

(2008) 12 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 11932 of 2008

Smt. Puttamma Shety

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 21, 226

Citation : AIR 2009 Kar 98 : (2009) 4 KCCR 2857

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Aravind Kamath and Almt Legal, for the Appellant; Udaya Holla, General and Niloufer Akbar, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This public interest litigation is filed by Smt. Put taratna w/o. Ishwara Shetty, Prathinidhi-I, Sri. Anjanayaswamy Stxee Shakti Swashaya Sangha, Nandihalli, Arasikere Taluk, Hassan District, being aggrieved by the Government Order dated 8.9.2008 issued by the second respondent—Under Secretary, Department of Animal Husbandry & Fisheries, Government of Karnataka, declaring a subsidy of Rs. 2./- per f litem of milk to those farmers who supply their milk to the Karnataka Milk Federation—Milk Federation and its constituents on the ground that it is violative of Articles 14 and 19(1)(g) of the Constitution of India.

2. It is averred in the writ petition that the petitioner is directly affected by the impugned Government Order. However, the petitioner has approached this Court by filing a public interest litigation as the Government Order impugned in this petition would have wide ramifications that traverse beyond the private interest of the petitioner. It is averred that the petitioner is a dairy fanner and is dependent on the dairy farming activity for her livelihood. The petitioner is the Prathinidhi-I of an unregistered self Help Group of rural women based at Nandihalli village of Arasikere Taluk in Hassan District. The said Self Help Group

has on its rolls IS members, all of whom are women engaged in the activity of dairy farming who have purchased milk cows after borrowing loan from Kalpatharu Kaveri Grameena Bank, Bageshpura Branch. The said Self Help Group is operating since 2004 and has been providing means of livelihood to its members and their family members. The members of the said welfare group collectively pool 150 litres of milk per day which is supplied to a private dairy based in Tiputur as there are no Dairy Co-operative Societies at Nandihalli. It is further averred that the concept of Dairy Co-operative Society originated from Anand in Gujarat and was adopted in Karnataka since 1983. Each Dairy Co-operative Society has members who are engaged in dairy farming and supply the milk to their respective societies. All the societies in a district are affiliated to the District Milk Union of such district. However, since fewer Dairy Co-operative Societies have been established in northern parts of the State, Societies of 2 or 3 Districts are affiliated to a common District Milk Union. Accordingly, there are 13 District Milk Unions in Karnataka to which all the Dairy Co-operative Societies are affiliated regionally. The Dairy Co-operative Societies supply their milk to their respective District Milk Unions. All the District Milk Unions are affiliated to the Karnataka Milk Federation, which controls their functioning. The Dairy Co-operative Societies are mainly concentrated in the southern districts of the State and particularly in areas that are economically stronger and viable with better infrastructure facilities. Hence, though there are 28 districts in the State there are only 13 District Milk Unions of the Karnataka Milk Federation. It is further averred that the Dairy Co-operative Societies in the southern part of the State activities contribute about 80% of the total milk procured by the Karnataka Milk Federation from southern districts namely - Bangalore Rural, Tumkur, Kolar, Hassan, Mandya and Mysore and the State procure a meagre 20% of the total milk. It is further averred that private dairies pursuant to economic liberalisation. The private Dairies procure about 8 to 10 litres of Milk through their farmers particularly in those areas where there are no Co-operative Societies. It is further averred that the present Government in pursuance of its manifesto had proposed in the budget speech delivered by the Hon'ble Chief Minister to pay a subsidy of Rs. 2/- per litre of milk supplied by a farmer. In the said speech, it is clearly stated that the object of paying the subsidy was to encourage the "farmers" who were engaged in dairy farming and were supplying milk and there was a general belief pursuant to the budget speech that the subsidy would be extended to all farmers irrespective of whom they supply their milk. However, the news reports in several local dailies stated that the Government is going to provide the said subsidy only to those farmers who supply their milk to the Dairy Co-operative Societies. Pursuant thereto various dairy farmers organisations including the Karnataka State Dairy Association protested the said proposal as it was discriminatory and representation was made to the Government through His Holiness Sri Sri Sri. Dr. Shivakumara Swamiji to lodge their protest against the said proposal. In the meantime the Karnataka State Dairy Association approached the Hon'ble Chief Minister and requested him to extend the subsidy to all milk producing farmers and the Hon'ble Chief Minister acceded to the said request on the floor of the

