

(1971) 11 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 726 of 1971

Manjashetty and Others

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 19-11-1971

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 5
Mysore Vanaspati Dealers Licensing Order, 1971 — Section 1 (3), 12 (d)

Citation : AIR 1972 Kar 138 : (1972) 1 MysLJ 151

Hon'ble Judges : A. Narayana Pai, C.J.;V.S. Malimath, J

Bench : Division Bench

Advocate : R.N. Narasimha Murthy, for the Appellant; R.N. Byra Reddy, High Court Govt. Advocate, for the Respondent

Judgement

Malimath, J.—The petitioners in this writ petition have challenged the Mysore Vanaspati Dealers Licensing Order 1971 and the Notification bearing No. S. O. 177 dated 27th January 1971 issued under the said order. u/s 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act), the Central Government is competent to issue orders regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein, if it is of opinion that it is necessary or expedient to do so, for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair prices. u/s 5 of the Act, the Central Government, by notified order, can empower the State Government or such officer or authority subordinate to the State Government to exercise its powers u/s 3, subject to such conditions as may be specified in the direction. The Central Government empowered the State Government to exercise powers u/s 3 of the Act by its order No. GSR 1111 dated 24th of July 1967. In exercise of the powers so delegated, the State Government of Mysore issued the Mysore Vanaspati Dealers Licensing Order. 1971, by its Notification dated 23rd of January 1971 (hereinafter referred to as the Order). Sub-clause (3) of Clause 1 of the Order states that the order shall come into force in such areas and on such dates as

the Government may, by Notification in the Official Gazette, specify. By a Notification dated 27th of January 1971, issued under Sub-clause (3) of Clause 1 of the order, the Government notified that the order shall come into force on the 15th of February 1971 in the areas specified in the said Notification (hereinafter referred to as the Notification).

2. The petitioners are all dealers from different talik head-quarters of Hassan District, to which the order has been made applicable by the Notification. The petitioners have challenged various provisions of the Order as well as the Notification on several grounds.

3. The first contention of Sri R. N. Narasimha Murthy, learned counsel for the petitioners, is that Sub-clause (3) of Clause 1 of the Order suffers from the vice of excessive delegation. Sub-clause (3) of Clause 1 of the Order empowers the State Government to bring into force the order in such areas as on such date as the State Government, by notification, specifies. The order is issued by the State Government authorising itself under Sub-clause (3) of Clause 1 to issue a notification specifying the date of coming into force of the Order as well as the areas of its operation. The resultant position is that the State Government, instead of specifying the date of coming into force of the order as the areas to which the order should apply, in the order itself, has done so by means of a separate notification. As Sub-clause (3) of Clause 1 issued by the State Government empowers the State Government itself to issue the notification, the question of delegation does not arise at all.

4. Shri Narasimha Murthy next submitted that the notification issued Under Sub-clause (3) of Clause 1 is liable to be struck down as offending Article 14 of the Constitution. It is clear from the notification that the order has been made applicable only to the specified places in each district of the State. It is, therefore, obvious that the Order does not apply to areas not covered by the notification. The submission of Sri Narasimha Murthy is that there is no rational basis for applying the Order to the places specified in the Notification and excluding from its applicability the other areas. The stand taken by the State is that a reasonable and rational classification has been made for the purposes of application of the Order on the basis of population and business, which classification has a nexus to the object of the order. The impugned Order prohibits persons carrying on business as dealers in Vanaspati except in accordance with the terms and conditions of a licence issued by the licensing authority. The order makes provision for the grant of licenses, deposit or security as well as for punishing contravention of the conditions of licence. The object of the Order is to prevent lording of the Vanaspati which is an essential commodity and to make the said commodity freely and regularly available to the consumers. The object will be achieved by applying the Order to places where business of buying and selling Vanaspati is carried on. The extent of regulation in a case like this has necessarily to depend on the extent of the evil sought to be remedied. It cannot be doubted that the extent of the mischief of hoarding depends on the

extent of population and business as criteria, for classification for the applicability of the order is reasonable and rational having regard to the object sought to be achieved. That there are some places whose population is slightly more than the population of the places specified in the Notification is not by itself sufficient to hold that the classification has been made arbitrarily inasmuch as what has been taken into consideration for classification is not only on the population of the places but also the extent of business. Besides, the petitioners have not placed any material to show that places having larger business in Vanaspati than the places specified in the notification have been excluded. There is, therefore, no force in the contention that the Notification offends Article 14 of the Constitution.

