(2002) 01 KL CK 0005

In the High Court Of Kerala

Case No : W.A. No. 1164 of 2001

Baby — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)(g), 226, 301, 302

Citation : (2002) 1 KLJ 355

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K.M. Sathyanatha Menon, for the Appellant; Raju Joseph Spl. G.P. for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—This appeal is preferred by the writ petitioner. Appellant herein approached this court seeking the following relief:

Declare as unconstitutional and void and quash or set aside the words and part of Ext.P4 notification "within the State" after the words "poultry farmers" in column 2 and the words "within the State" after the words "turnover of sale of poultry reared by them in their own farm" in column 3 of the notification, by the issue of an appropriate writ, direction or order.

A writ of certiorari was also prayed for to quash Ext.P5 notice dated 16-11-2000 issued by the Salestax Officer, II Circle, Alapuzha. Learned single Judge found no infirmity in the notice. Declaration prayed for was also rejected. Aggrieved by the same this appeal has been preferred. Writ petitioner is carrying on business of running poultry farm by rearing chicken and se?ling chicken, both live and meant. Petitioner having his poultry far under the name Malar Poultry Farm at Door No. / 231, Sukkampalayam, Majara Oonjapalayam village in Palladom Taluk in State of Tamil Nadu. Live chicken from petitioner''s poultry farm in Tamil Nadu is brought down to the petitioner''s place of business at Arattuvazhi in Alappuzha

District for sale. According to the petitioner, he is a duly registered dealer under the Central Sales Tax Act on the file of the first respondent in respect of live chicken, chicken meat, rice and poultry feeds. Petitioner submitted return for the month of October 2000 before the first respondent declaring total turn over of Rs. 21,60,000/-. He claimed exemption for the said turnover on the ground that sale was of the chicken reared by him in his own poultry farm in the State of Tamil Nadu. Government of Kerala in exercise of its power under See.10 of the Kerala Sales tax Act granted exemption and reduction in the rates of salestax for several dealers and on different goods. By SRO No. 1090/ 99 Government of Kerala granted exemption to poultry farmers within the State of Kerala on their turnover of sale of poultry reared by them in their own farm within the State and sale of meat obtained therefrom. By SRO. No. 291/2000 the said exemptions has been extended to ali farmers within the State of Kerala on the turnover of sale of poultry reared by them in their own farm in the State. According to the petitioner, by the said notification exemption is restricted and limited to only poultry farmers within the State of Kerala while the poultry farmers having poultry farms in other States like State of Tamil Nadu are denied exemption in respect of sale of poultry reared by them in their own farm at TamilNadu. Counsel submitted various notifications issued by the State Government granting exemption only to those poultry farms situated in the State of Kerala and denying the same to the poultry farms situated outside the State of Kerala is discriminatory and violative of Art. 14 of the Constitution of ?ndia. According to the counsel, it is also violative of Art. 301 of the Constitution of ?ndia. Counsel submitted subjecting the petitioner to levy of salestax under the Kerala General Sales Tax Act while granting exemption to identical poultry farmers in the State of Kerala is highly discriminatory violating the guarantee of Art. 304(a) of the Constitution. When the matter came up for hearing we directed respondents to file an affidavit detailing the correct position. Affidavit was filed by the Assistant Commissioner (La) II, Office of Deputy Commissioner (Law), Ernakulam. Affidavit reads as follows:

In the instant case chicks or chickens reared in hatcheries or poultry farms within the State is exempted from payment of tax under the KGST Act; eventhough such persons have the liability to pay tax, the same is not collected from them. Therefore the goods namely chick or chicken are not exempted from the levy of tax. Economic development of the State or any part of the State is also a duty cast on the State by the Constitution. As a part of discharge of that duty if the Government is giving any exemption or subsidy to any particular industry in any particular rea or through out the State to a colourable legislation. In order to compensate any such concession or subsidy given by one State the other State can invoke such power by giving exemption or subsidy. Therefore, there is no basis in saying that by the exemption given the goods are differently treated and which is absolutely prohibited under the Constitution.

We find it difficult to accept the contention of the counsel for the petitioner that non-granting of exemption to petitioer is violative of Art. 14 or 304(a) of the

Constitution of ?ndia. Art. 301 of the Constitution reads as follows:

Art. 301 . Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of ?ndia shall be free,

The expressions "subject to the other prov?sions of this part" according to us is very lim?ted. That means while the general rule of freedom of trade and intercourse is enunciated in Art. 301 , it may be subject to restrictions imposed by law under Art. 302 and 303 (2) and by State Legislature under Art. 304 , subject to the limitations prescribed by Arts. 302 and 304 respectively. Apex court in State of Madras v. Nataraja Mudaliyar, AIR 1969 SC 147, Lakshman and Others Vs. State of Madhya Pradesh, , State of Tamil Nadu Vs. Hind Stone and Others, held that expression "freedom" used in Art. 301 does not mean absolute freedom. Power of the Union or State to exerci se legitimate regulatory control is independent of the restrictions imposed by Arts. 302 and 305 . A contention was raised by the counsel for the petitioner that impugncd notification is unconstitutional and violative of Art. 19(1)(g) of the Constitution of ?ndia. We are of the view the said contention cannot be accepted. Not being a fundamental right, the infringement of Art. 301 cannot be challenged under Art. 226 of the Constitution on the ground thatit violates Art. 304 of the Constitution enables the State Legislature to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. Supreme Court in Video Electronics Private Ltd. and another v. State of Punjab, (1997) 77 STC 82 held that Art. 304(a) cannot be read in isolation. It is to be read in the context of other provisions in the constitution and also the obligations of the State under Art. 39 and 38 of the Constitution cannot be given a goby. Viewed in the above mentioned legal perspective we are of the view the contention of the learned counsel for the petitioner cannot be sustained. We fully agree with the view of the learned single Judge.

Appeal is dismissed.

