

(1996) 02 KL CK 0040

In the High Court Of Kerala

Case No : O.P. No's. 16115, 13936 and 14454 of 1995

Krishnan Kakkanth

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Constitution of India, 1950 — Article 162, 19(1)

Citation : AIR 1996 Ker 329

Hon'ble Judges : P.A. Mohammed, J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : P. Ravindran, for the Appellant; K. Ramakumar, A.K.J. Nambiar and K.K. Kochupappu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishnan, J.—In O.P. Nos. 13936 and 14454 of 1995, petitioners challenge Ext. P5 circular issued by the Kannur District Co-operative Bank Ltd. which required that the Rubber Sheeting Rollers shall be purchased only from Regional Agro-Industries Development Corporation Ltd. as a precondition for disbursement of loan. In O.P. No. 16115 of 1995, petitioner challenges the Government Order, dated 19-9-1995 which states that for the distribution of pump sets under the Comprehensive Coconut Development Programme, pump sets shall be supplied by the Kerala Agro-Industries Corporation and Regional Agro-Industries Development Corporation in the districts of Kannur, Wyanad, Kozhikode, Malappuram, Palakkad, Thrissur and Kottayam. The facts in O.P. No. 13936 of 1995 and O.P. No. 14454 of 1995 are similar. In both cases, petitioners, are agriculturists engaged in the cultivation of rubber, coconuts and other cash crops. Petitioners anti similarly placed agriculturists have availed loans for the purpose of cultivation. There are various schemes formulated by the State owned financial institutions to provide short term loan to agriculturists. By using these loans, agriculturists purchased good quality agro-machineries and accessories at competitive prices. In 1993, the District Co-operative Bank took a decision to

give incentives to agriculturists to purchase Rubber Sheeting Rollers from Regional Agro-Industries Development Corporation Ltd. (for short "RAIDCO"). But, later this scheme was withdrawn. RAIDCO is only a Co-operative Society dealing in agro-machineries. It does not have many outlets or distributors. Petitioners allege that at the instance of the Kannur District Co-operative Bank Ltd. it was decided that whenever loans are distributed it should be with a condition that whatever machinery is required for the purpose for which loan is sanctioned should be purchased from RAIDCO. Other agro-machinery dealers challenged this circular and it was held in O.P. No. 9628 of 1989 that the circular was discriminatory. This circular was withdrawn by the Registrar of Cooperative Societies. However, again a decision was taken to favour the 3rd respondent. This again was challenged before this Court but the original petition was dismissed. According to the petitioners, any order conferring special treatment to RAIDCO is illegal as it is violative of the fundamental rights of other dealers, It is further contended that these petitioners approached the District Co-operative Bank in the Kannur District to avail loan for the purchase of Rubber Sheeting Rollers and the petitioners were directed that the Rubber Sheeting Rollers shall be purchased from RAIDCO. This, according to the petitioners, is arbitrary, discriminatory and violative of the petitioners' right to equality, freedom of choice and freedom of liberty. According to the petitioner, that condition stipulated in Ext. P5 circular to purchase Rubber Sheeting Rollers from particular Co-operative Societies is against the orders of this Court.

2. In O.P. No. 16115 of 1995, the matter relates to the purchase of pumpsets. Petitioner therein is a dealer in agro-machinery and he is having a shop at Kanhangad in Kasaragod district. Petitioner is also the President of the Kerala Agro-machinery Dealers Association. It is contended that there are 550 private dealers. RAIDCO formed Co-operative Societies in the northern district of Kerala. They are also dealers in agricultural pumpsets, implements and agro-machineries. RAIDCO has got only 25 outlets all over Kerala. So also Kerala Agro-Industries Corporation Ltd. (for short "KAICO") which is a Government of Kerala undertaking, has only 11 outlets all over Kerala. Various schemes either sponsored by the Central Government or State Governments are implemented for the development of agriculture. As part of this scheme, Government of Kerala has decided to implement a scheme known as Comprehensive Coconut Development Programme (C.C.D.P.). Under this scheme subsidies are to be provided for tube-wells, open dug wells, pumpsets, group irrigation, green manure, copra drier etc. The scheme proposes to provide irrigation facilities by subsidising construction of wells and installation of pumpsets. In the northern districts, these pumpsets are being supplied by KAICO and when the petitioner made enquiry it was understood that the Government issued order No.G.O.(Rt) 1310/95/ AD, dated 19-9-1995, to the effect that in the districts of Kasaragod, Kannur, Wyanad, Kczhikode, Malappuram, Palakkad, Thrissur and Kottayam the supply of pumpsets shall be exclusively made by RAIDCO and KAICO. Petitioner contends that Ext. P7 Government Order is highly illegal, totally arbitrary and

absolutely without any jurisdiction. It is contended that it is violative of the fundamental rights of the petitioner.

