(1993) 03 AHC CK 0006

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10559 of 1993

Karedin Jaiswal and Others APPELLANT

Vs

State of Uttar Pradesh and Another RESPONDENT

Date of Decision : 29-03-1993

Acts Referred:

Constitution of India, 1950 — Article 19, 19(6), 226, 301
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 5, 6, 7, 7(2)

Citation : (1993) 3 AWC 1513

Hon'ble Judges : N.L. Ganguly, J;Anshuman Singh, J

Bench : Division Bench

Advocate : Dinesh Dwivedi and Rakesh Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

Anshnman Singh, J.—By means of this petition under Article 226 of the Constitution of India the Petitioner wants issuance of mandamus declaring Section 7(2) of the U.P. Krishi Utpadan Mandi Samiti Adhiniyam, 1964 (hereinafter referred to as Adhiniyam) as ultra vires of the Constitution of India.

2. The short facts which are relevant for the purposes of the present case are that the Petitioners are engaged in the wholesale business of food- grains and vegetables in Gopiganj, Distt. Varanasi. The Petitioners have been granted licence "in form 8 under the Adhiniyam. It is alleged that the Krishi Utpadan Mandi Samiti was constituted some times in the year 1974 in Gopiganj, Varanasi and at that time there was no wholesale dealer in foodgrains and vegetables. It was in the year 1990 that the Petitioners obtained licences in form 8 for carrying on the wholesale business of food- grains/vegetables. All the Petitioners except the Petitioners 16 to 18 are carrying on the wholesale bnsiness of foodgrains and rest are dealing in vegetables. The shops of the Petitioners are situate in Galla Mandi, Gopiganj, Varanasi. It has further alleged that the Petitioners are carrying on the wholesale business in their own houses. It has been alleged that the Respondent No. 1 had(issued a notification dated 25th March, 1987 requiring

that the wholesale transactions with respect to the specified agricultural produce mentioned in schedule ''A'' of the notification be carried on only in the areas specified in schedule ''B''. The area specified in schedule ''B'' consists of certain places in Gaon Sabha Madhorampur, Nyaya Panchayat Madhorampur, Vikas Khand Aurai, District Varanasi, bounded by the plots mentioned in the notification. The said notification has been issued under Clause (b) of Sub-section (2) of Section 7 of the Adhiniyam which envisaged the State Government to consider it necessary and expedient in public interest to-regulate purchase and sale of the agricultural produce and for controlling the market thereof. It has been alleged on behalf of the Petitioners that no notice or opportunity was afforded to the Petitioner before issuance of the notification under Clause (b) of Sub-section (2) of Section 7 of the Adhiniyam. In this case counter affidavit has also been filed at the admission stage on behalf of the secretary Kriahi Utpadan Mandi Samiti, Gopiganj, Varanasi.

3. Counsel for the Petitioner has stated that he does not propose to file any rejoinder-affidavit. Since the counter-affidavit has been filed, with the consent of the parties and as provided under the second proviso to Rule 2 of Chapter XXII of the Rules of the Court, this petition is being disposed of finally at the admission stage itself. In the counter-affidavit the main contention raised on behalf of the Respondents is that since the Respondents have constructed market-yard they are asking the Petitioners to shift their business from their houses to the market-yard. It has been stated that so long as the market-yard was not constructed by the Mandi Samiti, the Petitioner was permitted to carry on their business in their own shops but after the constructions of the market-yard they cannot be permitted to carry on their business from their houses and since the Respondents have authority to regulate the market the Petitioners are asked to shift their business in the new market-yard for which the Notifications under Clause (b) of Sub-section (2) of Section 7 of the Adhiniyam was issued.

4. From the facts stated above, it is abundantly clear that the only controversy in the instant case is whether before issuance of the Notification under Clause (b) of Sub-section (2) of Section 7, the Petitioner is entitled for an opportunity of being heard and the next limb of the arguments of the counsel for the Petitioner is that even if no notice is necessary then the provisions of Clause (b) of Sub-section (2) of Section 7 of the Adhiniyam is ultra vires of the Constitution of India.

5. Learned Counsel for the Respondents Mr. B. D. Mandhyan has seriously repelled the arguments of the counsel for the ''Petitioners that the Petitioners were not entitled to any notice or opportunity of being heard before issuance of Notification under Clause (b) of Sub-section (2) of Section 7 of the Adhiniyam and he further contended that the arguments of the couosel for the Petitioner that the said provisions is ultra vires is wholly untenable as the controversy is squarelly covered by the decisions of this Court in the case of Amrit Rice Mill, Pilibhit v. Krishi Utpadan Mandi Samiti 1987 UPLBEC 394, in support of his contention. The counsel for the Respondents has mainly invited our attention to

paragraphs 13 & 14 of the judgment of the case of M/s. Amrit Rice Mills (supra) which we consider proper to refer in extenso:

