

(1984) 02 KL CK 0026

In the High Court Of Kerala

Case No : Writ Appeal No's. 569, 570, 606 and 607 of 1983

The Kerala State Cashew Development Corporation Ltd.,
Quilon and Another

APPELLANT

Vs

Raj Mohan Cashew Ltd., Eravipuram, Quilon and Others

RESPONDENT

Date of Decision : 08-02-1984

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 3
Kerala Raw Cashewnuts (Procurement and Distribution) Act, 1981 — Section 10, 11,
12, 13

Citation : AIR 1984 Ker 139

Hon'ble Judges : M. Fathima Beevi, J;K.K. Narendran, J

Bench : Division Bench

Advocate : State Public Prosecutor for Govt. Pleader, for the Appellant; S. Vijayakumar, Public Prosecutor, M.N. Sukumaran Nayar, B. Raman Pillai, Sunny Varghese, B.S. Krishnan and P.R. Raman, for the Respondent

Final Decision : Dismissed

Judgement

Fathima Beevi, J.—These appeals arise from the common judgment dated 26-7-1983 disposing of O. P. Nos. 4957 of 1983-R and 5368 of 1983-1. The Kerala. State Cashew Development Corporation, the 3rd respondent in the Original Petitions, is the appellant in W. A. Nos. 569 and 570 of 1983 while the 1st respondent State has preferred W. A. Nos. 606 and 607 of 1983.

2. The Original Petitions had been filed challenging Ext R-3 (a) order of the Government dated 25-4-1983, directing sale of raw cashewnuts procured under the Kerala Raw Cashewnuts (Procurement and Distribution) Act, 1981, shortly stated the "Act". The petitioners are cashew manufacturers and factory owners.

3. The Kerala State Co-operative Marketing Federation, authorised agent of the Government, had reported to the Government that about 4800 M. T. of raw cashew-nuts procured under the Monopoly Procurement Scheme during 1982

cashew season were remaining unlifted in the various godowns of the State. The Cashew Special Officer, Quilon had allotted this quantity to the eligible processors, but they failed to lift the same. Consequently the Government passed orders that the said stock procured in the 1982 season may be sold to the Kerala State Cashew Development Corporation, hereinafter referred to as the "Corporation". This order dated 25-4-1983 is under challenge in the Original Petitions.

4. The Kerala Raw Cashewnuts (Procurement and Distribution) Act, 1981 (shortly stated "the Act") provided u/s 3 that no person shall sell any raw cashewnut within the State except to the agent of the Government authorised by them in this behalf by notification. u/s 10 the agent or a sub-agent had to sell in accordance with the provisions of Section 11 which stated that the raw cashewnuts procured shall be allotted on a pro rata basis to the various processors. During 1982 season the Kerala State Co-operative Marketing Federation Ltd., the agent notified u/s 3, procured about 62000 M. T. and the Special Officer made allotment, the Government having fixed the price u/s 13 at Rs. 7.55 per Kg. 4800 M. T. thus allotted remained without being lifted. After the Government Order dated 25-4-1983 it appears that Exts. P-1 and P-2 representations were made by the petitioners offering to purchase the entire stock at a price of Rs. 4.50 per Kg. or at a competitive price. Their representations were rejected. The petitioners had therefore filed the writ petitions for issuing a writ of certiorari quashing Ext. R-3 (a) directing the 2nd respondent to make over the 4800 M. T. of raw cashew-nuts held in stock by it to the Corporation and also directing the respondents to consider on merit the offer made by the petitioners.

5. The main contention advanced by the Corporation in resisting the writ petitions was that on the failure of the petitioners to take delivery of the raw cashewnuts offered to be sold to their factory, the offer for sale stood cancelled, and thereafter the Government had the power to make suitable arrangements for the disposal of the raw cashew-nuts procured by the agent; and Ext. R-3 (a) order has been made in exercise of that power. It was also the case that Sections 11, 12 and 13 of the Act stood repealed by the Kerala Raw Cashewnuts (Procurement and Distribution) Amendment Act, 1983, which came into force on 7-4-1983 replacing the Ordinance issued in that behalf; the petitioners had therefore no right to claim that the price should be fixed by the Government in accordance with the norms and guidelines prescribed u/s 13 or to have the quantity again put up for allotment to the processors. It was also stated that the Corporation being a public sector undertaking owning a large number of factories, the order of the State Government making over the raw cashewnuts to the Corporation is reasonable in the circumstances of the case.

6. The learned single Judge held the view that the amendment of the Act had no retrospective operation and the procurement and distribution of the raw cashewnuts being governed by the Act, the rights of the parties are to be

decided in accordance with the provisions as they stood before the amendment. On the merits it was held that the 3rd respondent is only one of the eligible actual users, the allotment made to the 3rd respondent pursuant to Ext. R-3 (a) is in clear contravention of the provisions contained in Section 11 of the Act and is absolutely without any legal basis, with these observations : All the eligible actual users, including the petitioners, had a legal right to receive from the authorised officer an offer for sale to them of such quantity of raw cashewnuts as would fall to their lot determined on a pro-rata basis mentioned in Sub-section (2) of Section 11, at the price at which it was decided to be offered to the 3rd respondent. It was stated that the favour extended to the 3rd respondent appears to be on an erroneous assumption that, being a Government Corporation, it is entitled to special consideration which, in fact, is not the correct position in law. In terms of the scheme of the Act except to fall in line with other eligible actual users and to receive what falls to its lot determined on the pro-rata basis contemplated in Sub-section (2) of Section 11 of the Act, the 3rd respondent had no superior claim or better right. In this view it was held that the impugned order violates the equality clause enshrined in Article 14 of the Constitution and is arbitrary and unsustainable.

