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(1952) 09 MAD CK 0010

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 4127 of 1951

R. Kuppuswamy Gramani APPELLANT

Vs

State of Madras and Another RESPONDENT

Date of Decision : 29-09-1952

Acts Referred:

Constitution of India, 1950 — Article 14
Madras Revenue Recovery Act, 1864 — Section 52

Citation : AIR 1957 Mad 23 : (1956) 69 LW 678

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : N. Rajagopala Ayyanger and N.S. Raghavan, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is an application under Article 228 of the Constitution of India, for issuing a writ of mandamus restraining the

respondents and their officers from proceeding to act under the provisions of the Madias Revenue Recovery Act 2 of 1864 in respect of the rice

mill belonging to the petitioner. The petitioner was a wholesale dealer under the Madras Rice Ration Scheme in Cholavaram firka for a period of

one year from October 1949 to October 1950.

During that period he became indebted to the Provincial Government in respect of rice, milo and wheat supplied to him in a sum of about Rs.

25000. The licence was not renewed for the year 1950-51. He alleged in the affidavit that he had paid over nearly. Rs. 11000. It is represented to

me that the balance of the amount due to the Government was also paid off. If the debt had been discharged in full, the Government would no doubt drop the proceedings.

But I shall proceed with this application on the basis of the allegations made in the affidavit. To realise the amount due, the Tahsildar as an officer

empowered on this behalf was bringing the mill and its machinery to sale'' under the provisions of the Madras Revenue Recovery Act. The

petitioner alleging that Section 52 of the same Act, which confers a power on the Government to recover the said amounts due through the

machinery of the Revenue Recovery Act is constitutionally bad, filed the aforesaid writ for restraining the respondents from bringing the mill to sale.

2. Section 52, Madras Revenue Recovery Act, reads:

All arrears of revenue other than land revenue to the Provincial Government, all advances made by the Provincial Government for cultivation or

other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed In

revenue or police duties, and all cesses lawfully imposed upon land, and all sums due to the Provincial Government including compensation for any

loss or damage sustained by them In consequence of a breach of the contract may be recovered in the same manner as arrears of land revenue

under the provisions of this Act, unless the the recovery thereof shall have been or may hereafter be otherwise specially provided for.

3. The impugned clause of the section, namely,

and all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of

contract"".

has been inserted in the section by Act 15 of 1939. This clause is alleged to be inconsistent with Article 14 of the Constitution of India and

therefore is void. Article 14 says:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

I had more than one occasion to consider the scops of this article. In South India Bank Ltd. Vs. T.D. Pichuthayappan and Another, , after noticing

the various cases cited at the Bar I summarised the law as follows:

All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept, equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are

equally subjected to the ordinary Jaw of the land; the latter postulates an equal protection of law alike in the same situation and under like

circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed.

It has also been held -- for without that apparently just laws may in their application be So abused as to subvert the fundamental concept of

equality before law -- that the law should be applied by public authority without arbitrariness or discrimination. The law though apparently fair but

contains inherent possibilities for discrimination and arbitrary action, is in itself bad. But these propositions conceived in the interests of the public, if

logically stretched too far, may not achieve the high purpose behind them.

In a society of unequal basic structure it is well nigh impossible to make laws suitable in their application to all the persons alike. So a reasonable

classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon

difference pertinent to the subject in respect of, and the purpose for which, it is made."" To this statement, in Writ Petn. No. 568 of 1952 (B), I

added the following passage of Professor Willis.

If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed and that one, who

assails a classification, must carry the burden of showing that it does not rest upon any reasonable basis.

Both the learned counsel appearing for the parties argued their cases on the basis of the aforesaid Statement of law. The contention of the learned

counsel for the petitioner may be briefly stated thus. The sums payable to the Government are amounts payable in respect of commercial

transactions which are similar to those that are entered into between two persons. The clause makes an unreasonable discrimination between the

Government and a person other than the Government.

In the case of the Government, they can decide for themselves whether and what amount is due from the other party. They can recover that

amount by resorting to the coercive process under the Revenue Recovery Act. In the case of any other person, he flies a suit for the ascertainment of the amount due, obtains a decree and executes that decree through Court. This discrimination in favour of the State and against other persons

which enables the State to decide its own cause and recover the amount by summary procedure offends the principle of equal protection of the

laws enshrined in Article 14 of the Constitution. Alternatively, it is contended that the operation of the impugned clause should be confined at least

to admitted debts.

4. There cannot be any doubt that the impugned clause discriminates the State from any, other person in the matter of realising a debt. But the

question is whether the said act of discrimination can be justified on the basis of a reasonable classification. What is the object and purpose of the

classification in this case? is there any reasonable basis for it, having regard to the differences between the persons classified? The purpose of the

classification is apparent.

The modern democratic State is not a police State. It is within a welfare state or one attempting to become a welfare state. Its activities are

manifold permeating the daily life of society. It takes on hand many social and ameliorative activities and to implement the same enters into

commercial transactions with other persons. The present one is one of such transactions entered into by the State in discharge of the duties of the

welfare State. ''If it is the duty of the State to implement such policies, it is equally its duty, if it, should function effectively, to realise the amounts

spent on such activities as early as, possible.

Public interests demand that such dues should; be collected expeditiously. In this context no private individual can be put on a par with the State.

Nor does the impugned clause finally preclude the affected party from getting his rights decided In a Court of law. Section 59 of the Act saves

such a right. The provisions of Sections52 and 59, in my view, attempt to reconcile the paramount interests and duties of the State with the just

rights of private individuals. The classification therefore is not arbitrary.

There is reasonable basis for the classification, having regard to the obvious differences between the State and the private individual in their relation

to the object underlying the impugned legislation. I therefore hold that the classification is not arbitrary but is based upon differences pertinent to the

subject in respect of, and the purpose for which it is made.

5. The learned Government Pleader then contended that the State is not a ""person"" within the meaning of Article 14 of the Constitution of India and

therefore Article 14 does not prevent a discrimination in favour of the State. A similar argument was raised in Moti Lal and Others Vs. The

Government of the State of Uttar Pradesh and Others, . A Full Bench of the Allahabad High Court expressed conflicting views on the question

though the majority was inclined to hold that the word, ""person"" is comprehensive enough to take in a State. It is not necessary to express my final

opinion on this question as I am disposing of the application on the other point.

6. In the result the application fails and is dismissed with costs.

