(1966) 06 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 2132 of 1965

T.C.N. Menon APPELLANT

Vs

The Union of India and another RESPONDENT

Date of Decision : 17-06-1966

Acts Referred:

Constitution of India, 1950 — Article 19(g)
Industries (Development and Regulation) Act, 1951 — Section 18G

Citation : (1966) KLJ 1125

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : N. Raghava Kurup, K.R. Panicker, K. Velayudhan Nair, K.J. Joseph, P.K. Shamsuddin, V.M. Kurien, E. Ebrahimkutty, Ittiera Kalliath, B. Moosakutty, P.A. Dhananjayan, M.T. Kuriakose, S.A. Nagendran, N. Krishna Pillai, George Vadakkel, Varghese Kalliath, K.C. John, T.P. Mathai, T.C.N. Menon, P. Sankaran Kutty, T.C. Karunakaran and M.C. Sen, for the Appellant; M.U. Issac for Union of India and V.K.K. Menon, P. Subramanian Potti, C.S. Padmanabha Iyer, M. Ramachandran, C.J. Balakrishnan, P. Krishnamoorthy and P.C. Chacko, for the Respondent

Judgement

P. Govindan Nair, J.—The question, in one form or other, that arises in these writ applications is as to whether clause 5 (2) of the Motor Cars (Distribution and Sale) Control Order, 1959 introduced in that order by the Motor Cars (Distribution and Sale) Control (Second Amendment) Order, 1965, should be declared as unconstitutional, void and ultra vires the powers conferred by Section 18G of the Industries (Development and Regulation) Act. 1931 (65 of 1951). To understand the contentions it is necessary to read clause 5 (2) as it stood before the amendment. It ran thus:

Every such applicant shall also furnish along with the application a written guarantee from a bank undertaking to pay to the dealer at the time when the motor car is ready for delivery to the applicant a sum of rupees two thousand;

Provided that, in the case of a person whose name appears in the books of the dealer as an applicant for the purchase of motor car at the commencement of this Order, the guarantee may be furnished within thirty days of such commencement.

Provided further that, where the bank guarantee furnished by a person expires before the delivery of the car, the guarantee may be renewed by that person within thirty days of the date of such expiry.

This provision has been changed by the amending order referred to as follows :-

(2) Subject to the provisions of sub-clause (2B), every applicant shall also furnish along with the application a Post Office Savings Bank Pass Book from a post office evidencing the fact that he has opened a Security Deposit Account in the post office for a sum not less than Rs. 2000/- and pledged to the dealer.

(2A) When the Motor Car is ready for delivery, the dealer shall send intimation of that fact in writing to the pledger applicant along with the Post Office Savings Bank Pass Book and an authority authorising the pledger applicant to withdraw the money from the post office.

(2B) Where, at the commencement of the Motor Cars (Distribution and Sale) Control (Second Amendment) Order, 1965, the name of any person appears in the books of the dealer as an applicant for the purchase of a Motor Car, such person shall, within sixty days of such commencement, furnish such Post Office Savings Bank Pass Book as is referred to in sub-clause (2) in lieu of the bank guarantee already furnished to the dealer, and thereupon the dealer shall release the bank guarantee forthwith:

Provided that the Controller may, having regard to the circumstances of any case and the purposes to be served by this Order, extend, by order in writing, the said period of sixty days to such further period as he deems fit.

2. The petitioners had applied as required by clause 5 of the Order and their names had been registered. Their applications were therefore pending at the time of the Amendment Order. Their case was therefore covered by sub-clause (2B) of clause 5.

3. It is their case that by furnishing the bank guarantee and by their names being registered they had obtained a vested right to get a car--the petitioners are applicants for obtaining motor cars--and that as enjoined by clause 7 of the Order in the order of priority provided therein. This right cannot be taken away; such taking away would infringe Art. 19 (g) of the Constitution and further that it cannot be done by the delegated authority, the Central Government functioning u/s 18G of the Act.