3. First respondent in O.P. No. 16115 of 1995 has filed a counter-affidavit supporting the Government order. It is contended that the Government order was issued under Article 162 of the Constitution and there is no discrimination by issuing such order since the State Government have power to give preferential treatment to Co-operative Societies and the Government Corporations. It is submitted that it is the duty of the Government to promote the activities of the Co-operative Societies as well as that of public sector undertakings in the matter of purchase of pumpsets. This order was issued on the basis of well planned scheme prepared after consultation with highly technical bodies. The orders were issued as under the policy decision of the Government and after high level discussions and deliberations considering all aspects. It is to ensure good quality pumpsets and proper after sales service especially to undertakings which are well-equipped and well-managed.

4. We heard petitioners' counsel and counsel Sri K. Ramakumar, who appeared for other contesting respondents. The main contention of the petitioners' counsel is that the direction to purchase Rubber Sheeting Rollers and pumpsets from RAIDCO alone is violative of the fundamental rights of these petitioners. In O.P. Nos. 13936 and 14454 of 1995 it is contended that the petitioners who have availed loans should be given opportunity to purchase agro-machineries from dealers of their choice. Petitioner in O.P. No. 16115 of 1995 alleges that the direction contained in the Government Order that the loanee shall purchase pumpsets only from KAICO and RAIDCO is violative of the freedom of choice of the petitioner who is a dealer in agro-machineries.

5. At the outset, it could be stated that the fundamental rights guaranteed under Article 19 of the Constitution do not confer any absolute or unconditional rights on the petitioner. It is always subject to reasonable restriction. Admittedly, RAIDCO and KAICO are Cooperative Societies. The mandate of the Article 43 in Part IV of the Constitution is that the State should endeavour to promote the activities of the Co-operative Societies. It is in this background the matter is to be viewed. It was held in the *Papnasam Labour Union Vs. Madura Coats Ltd. and Another*, at paragraph 16 : *Papnasam Labour Union Vs. Madura Coats Ltd. and Another*, , para 15(k),thus:

"Ordinarily, any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest."

6. It is not uncommon that the State Government and the authorities working under the Government enter into various fields of commercial activities. KAICO and RAIDCO are manufactures and dealers of agro-machineries. These organisations being part of the co-operative movement, it is necessary that the Government should give support and help to such Co-operative Societies. On

several occasions, the orders passed by the State Government giving special treatment to Co-operative Societies were challenged on various grounds. One of the earliest decision is reported in *Mannalal Jain Vs. The State of Assam and Others*, . That was a case where Clause 5(e) of the Assam Food Grains (Licensing and Control) Order was challenged on the ground that it provided monopoly in favour of Co-operative Societies. The licence was granted only to Cooperative Societies and the petitioner's application was rejected and he contended that there was discrimination. Even though there was divergent opinion in that case regarding the constitutional validity of the order. The majority as well as the minority view held that the favourable treatment given to the Cooperative Societies cannot be held to be unreasonable. The majority view at page 392 (paragraph 9) held that the preference given has a reasonable relation to the objects of the legislation set out in Section 3 of the Act and the order cannot be held to be bad on the ground of class legislation. The minority view held that on the facts of the case preference to Co-operative Societies even if that resulted in the dealers being prevented altogether from dealing in paddy, would be a reasonable restriction on the latter's right of trade. It was held that granting of licence to Co-operative Societies will not amount to creating monopoly;

7. In *Viklad Coal Merchant, Patiala and Others Vs. Union of India (UOI) and Others*, , Sections 27-A and 28 of the Railways Act (9 of 1890) was challenged on the ground that priority given to Central or State Government in the matter of transport of coal was held to be not violative of Article 19(1)(g). Petitioners therein contended that they had been denied the use of the railways for transport of coal from various coalfields and way-side stations to their destinations by the illegal and unconstitutional action of the railway administration. This plea was rejected and it was not illegal to give priority to State Government or Central Government in the matter of transport of coal.

8. Recently the Supreme Court considered the validity of the Rules 19-A, 19-B and 8-B of the Tamil Nadu Minor Mineral Concession Rules, 1959 under Mines and Minerals (Regulation and Development) Act, 1957. The High Court of Tamil Nadu had struck down Rule 19-A on the ground that by reason thereon State Government was obliged to give preference to State Govt. Companies and Corporations in granting quarrying licence for various granites set out there. The High Court had found that the first proviso of Rule 19-A did not contain any guidelines in the matter of company giving preference to State Government or Corporation and that this preference gave unfettered discretion to the State Government. This finding of the High Court was reversed by the Supreme Court on the ground that Rule 19-A does not wholly exclude private parties from obtaining quarrying licence for minerals specified therein and the Rule only stated that in such lease preference shall be given to State Government Companies and Corporations and it was held that Rule 19-A, therefore, cannot be said to be violative.

