(1972) 11 KL CK 0023

In the High Court Of Kerala

Case No : Original Petition No''s. 3683, 3766, 3896, 4111, 4234 and 4269 of 1972

S. Anthony Muthu and Another — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 29-11-1972

Acts Referred:
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1973 Ker 141

Hon'ble Judges : T.C. Raghavan, C.J;K. Bhaskaran, J

Bench : Division Bench

Advocate : Chandrasekharan and Chandrasekhara Menon, for the Appellant; Govt. Pleader and V.K.K. Menon, for the Respondent

Judgement

Raghavan, C.J.—The question involved in these writ petitions is the same; and the petitions can, therefore, be disposed of by a common judgment.

2. The petitioners are all owners of power crushers for crushing sugarcane; and they are working their power crushers within the reserved area of three sugar mills in the State, one in Chittoor Taluk, another in Tiruvalla Taluk and the third one at Pandalam. The Government of India passed the Sugarcane (Control) Order. 1966 in exercise of the powers conferred on it by Section 3 of the Essential Commodities Act. 1955. Under Clause 11 of the said Order the Central Government has power, by notification in the Official Gazette, to delegate some or all the powers under the Order, inter alia, to a State Government. By notification (dated 16th July 1966). the Central Government delegated its powers under Clauses 6, 7, 8 and 9 to the State Governments including the State Government of Kerala. The Government of Kerala thereafter issued a notification in 1968, another notification on 20th January, 1969 and yet another notification on 6th January, 1972. We are concerned only with the latter two notifications, viz., the notification of 20th January, 1969 and the notification of 6th January, 1972. Clause 3 of the notification of 1969 called the Kerala Power Crushers.

Khandsari Unit and Crushers Licensing Order 1969 read :

"No power crusher, khandsari unit or crusher shall be worked in the area specified in the schedule to this Order except under and in accordance with a licence issued in this behalf by the Government :

Provided that a licence already issued in respect of an existing power crusher, khandsari unit or crusher and in force at the commencement of this Order, shall, notwithstanding anything contained in, this clause be deemed to have been issued tinder this Order." This clause has been amended by the subsequent notification dated 6th January, 1972; and the amended clause reads:

"3 (1). A crusher not belonging to a grower or a body of Growers of sugarcane. or a power crusher or a khandsari unit shall not be worked in a reserved area.

(2). A power crusher shall not be worked outside the reserved area except under and in accordance with the conditions of a licence issued by the Government in that behalf."

It is this amended Clause 3 that is being challenged in all these writ petitions.

3. Two contentions have been urged by Sri T. Chandrasekhara Menon. the counsel of the petitioners in one of the writ petitions, namely, that the amended Clause 3 is beyond the powers of the State Govt., since it is beyond the scope of the powers delegated to the State Governments under Clauses 6. 7, 8 and 9 of the Sugarcane ("Control) Order; and that, in any event, the amended provision violates the fundamental right of the petitioners under Article 19(1)(g) of the Constitution. We shall first take up the first contention.

4. Under Clause 2 (j) of the Sugarcane (Control) Order, the expression "reserved area" is defined to mean any area where sugarcane is grown and reserved for a factory under Sub-clause (1) (a) of Clause 6. Clause 6 deals with the power of the Central Government to regulate the distribution and movement of sugar-cane; and Sub-clause (1) (a) of Clause 6 confers powers on the Central Government to reserve any area where sugarcane is grown as reserved area for a factory, having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it There are also provisions in the subsequent sub-clauses for determining the quantity of sugarcane which a factory will require for crushing, for fixing, with respect to any specified sugarcane grower or sugarcane grovers generally, the quantity or percentage of sugarcane grown by him or them, which each one of them shall supply to the factory concerned, for directing a sugarcane grower or a sugarcane growers'' co-operative society and the factory concerned to enter into an agreement to supply or purchase the quantity of sugarcane so fixed, etc. In Sub-clause (f) of Clause 6. there is provision for prohibiting or restricting or otherwise regulating the export of sugarcane from any area including a reserved area except under and in accordance with a permit issued in this behalf. The

other provisions in Clause 6 need not be enumerated. Clause 7 confers power on the Central Government to license power crushers, khandsari units and crushers and also to regulate the purchase of sugarcane. Sub-clause (a) of Clause 7 provides that the Central Government may by order direct that a crusher not belonging to a grower or a body of growers of sugarcane, or a power crusher or a khandsari unit, shall not be worked except under and in accordance with a licence issued by the Central Government in that behalf. Sub-clause (b) confers power on the Central Government to direct that in a reserved area no sugarcane shall be purchased for crushing by a power crusher and no sugarcane or sugarcane juice shall be purchased for crushing or for manufacture of gur, shakkar. etc. The provisos to Sub-clause (b) may be omitted. And under Sub-clause (c), the Central Government has power to

"direct the owner or other person in charge of a crusher not belonging to a grower or a body of growers of sugarcane, or a power crusher or a khandsari unit, in a reserved area to shift, it to such place outside the reserved area as may be specified by the Central Government for the purpose:

Provided that the factory, for which the area is reserved, undertakes to pay the cost of shifting, as determined by the Central Government, within such time as may be fixed by that Government on the basis of agreement between the parties in this behalf or in the event of there being no such agreement, on a fair and reasonable basis, after affording both parties an opportunity to make representations in writing as to the cost involved and the basis of calculation thereof."

