(1992) 02 MP CK 0034

In the Madhya Pradesh High Court

Case No : M.P. No. 4351 of 1991 (J)

Madhya Pradesh Ration Vikreta Sangh and Anr APPELLANT

Vs

State of M.P. and anr RESPONDENT

Date of Decision : 21-02-1992

Acts Referred:
Essential Commodities Act, 1955 — Section 3, 5

Citation : (1992) 1 MPJR 195

Hon'ble Judges : S.K. Jha, C.J;D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

D.M. Dharmadhikari>, J.

By this common order, this petition along with M.P. No. 244/92 and M.P. No. 245/92 raising similar questions, shall stand disposed of.

Petitioner No. 1 is a registered society of existing fair price shop-holders and Petitioner No. 2 and other Petitioners in the connected petitions are holders of licences of fair price shops granted by the State of M.P. in its Department of Food and Civil Supplies.

The Petitioners are challenging the M.P. (Food Stuff) Public Civil Supplies Distribution Scheme, 1991 (hereinafter referred to as the 1991 Scheme, a copy of which is annexed with the petition as Annexure-A. The impugned 1991 Scheme had been formulated and notified on 7-10-1991 and had to come into effect from 1-1-1992. The Scheme of 1991 has been issued in exercise of power under Clause 4 of the M.P. Food Stuff (Distribution) Control Order, 1960, as amended by the notification published in M.P. Rajpatra dated 21-2-91. It may be stated that the Control Order of 1960, above-mentioned, was issued in the exercise of power under Sections 3 and 5 of the Essential Commodities Act, 1955.

The impugned 1991 Scheme for distribution of essential food stuff has been introduced in supersession of the earlier distribution scheme of the year 1981. Under the 1981 scheme, there was a clause providing preference to be given to the co-operative societies for appointment as agents to run the retail fair price shops. The clause in the scheme provided that if there were no co-operative societies in the areas concerned nor such as are willing to accept the agency, individuals could be appointed as agents. The impugned scheme of 1991 supersedes the earlier scheme of 1 81 and provides that only co-operative societies shall be appointed as agents for running the fair price shops, to the complete exclusion of the individuals. The Petitioners, therefore, feel aggrieved by the impugned 1991 scheme as they are deprived of their present fair price shops held by them in agency with effect from 1-1-92.

4-A. Learned Counsel appearing for the Petitioners assailed the impugned 1991 scheme on several grounds, which we propose to deal with hereunder.

The first ground of attack to the 1991 scheme is that it violates their fundamental rights to trade in food-grains, guaranteed under Article 19 (1) (g) of the Constitution of India. It is submitted that complete exclusion of the individuals from being granted agency of the fair price shops, by creating monopoly in favour of the co-operative societies is not saved as a reasonable restriction under Article 19 (6) of the Constitution of India, because the impugned scheme is not a "law" but is only an executive decision. Reliance is placed on Mannalal Jain Vs. The State of Assam and Others, , Hrudananda Patra and Another Vs. Revenue Divisional Commissioner Central Division and Others, and Utkal Contractors and Joinery (P) Ltd. and Others Vs. State of Orissa,

In reply, the learned Advocate General, on behalf of the State, submitted that as a result of introduction of Clause 4 to the Control Order, under which the scheme of 1991 was formulated, as statutory scheme has come into being and is a piece of delegated legislation. The impugned scheme is, thus supported on the ground that there exists no fundamental right to be appointed as an agent of the Government and if it exists, complete exclusion of individuals and creation of monopoly in favour of the co-operative societies being the step taken in public interest, is saved by the provisions of Article 19 (6) (ii) of the Constitution of India.

The challenge based on alleged infringement of fundamental right has no force. Our task has become easier on this point, because the Supreme Court in two decisions (infra), while considering the 1981 scheme, has held that no citizen can claim any fundamental right of being appointed as an agent of the State Govt. in a distribution scheme for food stuff and such scheme does not take away the right to trade in food-grains. The following observations of the Supreme Court in the case of Sahkari Saste Ana] Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, at page 2035. squarely answer the point in question against the Petitioner in the following words:

The fundamental right of traders like the Petitioners to carry on business in food stuffs was in no way affected. They could carry on trade in food stuffs without hindrance as defers only, they could not run fair price shops as agents of the

Government. No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop.

The above decision was followed in Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another, and the above legal position is reiterated in the following words:

The constitutionality of the impugned scheme is also challenged as abridging Article 19 (1) (g) of the Constitution. The short answer to the challenge is that the scheme in no way infringes the Petitioners'' right to carry en their trade in food grains. They are free to carry on business as wholesale or retail dealers in food grains by taking out licenses under the M.P. Foodgrains (Licensing) Order. 964. There is no fundamental right in any one to be appointed as an agent of a fair price shop under a Government Scheme.