Assembly and agreed to set up a High Power Committee to consider the modalities for extending the subsidy to those dairy farmers who are vending milk to private dairies, like the petitioner and another detailed representation dated 19.8.2008 was given and upon consideration of the said representation, the said Principal Secretary called upon the Dairy association to suggest alternative mechanism for extending the subsidy to dairy farmers who vend milk to private dairies, like the petitioner. However, no steps have been taken for providing subsidy to the farmers who vend milk to private dairies and the Government Order which provides for payment of Rs. 2/- per litre subsidy to the dairy farmers who vend milk to the co-operative societies, has excluded from its ambit the dairy farmers who supply milk to private dairies. It is averred that the action on the part of the Government in providing subsidy at Rs. 2/- per litre of milk only to dairy farmers who supply milk to dairy co-operative society and not private dairy is discriminatory and is also violative of Articles 14 and 19(1)(g) of the Constitution of India and Therefore, unsustainable and liable to be set aside and accordingly, the writ petition is filed seeking for the following reliefs.

a) Quash the impugned Government Order bearing No. AH & F.53.KMF.2008 dated 8.9.2008 issued by the 2nd respondent (Annexure-D) holding that the same is arbitrary, discriminatory and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India, by issuing a Writ of Certiorari or any other writ or order in the nature of a writ;

b) Direct the respondents to reframe the scheme for payment of subsidy to dairy farmers and extend the same even to those dairy farmers who supply milk to private dairies took, by issuing a writ of Mandamus or any other writ or order in the nature of writ;

c) Grant such other relief that this Hon"ble Courts deems fit in the circumstances of the case, including the cost of this petition.

3. Notice was issued to the respondents and the Additional Government Advocate and the Advocate General have taken notice for respondents 1 and 2.

4. When the writ petition was posted for hearing before the court on 11.9.2008, the learned Senior Counsel appearing on behalf of the writ petitioner submitted that prayer (a) at Paragraph-32 of the memorandum of petition referred to above, is not pressed and notice was issued to the respondents regarding other prayers made in the writ petition and respondents were also directed to report the measures to be taken to protect similarly placed persons who are governed by the impugned Government Order dated 8.9.2008 and who proposed to sell the milk produce to the Karnataka Milk Federation.

5. We have heard the learned Counsel for the petitioner and the learned Advocate General appearing for the respondents.

6. Learned Counsel appearing for the petitioners submitted that the prayer (a) made in the writ petition, as referred to above, has been given up when the

matter was posted before the Court on 11.9.2008 and wherefore, only prayer (b) would survive for consideration before this Court and the Government Order, impugned in the writ petition dated 8.9.2008, specifically excluded payment of subsidy under the said Government order in respect of milk supplied to private dairies and the subsidy is payable only to dairy farmers vending milk to dairy co-operative societies and wherefore, there is discrimination between the dairy farmers who sell milk to the dairy co-operative society and private dairy and the said discrimination is arbitrary as the very object of providing subsidy is to give relief to the dairy farmers and wherefore, the respondents should be directed to re-frame the Scheme for dairy farming and extend the same to those dairy farmers who supply milk to private milk dairies too, as that of the petitioner and other similarly placed persons.

7. The learned Advocate General appearing for the respondents submitted that the object of providing subsidy is to encourage dairy farmers, development and promotion of dairy milk co-operative societies and since the dairy co-operative societies are functioning under the purview of the Co-operative Societies Act and under the control of the Registrar of Co-operative Societies it would be possible to ascertain the quantity of the milk supplied by the dairy farmers to the said society and the Government Order clearly states that the subsidy is applicable even to persons who are not members of dairy cooperative societies provided, they sell the milk to the co-operative societies and it is also open to the petitioner-Association to form a dairy co-operative society and all assistance and encouragement would be given by the Government for establishment of the dairy co-operative society and they can claim subsidy under the Government order dated 8.9.2008. He further submitted that there is a dairy co-operative society within a distance of 3 kms from the place of residence of the petitioner in Nandihalli, Arasikere Taluk, and despite the existence of the said society, the members of the petitioner-Sang ha exa sailing milk to private dairy as they are offering higher price than the one fixed by the Government in respect of milk supplied to milk dairy cooperative society and therefore, there is no discrimination in denying the payment of subsidy to dairy farmers selling milk to private dairy and providing subsidy to supply milk to dairy co-operative society and as the challenge to the order on the basis of the violation has been given up, the writ petitioners are not entitled to the relief in the writ petition.

