violative of their fundamental rights under Article 19(1)(g) of the Constitution of India. They submit, further, that the existing licence holders and the aspirants for licences as commission agents are treated differently --the aspirants in a hostile manner and the existing licence holders in a benevolent manner and this difference in treatment is discriminatory and violative of the Article 14 of the Constitution of India. It is also submitted before us that there is no power under the Act to issue a general direction to the market committees or the licencing authorities not to grant licences for commission agents in future. It is on that ground that the petitioners seek the issue of a declaration that G.O.Ms. No. 289 dated 2-5-1989 and the consequential orders issued by the respective market committee are illegal, arbitrary and without jurisdiction.

2. The State has filed counter-affidavit explaining the circumstances leading to the policy decision contained in G.O.Ms. No. 286 dt. 23-4-1989, its partial implementation in G.O.Ms. No. 287 dt. 29-4-1989 and the further manifestation of that policy by denying licences in future to act as commission agents in notified market yards as contained in the impugned order. The burden of the song is that the Government wanted to eliminate middlemen or commission agents in order that the growers or the producers of notified agricultural produce would get a better deal in selling the produce in the notified markets. There is, of course, a reference to wide spread malpractices committed by the commission agents which are mentioned apparently to justify the anxiety to eliminate the middlemen in the notified areas of the market committees between buyers and growers. Bereft of all the trappings as contained in the counter-affidavit, the case of the respondents is that the State was justified in its anxiety to eliminate middlemen or commission agents so as as to benefit the growers or the producers.

3. Learned Advocate-General who appeared for the respondent/State submitted that an anxiety to eliminate middlemen was basic justification for the enactment of the A. P. (Agricultural Produce and Livestock) Markets Act, 1966 and that was only partially achieved by establishing notified markets and regulating the number of commission agents that could operate. In furtherance of the above policy, which was approved by the Supreme Court, the State is now trying, according to the Advocate-General in gradual stages to eliminate middlemen so that in the market areas the growers and producers can directly deal with the

buyers resulting in additional benefits to the sellers. He submits that there is no question of violation of Article 19(1)(g) of the Constitution of India because the right of the applicants to conduct trade as commission agents generally is not denied by the impugned order. No question of expro- priation arises in these cases. No denial of right to undertake or continue a profession is also involved. In respect of notified agricultural produce, the State is enlarging the scope of restrictions in such a manner as to benefit the agricultural producers and growers. In so far as the rights of the petitioners to engage in trade as commission.agents in other articles are not impaired, submits the Advocate-General, there can be no question of any violation of any of the rights of the petitioners under Art. 19(1)(g) of the Constitution of India. He submits, in the alternative, that assuming that these are restrictions which the State imposes on the right of the commission agents in respect of trade in agricultural produce or other notified produce, the State is entitled to impose such reasonable restrictions in public interest as are permissible under Article 19(6) of the Constitution of India. He, therefore, submits that in so far as the restrictions are not shown to be unreasonable, petitioners cannot have any case of violation of their rights under Article 19(1)(g) of the Constitution of India.

4. On the other aspect of the petitioners'' case that denial of licences to them while permitting continuance of the existing licences violates of Article 14 of the Constitution of India, the Advocate-General submits that there cannot be any discrimination as between persons who are included in two different classes. Existing licence holders and aspirants are two definitely identifiable classes of persons with definite and inalienable identities. Petitioners fall into the latter and existing licences fall into the former. It is, therefore, submitted that there cannot be any complaint of discrimination violative of Article 14 of the Constitution of India in view of the well-defined classification between these two categories.

5. Dealing with the submission, that there is no power in the State to issue a notification in the nature of G.O.Ms. No. 289 and its Precursors G.O.Ms. Nos. 286 and 287, the Advocate-General, invited our attention to Section 32 which provides that the Government has power to regulate or prohibit the commission agents.

6. Agricultural market committee legislation, in our country, has got history of more than six decades. The Royal Commission on agriculture in India was appointed in 1928 and it submitted its report emphasising the need for establishing regulated markets under Provincial Legislation. That report dealfwith the sufferings and handicaps of the cultivators and the remedies for them by enacting legislations. The following is a revealing extract of that report:--

"Cultivator suffers from many handicaps to begin with, he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator''s marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces, the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under provincial legislation."

7. This report of the Royal Commission fell for consideration in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, . A reference was also made to the following portion of the report (at p. 303 of AIR):

"The key note to the system of marketing agricultural produce in the State is the predominant part played by middlemen. It is the cultivator''s chronic-shortage of money that has allowed the intermediary to achieve the prominent position he now occupies."