13. This is coveied substantially by the discussion under point No. 2. Marketing in a developing country like ours has assumed very large proportions. The legislation on the subject intends to meet a long-felt need of the society. In P.P. Kuti Keya v. State of Madras AIR 1954 Mad. 621 , the Division Bench dealt with the marketing legislation and need for the same and referred to the report of the Royal Commission and Agriculture in India. The Madras Act, it was observed, did undoubtedly restrict the freedom of a citizen to trade "as and where he will" but the restiictions are reasonable and vaild under Article 19(6). The Supreme Court affirmed this in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, . Subha Rao, J. tracing the historical background of marketing legislation observed:

The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived aad enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by elimina''ing middlemen and bringing face to face the producer and the buyer so that they may meet equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions. on the citizens right to do business unless it is clearly established that the provisions5 are too drastic, unnecessarily harsh and overreach the scope of the object to achieve which it is enacted.

14. In that Act also the provision was that after the market were built are opened by the Marketing Committees, all growers had to resort to the market for vending their goods. The aim is to ensure equal bargaining powers, to prove storage accommodation and facilities for correct weighment in addition to the elimination of various,guts and charges to that the growers may bring the agricultural produce to the market and sell them at reasonable Mice Clause (6) of Article 19 accords adequate protection to restrictions Inherent in such a situation. The provisions of the Act are neither so harsh nor so drastic as to constitute unreasonable restrictions on thei right to carry on trade Vishnu Dayal Mahendra Pal v. State of U.P. (1974) 5 SCC 314, Atom Ram Ratan Lal v. State of U.P. 1979 ALJ (DB). Another Bench of this Court in Vishal Traders v. State of U.P. 1983 AWC 204 as well repelled the argument that the shifting of the Market yard from one place to the other amounts to an unreasonable actor violates the Petitioners fundamental rights under Article 19 of that it contravenes Article 301 of the Constitution.

6. From the above, it is clear that the provisions of Clause (b) of Sub-section (2) of Section 7 is neither unreasonable nor it violates the fundamental right under Article 19(1)(g) or Article 301 of the Constitution of India. As regards the contention of the Petitioners regarding opportunity or notice, we would like to refer to the provisions and the scheme of the Act in this regard. Chapter II of the Adhiniyam deals with market area and market yards. In the aforesaid Chapter,

Section 5 provides that before the declaration of intention to regulate and purchase of the agricultural produce in any area, it is incumbent on the part of the State Government to invite objections against the proposed declaration and such objections, if. filed are to be considered by the State Government and it is after the consideration of the objections that the State Government shall notify the area to be the market area in respect of such agricultural produce. Section 7 lays down that after the publication of the Notification u/s 6, the State Government may by notification in the gazette declares such portion of the market area as may be specified, as the principal market yard and such other portions as may be specified as sub-market yard. Section 7(2) (b) Jays down that the wholesale transactions of all or any of the specified agricultural produce in respect of a market area shall be carried on only at a specific place or places within its principal market yard or sub-market yard. In the instant case, it is a case of shifting of business from the shops of the Petitioners to a market yard. U is not disputed before us that the place where the Petitioners are being asked to shift their business is outside the area of principal market yard. We have already stated that initially since the Mandi Simiti had not constructed the market yard, the Petitioners were being allowed to carry on their business in their houses but sinje the Mandi Samiti has been able to construct the market yard, the Petitioners are being asked to shift their business from the houses to the market yard within the limits of the principal market yard.

7. Mr R. D. Mandhyan, learned Counsel for the Respondent has placed reliance on a decision of AIR 1981 1127 (SC) , in which the Supreme Court while dealing with Section 5 of the Bihar Agricultural Produce Market Act (16 of 1969) has held that declaration made u/s 2 (b) is legislative function and while change of place of market yard, authority is not required to invite and Hear objections. We would like to refer to the following observations made by the appex court in the case of R. K. Purwar in this context which is as under:

We are concerned with legislative activity, we are concerned with the making of a legislative instrument, the decl.iration by notification of the Government that a certain place shall be a principal market yard for a market area upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by Statute followed forthwith. The making of the declaration in the context is certainly an act legislative in character and does not oblige the observance of the Rules of natural justice.

8. We have given our thoughtful considerations of contentions raised on behalf of the Petitioners and in view of the scheme of the Act and the view of the apex court, regarding the observance of natural justice, we are of the considered opinion that before issuance of the Notification u/s 7(2)(b) of the Adhiniyam no notice is necessary and the Petitioners were not entitled to any opportunity of being heard.

9. No other point has been pressed before us on behalf of the Petitioner in this case. All the two main contentions raised by the counsel for the Petitioners in our

opinion are wholly untenable and deserves to be rejected.

10. In the result, the petition fails and is accordingly dismissed. However, there will be no order as to costs.

