(1968) 03 MAD CK 0040

In the Madras High Court

K.M. Natesa Gounder APPELLANT

Vs

State of Madras and Another RESPONDENT

Date of Decision : 14-03-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 301, 302, 304
Essential Commodities Act, 1955 — Section 3, 3(2), 3(2)(c), 3(2)(g), 5

Citation : (1969) 82 LW 520 : (1969) 2 MLJ 186

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—The petitioner is a dealer in jaggery and other foodstuffs in Tirupathur, North Arcot district. He challenges the validity of G.O.Ms. No. 1171, Food, dated 30th October, 1967, directing the licensees under the Madras Gur and Khandsari Dealers'' Licensing Order, 1963, not to sell gur or khandsari sugar to any person residing or carrying on trade in gur and khandsari sugar outside the district except under and in accordance with the terms and conditions of the permit issued by the Commissioner of Civil Supplies. The validity of the notification is challenged on the ground that the notification was passed to effectuate purposes extraneous to the Essential Commodities Act, 1955, and is a colourable exercise of powers by the State Government. It was contended that the notification was in fact a prohibition on the movement of gur from Madras State to other States, and is beyond the powers of the State Government. It was submitted that as the notification has not set out that the State Government had formed the necessary opinion u/s 3 of the Essential Commodities Act, 1955, it is invalid in law. Lastly it was contended that condition (7) of the licence granted under the Madras Gur and Khandsari Dealers'' Licensing Order, 1963 gives an arbitrary power to the Government or the Collector which is violative of Articles 14, 19 and 301 of the Constitution of India.

2. The petitioner is dealing in jaggery with an annual turnover of about Rs. 3 to Rs. 4 lakhs. His business is buying jaggery from local dealers and jaggery manufacturers and selling it to dealers in Bombay, West Bengal, Gujarat, Bihar,

Uttar Pradesh, Madhya Pradesh, Kerala, Mysore and other States. The petitioner''s business is exclusively outside the district of North Arcot. As a result of the impugned notification, the petitioner''s business has come to a standstill, as he is not able to export jaggery to places outside the State.

3. Before examining the questions of law raised, the contention that the notification is a colourable exercise of the powers under the Act may be dealt with. According to the petitioner, it was reported in the press that the Madras Government had requested the Central Government to pass an order prohibiting the movement of jaggery from the Madras State. The petitioner was also made to understand that the Government was taking steps to prevent jaggery from being exported to other States with a view to make available more sugarcane for the sugar mills. It was also given out in the press that the State Government wanted to force the Central Government to take suitable action against all the Governments like Madhya Pradesh who had passed similar orders prohibiting the export of dhall and other grains outside their States. In the Press Note issued by the Commissioner of Civil Supplies, it is stated that the notification was passed in order to ensure that gur and khandsari sugar are made available to the consumers at reasonable prices and also to facilitate availability of more sugarcane for the sugar factories. It is, therefore, common ground that the notification was issued for the purpose of making gur and khandsari sugar available to the consumers at reasonable price and also to make sugarcane available for the sugar factories. So far as these two objects are concerned, it cannot be said that they are beyond the scope of the powers of the State Government u/s 5 of the Essential Commodities Act, 1955, for Section 3 (2) (c) of the Act enables the Government to control the price at which any essential commodity may be bought or sold. The section is also wide enough to empower the Government to pass an order for maintaining and increasing supplies of any essential commodity. This would include the power to regulate distribution of an essential commodity with a view to secure adequate amount of sugarcane being made available to the factories. The allegation is that the notification was passed for an extraneous purpose, namely, for forcing the Central Government to take similar suitable action against other State Governments like Madhya Pradesh, which have passed orders prohibiting the export of dhall and other grains outside their States. The Government in its counter affidavit has denied the allegation that the notification was passed for the purpose of forcing the Central Government to compel the other Governments to withdraw the restrictions imposed by them on the movement of dhall and other commodities. There is no material on record for coming to the conclusion that the notification was passed for the extraneous purpose of forcing the Central Government to compel other State Governments to withdraw their orders prohibiting sale of commodities like dhall to places outside their States. This allegation has not been made out, and has therefore to be rejected.

