(2002) 04 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5149 of 2002

C. Jayashree Sarathy and Another — APPELLANT

Vs

Government of Andhra Pradesh and Another — RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALD 477 : (2002) 4 ALT 1

Hon'ble Judges : Ar. Lakshmanan, C.J;Gopalakrishna Tamada, J

Bench : Division Bench

Advocate : C.P. Sarathy, for the Appellant; Adv.-General, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, C.J.

This writ petition was filed by the petitioners seeking suitable directions to the respondents not to send the Members of Legislative Assembly on foreign tour as per the press report dated 10-3-2002.

2. According to the petitioners the Chief Minister has already visited number of countries and, therefore, instead of sending these MLAs., his dynamism and knowledge can be availed of. Since the Government is planning to indulge in expenditure without meeting the needs on priority basis, suitable direction should be issued to the Government not to send the MLAs to foreign countries and thereby incur expenditure which would affect the public exchequer. According to the petitioners since the financial condition of the State is unsatisfactory and the State is heavily indebted to the World Bank and substantial amount being paid to the World Bank towards interest this expenditure if incurred by the State will not serve any purpose and that the theme of gnan Andhra Pradesh (knowledge State) can be achieved if funds are allotted and properly utilised to remove illiteracy and poverty. The petitioners also expressed their grievance that a microscopically small percentage of budget

is allotted to the Courts of law and, therefore, the practice of sending the MLAs should be stopped forthwith. Our attention was drawn to the paper reports.

3. Counter-affidavit was filed by the State though one K.R.W. Yesudas who is working as Officer on Special Duty and Ex. Officio Joint Secretary to Government (Protocol), General Administration Department, The background to the policy decision of the Government to send the Legislators to different countries to study the developmental schemes in such countries which were successfully implemented during the past few years with spectacular improvement in their economy has also been stated in extenso in the counter-affidavit. It is also mentioned that by and large the economies of the Asian countries are similar and each country can derive benefit from the progressive measures being taken in other countries. The Government of Andhra Pradesh has sponsored the scheme to depute Legislators with information to the countries concerned. It is also stated that this is not a mere tourist programme but it is a programme essentially devised to secure the benefits of the expertise available in those countries. The respondent has specifically denied the contention of the petitioners that the financial position of the State is unsatisfactory and it is indebted to the world Bank. As a matter of policy the Government has proposed to depute the Legislators on a study tour to certain countries viz., Malaysia, South Korea, China, Singapore, etc., which have recorded extraordinary growth rates in their economies during the last two decades and that the study tour will also allow the legislators to observe and experience the first hand developmental activities in those countries and advise the Government on implementation of similar developmental activities in the State of Andhra Pradesh in order to achieve the goal of Swarnandhra Pradesh.

4. Paragraphs 7 and 8 of the counter-affidavit can be reproduced hereunder for appreciating the stand of the Government:

It is also submitted that the Government is also taking adequate care in finalizing the itinerary of the study team. Each study team tours the countries for about 14 days including the journey period. Out of total period of (10) days (leaving out Saturday and Sunday) the team will have official meetings on (7) days with elected representatives, officials of the respective Governments and also with the beneficiaries in these countries. In addition the study team will also visit the places which have been developed into tourist centres on Saturday and Sundays and study the various steps taken by their Governments in development of the tourism sector. The tentative tour programme is as follows:

(1) 5-5-2002 to 19-5-2002 : team 1 (2) 12-5-2002 to 26-5-2002 : team 2 (3) 9-6-2002 to 23-6-2002 : team 3

(4) 16-6-2002 to 28-6-2002 : team 4 (5) 23-6-2002 to 6-7-2002 : team 5 This Government is also taking adequate precaution and steps to minimize the expenditure as far as possible to achieve more results, The contention of the petitioners deserves no consideration and it may therefore be rejected.