9. In *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, , a

Government order was challenged as violative of Article 19(1)(g) of the Constitution. In the State of M.P. a change was instructed in the course of instruction and syllabi in some of the subjects from the academic year 1971-72. State Government prescribed improved course of instruction and new text books were printed. The Text Books Corporation accordingly printed and published 28 text books in accordance with the new course of instruction. The State Government made it clear in the notification that so far other subjects were concerned for which such "nationalised" text books were not available, the schools were free to use according to their convenience such books of private publishers as they liked, provided they were written in accordance with the courses of instruction and syllabi for the academic year 1970-71. In 1972 State Government introduced new course of instruction and the Government prescribed 36 text books for use in the Primary and Middle School classes. In the writ petition, petitioners challenged the power of State Government to prescribe text books for schools under Article 162 of the Constitution and the question came up for consideration was whether the executive power of the State Government under Article 162 would extend to all matters with respect to which State Legislature has power to make laws. The Supreme Court answered in the affirmative. It was held that right of a person under Article 19(1)(g) is not infringed if his books were not prescribed for studies. It was further held that no publisher has any right to insist that any of his books should be accepted as text books by the State Government. He has only mere chance or prospect of any or some of his books being approved as text books. Such changes are incidental to all trade or business and there can be no infringement of any right if such chances are taken away by the Government by prescribing text books published by Text Books Corporation.

10. In another decision reported in *M. Jhangir Bhatusha and Others Vs. Union of India (UOI) and Others*, , the question came up for consideration was whether the exemption from customs duty given to State Trading Corporation and not to private importers was violative of Article 14 of the Constitution. The Supreme Court held that the material on record showed that international prices were fluctuating, and although they may have shown a perceptible fall there was the apprehension that because of the history of fluctuations there was a possibility of their rising in the future. The need to protect the domestic market is always present, and therefore, encouragement had to be given to the imports effected by the State Trading Corporation by reducing the rate of customs duty levied on them. In that decision the Supreme Court observed thus:

"It is true that the State dons the robes of a trader when it enters the field of commercial activity, and, ordinarily it can claim no favoured treatment. But there may be clear and good reason for making a departure. Viewed in the background of the reasons for granting a monopoly to the State Trading Corporation, acting as an agent or nominee of the Central Government in importing the specified oils, it will be evident that policy considerations rendered it necessary to make consumation of that policy effective by imposing a concessional levy on the

imports. No such concession is called for in the case of the private importers who, in any event, are merely working out contracts entered into by them with foreign sellers. Since the private importers have not made out that their business will be crippled or ruined in view of the rate of customs duty visited on their imports, they would not be entitled to relief."

11. From the various decisions cited above, it is clear that any favourable treatment given to the State owned Enterprises or Co-operative Societies cannot be held to be violative of Article 19(1)(g) of the Constitution. Here, there is no monopoly is created in favour of the co-operative societies. Under the various schemes of loans, the District Cooperative Bank directed that those who sought for loan shall purchase agro-machinery from the Co-operative Societies under the control of RAIDCO and KA1CO. The State is controlling the distribution of loans. It is true that NABARD, which, is making available the funds has not issued such direction to the State Government but it is well within the authority of the State Government to impose any condition as regards the disbursement of loans. It is also the duty of the State to see that the loans are utilised by the agriculturists for the purpose for which they had been availed. It is also the duty of the State Government to see that agriculturists get agro-machineries of first rate quality and that they must get after-sale services. It was submitted by the Government Pleader that there were complaints of corruption and such complaints could be properly investigated if only the agriculturists purchase machineries from the organisations like Co-operative Societies or other Government controlled institutions. Learned counsel for the petitioners contended that the reasonable restriction now imposed by the State Government is not on the basis of any law passed by the Legislature and the Executive instructions have no force of law. Reliance was placed on the decision reported in *Bijoe Emmanuel and Others Vs. State of Kerala and Others*,) and also the decision reported in *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, . But we do not think that the order of the Government and the one issued by the District Co-operative Bank, Kannur create any restriction on the freedom of right envisaged under Article 19(1)(g). If only such order infringes petitioners' right, such a question would come up for consideration.

12. We are of the view that the direction issued by the Government and the District Co-operative Bank to purchase agro-machineries from the RAIDCO and KAICO are not violative of the fundamental rights, if any, of the petitioners. The right to conduct trade or business is in no way infringes by such directions.

Original Petitions are without any merit and they are dismissed, however, without costs.