

(1994) 07 KL CK 0055

In the High Court Of Kerala

Case No : O. P. No"s. 7722, 8131 and 8228 of 1994

K.K. Pushkaran and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Merchant Shipping Act, 1958 — Section 435K

Citation : (1994) 2 KLJ 1075

Hon'ble Judges : Sujata V. Manohar, C.J.;D.J. Jagannadha Raja, J

Bench : Division Bench

Advocate : S. Narayanan Poti and T. Ravikumar, for the Appellant; Mohan C. Menon, Govt. Pleader, Jacob Varghese, C.S. Abdul Samad, S. Siri Jagan and Asok M. Cherian, for the Respondent

Final Decision : Dismissed

Judgement

Sujata V. Manohar, C.J.—These Original Petitions are filed by owners of fishing vessels having a length of 13.50 metres (45 feet), but with an engine having 118 BHP. The original fishing vessels of the petitioners have been modified in accordance with the scheme which is developed by the Marine Products Export Development Authority, which is a statutory authority constituted under the Marine Products Export Development Authority Act, 1972. The fishing vessels are registered with the Marine Products Export Development Authority which has issued a certificate of registration, Ext. P1, in which it is stated that the vessels shall not be permitted to operate in the territorial waters of Kerala. The Marine Products Export Development Authority has filed an affidavit in these Petitions in which it is stated, inter alia, that in order to increase fish production for the purpose of export, it was found that some of the small mechanised boats were amenable to modification for deep sea fishing. As the Authority felt that such modification would ensure increase in fish production, reduce fishing pressure in the 0-9 M. depth zones, save fuel consumed in steam to fishing grounds and result in increased fishing efforts beyond 50 M. depth Zones, it was necessary to

have a scheme for modification of such small mechanised fishing vessels to enable them to ply beyond territorial waters up to a depth of 50 to 70 metres. It formulated and implemented a pilot scheme. It has also a scheme for financing the cost of such modification. Pursuant to the said scheme, the vessels of the petitioners have been modified by the Marine Products Export Development Authority. Learned advocate for the said Authority has, however, clarified its position by stating that the said Authority can vouch for the capacity and efficacy of the modified fishing vessels. It is not concerned with the safety requirements. The Government of Kerala by a notification bearing S. R. O. No. 850/94 dated 18-6-1994 has, in exercise of powers conferred by Section 4 of the Kerala Marine Fishing Regulation Act, 1980 read with Rule 3 of the Kerala Marine Fishing Regulation Rules, 1980, restricted the use of fishing vessels going for fishing beyond the territorial waters by imposing the following pre-requisites :

(i) The engine fitted in the fishing vessel shall have a minimum power of 160 HP and the hull shall have a length of not less than 43 feet.

(ii) The fishing vessel shall have a minimum length of 500m. wire rope in the winch drum.

(iii) The fishing vessel shall carry on board sufficient number of life saving appliances and fire appliances as stipulated u/s 435K of the Merchant Shipping Act, 1958 (Central Act XLIV of 1958).

(iv) The Syrang and the Driver shall possess the Competency Certificate issued by Mercantile Marine Department/Port Department.

(v) The fishing vessel shall carry on board articles of first aid and navigational aids such as Mariner's Compass.

(vi) The fishing vessel shall carry a valid certificate issued under the Merchant Shipping (Indian Fishing Boat Inspection) Rules, 1988.

In the Explanatory Note which is annexed to the notification, it is set out that a fishing vessel which does not comply with the above conditions is not capable of conducting fishing beyond the territorial waters safely during the monsoon season without endangering human life and property. By another notification bearing SRO No. 755/94 dated 4-6-94 issued by the Govt. of Kerala, under the Kerala Marine Fishing Regulation Act, 1980 read with Kerala Marine Fishing Regulation Rules, 1980, the Govt. of Kerala has banned bottom trawl in the sea along the entire coast line of the State within the territorial waters. This ban is imposed for a period from 15-6-1994 to 29-7-1994, i.e., during the peak monsoon season. The Explanatory Note states that there have been persistent demands from various sections of fishing community for imposing ban on bottom trawling on the ground that the bottom trawling during the monsoon period has been adversely affecting the conservation of fish wealth and their share of earning from fishing. Consequently there have been clashes between the fishermen belonging to traditional sector and mechanised sector leading to

serious law and order problems in the sea. It further states that there have been frequent occurrences of squally weather condition in the sea during monsoon leading to accidents resulting in loss of human life and property.

2. It is the contention of the petitioners that the terms and conditions of these notifications are not reasonable, and that these notifications constitute an unreasonable restriction on their right to carry on their business. The petitioners contend that their fishing vessels, though they do not comply with the requirements of the notification of 18-6-1994, are nevertheless capable of plying beyond the territorial waters for the purpose of deep sea fishing during the monsoon season and hence they should have been exempted from the operation of this notification. It is an accepted position on all sides that the ban in the notification of 18-6-1994 operates only during the period specified in the notification of 4-6-1994, i.e., upto 29th July, 1994.

3. The competence of the State Government to issue such notifications cannot now be doubted in view of the decision of the Supreme Court in Civil Appeal Nos. 4222 and 4223 to 4226 of 1993 dated 23-6-1994 (S. C. Agrawal and B. P. Jeevan Reddy, JJ.) in the case of Karala Swathanthra Malsya Thozhilali Federation and ors. v. Kerala Trawl-net Boat Operator's Association and ors. Although the judgment does not deal with the type of fishing vessels which are before us the ratio of the judgment, in so far as it Upholds the competence of the State Government to issue such notifications, would directly apply.