4. The impugned notification was passed on 30th October, 1967. The notification purports to restrict the movement of gur and Khandsari sugar, and is stated to

have been passed in exercise of the powers conferred on the State Government by Sub-clause (2) of Clause (4) of the Madras Gur and Khandsari Sugar Dealers'' Licensing Order, 1963. Clause (4), Sub-clause (2) of the Order provides that every licence issued or renewed under the Order shall be in Form B and shall be subject to the conditions specified therein. Para. (7) of Form B provides that the licensee shall comply with any direction that may be given to him by the Government or the District Collector or the licensing authority in regard to purchase, sale and storage for sale of gur/khandsari sugar. The. Madras Gur and Khandsari Dealers'' Licensing Order, 1963 was passed by the Madras Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 read with notifications of the Government of India in the Ministry of Food and Agricultural (Department of Food) No. GSR. 888, dated 28th June, 1961, and with the prior concurrence of the Central Government. By this Order it was provided that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority. One of the conditions of the licence is that the licensee shall comply with the direction given to him by the authority in regard to purchase, sale and storage for sale of gur and khandsari sugar. This order, it may be noted, was passed with the prior concurrence of the Central Government.

5. The Essential Commodities Act, 1955, was passed by the Parliament to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. Section 3 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of any essential commodity and trade and commerce therein for the purpose of maintaining and increasing supplies of such essential commodity or for securing their equitable distribution and availability at fair prices. Section 3 (2) of the Act enumerates the purposes for which the order can be made by the Government without prejudice to the generality of the powers conferred under Sub-section (1) of Section 3 of the Act. Section 5 of the Act provides that the Central Government may, by notified order, direct that the power to make orders u/s 3 shall, in relation to such matters and subject to such conditions, be exercisable also by such State Government or such officer or authority subordinate to a State Government as may be specified in the direction. By virtue of the powers conferred u/s 5 of the Act, the Central Government had directed by GSR. No. 888, dated 28th June, 1961, published in the Gazette of India, Part II, Section 33, dated 8th July, 1961, that the powers conferred on it by Sub-section (1) of Section 3 of the Act to make orders to provide for the matters specified in Clauses (a), (b), (c), (d), (e), f), (h) (i), (ii) and (l) of Sub-section (2) thereof shall in relation to foodstuffs be exercisable also by a State Government subject to the condition that before making an order under Clause (a) or in regard to regulation of transport specified in Clause (d) of the said subsection (2), the State Government shall obtain the prior concurrence of the Central Government. It may be noted that the power to provide for regulating or prohibiting any class of commercial or financial transactions relating

to foodstuffs u/s 3 (2) (g) of the Act was not delegated to the State Government. Any order regulating, by licences, permits or otherwise, the production or manufacture of an essential commodity and any order relating to regulation, by licences, or permits or otherwise, of the transport of an essential commodity, should be with the prior concurrence of the Central Government. It will thus be seen that the State Government has no power to regulate, by licences or permits or otherwise, the transport of any essential commodity. The Madras Gur and Khandsari Dealers'' Licensing Order, 1963 requires only the dealers who are engaged in the business of purchase, sale and storage for sale of gur and khandsari sugar to take out a licence. Apart from the fact that the State is not competent to regulate the transport of an essential commodity, the Madras Gur and Khandsari Dealers'' Licensing Order, 1963 does not prohibit a person other than a dealer to sell or to deal with gur and khandsari sugar. In fact, the impugned regulation prohibits only the licensees under the Order from selling gur and khandsari sugar outside the district. Thus, it is admitted that even if the notification is held to be valid, the right of a person other than a dealer to deal with gur and khandsari sugar is not in any way affected. So far as the dealer is concerned, his right to transport cannot be interfered with.. But, by the impugned notification, the licensee is called upon to obtain a licence before selling gur or khandsari sugar to anyone outside the district.

6. Article 301 of the Constitution of India provides that trade and commerce and intercourse throughout the territory shall be free. Article 302 empowers the Parliament to impose restrictions on freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Under Article 304, the State Government may, by law, impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. But such a restriction can only be imposed with the previous sanction of the President. Thus, any restriction on the freedom of trade, commerce or intercourse imposed by the State can only be in the public interest with the previous sanction of the President. Though the learned Government Pleader would plead that the notification is in the nature of a regulatory or compensatory measure permissible under the Constitution, he does not rely on the powers of the State under the Constitution to impose any restrictions on trade, commerce or intercourse with or within that State; but contends that u/s 5 of the Essential Commodities Act, the State Government is empowered as a delegate of the Central Government to provide for the various purposes enumerated in Section 3 of the Act. It is not disputed that the power of the Legislature of the State to make laws is confined to the whole or part of that State. If the contention of the learned Government Pleader is to be accepted, the power to restrict sale to persons outside the State should be deducible from Section 5 read with Section 3 of the Essential Commodities Act. The Essential Commodities Act, 1955 is a Parliamentary enactment for the purpose of controlling the production, supply and distribution of certain essential commodities. One would normally expect

