

(1958) 10 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 681 of 1957

Balde Mukundayya and Another

APPELLANT

Vs

State of Andhra Pradesh, Hyderabad and Another

RESPONDENT

Date of Decision : 01-10-1958

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Hyderabad Abkari Act, 1316 — Section 4, 43, 7

Citation : AIR 1959 AP 394

Hon'ble Judges : P. Chandra Reddy, C.J.; Krishna Rao, J

Bench : Division Bench

Advocate : B.V. Subbarayudu, R. Sardar Singh and B.V. Narasimham, for the Appellant; M.S. Ramachandra Rao, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This is a petition under Article 226 of the Constitution of India to quash the order of the Board of Revenue in file No. 45/87/1956, dated 31-7-1957 passed in confirmation of the order of the Commissioner, of Excise, Hyderabad dated 10-12-1955.

2. The petitioners obtained a contract from the Government of Hyderabad for sale of liquor in the Khammam group of six shops for the year 1950-51, having become the highest bidders in the public auction. They paid the rentals for a few months regularly and thereafter defaulted in paying the same. This led the Department to start proceedings for the realisation of the arrears of rentals as arrears of land revenue.

At that stage, the petitioners approached the authorities concerned to pay them compensation for the loss they sustained as result of the shifting of the shops from the middle of the town to sites outside the abadi selected by the Sites Selection Committee of Khammam and also on account of the shifting of some of the shops situated on the borders between the erstwhile Hyderabad State and the Andhra state to residential quarters nearer his shops.

3. The request of the petitioners was rejected by the Commissioner of Excise which decision was confirmed in appeal by the Board of Revenue. The matter was then taken up in revision before the Minister for Revenue. On the representations made by the petitioners, the Minister thought that owing to the shifting of their shops some dislocation was caused to their trade resulting in some loss and that it was proper that something should be done for them in that regard. He, however, felt that there was no material to enable him to compute the losses. He therefore, remanded the matter to the Commissioner of Excise for estimating the losses.

4. The Commissioner who was acquainted with the situation came to the conclusion that, in fact, the petitioners had not sustained any losses. It also appears from his order as also from the counter affidavit filed on behalf of the respondents that in regard to the first ground of the complaint the persons that were taking part in the auction were informed of there being a likelihood of the shops being shifted from the centre of the town to places outside the town. This is how the relevant part of the order reads :

"The relevant proceedings of the said committee were also read out along with their translation in the local language in the presence of the Additional Collector who was then presiding over the auction. Signatures of some of the intending bidders present in the auction hall were also obtained on the said announcement. Among the signatories Samudrala Narasiah (Successful bidder for the liquor group of Khammam) also happens to be one, who has affixed his signature below the announcement."

Coming to the other complaint, it was thought that only a few of the border shops were shifted. The Excise Commissioner stated the position in that regard as follows :

"It should here be stated that out of five shops the nearest village to which one shop was shifted lies at a distance of 13 miles from Khammam while the distance of the remaining 4 shops range from 17 to 20 miles from Khammam."

5. Thus, it is seen that none of the shops were shifted to any place in proximity to the Khammam group to affect the consumption of liquor in the shops in question. It is also pointed out by the Commissioner that this had not in any way affected the sale of liquor in any of the shops. The order of the Commissioner was affirmed by the Board of Revenue. The order sought to be quashed recites inter alia :

"The figures of consumption also establish the falsity of alleged losses."

6. On the material that was available to them, they thought that there was no ground for awarding any compensation to the petitioners. It is to challenge the validity of this order that the jurisdiction of this Court under Article 226 of the Constitution has been invoked.

7. One of the grounds urged in support of this petition is that the Commissioner

and the Board of Revenue who were subordinate to the Minister, had only to give effect to the order of the Minister, and could not re-open the question whether in fact any loss had been sustained or not. At the outset, it may be mentioned that the Minister had not given any direction to the subordinates to carry out any order. He only directed the Commissioner to ascertain the losses said to have been incurred by the Commissioner. In that situation, it cannot be said that the Commissioner was not competent to go into the matter & find out whether, in fact, the petitioners were put to any loss. It is not as if there was any final order of the Minister which had to be put into execution by the authorities concerned. Surely, it was open to the Department concerned, to enquire into the matter and reach a conclusion on the facts before them in regard to the point in issue. We are also not pointed to any provision in the enactment under which a Minister could direct the Department to pay compensation to the lessees on any ground.