8. We have given careful consideration to the contentions of the learned Counsel for the parties.

9. In view of the fact that prayer (a) in the writ petition wherein the writ petitioner had sought for a declaration that the order dated 8.9.2008 issued by the respondents is discriminatory, arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India, has been given up by the learned Counsel for the petitioner on 11.9.2009, notice was issued in respect of other prayers in the writ petition. The only other prayer in the writ petition is, for a direction to the respondents to re-frame the scheme for payment of subsidy to the dairy farmers

and extend the same even to other dairy farmers who supply milk to private dairies too, by issuing a writ of mandamus or any other writ. The prayer (c) at paragraph 32 only relates to grant of such other relief this Court deems fit.

10. It is well settled that persons may be classified into groups and such groups may be treated differently if there is a reasonable basis for such difference. Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The principle of equality does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstances in the same position. The varying needs of different classes of persons require different treatment.

In fact, public welfare requires that persons, property and occupations be classified and be subjected to different and appropriate legislation. Government is not a simple exercise. It encounters and must deal with the problems which come from persons in an infinite variety of relations. Classification is the recognition of the relations! and, in making it, a legislature must be allowed a wide latitude of discretion and judgment.

11. It is also well settled that a classification to be valid must be reasonable. It must always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test for permissible classification two conditions must be fulfilled, namely : (1) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) the differentia must have a rational relation to the object sought to be achieved by the statute in question as laid down by the Hon'ble Supreme Court in the *The State of West Bengal Vs. Anwar Ali Sarkar*, reiterated in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, and *Raj Pal Sharma and Others Vs. State of Haryana and Others*, .

12. It is also well settled that the court exercising writ jurisdiction under Article 226 of the Constitution of India would not interfere with the Government orders proclaiming the Government orders pertaining to the policy of the Government unless it is shown that the said order violates the fundamental rights or Constitutional rights of the petitioner in respect of the matter with regard to payment of subsidy or fixation of tariff, this Court would not sit on an Appellate Court in exercise of its jurisdiction under Article 226 of the Constitution of India. All that this Court has to be satisfied with is that Government has followed the proper procedure and unless it can be demonstrated that its decision is on the face of it arbitrary or illegal or contrary to the Act, the court will not interfere in the matter of fixing the tariff and providing for cross subsidy is essentially a matter of policy and normally a court would refrain with a policy decision unless the power exercised is arbitrary or exercised bad in law as laid down by the Hon'ble Supreme Court, in *Association of Industrial Electricity Users Vs. State of Andhra Pradesh and Others*, .

13. The contentions urged in the writ petition has to be considered in the light of the above said principles laid down by the Hon''ble Supreme Court. The material on record would clearly show that the petitioner is an affected party as she is also a dairy farmer and is personally interested in the outcome of the writ petition seeking; for a direction to pay subsidy even in respect of the milk supplied to private dairy and the persons similarly situated as that of the petitioner. However, it is the contention of the petitioner that the subject matter of the writ petition is wider that traverse beyond the private interest of the writ petition.

14. It is clear from the averment made in the writ petition that the petitioner Sangha Sri Anjaneyaswamy Stree Shakti Swasahaya Sangha is an unregistered association comprising of about 15 dairy fanners on its rolls and the Sangha is pooling 150 litres of milk per day and selling the same to private dairy based in Tiptur. Apart from making a vague statement in the writ petition that in the village Nandihalli, there are no dairy cooperative societies, there is no averment in the writ petition as to whether there is any dairy co-operative society at Tiptur or Araaikere and according to the statement of the learned Advocate General, there is a dairy co-operative society within a radius of about 3 tans, from the village of the petitioner i.e. Nandihalli. It is clear from the contents of the order dated 8.9.2008 that the subsidy of Rs. 2/- per liter of milk supplied to dairy cooperative society would be distributed to 13 District Co-operative units and even persons who are not members of the co-operative society can vend milk to the co-operative society and avail the benefit of subsidy. However, milk sold to private dairy has been excepted from the benefit of subsidy and the amount of subsidy will be credited to the bank account of female members of the family and the scheme would be revised after one year.