5. A reply affidavit was filed by the petitioners. According to the petitioners it is difficult to verify how the Legislators within their short time will be able to implement the visions of the developed countries and that instead of sending the Legislators the Ministers can visit the countries to get the information regarding the spectacular growth of the countries and impart their knowledge to the legislators. Further a big team of Legislators need not visit the countries to acquire the knowledge and that the Government of India is also sending official delegates and parliamentary committees to different countries. But all the Members of the parliament are not being sent to different countries. According to the petitioners an amount of Rs. 4.00 crores is not a small amount when even in Andhra Pradesh millions of people are suffering due to poverty, starvation and illiteracy and such an amount can be diverted for better purposes; The Legislators who are the representatives of the masses have to strive hard to develop their constituencies and not to visit the foreign countries. In regard to the contention that the Government has taken a policy decision to send these Legislators for a study tour to the foreign countries it is submitted that this Court has not ample powers to interfere in the policy matters if the discretion regarding the policy is not properly taken.

6. We heard Sri C.P. Sarathy, the learned senior Counsel for the petitioners and Sri T. Ananta Babu, the learned Advocate-Counsel of the State.

7. Sri C.P. Sarathy reiterated the submissions made by the petitioners in the writ affidavit and reply affidavit and also cited decisions in J. Jayalalitha Vs. Government of Tamil Nadu and Others, , A.K. Singh and Others Vs. Uttarakhand Jan Morcha and Others, .

8. The learned Advocate-General drew our attention to the policy decision taken by the Government and also the various averments and statements made in the counter-affidavit. The learned Advocate-General relied on the decisions reported in Balco Employees Union (Regd) v. Union of India 2001 AIR SCW 5135.

9. We have given our thoughtful consideration to the rival submissions made by the respective parties. A perusal of the counter-affidavit would clearly go to show that the Government have very clearly and succinctly spelt out its policy decision to send the Legislators of the Assembly to different countries to study the developmental schemes in such countries which were successfully implemented during the past few years with spectacular improvement in their economy. It is mentioned that by and large the economies of the Asian countries are similar and each country can derive benefit from the progressive measures being taken in other countries. With this view the Government of Andhra Pradesh has sponsored this scheme to depute the Legislators with information to the countries concerned. It has been clearly mentioned that this is not a mere tourist programme and that the programme is essentially devised to secure the benefits of expertise available in those countries and that our ambassadors in those countries have been contacted and they are expected to devise programmes in consultation with the local authorities bearing in mind that the object of the

programme is for the Legislators to familiarize themselves with the constructive developmental programmes being implemented in those countries so that those could be emulated in our State. It is also mentioned that the Hon''ble Chief Minister of the State has already addressed the Union Minister for External Affairs for instructing the Indian ambassadors in those countries to provide all necessary co-operation and devise programmes in consultation with the local Governments and authorities.

10. To illustrate how new and innovative policies in other countries have helped to stimulate the respective national economies and resulted in the increase in the level of economic growth, several instances have been mentioned in paragraph 2 of the counter-affidavit. It is seen from paragraph 2 that the State of Andhra Pradesh has set itself a very ambitious economic development plan outlined in the Vision 2020 document envisaging economic growth rate of 9% to 10% per annum during the next two decades. The countries proposed to be visited viz., Singapore Malaysia, Thailand, South Korea and China have, through a variety of means, viz., following policies well suited to the economies of developing countries, achieved spectacular growth during the last two decades and attained the high levels of development which we are trying to achieve in Andhra Pradesh.

11. It is stated in the counter-affidavit that our Legislators will be able to study the implementation of Malaysian Government''s Vision 2020 plan which was instrumental in the emergence of Malaysia as a progressive economy with a per capita income of around US $ 3500 and annual exports of about US $ 90 billion.

12. Likewise, lessons are there to be learnt from Korea which has a mass contact community development programme called "Saemaul Undong" akin to the Janma Bhoomi programme in the State of Andhra Pradesh. It is mentioned that in the year 1970 the per capita income of South Korea was less than the per capita income of India. In view of "Saemaul Undong" programme South Korea could become the 13th industrial economy in the world with a per capita income of around US $ 10,000.

13. So also, in China the Legislators will be able to study how it has achieved spectacular growth based upon its unique strategy of securing private foreign investment within the framework of socialist/ communist State controlled environment.

14. In Singapore the Legislators will also study how the meagre assets of a resource-less city State have been transformed into a bustling commercial centre.

15. In Thailand the Legislators can learn how it has been able to keep pace with its dynamic neighbour through a variety of imaginative development programmes with resultant transformation of its rural population also.