In view of these clear pronouncements, it is not necessary, therefore, for us to go into the question whether the scheme of 1991, as contended by the Petitioners, is only an executive action or, as contended by the State, "law", being a piece of delegated legislation under Clause 4 of the Control Order of the year 1960 inserted by Notification dated 21st February 1991 published in M.P Gazette Extraordinary dated 21-2-1991.

Second contention on behalf of the Petitioners is based on the right of equality under Article 14 of the Constitution of India. In substance, the submission is that the action is arbitrary and discriminatory inasmuch as by an executive fiat, all individual fair price shop-holders are stigmatized as "corrupt" and guilty of illicit trade for justifying creation of monopoly in favour of co-operative societies. On the same aspect, it was further submitted that the reasons stand for, formulating the scheme are irrational and unreasonable and ignore all relevant aspects for improvement of the distribution system, it is contended that even if the right to hold fair price shop is held to he a more privilage or largessee extended by the State, the deprivation thereof is based on unreasonable and irrational grounds. Reliance is placed on Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and Olga Tellis and Others Vs. Bombay Municipal Corporation and Others,

In reply to the second ground of attack to the scheme, the learned Advacate General produced before us a copy of the report of the sub-committee consisting of five senior Ministers of the State. The committee was especially set-up to make an enquiry and study the working of the 1981 scheme so as to suggest ways and means to streamline and improve the existing system of distribution of foodgrains to better subserve public interest. Report of the above committee was read out before us by the counsel appearing on either side and commented upon by them in their favour.

In short, the committee reported that two basic difficulties, one of nonavailability of transport facilities upto each shop and law marging of profits to the shop-holders, encourage under-hand dealings by the shop-holders. The above factors were found to have frustrated the very purpose of the distribution systen. The committee instead recommended that the distribution could be done through the agency exclusive, of co operative societies in order to discourage the profit motive and to avoid rise in prices of foodstuffs to be distributed by the Government. The committee found that the fair price shops can be better managed through the agency of co-operative societies which will have inherent internal and external checks through the Governmental authorities 10 ensure the improved distribution system.

Learned Counsel for the Petitioners severaly criticised the report of the sub-committee stating inter alia that no attempt was made to see and judge the performance of individual shop holders and on generalisation, the individuals have been totally ousted from the trade in fair price shops, it is stated that in these hard days of unemployment, a large number of existing shop-holders will be rendered jobless and lose their means of livelihood which they were enjoying for the past several years.

We have been taken through the report of the sub-committee. It is difficult to accept that opinion formed and suggestions made by the said committee therein, are in any manner arbitrary or unreasonable. In our opinion, it is for the Government to evolve the best method of distribution system for foodgrains and it is the best judge on such policy matters, it is not for this Court to substitute its opinion or force a scheme for the one evolved and formulated by the Government on the recommendations of the sub committee which had means to collect the necessary information for the purpose. The attack based on the alleged violation of Article 14 of the Constitution of India also, therefore, fails.

The alternative submission of the Petitioners was that the existing arrangement of fair price shops under the 1 81 scheme is saved by the repeal and saving Clause 16 of the impugned 1991 scheme. Repeal and saving Clause 16 as is generally to be found in statutes, provide, that 1981 scheme would stand repealed but the repeal shall not affect the operation of any order issued or action already taken under the repeated scheme and such order or action shall be deemed to have been issued or taken under the provisions of the new scheme. It is illogical to read the above Clause 16 of the scheme to mean that any action taken or arrangement made under the repealed scheme, although inconsistent with the repealing scheme would survive. To construe the clause in the manner sought to be done by the Petitioners, would defeat the very purpose for which the earlier scheme was changed and substituted by the new scheme. It is inconceivable from the report of the sub-committee, which was the foundation of formulation of the impugned scheme, that it was contemplated that the existing fair price shop under the agency of individuals would be allowed to be continued along with the shops to be given to the co-operative societies. The contention of the Petitioners, therefore, based on repeal and saving Clause 16 of the impugned scheme has no force.

Lastly a feeble attempt was made to challenge the impugned scheme alleging malafides. It was submitted that the action was motivated politically to oust unfavourable shop-holders. The plea based on malice has no legs to stand. There can be no better consideration than that was bestowed on the subject of improving the distribution system of essential foodstuffs by the Government. The scheme evolved neither favours, nor disfavours any particular individual or class of individuals. On the contrary, it would encourage the co-operative movement in the best public interest. The charge of malice is, therefore, frivolous and baseless.

Consequently, the petition stands dismissed We, however, leave the parties to bear their own costs. The amount of security, if deposited, be refunded to the Petitioners.