(1985) 03 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No''s. 1945, 1977, 1978 and 2187 of 1985

K.K. Thomas and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 12-03-1985

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 19(1)(f), 226, 31(1)

Citation : (1985) KLJ 349

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : Thomas V. Jacob and B.S. Krishnan, for the Appellant;

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—The questions arising for consideration in these original petition are identical and therefore they are disposed of by a common judgment. The prayers in these original petitions are similar. I shall therefore extract the prayers in one of the petitions viz., O.P. 1978 of 1985. The prayers are:

A) Call for all the connected records relating to this case and peruse the same;

B) Issue a writ in the nature of Certiorari or such other appropriate writ or Order declaring the guidelines in regard to the fixation of upset price for the sale of Abkari auction for the year 1985-86 as given in Ext. P2 illegal and ultra vires the powers of the Abkari Act 1/1077 and the Rules framed thereunder;

C) Issue a writ in the nature of Mandamus or such other appropriate writ or order directing the Government to re-fix the quota of arrack under Rule 8 (1) of the Rules having relationship to the upset price and the local requirements;

D) Issue a writ in the nature of Mandamus or such other appropriate writ or Order directing the Government to supply to the Petitioners the required quantities of arrack enabling them to run their business effectively in the Excise

Ranges which they are able to bid in auction;

AND

E) Grant such other reliefs that are found just and proper in the circumstances of the case.

The learned counsel for the petitioners submitted that the scheme of auction devised by the Government is ultra vires the Abkari Act, for short the Act. It is unreasonable and arbitrary and hence hit by the prohibition contained in Article 14 of the constitution. Dialating this point, the learned counsel submitted that there is no nexus between the upset price fixed and the price "which can be realised by the sale of arrack covered by the quota". He further submitted that unless there is some nexus between the upset price and the price which can be realised by the sale of arrack covered by the quota there is every possibility of certain "unscrupulous lessees", according to the petitioners, resorting to methods by which spurious liquor will be sold in the market, endangering the helth of the public. The policy underlying the rules therefore, according to the learned counsel, is not only shortsighted, contrary to public interest, but also against the provisions of the Act which have provided for an auction and not for entering into a trasaction in the nature of a gamble. They further submitted that the State therefore is sacrificing the interest of the people by looking only to its own financial gain. The clauses in the tender notice therefore on the face of it, are unreasonable and violative of Article 14 of the Constitution as also ultra vires Section 18 of the Act. In O.P. 1977 of 1985 and O.P. 2187 of 1985 the respective petitioners have a further case. They submitted that they have filed these petitions in their capacity as members of the public i.e. as citizens who are interested in the health and wellbeing of the people and therefore they have the right to bring such arbitrary actions of the Government to the notice of this Court by initiating proceedings under Article 226 of the Constitution, They further submitted that they have filed these petitions to remind the court that unless this Court is very vigilant, the Vypeen and Punalur sort of tragedies may repeat. The learned counsel therefore submitted that the petitioners are entitled to the reliefs prayed for in the original petitions

2. Before I deal with these aspects I would refer to the decision of the Supreme Court, in Nashirwar and Others Vs. State of Madhya Pradesh and Others, , where, according to me similar contantions except the plea based on Article 14, have been considered and rejected by the Supreme Court. The Supreme Court has held thus:

The State has the exclusive right or privileges of manufacturing and selling liquor. The State grants such right or privilege in the shape of a licence or a lease. The State has the power to hold a public auction for grant of such right or privilege and accept payment of a sum in consideration of grant of lease..............

The grant of a lease either by public auction or for a sum is a regulation pertaining to liquor. One of the purposes of regulation is to raise revenue. Revenue is collected by the grant of contracts to carry on trade in liquor. These contracts are sold by auction. The grantee is given a lieence on payment of auction price.

There is no fundamental right of citizens to carry on trade or to do business in liquor. There is the police power of the State to enforce public morality to prohibit trades in noxious or dangerous goods. There is power of the State to enforce an absolute prohibition of manufacture or sale of intoxicating liquor. Article 47 states that the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The history of excise law shows that the State has the exclusive right or privilege of manufacture or sale of liquor. Trade in liquor has historically stood on a footing from other trades. Restrictions which are not permissible in other trades are lawful and reasonable so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public mormality, public interest and harmful and dangerous character of the liquor. The nature of the trade is such that the State confers the right to vend liquor by farming out either in auction or on private treaty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. (emphasis supplied)

It can thus be seen that the rental that is collected from the successful bidders in the public auction, is not the price of the liquor that the Government would supply to them as per quota but only the consideration for the privilege granted by the Government to the licensee to vend liquor. If that be so, one fails to see how the petitioners could contend that there should be nexus between the upset price fixed and the price which can be realised by the sale of arrack covered by the quota agreed to be supplied.

3. The argument of the learned Counsel for the petitioner that the scheme of auction devised by the Government is ultra vires the provisions of the Act and is highly unreasonable and arbitrary and hence hit by the prohibition contained in Article 14 of the Constitution, according to me, is not cognisable for another reasonable also. Reference in this connection to these facts, is necessary From the discussions on various aspects in the original petitions, it is evident that the petitioners are claiming the benifits of Act 19 (i) (g). For instance they have stated in the petition (O.P. 2787/85) thus:

Many of the licensees, as stated earlier, entered into this trade after burning their boats elsewhere with the result they have to make up for what has been lost......................................