16. We have already extracted paragraphs 7 and 8 of the counter-affidavit. It is stated that special care is being taken to finalise the itinerary as a study tour. In addition to the study tour the Legislators will also visit the places which have

been developed into tourist centres on Saturdays and Sundays and study the various steps taken by their Governments in development of tourism sector. The tentative programme has also been mentioned in paragraph 7. It is submitted that the contention that all the 254 Legislators are being sent to foreign countries is not correct. The Legislators are being sent to various countries in 5 different teams and also on different dates. The Government have also assured in the counter-affidavit that adequate steps and precautions have also been taken to minimise the expenditure as far as possible to achieve more results. The study tour also envisages visit to certain projects which have the potential of replication in our State, The study tour, according to the respondents, is an interactive process which is not possible otherwise and such interaction, in our opinion, is expected to help the Legislators to better conceptualise the programmes more beneficial to the State and their implementation, all of which the State is actively pursuing in its efforts to achieve the objective laid out in Vision 2020 document and bring in all round social and economic development of the State.

17. In our view by sending these Legislators for study tour they will have exposure to development in other countries and thereby acquire more expertise and knowledge in regard to developmental activities and that the State of Andhra Pradesh and the people of this State will be beneficial through the additional knowledge and experience the Legislators would gain since the object of the programme is for Legislators to familiarize themselves with the constructive development programmes being implemented in other countries so that those could be emulated in our State. Therefore, with a genuine view the Government of Andhra Pradesh is sending these Legislators to the foreign countries since it felt that the exposure of the Legislators to different policies and programmes of those countries would provide them with wealth of knowledge and ideas which could well be utilised in formulating the economic policies and necessary Legislative framework for the accelerated and broad based development of the State. The purpose and object of sending the legislators to the foreign countries, in our view, is legitimate and these legislators are being sent to foreign countries with a legitimate expectation that the programme which they are going to attend would provide them with knowledge and ideas which could well be utilised in formulating economic policies and the necessary legislative framework for the development of the State of Andhra Pradesh.

18. Much has been argued by the learned Counsel for the petitioners that a sum of Rs.4 crores is being spent for an improper use. We are unable to countenance the said submission. In our opinion, all the Legislators who are being deputed would certainly be benefited by this study tour and that the knowledge and information which will be acquired by them will be utilised in formulating economic policies and for the development of our State. Considering the avowed object of the tour we are of the opinion that the expenditure of Rs. 4 crores and odd is comparatively an insignificant expenditure for a State like Andhra Pradesh and it cannot be considered as an improper expenditure. In our view compared

to the advantages to be derived, the expenditure is minimal and expert knowledge cannot be quantified in terms of money. We say that it is not improper expenditure and we are bold to say that this expenditure is a constructive investment for the future of the State. It is also permissible to the State to send the Legislators who are not ordinary segment of the population. They are the persons vested with the authority to rule under a democratic set up and it is they who take policy decisions and these Legislators who arc the policy makers have been chosen by the people to represent their constituencies in the State Assembly. Those people are being deputed to visit the foreign countries. It is not out of place to mention that the decision to send these Legislators to foreign countries is a composite decision of the entire legislative body and the representatives of all the political parties are being sent to the foreign countries. The persons who are being deputed to foreign tour are the representatives of the people who make laws and policy decisions. The people of the State have entrusted on these representatives the power to govern. They are being sent not to the developed countries but to the developing countries which have shown astronomical development in the economic scenario of those countries. Therefore, there is nothing wrong or improper on the part of the State of Andhra Pradesh to send these Legislators to different countries to study the progress made by those developing countries and utilise the wealth of knowledge and ideas acquired by them in formulating the economic policies and the necessary legislative framework for the welfare of our State.

19. The decision reported in J. Jayalalitha''s case (supra) was cited by the learned Counsel for the petitioner to say that any taxpayer in the State has a right to challenge misuse or improper use of any public property by anyone, including the political party in power, where large sums of taxpayers'' money had been spent to build such public property. This case will be of no assistance to the petitioners. We have already discussed with respect to the argument advanced by the learned Counsel for the petitioners on this aspect. In our view the above judgment will apply only to the cases in which improper use of any public property or misuse of any public money is involved. We have already opined that the expenditure is not an improper expenditure but is a constructive investment for the future of the State.