Thereafter the Indian Central Banking Enquiry Committee and All India Rural Credit and Survey Committee conducted surveys of a similar nature. Still later, the Government of Madras appointed an expert committee to review the Act. Report of that committee was referred to in extenso in Arunachala Nandar''s case. It is relevant to refer to the following portion which dealt with difficulties of the cultivators consequent on their dependance upon the middlemen M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, :

"The middlemen play a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to (he taluk or district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought, it is stored in the commission agent''s godown at the cultivator''s expense and as the latter generally cannot afford (o wait about until the sale is effected, he leaves his produce to be sold by the Commission agent at the best possible price, and it is doubtful whether eventually he receives the best price. The middle-class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent, because he generally takes advance from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore, he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price, but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market rates, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middlemen occupies and his methods of sale and the terms of his dealings have long ago been realised."

8. The Madras Agricultural Markets Act was upheld in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, , on the basis of the policy of the State to eliminate middlemen to the extent possible or at least in so far as it struck at the foundation of commission agents/middlemen.

9. The institution of middlemen and the tactics played by them to exploit growers, continue even after enactment of registrations and establishment of regulated markets as is evident from the Fourteenth Report of the Law Commission of Andhra Pradesh which was submitted in December, 1962. That report had also to deal with the same question of exploitation of growers of agricultural produce, the commission stated in its report:

"It is appropriate that we should advert here to one aspect of problem which neither the Bill nor similar legislation in other States attempted to tackle. The legislation does not enable the middle class cultivator to free himself from the clutches of the Commission Agent. The middle class ryot during the season from the planting of a crop till the time of harvest required short term loans to meet his needs for agriculture and the expenses of the family. There being no agency which accommodates him with such loans he is necessarily driven to the commission agent. He borrows money, from time to time from such commission agent and he is obliged, therefore, to sell the produce either to him or through him. It is no doubt true that in the regulation markets in the Telangana area, commission agent''s commission is regulated and restricted, but the advances he makes to the middle-class ryot during the interim period between planting of the crop and the harvest is recouped by him from out of the sale proceeds of the produce realised in the market. As the grower is free in the market from the influence of the commission agent, he gets the best price for his produce and is subject only to reasonable deductions such as commission agent''s commission, weighmen''s fee and so on. But his indebtedness to the commission agent is there and is not regulated. We do not know how much the commission agent in the Telangana area charges by way of interest or other returns for the amount he advances from time to time. It is a matter entirely between the ryot and the commission agent."

10. It is clear from the reports of Commissions appointed by the Government of India, the Government of Madras and the State of Andhra Pradesh, that the evils of the institution of commission agents/middlemen were realised and the need to eliminate them was repeatedly emphasised. The provisions in respective enactments for regulating the commission agents by granting licences and by insisting that in the notified areas, no person other than a licenced commission agent shall conduct trade in notified agricultural and related produce were justified by the Supreme Court as reasonable restrictions on the right to conduct trade in the decisions in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras

and Others, ; Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, and Karan Singh and Another Vs. State of M.P. and Others, .

11. In M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, the Supreme Court observed (at p. 304 of AIR):

"The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for ex-ploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens'' right to the business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and over reach the scope of the subject to achieve which it is enacted."

12. The provisions of the Andhra Pradesh Act are almost similar in terms as the Madras Act which was discussed in the M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, . It is, therefore, obvious that imposition of reasonable restrictions with a view to eliminate middlemen, cannot be considered as violative of Arts. 19and 14 of the Constitution of India.

13. The Supreme Court, in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, where the validity of the very, same statute A.P. Agricultural (Produce & Livestock) Markets Act, 1966 was questioned observed (Paras 18 and 19):

".....the pursuit of any lawful trade of business may be made subject to such conditions and restrictions as may be deemed essential by the legislature to be in the interests of the general public, It is obviously in the interests of the producers of agricultural produce that they can get the best competitive prices in an open market and that they have not to pay the middlemen."

14. It is obvious therefore that the Act authorises ''the total or substantial elimination of the middlemen'' which is sought to be achieved by prohibiting the grant of licences to fresh applicants. This cannot be considered as contrary to the provisions of S.32 of the Act or the policy of the State.

15. We are, therefore, not in a position to accede to the submission of the petitioners that the impugned notification violates the rights of the petitioners under Art. 19 of the Constitution of India or it contravenes the policy of the State or the provisions of the statute.

16. We do not find any substance in the submission that the Act provides only for total prohibition; and nothing short of that can be implemented by the State. The argument is that the State is allowing, in most of the markets, continuance of the existing licensees as commission agents whose licences have been even renewed, whereas fresh applicants are denied licenses. As is evident from the decision in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, ,

the regulation or prohibition may be in a phased manner and can be implemented in gradual stage. The first effort made when the market committee Acts were enacted was to regulate the commission agents by insisting that none other than those who were licensees should operate in the regulated market areas. The next stage which appears to us is now being taken consists of a total prohibition of trading through commission agents in four markets under G.O.Ms. No. 287 F & A dated 29-4-1989 and by a provision that no further commission agents need be licenced hereafter in the remaining market areas. We find that a decision to implement the policy of the State to regulate the activities of the commission agents in gradual stages is unassailable. We do not, therefore, find any substance in the submission that prohibition shall be complete or none at all or the regulation shall be what it is at present no further.

