(1957) 08 MAD CK 0003

In the Madras High Court

In Re: S. Venkatakrishnan

Date of Decision : 12-08-1957

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)(g), 226
Imports and Exports (Control) Act, 1947 — Section 3

Citation : AIR 1958 Mad 218 : (1958) 71 LW 100 : (1958) 1 MLJ 338

Hon'ble Judges : P.V. Rajamannar, J

Bench : Single Bench

Judgement

P.V. Rajamannar, C.J.—We agree with the conclusion of Rajagopala Ayyangar, J., against whose judgment this appeal has been filed, that

the appellant is not entitled to either of the reliefs sought by him under Article 226 of the Constitution of India. The twofold prayer of the appellant

was for the issue of a writ, order or direction directing the respondent, that is, the Joint Chief Controller of Imports and Exports, Madras, to

forbear from issuing any license or allotment memo, to any co-operative society in the Madras State for the export of dried chillies to destinations

other than Pakistan and hard currency countries and cancel such licences or allotment memos already issued and give consequential directions to

the respondent to consider the grant of licence to the petitioner without any discrimination.

2. Section 3 of the Imports and Exports (Control) Act, 1947, was enacted to continue, for a limited period, powers to prohibit or control imports

or exports in public interests. Section 3 of this Act empowers the Central Government, by order published in the official Gazette, to provide for

prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions as may be made by or

under the order, the import, export, carriage coastwise or shipment as ships'' stores, of goods of any specified description. The Exports (Control)

Order, 1954, which was made in exercise of the powers conferred by the Imports and Exports (Control) Act, 1947, provided for the issue of

licences for import and export of goods specified therein. Clause 7 of this Order, later alia, declared that nothing in the Order shall apply to any

goods exported by or under the authority of the Central Government. Schedule I to the Exports (Control) Order specified the goods in respect of

which an absolute restriction was placed on exports except under and in accordance with the licence granted by the Central Government or by any

officer specified in Schedule II to the Order. Dry chillies is one of the commodities mentioned in Schedule I. In view of the above provisions it is

clear that except under and in accordance with the licence granted by Government, no person can export dry chillies. It was not contended before

us that the provisions of the Imports and Exports (Control) Act, 1947, or the Exports (Control) Order, 1954, was ultra vires and unconstitutional.

It is common ground that though it was open to the Government to issue licences for the export of chillies, as a matter of policy, the Government

decided by an executive order in May, 1956, that the export of chillies should be altogether stopped. This total ban really amounted to the

statement of policy and the Government did not alter, any of the provisions of the Exports (Control) Order or the Imports and Exports (Control)

Act. Under clause 3 of the Exports (Control) Order it was open to the Central Government to grant licences for the export of dry chillies. Only

they decided in the interests of the public presumably that there should be no issue of such licences. While this policy was being followed, an

exception appears to have been made in the following circumstances. The Food Commissioner of the Government of Ceylon wanted a supply of

2,500 tons of chillies and the Government of India decided as a special case to release 2,500 tons of chillies for export to the Ceylon Government.

In effect the transaction was really permission granted to another Government, by its representative, to purchase and export to that country a

specified quantity of dry chillies from this country.

3. The Government of Ceylon, that is, the Food Commissioner to that Government, was advised to make the purchase of chillies up to 2,500 tons

from co-operative societies recommended by the State Government and such a list of societies was forwarded to him. It is only after evidence of

purchase by the Food Commissioner of Ceylon was furnished by any particular co-operative society that a licence was directed to be issued to

such society and only for quantities purchased from each of them. There was no general licence issued to any co-operative society to export any

quantity of dried chillies which they may choose to. In effect, the transaction was nothing more than a special permission given to the Government

of another country to purchase and take to their country a certain quantity of chillies and the co-operative societies were only indicated as the

vendors of such chillies and to facilitate the export, the particular co-operative societies which sold the chillies were granted the licence to actually

make the export of that quantity purchased from them. The Joint Chief Controller of Imports and Exports gave a list of approved co-operative

societies and it was perfectly open to the Food Commissioner to purchase the chillies from any of these societies. It depended upon the stock with

each of the societies and the convenience of the Food Commissioner or his representative. We see here no change of policy of the Government in

favour of co-operative societies in general. It is not as if the Government intimated their decision to make an exception to the general ban in favour

of co-operative societies only. On this view of the facts we fail to see how the appellant can sustain his contentions that Article 14 or Article 19(1)

(g) has been violated in any manner. The appellant might have an arguable case if the Government had published a notification or even issued a

circular that only co-operative societies may be granted licenses for export of day chillies under clause 3 of the Exports (Control) Order, but no

private party should ever be given a licence. But this is not the case. Even the co-operative societies have not been given general licences to export

chillies. Their right to export is confined to the quantity which the Food Commissioner might choose to purchase from any of them. If the

Government choose the co-operative societies as the instruments to complete the transaction with the Ceylon Government for the purchase and

export of the chillies, we fail to see how it amounted to discrimination. The Government could not obviously choose anybody at random and if they

choose societies which are not mere profit-making organisations like private bodies, we see no arbitrariness or favouritism.

4. We are unable to follow the appellant''s contention that the fundamental right guaranteed under Article 19(1)(g) has been in any manner violated by the special permission granted, to certain co-operative societies to export quantities of dry chillies. As we mentioned at the outset, there is no statutory rule or order prohibiting the issue of licence under Clause (3) of the Exports (Control) Order. It is true that that clause prevents the export by any person or body of persons without a licence. Such provisions have never been held to be in derogation of fundamental rights because such provisions have always been enacted in the interests of the public and for the regulation of trade and for the conservation of essential commodities. The clause is still there. It may be that the Government at one time decided not to grant any licence under clause 3 for the export of dry chillies. But when conditions altered, there is nothing to prevent the Government to change that policy. It is up to persons interested to make representations to Government and convince that an absolute ban is no longer necessary; but it is not the province of this Court to indicate to the Government that their policy should change. All that we can say is that there has been no violation of any fundamental right or the principle underlying Article 14, so far as the appellant before us is concerned.

5. A subsidiary point was pressed before us, namely, that the permission granted to the co-operative societies to effect the exports was not published in the Gazette. With great respect to Rajagopala Ayyangar, J., we must confess we were not impressed by the argument even at first sight. Indeed we are unable even to follow the argument. The Chief Controller of Imports and Exports, New Delhi, informed the Joint Chief Controllers of Madras, Bombay and Calcutta that licences may be issued to certain co-operative societies to export quantities of dry chillies which may be sold to the Ceylon Government. We fail to see why this departmental instruction should be published in the Official Gazette. As Rajagopala Ayyangar, J., observed, there is no statutory requirement that policy decisions of the Government in exceptional circumstances should be published in the Official Gazette. We see nothing in this objection. The appeal is dismissed.