7. Accordingly there was a direction to the respondents to offer for purchase by the petitioners such quantity of raw cashewnuts which the respective petitioners would be entitled to receive on distribution of a quantity of 4800 M. T. if effected in accordance with Sub-section (2) of Section 11 of the Act with the reservation that the petitioners shall stick to their offer and pay the price as stated in their representations. Being aggrieved by the decision, separate appeals have been filed by the Corporation and the State.

8. The contention that the provisions contained in Sections 11, 12 and 13 of the Act have no application after the amendment which came into force on 22-2-1983 has been reiterated before us. It is also said that all the circumstances have been taken into consideration in passing Ext. R-3 (a) order making over the quantity not lifted by the allottees to the Corporation and the challenge against the order is unfounded.

9. It is seen that the Kerala Raw Cashew-nuts (Procurement and Distribution) Amendment Act, 1983 repealing Sections 11, 12 and 13 of the Act came into force on 7-4-1983. The amending Act had replaced Ordinance 7 of 1983 dated 22-2-1983. Section 10 of the Principal Act which provided that the agent shall not sell any raw cashew-nuts purchased under the Act except in accordance with the provisions of Section 11 was also amended. The scheme of allotment u/s 11 was not in force after the Ordinance was promulgated and Sections 11, 12 and 13 were not in the statute book since 22-2-1983. Even in respect of raw cashewnuts purchased by the authorised agents of the Government, the sale is regulated by Section 10 as amended when there is no saving clause in the amending Act expressly excluding the operation of the amended provision to stock already procured. Under the amended provision in Section 10 the agent

shall not sell, except in accordance with the directions issued by the Government in this behalf, the raw cashew-nuts purchased by him under the Act. It necessarily follows that even in respect of the stock remaining unlifted, it was the Government to issue appropriate directions. The validity of Section 10 as amended has not been challenged. Ext. R-3 (a) order passed by the Government on 25-4-1983 after repeal of Section 11 can be deemed to be only one in exercise of this power u/s 10 as it then stood and not on u/s 11, 12, or 13 which had been repealed.

10. It cannot therefore be said that the distribution of the stock is to be done only u/s 11 (2). But it may be necessary to consider whether in exercising the power to issue directions for selling the raw cashewnuts purchased by the agent under this Act, the Government had acted in conformity with the norms and guidelines required to be followed. Any act of the State or its functionaries which does not satisfy the test of absence of discrimination, unreasonable classification and arbitrariness violates the equality clause enshrined in Article 14 of the Constitution, the rule of law and the principles of natural justice. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous, irrelevant considerations because that would be denial of equality. The Supreme Court has stated in law thus in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, at pp. 1637 and 1638) :--

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational unreasonable or discriminatory."

The position is affirmed in the later decisions referred to by the learned Judge.

11. The petitioners have specifically alleged in Ground 8 that the direction given by the Government to the agent to sell to the Corporation the entire quantity of raw cashewnuts procured under the Act and that too at a low price is quite arbitrary and highly discriminatory and hence violative of Article 14 of the Constitution of India. It is stated that there is no justification for extending an undue favour to the Corporation by making available to them the entire quantity of raw cashewnuts held in stock by the agent to the exclusion of similarly

situated factory owners and processors like the petitioners without affording any opportunity to the petitioners and other processors in the State to purchase any portion of the above stock of raw materials either at competitive price or at the price at which the same was proposed to be sold to the Corporation. It was also pointed out that the petitioners and other similarly situated exporters would be driven out of business if the raw materials for the industry are exclusively made available to the Corporation at a very low price arbitrarily fixed by the Government and this would be unjust and illegal and violative of Article 19(g) of the Constitution. No counter-affidavit was filed on behalf of the State. The Corporation pointed out that the petitioners and others to whom the 4800 M.T. were allotted did not lift the nuts and on their failure to take delivery of the allotted cashewnuts, the offer for sale stood cancelled, the petitioners have lost their right over any quantity out of the 4800 M.T. It is not however shown that the Corporation had been chosen for the purpose of the stock that had come back, on some valid principle and how the price has been fixed at the minimum price notified. The contents of Ext. R3 (a) also do not disclose these relevant materials. The State has for the first time stated the circumstances and facts that weighed with the Government, in these appeals. The only justification is that the Corporation in the public sector had earlier purchased raw cashewnuts allotted at higher price. This can hardly be a reason for any discriminatory action because the Corporation was obliged to take delivery of the allotment as any other, factory owner. When the price was proposed to be reduced in respect of the stock which the allottees declined to lift for the reason that the price originally fixed was unreasonable and exorbitant, the petitioners had every right as owners of factories eligible for imported nuts to participate in the distribution of stock at the reduced rate. The action of the Government in excluding the petitioners and preferring the Corporation is not on any valid principle and is arbitrary irrational and unreasonable and against the norms adopted for equal treatment and equitable distribution among all the eligible actual users and therefore discriminatory. We therefore agree with the conclusion arrived at by the learned Judge that Ext. R3 (a) order is liable to be quashed.

12. It is common ground that out of 4800 M. T. made over to the Corporation, the stock excluding 50 M. T. had already been disposed of. The directions contained in the judgment can apply only to the available stock. It is only in the fitness of things that the Government issues appropriate directions for sale out of the available stock the eligible quantity to the petitioners who alone had claimed relief from this Court. The directions will stand modified to that extent.

13. The writ appeals are accordingly dismissed with the above reservation, in the circumstances without costs.