The other provisions in this clause may also be omitted. Clause 8 confers power on the Central Government to issue directions to producers of khandsari sugar, power crushers khandsari units, crushers and co-operative societies regarding the purchase of sugarcane or sugarcane juice. production, maintenance of stocks, storage price, etc. Clause 9 deals with the powers of the Central Government to call for information on certain matters, with a view to securing compliance with the Sugarcane (Control) Order.

5. Now. the argument of Sri. Chandrasekhara Menon is that the amend-ed Clause 3 completely loses sight of or ignores, the proviso to Clause 7 (c): not only that, the amended provision prohibits the owner of a power crusher from working in a reserved area, while Sub-clause (c) of Clause 7 of the Order only contemplates a shifting of the power crusher from a reserved area to a specified place outside the reserved area. To put the argument differently, the contention is that, without specifying a place whereto the owner of a power crusher has to move his power crusher, without providing for his cost of shifting, without Setting an undertaking from the factory concerned to pay such cost, without even determining the cost of shifting as contemplated by the proviso to Clause 7 (c). the emended provision just commands the owner of a power crusher to stop work altogether in the reserved area.

6. We have considered the relevant clauses in the Sugarcane (Control) Order, viz., Clauses 6 to 9 : we have summarised the more important portions thereof. And what we find from these provisions is that the scheme of these clauses is to provide for a reserved area for a mill so as to enable it to purchase the quantity of sugarcane required by it, at the same time, pointing out to the owner of a power crusher, who has his crusher within the reserved area, another place outside the reserved area, and asking him to move thither, the mill undertaking to Day his cost of shifting and the Government fixing the cost on a fair and reasonable basis after affording both parties an opportunity to make representations in writing regarding the cost. The scheme does not indicate that the benefit should go to the mill alone: the scheme clearly indicates that the interest of an owner of a power crusher working in a reserved area is also to be protected in the manner provided. The argument of the Government Pleader that what is contemplated by the amended Clause 3 is only the first step in the moving of a power crusher outside the reserved area and the further steps like fixing the place to which the crusher has to be moved, the cost of moving, the undertaking by the mill. etc. will follow cannot be accepted for the simple reason that such things do not appear to have been contemplated by the amended provision : the amended provision is clearly to the effect that the power crusher or khandsari unit shall not be worked in a reserved area : it does not. indicate that any further action by way of amelioration of the owner of the power crusher will follow : under the amended provision, the owner of the power crusher has no power to seek his relief. We would also point out that Clause 7(c) of the Order with the proviso thereto leaves no room to doubt the intention behind it, viz., that fixing the alternate site, fixing the cost of shifting, the undertaking by the mill. etc. should precede the order to shift. Similarly the argument of the counsel of the mills that the Central Government has power to prohibit the owner of a power crusher altogether from working his power crusher within the reserved area does not also have any force. As we have. indicated the scheme of the relevant provisions of the Order is that the mills be enabled to purchase their requirements of sugarcane from the reserved area, at the same time, not forgetting the interest of the owner of a power crusher working within the reserved area. Such an absolute prohibition of a power crusher working in a reserved area without pointing out a place for the owner thereof to move his crusher and also without providing for his cost of shifting is not in the contemplation of the Sugarcane (Control) Order : What, in our opinion, the Order contemplates is only a regulation of the working of such power crushers by licensing them and also, if necessary, by asking them to move to suitable places outside the reserved area paying them their cost of shifting.

7. This conclusion of ours is sufficient for holding that the amended provision is beyond the powers delegated to the State Governments by the Central Government. The amended Clause 3 in the notification dated 6th January, 1972 is thus ultra vires the Sugarcane (Control) Order under which the State Government has acted.

8. In view of this conclusion on the first question, we do not propose to go into the next question regarding the violation of Article 19(1)(g) of the Constitution.

9. The attack of the petitioners Is directed mainly against Sub-clause (1) of the amended Clause 3. If Sub-clause (1) is struck down and Sub-clause (2) is retained, the position becomes anomalous -- a power crusher can work within a reserved area without a licence, but outside such area only with a licence : And we point out further that the power to issue licences is available under the Sugarcane (Control) Order itself.

10. The writ petitions are consequently allowed and the orders impugned therein. we mean, the amended Clause 3 mentioned above and the consequential orders passed on the basis of the amendment are all quashed. However we do not pass any order regarding cost.