4. I shall read Section 18G and refer to the relevant provisions of the Order before discussing these contentions.

18-G. Power to control supply, distribution, price, etc., of certain articles.--

(1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles, relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution therefor and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), a notified order made thereunder may provide-

(a) for controlling the prices at which any such article or class thereof may be bought or sold;

(b) for regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof.

(c) for prohibiting the withholding from sale of any such article or class thereof; ordinarily kept for sale;

(d) for requiring any person manufacturing, producing or holding in stock any such article or class thereof to sell the whole or part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the articles so held in stock to such person or class of persons and in such circumstances as may be specified in the order;

(e) for regulating or prohibiting any class of commercial or financial transactions relating to such article or class thereof which in the opinion of the authority making the order are, or if unregulated are likely to be detrimental to public interest;

(f) for requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the price-lists of articles held for sale and also to similarly exhibit on the first day of every month, or at such other time as may be prescribed, a statement of the total quantities of any such articles in stock;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and

(h) for any incidental or supplementary matters, including, in particular, the grant or issue of licences, permits, or other documents and the charging of fees there for.

(3) Where, in pursuance of any order made with reference to clause (d) of sub-section (2), any person sells any article, there shall be paid to him the price therefor--

(a) where the price can consistently with the controlled price, if any, be fixed by agreement, the price so agreed upon;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, fixed under this section;

(c) where neither clause (a) nor clause (b) applies, the ''price calculated at the market rate prevailing in the locality at the date of sale.

(4) No order made in exercise of any power conferred by this section shall be called in question in any court.

(5) Where an order purports to have been made and signed by an authority in exercise of any power conferred by this section, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

Explanation--In this section, the expression ''article or class of articles'' relatable to any schedule industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry.

The Order enjoins that

No manufacturer shall after the commencement of this Order, sell or otherwise dispose of, or offer to sell or otherwise dispose of any description of motor cars manufactured by him whether manufactured before or after such commencement or whether in assembled or unassembled condition, except in accordance with the order made by the Controller under clause 3.

Clause 3 provides:

The Controller may, from time to time by order:--

(a) fix quotas of motor cars for meeting the requirements of the Government, or of any public authority or of any class of persons having regard to the nature of their work or duties, or of specified regions in India, and different quotas may be fixed for different purposes or for different descriptions of motor cars.

and clause 5 enacts:

Every person desirous of purchasing a motor car shall apply to a dealer in the form set out in Schedule-II.

5. I shall read sub-clause 2 of clause 5 as well as the clause substituted for that clause by the Amending Order.

5(2) Every such applicant shall also furnish along with the application a written guarantee from a bank undertaking to pay to the dealer at the time when the motor car is ready for delivery to the applicant a sum of rupees two thousand;

5(2) Subject to the provisions of sub-clause (2B) every applicant snail also furnish along with the application a Post Office Savings Bank Pass Book from a post office evidencing the fact that he has opened a Security Deposit Account in the post office for a sum not less than Rs. 2,000/- and pledged to the dealer.

6. The order further insists that a register should be maintained by every dealer in which the names and other particulars of the persons who had applied in the manner provided are entered as also the names of persons appearing in the book at the commencement of the order. The names should be entered in accordance with the date of the receipt of the application and in the case of persons whose names had already appeared in the book in accordance with the date on which their names were entered. The sale is to be effected only to persons whose names appear in the register and only in accordance with the order in which their names appear.

7. Further there are restrictions about the purchase of motor cars and resale of motor cars and maintenance and production of books of accounts etc. which are not very material for the purpose of this case.

8. It is clear that the object sought to be achieved is the purpose mentioned u/s 18G of the Act. The Motor Cars (Distribution and Sale) Control Order, 1959 is an order issued by the Central Government for securing the equitable distribution and availability at fair prices of motor cars. Some such machinery is necessary in all regulatory measures. It is the inevitable consequence of a society governed by restrictions that have to be imposed by the exigencies arising out of lack of supplies and the pressure of demand.

