
(1952) 09 MAD CK 0017
In the Madras High Court

R. Kuppuswamy Gramani

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 29-09-1952

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Madras Revenue Recovery Act, 1864 — Section 52

Citation : (1956) 2 MLJ 185

Hon'ble Judges : Subba Rao, J

Bench : Division Bench

Judgement

Subba Rao, J

1. This is an application under Article 226 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 Madras Revenue Recovery Act (II 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 Gholavaram 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, mile and wheat supplied

to him in a sum of about Rs. 25,000. The licence was not renewed for the year 1950-51. He alleged in the affidavit that he had paid over nearly

Rs. 11,000. 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 in 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 said 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 of the Madras Revenue Recovery Act reads:

All arrears of revenue other than land-revenue due 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 cases lawfully imposed upon land, and all sums due to the Provincial Government including compensation for any

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

the provisions of this Act, unless 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 XV 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 scope of this article. In W.P. No. 296 of 1951, 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 law 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 differences pertinent to the subject in respect of, and the purpose for which it is made.

To this statement, in W.P. No. 568 of 1952 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 files 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 Sections 52 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.