that the control of production, supply, and distribution of essential commodities as between the various States would be by the Central Government and within the States, by the State Governments. Otherwise, if every State is empowered to make rules regulating the supply and distribution of commodities outside the State, a conflict would be inevitable. By virtue of the delegation of power, the State Government is entitled to exercise the powers conferred u/s 3 of the Act, as specified in notification of the Government of India, Ministry of Food and Agriculture (Department of Food) No. GSR. 888, dated 28th June, 1961. The Government has power to regulate the distribution and disposal of essential commodities. The power is regulatory and would not normally extend to the total prohibition of the sale. It is the plea of the State that they were not prohibiting, but merely regulating by insisting the licensee to take out a permit for sale outside the district. The prohibition of sale outside the district without a permit cannot be said to be in excess of the powers of the State Government. I am unable to agree with the contention that the State Government''s powers to regulate distribution and disposal of an essential commodity would include the prohibition of sale of the essential commodity to a place outside the State without a permit, for, under general law, the State Government has no power to prohibit such sale. Under the delegated powers, the State Government cannot be said to be invested with the power to prohibit a sale outside the State without a permit. It is significant in this connection to note that the Madras Gur and Khandsari Dealers'' Licensing Order, 1963 was passed with the prior concurrence of the Central Government. The Order did not contemplate any restriction on the sale of gur and khandsari otherwise than in accordance with a permit. This restriction is sought to be introduced under para. (7) of Form B which requires the licensee to comply with any direction that may be issued by the competent authority in regard to purchase, sale and storage for sale of gur and khandsari sugar. For the purpose of regulating the purchase, sale and storage for sale of gur and khandsari sugar, it cannot be said that the Government would be entitled to restrict the sale outside the State only on obtaining a permit and in accordance with the conditions of the permit. This, to my mind, appears to be not only beyond the scope of para. (7) of Form B, but also beyond the powers delegated to the State Government by the Central Government u/s 5 of the Act. It is also common ground that the concurrence of the Central Government was not obtained before the State Government passed the impugned notification. The result of the notification would be placing restrictions on the transport outside the State of gur and khandsari sugar. The notification so far as it relates to restrictions on sale outside the State is concerned has therefore to be held beyond the powers of the State Government.

7. The learned Government Pleader submitted that the notification was intended to restrict the sale inside the district, and the restriction on the sale outside the State was only incidental. This contention cannot be accepted, for, there is no power to the State to restrict the sale outside the State. If the purpose of the notification was only to restrict a sale to a place outside the district within the

State, it will be within the competence of the State. But this was not the ground on which the State Government sought to support the validity of the notification. The notification will, therefore, have to be held to be beyond the scope of the powers delegated to the State u/s 5 of the Essential Commodities Act, 1955.

8. The contention of the learned Counsel for the petitioner is that the notification is liable to be held as invalid as the State Government has not formed an opinion that it was necessary for maintaining or increasing the supply of gur and khandsari sugar or for securing their equitable distribution and availability at fair prices that the notification should be passed. I am unable to accept this contention, for, the Madras Gur and Khandsari Dealers'' Licensing Older, 1963 was passed by virtue of the powers conferred by Section 3 of the Essential Commodities Act, 1955, and the formation of the opinion need not be specifically expressed every time when an order is passed by the Government. In this case, the notification is intended to be an additional condition in the licence issued to the licensees under the Madras Gur and Khandsari Dealers'' Licensing Order, 1963. This plea cannot therefore be accepted.

9. Regarding the contention that condition (7), of Form B of the licence confers an arbitrary power on the State Government and the concerned authority, it is seen from the order as well as the several conditions of the licence that the purpose of imposing conditions is clearly for regulating the purchase, sale and storage for sale of gur and khandsari sugar. Para. (7) of Form B. cannot be attacked on that ground. But as I have already stated, the impugned notification has to be struck down as it is not within the scope of para. (7) when it restricted the sale of gur and khandsari sugar outside the State. The writ petition is allowed with costs. Advocate''s fee Rs. 250.