17. We are in entire agreement with the submission of the Advocate-General that the existing licence-holders and the aspirants, namely, the petitioners are two different classes of persons and therefore there cannot be any discrimination which can only be among persons belonging to the same class of persons. Nor, are we in a position to accept the submission that business community or the existing and potential commission agents shall be treated as whole and as a class and that no sub-divisions shall be made amongst them in the matter of grant of licenses and that any such differentiation will amount to discrimination in violation of Art. 14 of the Constitution.

18. Counsel for the petitioners invited our attention to allegations in the counter-affidavit regarding maipractices which are being committed by some licensed commission agents. Counsel submitted that there are penal provisions in the Act and the Rules to deal with such conduct by a few commission agents and the existence of malpractice by a few can hardly be sufficient justification to prohibit grant of fresh licenses.

19. We have adverted to the policy of the State to gradually eliminate commission agents from the regulated markets, so that there will be no middlemen between the grower and the buyer of notified produce. We have also noted the observations of the Supreme Court as to the justifiable anxiety to eliminate the middlemen. If that policy is sought to be achieved by promulgation of orders, one after the other, for implementation thereof in stages, we are not in a position to find fault with the same. Even apart from the assertion contained in the counter-affidavit, the basic question is of the policy evolved by the State to eliminate middlemen proliferating in the market areas, by placing reasonable restrictions on the grant of further licences to the aspiring applicants. In dealing with this question, we should advert to the fact that the provisions or S. 32 of the Act authorising the State not only to regulate but as well to prohibit the commission agents from operating in the market area. Even assuming that the petitioners are not the persons responsible for the misconduct alleged in the counter-affidavit, we do not find justification to hold that the policy to eliminate middlemen in gradual stages, shall be annulled in these proceedings.

20. Learned counsel for the petitioners submited that renewal of licence to existing licensees or permission to transfer of existing licensees which are allowed under the impugned order are contrary to the policy of the State not to grant new licences. Yet another submission is that some of the petitioners have obtained, licences pursuant to the interim directions issued by this Court, and those persons may be allowed to continue till such time the State completely eliminate commission agents/middlemen as the next stage of implementation of its policy.

21. We are unable to agree with either one of those submissions. It is not disputed that promulgation of G.O.Ms. No. 286, dated 28-4-1989 was followed by G.p.Ms. 287 dated 29-4-1989 completely prohibit operation of the commission agents in 4 notified market areas in the State. G.O.Ms. No. 289 dated 2-5-1989 which is under challenge in this writ petition was issued in implementation of that policy, as is clear from the prefactory portion of that order. It became operative from the date of its promulgation with provision for grant of specific exemptions for the time being from the policy to eliminate commission agents. The polily of elimination was implemented completely in four of the exist- ing market areas without any exception. Implementation of the policy of elimination has necessarily to be under taken according to the exigencies of the situation and hence a decision to implement the policy in a phased manner cannot be held to be illegal or arbitrary. In view of the submissions emphatically advanced by learned counsel for the petitioners, that there is no likelihood in any further elimination of commission agents from the notified market areas, we enquired of the learned Advocate-General as to whether the State was serious in following -- up its policy of elimination of commission agents from the notified market areas: We are assured that the State sticks to its policy or such elimination and further steps are on the anvil.

22. If that be the position, we do not find any substance in the submission that some of the existing licensees have been permitted to continue even by renewal or transfer of licences contrary to the policy contained in G.O.Ms. No. 286. The fact that the existing licensees are allowed to transfer their licenses by inheritance or under specified exigencies or that such licences were renewed till such time as the State implements its policy stage by stage does not appear to us to contravene the policy of the State.

23. The last argument of the learned counsel tthat such of the petitioners who have obtained interim orders of this Court may be allowed to continue is, of course, attractive, but we are not inclined to accept the submission. Since benefits of interim orders cannot oridinarily survive the dismissal of the writ petition. Even otherwise, if we accept this submission we may be conferring on the undeserving a benefit which others of their class may not obtain for the only reason that the petitioners have chosen to file these writ petitions. That will amount to discrimination among aspiring commission agents enabling those who have come to this Court to get benefits which others will not get. These interim

orders will naturally be Vacated when these writ petitions are finally disposed of. Any interim order which the petitioners obtained cannot survive the disposal of these writ petitions. We do not therefore, find any justification for issuing the direction as ought for by the petitioners that the persons who obtained licences by virtue of interim orders may be allowed to continue till such time as the policy of elimination of commission agents is finally implemented by the State.

24. In view of the above findings, we dismiss these writ petitions. There will be no order as to costs. The interim directions which were issued earlier, will stand vacated.

Soon after the judgment was pronounced, Counsel for the petitioners made an oral request for grant of leave to file appeal before the Supreme Court under Art. 134-D of the Constitution of India. We have rested our decision entirely on the decisions of the Supreme Court which have dealt with identical questions of law. We do not, therefore, think that any substantial question of law of general importance which needs to be decided by the Supreme Court, arises in these writ petitions. We therefore, refuse to grant leave.

25. Petitions dismissed.