The relief which the petitioners claim in that behalf is damages or compensation for the alleged breach of obligations of the terms of the contract. That is an incident of contract and if the petitioners feel that there has been any breach thereof, their remedy is to institute a suit for recovering damages. Be that as it may, we fail to see how the quashing of the order of the Commissioner or the Board of Revenue would give any relief to the petitioners. This Court will stultify itself by passing order to which no effect can be given; even if the impugned order is set aside, it does not carry the petitioners anywhere.

8. It is next urged that Section 43 of the Hyderabad Abkari Act No. 1 of 1316 Fasli which, according to the learned counsel for the petitioners, governs the present case as the contract was entered into in 1950, is ultra vires the powers of the Provincial Legislature. Incidentally, it may here be mentioned that in January, 1954, Section 43 was amended and that portion which dealt with the procedure for recovery of the arrears was replaced by the present Section 7.

The argument that was pressed upon us was that Section 43 is an unreasonable piece of legislation in that while it permits the State to realise the amounts due to them by coercive process, the other party to the contract is obliged to seek his remedies in a civil court to enforce the obligations incurred by the Government. It is also agreed that u/s 43 which is now replaced by Section 7, an ordinary citizen who has taken on lease from the Government a right to vend liquor, is deprived of the right to deny his liability and make counter claims in regard to the same contract.

It is further submitted that in regard to the contracts entered into between the State and the private citizens, the State acts in a commercial capacity and it is incompetent for the legislature to pull the State in a privileged position and to do so, is violative of the principle underlying Article 14 of the Constitution. Alternatively it is contended that the relevant provision offends against Section 54 of the Indian Contract Act. We cannot assent to any of the propositions formulated by Sri. Subbarayudu.

9. The theory that in granting leases for the sale of liquor the State is acting in a commercial capacity and it should therefore be put on the same par with the individual citizen, is not borne out by either the general principles or the provisions of the Hyderabad Abkari Act. It is convenient at this stage to extract the terms of Section 43, and 4 which are impugned as infringing the doctrine enshrined in Article 14 of the Constitution. Section 43, as it stood prior to the amendment in 1954, runs as follows :

"All Abkari duties, lease moneys or moneys due to Government from the person primarily liable therefore or from his surety, or in the cases mentioned in Section 7, the moneys due to the defaulting lessee from his Shikmidars or Vendors, shall be recoverable as arrears of Land Revenue. Section 4 of the Act reads thus :

"Subject to such conditions as may deem fit, the Government may grant, for a fixed period to any person at any place,

(1) a lease jointly or severally for the supply, manufacture or sale of any inebriating or intoxicating drug or mohwa flowers

Explanation: A lease shall not take effect until the Collector or any other competent officer has issued a licence in the prescribed form.

(2) The Government may confer on any officer the power mentioned in Sub-section (1). Section 43 extracted above as embodied in Section 7 is in these words :

(1) "All duties, taxes, fines, fees and other moneys payable to Government under any of the provisions of this Act or of any licence or permit issued under it, and all amounts due to Government by any grantee of a privilege or by any licensee under this Act or any person on account of any contract relating to the excise revenue may be recover-ed from the lessee or his surety or every such person who may have occupied the business relating to such lease to the extent of the amount due from him to the lessee in respect of the period of occupation of such person, as if they were arrears of land revenue."

It is seen that authority is vested in the Government to realise the amounts payable under the various heads enumerated in that section as arrears of land revenue. It is this power that is being questioned as being unreasonable and also encroaching on the principle of equality between the citizen and the State.

10. It is unnecessary for us in this case to express an opinion as to whether a State could be regarded as a "person" within the ambit of Article 14 of the Constitution and whether that Article does not contemplate a State meeting out equal treatment as amongst its various citizens, as this petition can be disposed of on other points. We do not think that the Government can be said to be carrying on a commercial activity in granting contracts to private citizens; nor can it be said to have "descended into the arena of competition" with private citizens in leasing out the right to sell liquor u/s 4 of the Act.

It is by selling contracts in public auction to! the highest bidder that the Government is able to realise the Abkari Revenue. It therefore pertains to the realm of ordinary functions and duties of a Government. There can, therefore, be no question of either Section 43 of the old Act or Section 7 of the Act as amended conferring a privileged position on a State when it engages itself in trade or commerce or the legislature treating the State on an equal footing with a private citizen. That being so, the decisions relied on by the learned counsel do not render, much assistance to him.

11. Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, related to a case where the State Government wanted to run its own buses. One of the questions raised there was whether the transport authorities who were charged with the duty of granting permits, could impose certain restrictions either on the routes on which the private busowners could ply their buses or on the number of permits that would be granted to implement the policy of the State to run buses of their own on some of these routes. It is in dealing with these problems that certain observations were made by some of the learned Judges in the decision cited above; namely;

"..... when the state engages in business or commerce such as is carried on by a private individual or corporation it must subject itself to the same obligations as are imposed on, and place itself in the same position as a private individual or corporation except in the matter of taxation."

But these observations have no bearing on a situation where the State undertakes an activity as incidental to its ordinary functions of Government. In fact, Malik C. J. observed that Article 14 could not be relied on in support of the argument that the State should be put on the same footing qua that business as any private citizen, when the undertaking is in relation to the normal functions of the Government. Further, we do not think that the offending provisions in any way constitute an infringement of the principle of Article 14 of the Constitution. Article 14 does not stand in the way of a classification being made.

All that it contemplates is that the classification should be based on an intelligible basis and there should be nexus between the object of the enactment and the reason for the classification. There can be little doubt in this case that such a connection exists. The purpose of the statute is the realisation of Abkari revenue and the reason for the classification is an expeditious collection of the amount.

The State which has a heavy responsibility of carrying on the administration for which purpose the revenues must be readily realisable, should not be driven to a Civil Court to collect the amounts that are due to it either by way of rentals or licences, permits etc., while the lessee to establish any claim he may have against the State either by way of set-off or damages for breach of contracts, could resort to a civil Court to have his remedies worked out.

12. This opinion of ours is re-inforced by authority. In *Kesneoprasad v. State of Madhya Pradesh*, (S) AIR 1955 Nag 177, a Bench of the Nagpur High Court held

that Section 225 of the C. P. Land Revenue Act, 1917, which is analogous to the offending provisions, was intra vires the State legislature. The learned Judges took the view that the coercive processes issued against the petitioners therein did not offend against either Article 14 or Article 19(5) of the Constitution. They also remarked that regulation of sale of excisable articles and realisation of fees in respect thereof was one of the normal functions of the State. They were not also prepared to subscribe to the view that the concept of the word "person" occurring in Article 14 takes in a State also. However, as we have already stated, we are not called upon to decide that point now.

13. In *Attelliswamy v. Hyderabad State*, AIR 1955 Hyd 109, it was laid down by a Bench of the erstwhile Hyderabad High Court that Section 43 of the Hyderabad Abkari Act had not in any way violated Article 14 of the Constitution. That case is on all fours with the present one and we express our respectful agreement with the principle enunciated there.

14. To a similar effect is the judgment of Subba Rao J. in *R. Kuppuswamy Gramani Vs. State of Madras and Another*, . The learned Judge ruled that Section 52 of the Madras Revenue Recovery Act (II of 1864) was not opposed to Article 14 of the Constitution. It was stated therein that there was a reasonable basis for that classification, since the State had manifold activities permeating the daily life of society and in order to enable it to function efficiently, it had to realise and collect its revenue expeditiously, so that it might spend the re-venue on those various activities. The same reasoning applies to the provisions in question, since the State has to gather its revenues as expeditiously as possible to enable it to discharge its normal duties. It follows that there is a reasonable basis for making the classification between the State and the ordinary private citizen.

15. We cannot also give effect to the argument that there are reciprocal promises or mutual obligations between the parties. There is no foundation for this argument because there is no provision in the Hyderabad Abkari Act or in the rules framed thereunder casting any obligations on the Government. This is a taxing enactment and it does not impose any liability on the Government. There is, therefore, no question of any agreement giving rise to mutual obligations or reciprocal promises. The learned counsel for the petitioners, has not been able to draw our attention to any provision in the enactment or in the rules by and under which the Government undertakes any obligation.

16. Nor is it a ground for striking down the enacted legislation merely because the private citizen is denied the right of prolonging the payment of amounts due to Government. If he had any right of set-off or if he wants to claim any damages under any head, there is action at common law which could afford complete satisfaction. There is, therefore, no substance in the contention that two different standards are laid down by the provisions in dispute, one for the Government and the other for the ordinary citizen in regard to reciprocal promises arising under the same contract. We are not shown, how these sections in any way contravene Section 54 of the Indian Contract Act. In this view, it is

unnecessary for us to consider the doctrine of pith and substance.

17. On this discussion it follows that all the contentions urged on behalf of the petitioners are devoid of substance and have to be negated. In the result, the petition is dismissed with costs, which we fix at Rs. 250/-.