(1992) 10 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 30114 of 1992

K.N. Subba Reddy APPELLANT

Vs

State of Karnataka and others RESPONDENT

Date of Decision : 15-10-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 282

Citation : AIR 1993 Kar 66

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : Mr. P.R. Ramesh, for the Appellant; Mr. P.P. Muthanna, General, for the Respondent

Judgement

1. This petition is filed under Art. 15 of the Constitution of India to espouse a public cause. The petitioner is seeking for the following reliefs:

i. For a direction to restrain respondent No. I from spending any amount towards the function slated for 17-10-1992 to mark the second anniversary of assumption of office of Chief Minister by respondent No. 2; and

ii) For a direction to respondent No. 1 to take steps for recovery of whatever funds that has already been spent on the function stated for 17-10-1992 to mark the second anniversary of assumption of office of Chief Minister by respondent No. 2.

And to grant certain interim reliefs.

2. The learned counsel for the petitioner made submissions on five aspects, namely:

(1) that the money is spent only to glorify the second respondent;

(2) that the said expenditure is without the authority of law;

(3) that it runs contrary to the austerity policy adopted by the Government as

disclosed in the budgetary speech made by the second respondent;

(4) that release of buses in the State will cause great public inconvenience; and

(5) that the land where the convention is sought to be held itself is involved in litigation between the Government and the private parties and the convention should not be held in such a land.

Reference was also made by the learned counsel for the petitioner to Art. 267 of the Constitution and the Manual of Contingent Expenditure. He relied upon several decisions of the Supreme Court and other High Courts to contend that the State in order to incur expenditure must be duly authorised and unless it is so authorised it cannot incur such expenditure. The principal submission made on behalf of the petitioner is that the convention in question is going to be held only for the benefit of the second respondent and not for the benefit of the public of the State. The learned counsel for the petitioner further urged that every action of the Government must be informed with reason and unless the action of the Government is one informed with reason and in public interest the same is liable to be struck off by the Court. However, such''an issue is not before me. When there is a lis between the Government or any party or between any two parties where such parties have rights of State in distributing its largesse to any particular individual or lacks in fairness in treating all equally such questions may arise. Here the question is one relating to powers of the Government to spend money out of public exchequer for a set of purposes. Thus the question really is one on the nature and extent of power of expenditure, scope and limit thereof and the ambit of judicial audit.

3. The learned Advocate General in reply submitted that so far as this Court is concerned, there is a serious limit to the exercise of its power as set forth in various decisions and referred me to them in detail, to which I shall make reference a little later.

Thus the nature of the reliefs sought for in this case do not enure to the benefit of any particular individual as they are general in nature. No rights of any individual are involved, An analysis of the submissions made on behalf of the petitioner will reveal that what is attacked is the scope of the power of expenditure by the State in a matter of this nature.

4. The earliest case in this regard was the one in Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar and Others, . The Bombay High Court while dealing with this question and with specific reference to Art. 282 of the Constitution has stated as follows (at page 168):

"..... The powers of a State Government are much wider as would appear from Article 282 of the Constitution ..... This provision confers a very wide discretion on a State Government. It is for the State Government to decide what is public purpose and what is not a public purpose ..... If the Government purports to spend money for a purpose which it characterises as a public purpose though in point of fact it is not a public purpose, the proper place to criticise the action of the Government would be the legislature or the Appropriation Committee. The Courts are not the forum in which the Government''s action could be sought to be criticised or restrained. Wide as the powers of the High Court are under Article 226 of the Constitution, they do not extend as far as the petitioner would like them to go. The business of governing the State is entrusted by the Constitution to the executive government. How to spend public monies is part of the executive functions of the Government and it is not permissible to the High Court to interfere with the powers of the Government in this respect."

In Bira Kishore Mohanty Vs. State of Orissa, it was noticed that "it is for the State Government to decide what is a public purpose and what is not a public purpose. If the Government purports to spend money for a purpose which it characterises as a public purpose, though in point of fact it is not so, the proper place to criticise the action of the Government would be the Legislature or the Appropriation Committee. The Court shall not be the forum in which Government''s action can be criticised or restrained..... ". Again this position was reiterated in M. A. Ismail v. Alwaye Municipality 1974 Tax LR 1659.

5. So far as the power of expenditure of the State is concerned, the scheme of the Constitution of India is that the power of the Union or a State Legislature is not limited to the legislative powers to incur expenditure only in respect of powers conferred upon it under the VII Schedule, but it can incur expenditure on any purpose not included within its legislature powers. However, that purpose must be public purpose. The position is elucidated in "Commentary on the Constitution of India" Volume I, at pages 1 & 2, by Basu in the following manner, with reference to American Constitution on a provision similar to Article 282 of Constitution of India:--

"It has been held that the above spending power is not restricted to the purposes with respect to which Congress has legislative power delegated to it by the Constitutional extends to any public purpose, provided it provides for the general welfare. This, however, does not mean that the ''spending power'' grants to Congress any legislative power to provide for ''general welfare''. It only enables Congress to spend the revenue for a purpose of general welfare even though that subject matter does not come within its legislative competence. For instance, it enables Congress to make grants and subsidies to State Governments for agriculture, irrigation or reclamation of land, education, unemployment, highways etc., which are outside the legislative powers delegated to Congress.

This power has also been availed of to make federal grants or loans direct to municipal or local bodies or agencies subordinate to the State, e.g., to promote construction of municipal public works, or to create a corporation authorised to use federal funds for financing private debtors throughout the nation. The power to make grants has been held to include the power to impose terms and conditions as to expenditure of the moneys granted.

Courts have never sought to interfere with the Congressional determination of what is ''general welfare''. The result is, that once the money is collected by legitimate means, there is no judicial review over the distribution or spending of that money and Congress is free to make any law authorising expenditure for any purpose that appears to it to be conducive to the ''general welfare''. A taxpayer cannot question expenditure of the money raised by taxation on the ground that the expenditure will deplete the public funds and thus increase the burden of future taxation."

Considering the nature of the problem raised before me, I called upon the learned Advocate-General to place the necessary files and materials before this Court to enable the Court to know the nature of the expenditure to be incurred by the State. The learned Advocate-General was able to produce only one file and it does not contain all the information on the questions raised by me. The learned Advocate-General was not able to produce all those files on account of paucity of time.

6. In the background of this analysis made by the various High Courts of the constitutional scheme on financial powers of the State, I do not think this Court is competent to go into the question as to whether the expenditure incurred by the Government is for a public purpose or not or whether it is wise or not. Our Constitution envisages that the executive is responsible to the legislature and every policy and action is subject to its scrutiny and that is in consonance with Westminster system of Parliamentary democracy. Judicial interference is permissible when the action of the Government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for good of the State. All such questions must be thrashed out in the legislature and not in Courts. The complaint of the petitioner is in the nature of criticism of the Governmental expenditure and the wisdom thereof. But as held by various Courts such an exercise can be done only in other forums and not before this Court. This Court cannot control the purse strings of the Government. Not that I approve of the expenditure to be incurred or the purpose for which it is incurred is in the interests of public. If such questions are allowed to be raised before Courts every expenditure of the State can be called in question both as to the nature and extent thereof in which event the functioning of the Government itself will be hampered. In that view of the matter, I decline to entertain this petition. Petition is rejected.

7. Petition rejected.