(1981) 12 KAR CK 0010

In the Karnataka High Court

Case No : WAs 1602 to 1606/81

Mahadeshwara Stores APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 04-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 2 KarLJ 201

Hon'ble Judges : D. M. Chandrashekhar, C.J.;N. Venkatachala, J

Judgement

N. Venkatachala, J.-By consent of learned counsel, these appeals were treated as having been posted for hearing and we heard them.

2. These are appeals from the common order of Puttaswamy, J., dismissing WP Nos. 8703 to 8705, 9362 and 9651 of 1981. The petitioners therein have presented these appeals. For the take of convenience, the parties will hereinafter be referred to according to their respective positions in the writ petitions.

3. S. 3 of the Essential Commodities Act, 1955 (hereinafter referred to as ''the Act''), confers upon the Central Government, power to make orders, inter alia, for regulating by licences, storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. S. 2 (a) of the Act defines the term ''essential commodity'' to mean, inter alia, sugar and foodstuffs including edible oil seeds and oils. S. 5 of the Act authorises the Central Government to delegate, by a notified order, the power conferred upon it under S. 3 thereof, to a State Government. By its notified Order No. GSR 888 dt. 28th June 1961, issued under S. 5 of the Act, the Central Government delegated its powers of making certain orders under S. 3 of the Act to the Karnataka State Government (hereinafter referred to as ''the State Government''). In exercise of such delegated power, the State Government made the Karnataka Sugar Dealers Licensing Order, 1962 (hereinafter referred to as ''the Sugar Order'') and the Karnataka Food-grains (Retail) Dealers Licensing Order, 1964 (hereinafter referred to as ''the Food-grains Order''). The Sugar Order provides for regulating

the issue and cancellation of licences to persons to be engaged in the business of purchase, sale or storage for sale of sugar exceeding 5 quintals, at any one time. The Foodgrains Order provides for regulating the issue and cancellation of licences to any person to be engaged in business of purchase, sale or storage or for sale of foodgrains exceeding certain quantities of foodgrains, such as, paddy, rice, jowar, wheat and wheat products.

4. Since the Sugar Order and the Food-grains Order are in force in the City of Bangalore, any person, who wants to engage himself in the business of purchase, sale or storage for sale of sugar or food-grains exceeding quantities specified in those orders, can carry on such business only after obtaining licences under each of those Orders from the Licensing Authority provided therefor. The petitioners having obtained such licences were carrying on business in sugar and foodgrains.

5. The City of Bangalore being an ''informal rationing area'', consumers of sugar and foodgrains in this area are enabled to obtain supply of them in limited quantities, on ration cards from authorised fair price shops. The State Government, which procures sugar and foodgrains either from the Central Government or from other sources, supplies the same to authorised fair price shops for being supplied in turn toration card holders. Such authorised fair price shops are those run by authorised retail agents each of whom will have entered into an agreement in that regard with the State Government in the prescribed form and will have obtained licences for carrying on retail trade in sugar and foodgrains. Petitioners are some of such authorised retail agents.

6. The Joint Director of Food and Civil Supplies (hereinafter referred to as ''the Joint Director''), an officer of the State Government, having authority to terminate the agreements with authorised retail agents running fair price shops, made orders suspending the operation of such agreements with the petitioners on the basis of reports received from his subordinates to the effect that the petitioners were not properly running such fair price shops.

7. Feeling aggrieved by such orders of suspension, the petitioners impugned them by presenting writ petitions out of which these appeals have arisen. The learned single Judge, who heard the writ petitions, dismissed them holding, inter alia, that since the grievance of the petitioners in the writ petitions related to an alleged breach of terms of the agreements entered into between each of them and the State Government no relief could be given in respect of such alleged breach in exercise of this Court''s writ jurisdiction.

8. In these appeals, Sri S.C. Javali, learned counsel for the appellants-petitioners, Contended that the agreements with the petitioners had been entered into by the State Government in exercise of its statutory power under the Act and that hence the breach of such agreements could be the subject matter of writ petitions. He further contended that principles of natural justice required that before suspending the operation of such agreements, the

petitioners should have been given show cause notices and given an opportunity to show cause against such suspension.