20. In the decision reported in A.K. Singh ''s case (supra) the High Court without trial and without even considering the evidence ordered the Government to pay Rs. 10,00,000/- each to the dependents of the persons who died in police firing and Rs. 10,00,000/- each to be given to the victims of molestation and Rs. 50,000/- each for the 398 persons who were detained by the police. It was argued by the learned Counsel for the appellant therein who made scathing attack on the rationale of the High Court in fixing such huge sum as a compensation at a premature stage and it was contended that while imposing such heavy liability on the State the High Court has not made any attempt to discuss the relevant questions which were to be answered for fixing the liability of compensation and for quantification of the amount of compensation. The

Supreme Court was satisfied that there was ample substance in the contention raised by the learned Counsel in that regard and also observed that the direction for payment of compensation was clearly unsustainable and it was liable to be vacated. The Supreme Court has made it clear that no further amount need be paid as compensation pursuant to the judgment of the High Court. The Supreme Court in paragraph 16 of the judgment also has observed with respect to the direction by the High Court suggesting upliftment of the Kumaun and Garhwal that they are not the only regions to be attended by the State Government or the Central Government. Every part of the country requires further development and if the High Courts were to issue such direction for each region using different writ petitions the financial policy of the State may have to be restructured by the Governments. The Supreme Court has also observed that judicial creativity has no doubt expanded to newer dimensions in recent past but that is no justification for using judicial power for imposing such unbearable burden on the State which in turn would be compelled to extract money out of common man''s coffers to meet such massive financial burden. In our view this judgment has no relevance to the question at issue. In this case the Supreme Court was concerned with the direction given by the High Court in respect of the people of Kumaun and Garhwal. In the instant case we are of the opinion that the money is being used out of common man''s coffers to meet the financial burden but at the same time this Court, without any hesitation, can say that such financial burden is being put for a laudable purpose and is also being spent for all the Legislators and not a specified Legislators belonging to a particular political party.

21. The Supreme Court in a very recent decision in BALCO''s case, (supra) held that the policy decision of the Union of India to disinvest and transfer 51% of the shares of public sector undertaking (BALCO) in favour of private party is a policy decision and it is in respect of economic matters and therefore it cannot be interfered with unless the policy is contrary to the Act or Constitution and that the appropriate forum for testing the policy is the Parliament but not the Courts and the principles of natural justice have no role to play and that the employees of Balco cannot demand a right of hearing merely because BALCO is regarded as a State nor can claim right of continuous consultation at different stages of disinvestment process.

22. In M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, . The Supreme Court held where a policy of Government is not touched by mala fides and is not unfair, unreasonable or arbitrary the fact that the policy may hurt business interest of a party would not justify interference by the judiciary and that it is not within the province of the judiciary to test the correctness of a policy or to lay down whether such policy ought to be changed or to remain static as long as the policy is not tainted by mala fides, arbitrariness, irrationality, perversity, unfairness or unreasonableness.

23. In Bhavesh D. Parish and Others Vs. Union of India and Another, , the writ petitioners who are shroffs engaged in the business of providing credit to the

members of the public challenged the constitutionality of Section 45-S of the Reserve Bank of India Act on the ground that the facility of deposit and withdrawal of the funds made available by the petitioners therein to the customers like agriculturists such as cotton farmers, tobacco farmers, vegetable producers, etc., who had a seasonal need for finance and a periodic surplus of investible funds, would cease. This section restrained the firms of or individual shroffs from accepting any deposit from the public for the purpose of their business activities and was, therefore, alleged as violative of Article 19(1)(g) of the Constitution of India. The Supreme Court held that the said impugned section does not in any way prohibit or restrict any unincorporated body or individual from carrying on business it likes and that there can be no unrestricted fundamental right to accept deposits from the public. The Supreme Court has held that economic policy of the State should not be lightly interfered with and that the scope of judicial review is limited. The Supreme Court has also further held that the question of restricting such financial activity by unincorporated body is a question of economic policy as it involves regulation of economic activities by different constituents. In such matters of economic policy the Supreme Court does not interfere with the decision of the expert bodies which examined the matter.

24. In the instant case the policy decision has been taken by the Legislators considering various aspects of the matter and of the welfare of the State of Andhra Pradesh and the economic policy of the State. In such matters this Court will not interfere with the decision of the law makers who have examined the matter.

25. For the foregoing reasons the writ petition fails and is accordingly dismissed. No costs.

