(1994) 04 KL CK 0026

In the High Court Of Kerala

Case No : O. P. No. 3831 of 1994

Kallara Sukumaran APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 04-04-1994

Acts Referred:
Constitution of India, 1950 — Article 151, 226

Citation : (1994) 2 KLJ 204

Hon'ble Judges : P. Krishnamoorthy, J

Bench : Single Bench

Advocate : Tharian Joseph, for the Appellant; D. Somasundaram Senior Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Krishnamoorthy J.

1. This public interest litigation filed by the petitioner seeks the assistance of this Court for the issuance of an appropriate writ, order or direction directing respondents 1 and 2 to register a proper crime in the matter of import of palmolein in February-March, 1992 against the rules, regulations given by the 1st respondent and giving heavy pecuniary advantage to a foreign company. There is a further prayer to direct respondents 1 and 2 to take appropriate steps against the 3rd respondent who is the Chief Minister of the State and other concerned persons for infringement of the rights and regulations and the. Guidelines fixed by the 1st respondent in regard to the import of palmolein and for reimbursement of loss caused to the State Exchequer by them. Petitioner was prompted to file this Original Petition on the basis of a report submitted by the Comptroller and Auditor General of India for the year ended 31st March, 1993. The report is produced as Ext. PI. According to the petitioner, the relevant portion of Ext. P1 report indicate positively that huge loss was caused to the State running into crores by the action of the State Government acting through the Civil Supplies Corporation. The report further makes it clear that it was the

3rd respondent who was instrumental in bringing about the deal concerned which violated all norms and guidelines issued by the Government of India in the matter of import of palmolein According to the petitioner, it is further seen from the report that it was the 3rd respondent who was instrumental in bringing about the deal, which is clear from the relevant files which form the basis of the report of the Comptroller and Auditor General of India. Petitioner further submits that the Constitution of India provides that the Report of the Comptroller and Auditor General of India (hereinafter referred to as the C. A. G.) should be placed before the Parliament or the State Legislature and even if the Legislature does not act upon the same, a citizen has the right to redress the grievances of the public for any financial misdemeanor as reflected in the C. A. G''s report. The Court has power in appropriate cases to give direction to the concerned Government to take appropriate action against a person or authority, who, according to the Report, has committed financial misdemeanor resulting in heavy financial loss to the State. Petitioner further alleges that the 3rd respondent who is the Chief Minister of Kerala and who was also the Chief Minister at the relevant time has acted in the palmolein deal quite contrary to the financial interest of the State and that normally the State or the Union Government would not act in accordance with law unless there are specific directions in the matter by the Court. It is further alleged that from the report Ext. P1 it is clear that the decision taken by the State Government to import palmolein is against the interest of the public and is therefore arbitrary and that necessary directions have to be issued by the Court as prayed for by the petitioner and mentioned above.

2. At the admission stage itself Sri. D. Samasundaram appeared in the case on behalf of the respondents and assisted the Court by placing the relevant position of the matter.

3. The prayers in this Original Petition are made solely on the basis of Ext. P1 report of the C.A.G. for the year ended 31st March, 1993. The report mentions certain irregularities which had occurred in the matter of import of palmolein in the year 1991-92. No doubt, the C.A.G. occupies an exalted position under the Constitution of India, which is clear from Art. 148 of the Constitution. Under Art. 149 of the Constitution of India, the C. A. G. shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament. In exercise of the power under Art. 149, Parliament has enacted the Comptroller and Auditor-General''s (Duties, Powers and Conditions of Service) Act, 1971 which was amended in 1976. That Act provides the duties of the C. A. G. and among other things it shall be his duty to audit all trading, manufacturing, profit and loss accounts kept by any department of the Union or of a State (Section 13). It is in pursuance to that power that the report Ext. P1 is submitted by him in regard to the deal in question.