9. The learned Addl. Government Advocate, on the other hand, contended that the agreements with the petitioners, had been entered into by the State Government not in exercise of any power under the Act but in exercise of its executive power and that hence the petitioners could not seek relief in respect of alleged breach of such agreements by invoking the writ jurisdiction of this Court. He also contended that there is no rule of natural justice which requires a show cause notice being issued and the petitioners being heard before suspending the operation of such agreements.

10. In the light of the rival contentions, the points which arise for our determination in these appeals, are:

(i) Whether the State Government had entered into the agreements in question with the petitioners in exercise of its executive or statutory power; and

(ii) Whether this Court could, in exercise of its writ jurisdiction, give relief to the petitioners complaining about breach or threatened breach of such agreements:

11.Point No. (i):-Sri Javali''s contention that the State Government had not entered into these agreements in exercise of its executive power, but the statutory power under the Act, proceeded on the assumption that no activity of the State Government relating to the distribution of essential commodities, could be done outside the framework of the Act. That contention is untenable in view of the pronouncement of the Supreme Court in Sarkari Sasta Anaj Vikreta Sangh v. State of M.P., (1981) 3 Scale 1413. SC. There the question was whether the MP Foodstuffs (Civil Supply Distribution) Scheme, 1981, providing for establishment of fair price shops to be run by the agents appointed by the MP State Government, had been made in exercise of its executive power or the statutory power under the Essential Commodities Act, 1955 delegated to it by the Central Government. It was argued therein that the State Government had no power to make the order formulating the scheme of distribution of essential commodities except under S. 3 of that Act. Repelling that contention, the Supreme Court observed thus:

"The basic assumption underlying the argument was that the scheme was formulated by the Government pursuant to some power purported to be vested in the Government under the MP Foodstuffs (Distribution Control) Order, 1960, and that the Government would otherwise have no power to formulate such a scheme. The assumption is not well-founded. In the first place the MP Foodstuffs (Distribution Control) Order. 1960, as amended in 1980 defines ''fair price shop'' as a "shop set up by the Government under the Government Scheme" and the ''Government Scheme'' as "the scheme for distribution of foodstuffs to consumers through fair price shops set up by the Government in this behalf". There is no other provision in the Order authorising the setting up of fair price shops or the making of a scheme for setting up fair price shops. On the other hand the State Government has undoubted competence to make a scheme for setting up fair price shops and to set up fair price shops in pursuance thereof, in exercise of its executive power under Art. 162 of the Constitution which is co-extensive with the legislative power of the State Legislature. Entry 33(b) of List III (Concurrent List) is ''trade and commerce in, and the production, supply and distribution of foodstuffs, including edible oil-seeds and oils. The Government, therefore, has the undoubted right to make a scheme for the distribution of foodstuffs, without being vested with any special authority under any order made under the Essential Commodities Act. As already mentioned by us, the MP Food. stuffs (Distribution Control) Older, 1960, does act purport so vest any such power in the Government. It must, therefore, be taken that the MP Foodstuffs (Civil Supply Distribution) Scheme, 1981, was made in exercise of the executive power of the Government and not in exercise of any power delegated by a delegate under the Essential Commodities Act."

12. We perused the pro forma agreement entered into between each of the petitioners and the State Government. It be gins with a statement that the agreement is being made pursuant to a decision of the State Government to distribute and sell to the public through authorised fair price shops, the stocks of foodgrains released by the Government of India or other stocks as the State Government may procure from other sources. It deals with the State Government and the person entering into that agreement as parties to the agreement. The terms and conditions in the agreement relate to the respective obligations to be carried out by the parties under that agreement. Its concluding part shows that it has been entered into on behalf of the State Government. However, there is absolutely nothing in the agreement to indicate that it is entered into by the State Government in exercise of any statutory power. In our view, the full text of the agreement clearly demonstrates that the agreement is one which is brought into existence by the State Government in exercise of its executive power as held by the learned single Judge.

13.Point No. (ii): If the agreements had been entered into with the petitioners by the State Government in exercise of any statutory power, the obligations of the State Government created under such agreements, would have been statutory obligation which could have been enforced by the petitioners by invoking the writ jurisdiction of this Court. But. the agreements in question were entered into, by the State Government in exercise of its executive power as held by us The obligations of the State Government under those agreements towards the petitioners, therefore, could only be contractual in nature. According to the petitioners, the officers of the State Government acting on its behalf, should not have made orders suspending such agreements. In substance, the petitioners'' grievance is that there is an attempt on the part of the State Government to terminate its obligations under the agreements in breach of the terms and condition thereof and therefore this Court should prevent the State Government from committing breach of its obligations under such agreements.

