

(2017) 04 KL CK 0035

In the High Court Of Kerala

Case No : 692 of 2017 () IN WP(C) 7846 of 2017

THE KERALA RATION WHOLESale DISTRIBUTORS & Anr

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

Constitution of India, Article 19(6) -
Protection of certain rights regarding freedom of speech, etc
Essential Commodities Act, 1955, Section 3,
Section 24

Citation : (2017) 04 KL CK 0035

Hon'ble Judges : Navaniti Prasad Singh, Antony Dominic

Bench : DIVISION BENCH

Advocate : GEORGE POONTHOTTAM, RANJITH THAMPAN, MOLLY JACOB

Judgement

1. These three appeals arise out of a common judgment dated 27.03.2017 passed in grouped writ petitions on the same issue.
2. We have heard learned counsel Sri.George Poonthottam and Senior Counsel Sri.Jaju Babu appearing on behalf of the appellants, who were the writ petitioners, learned Additional Advocate General Sri.Ranjith Thampam and the learned standing counsel Smt.Molly Jacob for the Civil Supplies Corporation.
3. The issue raised in the writ petitions as well as the writ appeals is whether the State Government should or should not be directed to continue with the old system of distribution of foodgrains under the public distribution system, i.e., to retain Authorised Wholesale Distributors (AWD) and not to shut them out totally. In our view, this is a question which is too abstract in as much as, unless it can be shown that State has a duty to continue with the AWD, the said distributors would have no right to continue especially when, the law mandates otherwise.
4. It appears that prior to the enforcement of the National Food Security Act, 2013 (the "Act", for short), the distribution of subsidised foodgrains to the needy and poor was pursuant to the Kerala Rationing Order, 1966, an order made by

the State with reference to Section 3 of the Essential Commodities Act, 1955. In order to facilitate movement of subsidised foodgrains from the Central Government which is stocked by its agency the Food Corporation of India (FCI), the work was entrusted to the AWD, who would lift the foodgrains, store it and from whom, the authorised retail distributors would take delivery from whom ultimately, the consumers would pick up their weekly ration.

5. Upon enforcement of the Act, certain fundamental changes have been made. By virtue of Section 24(2) thereof, it has been made the duty of the State Government to take delivery of foodgrains from designated depots of the State Government and then, the State Government is to allocate them for delivery at the door-step of each fair shop through authorised agencies of the State. Thus, this Act does not permit anyone much less a private individual, to take delivery of foodgrains from the FCI (Central Government). Thus, the role of AWD has been statutorily abolished. We may then refer to the Targeted Public Distribution System (Control) Order, 2015 (the "Order", for short), an order issued by the Central Government with reference to Section 3 of the Essential Commodities Act on 20.3.2015. This order supersedes the earlier order of the Central Government known as the Public Distribution System (Control) Order, 2001 and this order has been made to secure the availability and distribution of essential commodities to the targeted public distribution system. In other words, this is in furtherance to the implementation of the Act, though may with reference to the Essential Commodities Act. Here, we may first refer to Section 2(g) of the Order, which reads thus: "2. Definitions.- In this Order -

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(g) "authorised agency" means the concerned Department of State Government or a body corporate or a company owned by it or a co-operative."

6. From the definition aforesaid, it would be seen that an authorised agency would only be an agency under the control of the State Government. We may then refer to clauses 7(2) and (11), which read as under: "7. Lifting of foodgrains by States.-(1) xx xxx xx

(2) The State Government shall, on getting allocation of foodgrains from the Central Government, issue allocation orders authorising their agencies to lift foodgrains from the Corporation and such order among others shall specify-

(i) number of cards and units;

(ii) balance in hand; and

(iii) allocation made for each month in respect of fair price shop.

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(11) The State Government shall devise suitable mechanism for transportation of foodgrains from the Corporation godown to the intermediate godown and the door-step delivery of foodgrains to the fair price shop."

7. From a combined reading of the provisions quoted above, it would again be abundantly clear that it is the obligation of the State Government now through its agency to ensure proper compliance of the provisions of the delivery though certain discretions had been given as contained in sub-clause (11) of clause (7). Thus seen, the scheme of the Act and the Order is minimal involvement of private persons. If that be the statutory claim and the statutory policy, then, no court can issue any direction contrary thereto even for a temporary period. It is for the Government to ensure compliance of the provisions and securing the benefits to the person for whom the entire exercise is meant to be done.

8. It was then submitted that Government does not have the wherewithal to undertake such an exercise and till such time that Government acquires the infrastructure, the existing AWD should be allowed to work. We have noticed the argument only to reject the same. The Government does not accept the position as it lacks infrastructure. It is pointed out that so far as transporting the goods are concerned, tenders have already been issued and are likely to be finalised. It was open to the persons like the AWD to participate therein as any other person and those who have participated would be considered. But that would not give them a right to continue with what they were doing. It is then urged that State lacks godowns. The stand of the State is that they have already identified 90 godowns which are in their possession through the Civil Supplies Corporation. As and when need be, they would take godowns on rent as nothing prevents them from doing this. But that does not again mean that till the time 100% infrastructure is developed by the State, the AWD be allowed to continue, for we have already indicated above that the scheme of the Act and the Order is to exclude private interference or indulgence in the distribution system.

9. It is undoubtedly true that the AWD have worked as such for decades and it would be painful if not difficult for them to give up their trade and business. But then, if we look to Article 19(6) of the Constitution, State thus have a right of monopolising business. We, thus find no merit in these appeals. These appeals are dismissed accordingly.