4. The question to be decided is as to what is the power of the Court to give any

directions on the basis of such a report alone. As stated earlier, the C A. G. is entitled to audit and submit a report in regard to any department of a State. Art. 151 of the Constitution of India provides as follows :-

151. Audit reports - (1) The report of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

Under Clause (2) of the aforesaid Article, the reports of the C.A.G. relating the accounts of a State shall be submitted to the Governor of the State who shall place them before the Legislature of the State. No further provision is made in the Constitution in regard to the matter. It can thus be seen that a report prepared by the C. A. G. has to be placed before the Legislature and when once the Constitution provides that it shall be placed before the Legislature which is one of the three supreme authorities of the State, it implies that it is primarily for the Legislature to consider and act upon such report. The placing of the report before the Legislature as provided for under Art. 151 of the Constitution of India is not meant to be an empty formality but it implies that it is the Legislature which has to scrutinise the report and take any further action, if necessary. Laying the report before the Legislature would be meaningless unless the Legislature has the power to examine the same and the Constitution does not in any way limit that power. Accordingly under the rules of procedure, the report has to be scrutinised by the Public Accounts Committee or by the Public Undertakings Committee constituted by the State Legislature which are having the same powers. As observed in Practice and Procedure of Parliament by M. N. Kaul and S. L. Shakdher, Third Edition, page 698;

The functions of the Committee extend ''beyond the formality of expenditure to its wisdom, faithfulness and economy'' The Committee thus examines cases involving losses, nugatory expenditure and financial irregularities. When any case of proved negligence resulting in loss or extravagance is brought to the notice of the Committee the Ministry concerned is called upon to explain as to what action, disciplinary or otherwise, has been taken to prevent a recurrence. In such cases the Committee also records its opinion either disapproving the action of Government or passing strictures against the extravagance or lack of proper control by the Ministry or Department concerned.

The Public Accounts Committee or the Public Undertakings Committee shall also examine the report with reference to the facts of each case and the circumstances leading to any irregularity and make such recommendations as it may deem fit. The Public Accounts Committee has also the power to take evidence it the matter and call for explanation from the concerned departments. It is observed by Basu in his commentary on the Constitution of India, Sixth

Edition, at page 59, as follows:

The exercise of this function gives the Committee a Comprehensive power of survey over the entire scheme of expenditure of the government as well as the administration. Though the Committee has nothing to question the policies of the government, it has to acrutinise the implementation of the policies through its review of the expenditure. Both in England as well as in India, it has been acknowledged that the present function includes a criticism of extravagant or wasteful expenditure of public money, in general and in this connection, it is entitled to point out the weak points in the administration of the departments concerned, and also to ensure that proper action has been taken against delinquents guilty of irregularity or breach of the rules, though it has no power to enforce its comments by any direct administrative action

As stated earlier, Art. 151 of the Constitution of India mandates that the reports of the C.A.G. relating to the accounts of a State shall be submitted to the Governor of the concerned State who shall cause them to be laid before the legislature of the State. As I read that Article, the intention of the Constitution makers is clear that it is primarily for them to consider the report and take any follow up action that is necessary, by referring the matter to the Public Accounts Committee or Public Undertakings Committee, as the case may be. That being the mandate contained in the Constitution of India, I do not think that the Court can interfere in the matter at this stage; and it is too premature to say one way or the other in regard to the allegations made by the petitioner, 1 do not find my way to accept the contention of the petitioner that even at this stage the Court is entitled to intervene. The decisions of the Supreme Court relied on by counsel for the petitioner, The State of U.P. Vs. Raj Narain and Others, and Fertilizer Corpn. Kamagar Union v. Union of India (AIR 1981 SC 344) have no relevance at this stage. Accordingly I do not find any reason to interfere in the matter in exercise of my power under Art, 226 of the Constitution of India.

5. Petitioner also contended that on the basis of the Report of the C. A. G., an offence is made out under Sec. 3 of the Prevention of Corruption Act. On going through the report of the C.A. G. I do not think that the report by itself is sufficient to come to such a conclusion at this stage. From the allegations in the Original petition it is seen that the object of the petitioner is more political rather than anything else and the main target of attack seems to be the 3rd respondent-the Chief Minister of the State. I conclude this judgment by quoting what Krishna Iyer J. said in Fertiliser Corpn. Kamagar Union v. Union of India (AIR 1981 $C 344):-

If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him.

I dismiss this Original Petition.