4. The only question which we have to examine is whether the restriction so imposed by the State Government constitutes an unreasonable exercise of power in view of the nature of the boats which are sought to be plied by the petitioners for the purpose of deep-sea fishing beyond the territorial waters of Kerala.

5. In view of the fact the Marine Products Export Development Authority (10th respondent in O. P. No. 7722 of 1994) had filed an affidavit before us, we had by our order dated 7-7-1994 directed respondents 1 and 2 to examine the vessels of the petitioners- if necessary, by appointing an expert committee, in order to ascertain whether these vessels can safely ply beyond the territorial waters of Kerala during the monsoon season for the purpose of deep-sea fishing; and if so, whether the benefit of exemption under the said notification can be extended to these vessels also.

6. Accordingly, respondents 1 and 2 constituted an expert committee consisting of (1) Sri. S. Ayyappan Pillai, Principal Scientist, representative of Central Institute of Fisheries Technology, Cochin; (2) Sri. P. Kumaran, Senior Instructor, representative of Central Institute of Fisheries Nautical & Engineering Training, Cochin; (3) Sri. T. Sathees Babu, Assistant Engineer (Workshop), representative of Integrated Fisheries Project, Cochin; and, (4) Sri. M.S. Nazir Ahmed, Joint Director of Fisheries (Central Zone), Ernakulam. The last named person was the convenor of the committee. The expert committee inspected the vessels in question and has submitted before us a report dated 16-7-1994. It is a detailed

report which sets out why, according to the expert committee, these vessels cannot safely ply beyond territorial waters, especially during the monsoon season for the purpose of fishing. According to the expert committee, any vessel which goes beyond territorial waters during monsoon season should have sufficient stability and strength, life saving appliances, fire fighting appliances, navigational lights, shapes, sound signals and distress signals for the safety of the vessel and its crew. The committee has pointed out the non-compliance of these vessels with the statutory requirements as per the Merchant Shipping (Life Saving Appliances) Rules, 1991, as also the fact that none of these vessels has a Syrang or a Driver possessing the necessary competency certificate issued by the Mercantile Marine Department/Port Department. They also do not comply with other statutory requirements as set out therein. It is also pointed out that the vessels do not possess any valid certificate issued under the Merchant Shipping (Indian Fishing Boat Inspection) Rules, 1988.

7. The respondents have drawn our attention to Section 435K of the Merchant Shipping Act, 1958 which applies to fishing vessels fitted with mechanical means of propulsion exclusively engaged in sea fishing for profit (vide Section 3(12) of the Merchant Shipping Act, 1958). Our attention is also drawn by respondents 1 and 2 to the Merchant Shipping (Life Saving Appliances) Rules, 1991, which have been framed under the Merchant Shipping Act, 1958, wherein, inter alia, the fishing vessels have to comply with various requirements set out in Section V of these Rules. The expert Committee has pointed out that these requirements have also not been met by the vessels of the petitioners.

8. In view of the report of the expert Committee, it cannot be said that the restriction imposed by the State Government is unreasonable qua the petitioners.

9. The petitioners have strongly relied upon the registration, certificates issued to them under the Cochin Harbour Crafts Rules, 1947. They submit that this is the only registration which is granted to fishing vessels under the Cochin Harbour Crafts Rules in the Cochin Port. Respondents 1 and 2, however, point out that these Rules are essentially meant for catamaran plying for hire, or any fishing or cargo, passenger, or other boat plying within and partly without the Port of Cochin. Ext. P14 to the reply affidavit filed in O. P. No. 7722 of 1994, which is a letter from the Surveyor in Charge, Mercantile Marine Department, Cochin-9, to the Deputy Conservator/Cochin Port Trust, Kochi-9, merely sets out that all vessels which are less than 20 metres (15 tons net) and which have been registered under the Harbour Craft Rules, may be permitted to proceed to sea complying with harbour craft rules, till definite instructions are issued by the Department. This by itself does not negative the contention of respondents 1 and 2 that the Harbour Craft Rules do not apply to vessels plying exclusively beyond, the territorial waters of the State. The petitioner's vessels are registered only for plying beyond the territorial waters of Kerala. If so, they require registration under the Merchant Shipping Act. Also even the registration certificates which the petitioners have produced-particularly Exts. P12 (b) and P12 (c) annexed to the

said reply affidavit, show that the vessel is permitted for trawl fishing in fine weather conditions only. Be that as it may, In view of the report submitted by the expert committee before us, it is not possible for us to hold that the restrictions imposed are unreasonable so far as the vessels of the petitioners are concerned. Our attention is also drawn to Section 435K of the Merchant Shipping Act, 1958 under which the Central Government has power to exempt any Indian fishing boat or owners of Indian fishing boats from any specified requirement which may be contained in or prescribed by any rules made in pursuance of any provision of this Part or from any other requirement of this Act extended to Indian fishing boats or to personnel employed on Indian fishing boats. For this purpose, the Central Government can issue a notification, if it is satisfied that the requirement is substantially complied with or the compliance with the requirement may be impracticable or unreasonable in the circumstances attending the case. In view of this express provision, it is open to the petitioners to satisfy the Central Government that the requirements under the Merchant Shipping (Life Saving Appliances) Rules, 1991 or any other Rules made under the Merchant Shipping Act, 1958 may be relaxed in the case of their boats, provided they are able to satisfy the Central Government that the equipment on their fishing vessel is otherwise adequate for the purpose of ensuring safety of the vessel and its crew. As and when the vessels of the petitioners comply with the safety requirements the petitioners can also move the State Government for granting them exemption under the said notification. In these circumstances, we do not see any reason to entertain the present Writ Petitions- They are accordingly dismissed.

Issue photocopy of this judgment to counsel on both sides on usual, terms expeditiously.