5. Sri Narasimha Murthy next submitted that Clause 8 of the Order empowering the licensing authority to refuse licence or its renewal is liable to be struck down on the ground that it imposes an unreasonable restriction on the fundamental right of the petitioners to carry on trade or business. It was submitted that no guidance whatsoever is available to the licensing authority in regard to refusal to issue licence or to renew the same. As a dealer cannot do business except under a licence, it was submitted that a refusal of licence or renewal of the same would virtually deprive him of the fundamental right to carry on trade or business. Clause 8, which gives power to the licensing authority to refuse licence or renewal, reads as follows:--

"The licensing authority may, after giving the applicant concerned an opportunity of being heard and for reasons to be recorded in writing refuse to grant or renew a license."

Clause 11 which provides for an appeal against the refusal to issue or renew a licence and other matters, reads as follows:--

"Appeals:-- (1) Any person aggrieved by any order of the licensing authority refusing to issue or renew a license or cancelling or suspending a licence or forfeiting the security deposited by the licensee under the provisions of this order may appeal to the Appellate authority within thirty days of the date of the receipt by him of such order.

(2) No such appeal shall be disposed of unless the aggrieved person has been given a reasonable opportunity of being heard.

(3) Pending the disposal of an appeal, the Appellate authority may direct that the order under appeal shall not take effect until the appeal is disposed of." Clause 8 requires the licensing authority to give an opportunity of being heard before he takes any decision against the appellant. He is further required to record the reasons in writing if he decides to refuse to grant or renew a licence. The decision of the licensing authority is not final, inasmuch as the same is subject to an appeal to the prescribed appellate authority. The appellate authority is also required to give a reasonable opportunity to the appellant of being heard before a final decision is taken. Therefore it is clear that sufficient procedural safeguards have been provided against arbitrary exercise of power by the licensing

authority.

6. We also find it difficult to accede to the contention of Sri Narasimha Murthy that no guidance whatsoever is available to the licensing authority in the matter of refusal of licence or renewal. There is no specific provision in the order stating the grounds on which licence or renewal can be refused. It is, therefore, necessary to examine the scheme of the order to ascertain if any guidance is available to the licensing authority. Clause 4 requires that a person desiring to secure a licence or renewal, shall make an application to the licensing authority in form "A" which forms part of the Order itself. The terms and conditions of the wholesale Dealers Licence are prescribed in form "B" and the terms and conditions of retail Dealers Licence are prescribed in form "C" both of which form part of the Order. The terms and conditions pertain to the maintaining of regular accounts in regard to the stock of vanaspati and the exhibition at the place of business of the price-list of vanaspati offered for sale. The applicant for licence or renewal is required to state that he has carefully read the conditions of licence and agreed to abide by them. It is, therefore, clear that the licensing authority, while dealing with an application for licence or renewal, has to consider whether the applicant is a person who can reasonably be expected to conform to the terms and conditions of licence. Several particulars are required to be given by the applicant in the application to enable the licensing authority to assess the suitability of the person and the place of business for the purpose of grant of licence or renewal. Column No. 8 of the application form requires the applicant to state if he was holding any other license issued by the Food and Civil Supplies Department and to give particulars of the same, Column No. 11 requires the applicant to state if he was convicted by a court of law or found guilty in any departmental enquiry regarding breach of any other control orders. If a person has committed breach of terms and conditions of analogous control orders, it may reasonably be apprehended that he may not abide by the terms and conditions of licence. There are also other particulars which are required to be given in the application, such as the standing of the applicant in the business, the extent of his business, the extent of income tax paid by him etc., which are all factors quite relevant to the consideration of suitability of the applicant for grant of licence, having regard to the terms and conditions which he is required to abide by. Similarly, information is required to be given in regard to the place of business. While particulars about the situation and location are to be furnished in column No. 6, the applicant has to state in column No. 12 if he has secured Municipal licence for storage and sale of vanaspati. The information in these two columns enables the licensing authority to judge the suitability of the place of business having regard to the terms and conditions of licence.

7. We are therefore, satisfied that there is sufficient guidance in regard to the factors which have got to be taken into consideration for the grant or refusal of licence or renewal of the same. As sufficient guidance is available in the scheme of the order to the licensing authority in the matter of grant or refusal and as sufficient procedural safeguards have been provided in Clauses 8 and 11, it is not

possible to hold that Clause 8 imposes any unreasonable restriction, on the fundamental right of the petitioners to carry on trade or business, guaranteed by Article 19(1)(g) of the Constitution.

8. The next attack is against Sub-clause (d) of Clause 12 regarding search and seizure which reads as follows:--

"(d) search, seize and remove stocks of vanaspati and the animals, vehicles, vessels or other conveyances used in carrying the said vanaspati in contravention of the provisions of this order, or of the conditions of the licences issued thereunder and thereafter take or authorise the taking of all measures necessary for securing the production of stocks of vanaspati and the animals, vehicles, vessels or other conveyances so seized, in a court and for their safe custody pending such production."

