

(1958) 04 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 249 of 1957

K. Bhaskaran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-04-1958

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1)

Citation : AIR 1958 Ker 333

Hon'ble Judges : Varadaraja Iyengar, J; M.S. Menon, J

Bench : Division Bench

Advocate : T.K. Narayana Pillai N, for the Appellant; C.M. Kuruilla, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner is a contractor who executes works for Government departments. He wanted to tender for the construction of latrines in the Head Office of the Director of Public Instruction, Trivandrum, and applied for the necessary chalan for depositing the earnest money on 11-6-1957.

2. The petitioner's application, Ext. P1, reads as follows :

"I request you to be so good as to issue necessary counter-signed chalan, for depositing the earnest money for the work of constructing a latrine for ladies in the Office of the D. P. I."

Ext. P2 of the same date is the reply that he received from the 2nd respondent, the Executive Engineer, Education Division, Trivandrum :

"With reference to his application dated 11-6-57, the contractor is informed that he will not be given any chalan as he has been black-listed."

3. The petitioner contends:

(1) that his fundamental right to practise his profession is infringed by the

"blacklisting"; and

(2) that the order of "blacklisting" has been passed without giving him an opportunity to present his case and thus violates an elementary principle of natural justice.

4. We are unable to see any fundamental or other right to compete for a government contract or to obtain the same. As stated in *A. Vedachala Mudaliar Vs. Divisional Engineer, Highways, Saidapet, Madras and Another*, , a citizen of India "undoubtedly has a fundamental right to carry on a trade or business, but he has no fundamental right to insist upon the Government or any other individual doing business with him. The Government, as well as any individual, has got a right to enter or not into a contract with a particular person".

5. In *Perkins v. Lukens Steel Co* (1940) 310 US 113 (13), the Supreme Court of the United States said :

"Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases"; that

"Judicial restraint of those who administer the Government's purchasing would constitute a break with settled judicial practice and a departure info fields hitherto wisely and happily apportioned by the genius of our polity to the administration of another branch of Government"; and

"The case before us makes it fitting to remember that "the interference of the Courts with the performance of the ordinary duties of the executive departments of the Government, would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them"".

6. It was suggested that there was discrimination and that Article 14 of the Constitution which provides that:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"

has been violated. Article 14 applies only to laws as defined in Article 13 of the Constitution and not to orders of the type with which we are concerned in this case. In *D.P. Joshi Vs. The State of Madhya Bharat and Another*, the Supreme Court said:

"We have proceeded so far on the assumption that the impugned rule is a law" as defined in Article 13. If it is not that, Article 14 would have no application";

and in *Joseph Thomas Vs. State of Kerala*,

"In order to attract Article 14 Ext. 4 (the order impugned) must amount to a law* as defined in Article 13 and not a mere administrative direction or executive order".

7. Counsel for the petitioner drew our attention to the following passages in *Saghir Ahmad Vs. The State of U.P. and Others*, :

"In the last century when the *laissez faire*" doctrine held the field, the primary function of a State was considered to be maintenance of law and order and all other activities were left to private competitors"; and

"Section 3 of the Act (U. P. State Road Transport Act, 1951) authorises the State Government to declare that the road transport service general or on particular routes should be run and operated by the State Government exclusively or by the State Government in conjunction with railway or partly by the State Government and partly by others in accordance with the provisions of the Act.

The whole question is how is the last part of the section to be implemented and carried out? If the State can choose any and every person it likes for the purpose of being associated with the transport service and there are no rules to guide its discretion, plainly the provision would offend against Article 14 of the Constitution."

8. We do not see how these passages or *Lokanath Misra Vs. State of Orissa and Another*, which is mentioned in paragraph 27 of the Supreme Court judgment can possibly postulate a violation of Article 14 so long as there is no "law" within the meaning of Article 13 of the *K.N. Guruswamy Vs. The State of Mysore and Others*, which was also cited relates to a statute, the Mysore Excise Act, 1901.

9. The second of the two contentions raised relates to the violation of a canon of natural justice. In passing purely executive orders, in the absence of statutory provisions, there seems to be no such canon in existence. In *Bapurao Dhondiba Jagtap Vs. The State*, Chagla, C. J., dealing with an order u/s 37 of the Bombay Police Act, 1951, said:

"Now, the order complained of and the order that has got to be made u/s 37 is clearly an administrative order and it would be erroneous to import into the consideration of an administrative order the principles of natural justice".

10. In the light of what is stated above we must hold that no right of the petitioner - constitutional or statutory - has been violated and that there is no infirmity in the action taken which will attract the jurisdiction of this court under Article 226 of the Constitution. It follows that the petition has to be dismissed and we decide accordingly, though, in the circumstances of the case, without any order as to costs.

11. Various decisions were cited by counsel for the petitioner. We have perused all of them; but must confess that we have been unable to see any thing in any of them which will in any way militate against the conclusion we have reached. No useful purpose will be served by discussing them in this judgment and we desist from doing so.