15. It is clear from the contents of the order dated B. 9.2008 that the object of passing the Government Order has been recited in the preamble of the order stating that the Chief Minister had made a statement in his budget speech on the floor of the legislative assembly on 17.7.2008 while reading its budget speech that, steps would be taken to provide subsidy in respect of the milk supplied to the milk co-operative societies at the rate of Rs. 2/- per litre of the milk supplied and the subsidy would be granted and distributed through to the dairy Co-operative societies situated in the villages. Thereafter, decision was taken in the cabinet on 4.9.2008 and in order to achieve the said object, Government order has been passed. The preamble of the of the order would clearly show that the object of passing the order is to provide subsidy to dairy farmers specifically to the female dairy farmers in the village who vend milk to dairy co-operative society at the rate of Rs. 2/- per litre.

16. In view of the above said material on record, it is clear that there is a classification made in the Government Order founded on intelligible differentia which distinguishes persons or things which are grouped together that are left out of the group. As the subsidy of Rs. 2/- per litre of milk is payable only in

respect of the milk sold by the dairy fanners to the dairy cooperative society and the said subsidy would not be applicable to persons selling milk to private dairy and persons grouped together for availing the benefit of subsidy are clearly distinguishable from others left out of group. Further, the differentiation has a rational relationship to the object sought to be achieved by the Government order as it is clear from the preamble as already referred to above that the object of the Government order is to promote sale of milk by dairy farmers to dairy co-operative societies and to encourage women folk in the village and wherefore both the conditions requisite for a valid classification under Article 14 of the Constitution of India are satisfied. The Government Order would further show that even persons who are not members of the Cooperative society would be entitled to subsidy if they sell milk to the co-operative society despite the fact that they are not members of the said co-operative society.

17. It is clear from the perusal of the Government Order that any dairy farmer who sells milk to the co-operative society even if he is not a member of the said co-operative society is entitled to claim the benefit of subsidy and according to the submission of the learned Advocate General there is a dairy cooperative society within a distance of 3 kms from the village of the petitioner-Nandihalli. Even assuming that there is no dairy co-operative society in the village or nearby villages, it is open to the petitioner or Sangha which is an association comprising of 15 dairy farmers to form themselves into a dairy cooperative society and the members of the said society could sell the milk to society and claim subsidy through the society formed by them and claim the benefit of Sangha under the Government order dated 8.9.2002. The object excluding the benefit of subsidy in respect of the milk sold to private dairy is clear. The dairy cooperative societies are governed under the Karnataka Co-operative Societies and they required to maintain accounts and the same will be subject to auditing and the society would be working under the jurisdiction of the Registrar of co-operative societies and therefore, there would be proper accounting of the milk that is sold to the society as formation of co-operative society and election of the Executive Committee members is by democratic process of election and further, the price for the milk supplied to dairy cooperative societies is to be fixed with the prior approval of the Government and wherefore, the Government would play a pivotal role in fixing the price of the milk by cooperative society. The Government would take into account the interest of the consumers as also the dairy farmers and other material on record and since it was felt that the dairy farmers selling milk to the dairy co-operative society should be given subsidy of Rs. 2/- per liter, it is clear that the Government order cannot be said to be arbitrary. The mere fact that the benefit of subsidy is not made available to dairy farmers selling milk to private dairy would not by itself set aside the order as there is valid classification satisfying the test, as already held above, and if the subsidy is made available to dairy farmers who sell milk to private dairy, it would be difficult for the Government to implement the policy of payment of subsidy as the private dairy would not be under the control of the Government and the transaction may not

be transparent. In any view of the matter, subsidy cannot be claimed as a matter of right. It is always open to the petitioner-Sangha to form dairy co-operative society and claim the benefit of subsidy under the Government Order dated 8.9.2008 and the learned Advocate General has submitted that all assistance would be given for registration of the said Society in accordance with law and they can claim the benefit of subsidy under the Government Order dated 3.9.2008 in forming the dairy co-operative society.

18. Under the circumstances, in view of the above reasoning, we hold that the Government order impugned in the writ petition dated 8.9.2008, insofar as it relates to denial of subsidy in respect of the milk sold to private dairy by dairy fanners is not arbitrary as to call for interference in the writ petition.

19. Accordingly, we hold that there is no merit in the writ petition and pass the following order:

The writ petition is dismissed with the above said observations.