It was urged that the said provision is so far as it entitles search, seizure, and removal of stocks of vanaspati is concerned, the same confers arbitrary, unguided and uncontrolled power. Sub-clause (d) of Clause (11) of the Mysore Foodgrains (Wholesale) and (Retail) Dealers Licensing Orders which is similar to Sub-clause (d) of Clause 11 of the Order was struck down by this court in so far as it pertained to search, seizure and removal of stocks of foodgrains in (1970) 1 Mys LJ 512 : (AIR 1970 Mys 289) (A.K. Appanna Setty and Sons v. State of Mysore) on the ground that the said provision conferred arbitrary, unguided and uncontrolled power. Following the said decision, we declare that Sub-clause (d) of Clause 12 of the Order in so far as it pertains to search, seizure and removal of stocks of vanaspati, is void.

9. It was next urged that Clause 6 of the order which requires a wholesale dealer to deposit Rs. 500/- and a retail dealer to deposit Rs. 75/- as security, imposes an unreasonable restriction on the fundamental right of the petitioners to carry on trade and business. The security is required to be furnished to ensure due performance of the conditions subject to which licence is granted. If the licensee commits any breach, the licensing authority is empowered under Clause 10 to forfeit the whole or any part of the security deposited by the licensee. The licenses are issued under the order, subject to the condition that the licensee abides by the terms and conditions of licence. The insisting of security for the due performance of the terms and conditions of licence cannot be regarded as imposing an unreasonable restriction. The amount of Rs. 500/- fixed as security to be furnished by the whole-sale dealer and the amount of Rs. 75/- fixed as security to be furnished by the retail dealer cannot be regarded as excessive or oppressive, having regard to the nature and extent of business that is normally conducted by the dealers in vanaspati.

10. It was next urged that Clause 13 of the order, which empowers the Government to exempt any person or class of persons from the operation of all or any of the provisions of the Order, is invalid on the ground that it confers unguided and arbitrary power on the State Government. But, it is necessary to

note that it is clearly stated in Clause 13 that the power of exemption can be exercised by the State Government only if it is necessary in the public interest so to do. The necessity of considering public interest is itself sufficient guidance and also guarantee against arbitrary exercise of power.

11. Column 9 of the application form "A" requires the applicant to state quantities of vanaspati (brandwise) in kilograms handled by the applicant monthly during the last three years. It was urged that the insisting on the furnishing of such information amounts to imposition of an unreasonable restriction on the petitioners' right to carry on trade and business. It was submitted that it is almost impossible to furnish such detailed information as contemplated in column 9. It is obvious that the information in column 9 need be furnished by the applicant only if the applicant has carried on business in vanaspati during three years preceding the date of application. It is common knowledge that vanaspati is a commodity which is produced in factories. The wholesale dealers as well as dealers who deal in vanaspati are reasonably expected to have information in regard to the handling of vanaspati. It is also necessary to note that vanaspati being an item liable to sales-tax, the dealers are expected to maintain accounts for the purpose of payment of sales-tax. The requirement of column No. 9 cannot, therefore, be regarded as imposing an unreasonable restriction on the right of the dealers to carry on trade or business.

12. It was next urged that licence condition No. 8 (i) and condition No. 7 (a) of the whole-sale dealers licence and retail dealers licence respectively in so far as they prohibit licensees from entering into any transaction involving purchase, sale or storage for sale of vanaspati in a speculative manner prejudicial to the maintenance and easy availability of stocks or supplies in the market are void as imposing unreasonable restrictions on the fundamental right to carry on trade or business. Both the clauses referred to above are similar. It was urged that as specified criteria for determining what transactions are speculative have not been provided the conditions are void as being Vague and uncertain. Similar conditions prescribed under Clause 7 (i) of the whole-sale and retail dealers licensing Orders. 1964 were struck down by this court in A.K. Appanna Setty's case (1970) 1 Mys LJ 512 : (AIR 1970 Mys 289) on the ground that the condition suffered from vagueness and uncertainty. Following the said decision, we declare that conditions 8 (i) and 7 (i) of the whole-sale dealers licence and retail dealers licence respectively are void.

13. For the reasons stated above, this writ petition is partly allowed. We declare that Sub-clause (d) of Clause 12 of the Mysore Vanaspati Dealers Licensing Order. 1971 in so far as it pertains to search, seizure and removal of stock of vanaspati and conditions 8 (i) and 7 (i) of the conditions of the whole-sale dealers licence and retail dealers licence occurring in form "B" and "C" respectively of the Order are void and unenforceable. In other respects the Writ Petition shall stand dismissed.