Thirdly such a system will keep out of the legitimate and bona fide liquor dealers from participating in the auctions since they cannot, on the off chance of their being able to get arrack in excess of the quota and thus making both ends meet or mating a reasonable profit, take part in the auction. In fact, by resorting to this method, the" Government is keeping out a large" number of persons who would be interested in participating in the auction, thus arbitrarily depriving them of their right to acquire the privilege of retail sale of arrack since it is only those who are sure that for whatever reasons they would get arrack in excess of the quota or would be able to arrange illicit liquor, would participate in such a manner of disposal termed by the Government ''auction''. This will be violative of Art. 14 of the Constitution in as much as it does not give equal opportunity to all intending participants for purchase of the privilege and is also against public interest.

4. From the above pleadings it is evident that the inequality pleaded is interlinked and interlaced with the basic fact that the petitioners are entitled to the guaranteed right of carrying on any occupation, trade or business enshrined in Art. 19 of the Constitution. However, in order to sustain the plea that the method devised by the Government to conduct the auction, is violative of Art. 14, the petitioners should also show that they are the beneficiaries of the guaranteed right under Art. 19. In view of the decision in Nashirwar''s case, it is but plain truth that the petitioners though citizens, do not have the fundamental right to carry on the business or trade in liquor. In the said decision it has also been held:

Restrictions which are not permissible in other trades are lawful and reasonable so far as the trade in liquor is concerned..............Rental is the consideration for the privilege granted by the Government for manufacture or vending liquor

5. I am fortified in this view by a decision of the Supreme Court reported in Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others, . In this case the Supreme Court while considering the argument of the Indo-China Navigation Company (which was a foreign Company) that Section 52A of the Sea Customs Act, the Contravention of which provision resulted in the confiscation of the vessel which carried the contraband goods, is ultra vires Articles 14, 19 and 31 (1) of the Constitution and hence the order impugned is liable to be set aside, has held thus:-

Mr. Choudhary attempted to argue that if mens rea was not regarded as an essential element of S. 52A, the said section would be ultra Vires Articles 14 19 and 31 (1) and as such, unconstitutional and invalid. We do not propose to consider the merits of this argument, because the appellant is not only a company, but also a foreign company, and as such, is not entitled to claim the benefits of Article 19. It is only citizens of India who have been guaranteed the right to freedom enshrined in the said article. If that is so, the plea under Article 37 (1) as well as under Article 14 cannot be sustained for the simple reason that in supporting the said two pleas, inevitably the appellant has to fall back upon the fundamental right guaranteed by Article 19 (1) (f). The whole argument is that appellant is deprived of it property by operation of the relevant provisions of the Act and these provisions are invalid. All that Article 31(1) provides is that no person shall be deprived of his property save by authority of law. As soon as this plea is raised, it is met by the obvious answer that the appellant has been deprived of its property by authority of the provisions of the Act and that would be the end of the plea under Article 31(1) unless the appellant is able to take the further step of challenging ''he validity of the Act, and that necessarily imports Article 19(1) (f). Similarly, when a plea is raised under Article 14, we face the same position. It may be that if S. 52A contravenes Article 19 (1) (f), a citizen of India may contend that his vessel cannot be confiscated even if it has contravened S. 52A. and in that sense, there would be inequality between the citizen and the foreigner, but that inequality is the necessary consequence of the basic fact that Article 19 is confined to citizens of India, and so, the plea that Article 14 is contravened also must take in Article 19 if it has to succeed. The plain truth is that certain rights guaranteed to the citizens of India under Article 19 are not available to foreigners and pleas which may successfully be raised by the citizens on the strength of the said rights guaranteed under Article 19 would, therefore, not be available to foreigners. (emphasis supplied)

6. The petitioners in order to sustain the plea that the scheme of auction devised by the Government contravenes Articles 14 of the Constitution, should also establish that they have the fundamental right to carry on trade in liquor. It therefore follows that the plea of the petitioners based on Article 14 of the Constitution fails and the same is rejected.

7. Relying on the decision of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , and S.P. Gupta Vs. President of India and Others, , the learned counsel for the petitioners submitted that the Petitioners have the locus standi to challenge Ext. P2 notification. The principles laid down in the said decision, according to me, are not applicable to the facts of the case. Here the petitioners could not place any material before this court to show that the impugned order would interfere with any of their rights. That they have no fundamental right to carry on business in liquor is well established. As held by the Supreme Court in Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, , only a person who is directly affected by law can challenge it. The petitioners have, as already stated, not been successful in establishing that the impugned provision directly infringe any of their rights, leave alone fundamental rights

8. The petitioner therefore have no locus standi to challenge Ext. P2.

9. The petitioners have also a case that unless the upset price is brought down, there is the chance of spurious liquor being sold and the Vypeen and Punalur incident repeated. I do not think that there is any scope for such an argument especially when the Government after taking note of such situations, have incorporated Sec. 57(A) in the Act, giving life imprisonment to the culprits who are responsible for such situations. For the reasons stated above, the petitions are liable to be dismissed. Accordingly I dismiss the Original Petitions.