9. The first question is can it be said that a person who had applied duly and in accordance with the provisions of the order and whose name had been registered in the register in a particular order obtains thereby a right to obtain a car without further insistence of further compliance with other conditions. It appears to me that the order of registration does not confer any such right. The right conferred to the citizen of this country by the Constitution is to acquire property as he likes. What has been introduced by the statute is a restriction in regard to that right. It is not suggested before me that these restrictions are unreasonable and therefore those restrictions must go. Viewed in this light J do not see any right arising out of the procedure prescribed by the order. Nor can it be said that there is any contractual relationship giving rise to contractual rights. The very nature of the procedure indicates an absence of any consensus ad idem. There is only compliance with the statutory provision without which it is impossible to obtain motor cars.

10. Section 18G confers a certain power. This power as I read it can be exercised repeatedly and in so exercising that power restriction imposed by earlier exercise of power may vanish and new restriction may come into being. It is impossible to say that when the order was promulgated there was an implied guarantee given to the applicants that the conditions imposed by that Order will not be changed as far as they are concerned. There is nothing like that in the Order. So from the amplitude of the power conferred by Section 18G it must be taken that the right

to get the car would be subject to such restrictions and modifications as have been introduced by the Government acting u/s 18G-G from time to time.

11. It was suggested that the Amendment Order has done something which has a retrospective effect. I do not think so. The priority that the petitioners got has not been altered. Only there is an insistence that those who had applied and and who had not obtained cars and the new applicants after the amendment came into force will have to deposit amounts in the Post Office Savings Bank Account. There is nothing wrong in this because the earlier applicants are also placed in the same position as the new applicants. I do not think the order is retrospective. I need not therefore consider the question as to whether delegated authorities could or could not pass rules which can have retrospective effect.

12. The only remaining point arising for determination is the contention raised in some of these writ applications, such as O. P. Nos. 2218 and 1416, that the real object of this amending order is not the purpose envisaged by Section 18G of the Act but some other ulterior motive. It is suggested that the attempt appears to be to conserve this money in the Post Office which may be utilised, at a low rate of interest. This contention has been raised in paragraph 10A of the affidavit in support of the Original Petition 2218 and this has been promptly denied in the counter-affidavit filed in that case. It is also stated in the counter affidavit why the amendment was introduced. It is said that for a very nominal price it was possible to obtain bank guarantee. The Government felt that this could be controlled by an insistence that the amount should be deposited. This may or may not have the effect. These are matters of policy which this Court is not concerned with. It cannot certainly be said that the insistence that Rs. 2000/- must be deposited is an abuse of power or something directed to be done for the purpose of achieving the objects not mentioned in the Section. Then the only question is whether there was anything wrong in directing that the deposit should be in the Post Office Savings Bank and not in some other Bank. If the restriction is that the cash must be deposited before an application can be registered, the incidental effect that the money deposit has been made available to the Government cannot be said to be a colourable exercise of power. I am not satisfied that the main purpose is anything other than what has been stated in the counter affidavit. So this contention cannot also stand. I dismiss these writ applications. It was suggested that during the pendency of these writ applications there were stay orders and injunctions which prevented the effect of the Amendment Order being implemented and so the petitioner continued to be registered applicants under the order. Had they made deposits as required by clause 5 (2B) they would have been entitled to receive cars as provided by clause 7 of the Order. The proviso to clause 5 (2B) has allowed a discretion to the Controller to extend the time which has now elapsed. It is suggested that this court should pass orders that would enable the petitioners to make the deposits. This court cannot do so. But in all the circumstances of the case, I feel no doubt that if an approach is made to the Controller he will take into account the pendency of those applications as well as the orders and interim injunctions that

were in force till today and grant reasonable time to enable the petitioners to make their deposits. So the petitioners must move the Controller in this regard within ten days from today and make the deposits. I make no order as to costs.