14. The question, which, therefore, arises for our consideration is whether this Court, in exercise of its writ jurisdiction, could give relief to the petitioners complaining of breach of contractual obligations of the State Government under the agreements in question.

15. As to whether the High Courts, in exercise of their writ jurisdiction, could give relief to citizens who complain of breach of contractual obligations by the State Government or their officers, has since been considered by the Supreme Court in several of its decisions, we shall refer to some of them:

16. In Lekhraj Sathramdas Lalvani v. N. M. Shah, Dy. Custodian, AIR 1966 SC 334, the Supreme Court was dealing with the question whether the machinery of a writ under Art.226 of the Constitution, could be availed of by a citizen to enforce a duty or obligation falling upon a public servant under the terms of a contract. That question was answered by the Supreme Court thus:

"In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant, cannot be enforced by the machinery of a writ under Art. 226 of the Constitution".

17. In Harishankar v. Dy. Excise and Tax Commr., AIR 1975 SC 1121, the Supreme Court considered the question whether the persons (appellants before it), who had entered into contracts with the Government, could impeach such contracts and seek relief therefor by invoking the writ jurisdiction of a High Court. Dealing with that question, the Supreme Court observed thus:

".... A writ petition is not an appropriate remedy for impeaching contractual obligations".

18. In the Division Forest Officer v. Bishwanath Tea Co., Ltd, AIR 1984 SC 1368, the Supreme Court, while dealing with the question as to whether relief under Art. 226 of the Constitution, could be given to a party under a contract, elucidated the law on the point thus:

"Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract. If contract is capable of being specifically performed, or the party may sue for damage. Such a suit would ordinarily be cognizable by the Civil Court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a Civil Court where a suit for specific performance of contract or for damages could be filed. This is so well settled that no authority is needed",

19. In the writ petitions from which the present appeals have arisen, the petitioners had complained against the orders of the officers of the State Government, which, according to them, amounted to breach of obligations of the State Government under the terms of the agreements and sought for relief against such breach. In our view, such relief cannot be obtained in writ petitions.

As rightly pointed out by the learned single Judge, the remedy, if any, for the breach of contractual obligations by the State Government or its officers, now complained of by the petitioners, would lie only in a Civil Court.

20. Sri Javali, however, contended that certain terms and conditions in the agreements in question, were similar to the terms and conditions in the Sugar Order and the Foodgrains Order and that hence the breach of the terms of the agreements by the State Government, would give a right to the petitioners to complain against such breach by invoking the writ jurisdiction of this Court and seek relief therefor.

The mere fact that certain terms in the agreements are similar to the terms and conditions of licences under the Sugar Order or the Foodgrains Order, does not make them statutory terms and conditions. Further as the terms and conditions in the agreements do not lose their contractual nature, they could only be enforced as contractual obligations in a Civil Court.

20. Sri Javali nextly contended that the Karnataka (Prevention of Unauthorised Possession of Ration Card) Rules, 1975, imposed an obligation on the petitioners, who were retail dealers, not to supply foodgrains and sugar against ration cards which they know were bogus ration cards and that hence petitioners had to be treated as persons performing statutory duties under the agreements and that the breach of the obligations under the terms of the agreements by the State Government, therefore, should be construed as breach of statutory obligations.

We are unable to see any merit in this contention.

The fact that certain duties are imposed by statutory orders on persons discharging certain contractual obligations, cannot convert the contractual obligations into statutory obligations.

21. Sri Javali, lastly, contended that having regard to the general character of agreements entered into by the State Government with the petitioners, we should hold that the impugned suspension of such agreements was vitiated when it had been admittedly made without conforming to the principles of natural justice, that is, by affording the petitioners an opportunity to show cause against the making of such orders. It is not necessary for us to deal with this contention since the answer to it is found in the ruling of the Supreme Court in Radhakrishna Agarwal v. State of Bihar, AIR 1977 SC 1496, wherein it is ruled thus:

"The limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively".

22. In the result, we dismiss these appeals.

However, we direct the parties to bear their own costs in these appeals.

