

(2014) 10 KL CK 0014

In the High Court Of Kerala

Case No : W.A. No. 1543 of 2014 (Against the order/judgment in WP(c) 27413/2014 of high court of kerala dated 24/10/2014) in WP(C). 27413 of 2014

Kandha Samy

APPELLANT

Vs

Director of Dairy Development

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2014) 4 KHC 567

Hon'ble Judges : Mr. Antony Dominic and Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Raju K. Mathews, Advocate, for the Petitioner; Sri. S. Jamal, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Anil K. Narendran, J. - Appellants are the petitioners in WP(C)No.27413/14. They have approached this Court in the said Writ Petition seeking a writ of certiorari to quash Ext.P2 circular issued by the Deputy Director, Department of Dairy Development, Palakkad, the 2nd respondent herein, dated 30/8/2014 and Exts.P3 and P3(a) memos issued by the Walayar Ksheerolpadaka Sahakarana Sanghom Ltd. No.P100 (D) APCOS, the 3rd respondent herein, dated 9/9/2014, and also seeking a declaration that the total prohibition of collection of milk produced in other States, by the Co-operative Societies in Kerala, imposed by the 1st and 2nd respondents is arbitrary, ultra vires, unconstitutional and void. The learned single Judge by judgment dated 24/10/14 dismissed the said writ petition in limine. It is aggrieved by the said judgment of the learned single Judge, the appellants are before us in this writ appeal.

2. We heard the arguments of the learned counsel for the appellants and also the learned Government Pleader appearing for respondents 1 and 2.

3. According to the appellants, they are small scale dairy farmers living in the

border areas of Tamil Nadu State and the places where they live are separated from Kerala State by Walayar river. The 3rd respondent is a Dairy Co-operative Society of Milk Producers registered under the Kerala Co-operative Societies Act, 1969, and the Society is also having registration under the Department of Dairy Development, Kerala. The 3rd respondent Society, formed with the objective of enhancing the production of pure milk and marketing it through the District and Regional Dairy Co-operative Societies, is having its area of operation limited to Ward Nos.11 and 12 of Puthussery Panchayat in Palakkad District. The appellants do not have any source in their area for marketing the milk obtained from the cows they rear and the nearest place where they can sell their milk is with the 3rd respondent Society. Since the appellants are residing outside the area of operation of the 3rd respondent Society, they are assigned with Cow-Non-Member Code Nos.5117 and 5060, respectively, which is evident from Ext.P1 receipts issued by the Society. While so, the 2nd respondent issued Ext.P2 circular by which the Societies in the border districts including the 3rd respondent Society are interdicted from collecting milk from outside the State. On receipt of Ext.P2 circular, the 3rd respondent issued Exts.P3 and P3(a) memos to the appellants, expressing its inability to purchase milk from them. According to the appellants, Ext.P2 circular and Exts.P3 and P3(a) memos are arbitrary, unconstitutional and violative of the freedom of trade guaranteed under Article 301 of the Constitution of India.

4. From the pleadings on record, it is not in dispute that the 3rd respondent is a Dairy Co-operative Society of Milk Producers registered under the Kerala Co-operative Societies Act, 1969, (hereinafter referred to as "the Act") with its area of operation limited to Ward Nos.11 and 12 of Puthussery Panchayat in Palakkad District. It is an "Anand Pattern Co-operative Society" (APCOS) formed with the objective of enhancing the production of pure milk and marketing it through the District and Regional Dairy Co-operative Societies. It is also not in dispute that the appellants are dairy farmers living outside the area of operation of the 3rd respondent Society, in the border areas of Tamil Nadu State, and as such, they are not entitled to be members of the said Society. This is the mandate of Section 16(1)(a)(iii) of the Act, which says that, no person shall be admitted as a member of a Society except who is a resident within, or is in occupation of land in the area of operation of the Society.

5. Further, the 3rd respondent being a Society registered under the Act has to confine its business activities within its area of operation. This is the mandate of Section 7(1)(c) of the Act. When the Director of Dairy Development, the 1st respondent herein, noticed that the Dairy Co-operative Societies in the border districts are collecting milk from outside the area of operation, i.e., from other States, such collection was interdicted by issuing circular dated 10/3/2014 referred to in Ext.P2 circular. In spite of the circular dated 10/3/2014, the Dairy Co-operative Societies in the border districts continued collection of milk from outside the area of operation, i.e., from other States. It was in such circumstances, the 2nd respondent issued Ext.P2 circular to stop collection of

milk contrary to circular dated 10/3/2014 issued by the 1st respondent. The direction contained in Ext.P2 circular to the Dairy Co-operative Societies in the border districts not to collect milk from outside the area of operation, i.e., from other States, would not go against the mandate of Article 301 of the Constitution of India, which guarantees freedom of trade, commerce and intercourse throughout the territory of India. The membership and business activities of the 3rd respondent Society is regulated by the provisions under the Act and the appellants have no fundamental or legal right to insist that the Society should purchase their milk contrary to the mandate contained in Sections 7(1)(c) and 16(1)(a)(iii) of the Act. Therefore, the learned Single Judge rightly held that the embargo in Ext.P2 would not go against Article 301 of the Constitution of India as it is not intended at collecting milk from other States, but confining the collection to the area of operation of the Societies.

6. While dismissing the Writ Petition in limine, the learned Single Judge has also taken note of the submission made by the learned Government Pleader that, there were wide-spread allegations of adulteration of milk and this prompted such prohibition. The appellants would contend that, when the respondents are entitled to check the purity of the milk brought to the Societies and ensure that they conform to the prescribed standards, the total prohibition imposed in Ext.P2 circular is unwarranted. We are unable to accept this contention. In *Centre for Public Interest Litigation v. Union of India and Others* (AIR 2014 SC 49), the Apex Court emphasised that, any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India and that a paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India. Paragraph 23 of the judgment reads thus;

"23. Enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, etc. But the fact remains, many of the food articles like rice, vegetables, meat, fish, milk, fruits available in the market contain insecticides or pesticides residues, beyond the tolerable limits, causing serious health hazards. We notice, fruit based soft drinks available in various fruit stalls, contain such pesticides residues in alarming proportion, but no attention is made to examine its contents. Children and infants are uniquely susceptible to the effects of pesticides because of their physiological immaturity and greater exposure to soft drinks, fruit based or otherwise."

7. The issue of food safety and right to have safe and unadulterated food is a matter of national as well as international concern. We cannot ignore or overlook this reality. As right to life guaranteed under Article 21 of the Constitution would encompass a right to live with dignity, i.e., to have a healthy life, which is

possible only if safe and unadulterated food is available for human consumption, any efforts made by the State and its authorities to achieve an appropriate level of protection to human life and health cannot be scuttled on the rigid technicalities as canvassed by the appellants. Therefore, the learned Single Judge rightly declined interference under Article 226 of the Constitution of India. We find absolutely no grounds to interfere with the judgment of the learned Single Judge.

In the result, this Writ Appeal is dismissed. No order as to costs.