

SUPREME COURT OF INDIA

Vishnu Dayal Mahendra, Pal

Vs.

State of U.P.

(K. K. Mathew, A. Alagiriswami, P. K. Goswami and R. S. Sarkaria JJ.)

01.05.1974

JUDGEMENT

GOSWAMI, J.:-

1. By the above writ applications under Article 32 of the Constitution the validity of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (U. P. Act No. XXV of 1964 as amended by U. P. Act No. 10 of 1970) (briefly called the Act) and the rules made thereunder are challenged on the ground of violation of Article 14 and Article 19(1)(g) of the Constitution.

2. The petitioners in all the above cases are traders or commission agents dealing in agricultural produce.

2A. The following submissions are made on behalf of the petitioners:-

(1) The constitution of the Market Committee under Section 13 of the Act is highly prejudicial to their interests and of the traders in general since it will have a perpetual majority of producers.

(2) The entrustment of licensing to such a Market Committee instead of to any impartial authority is unfair and an unreasonable restriction on the right to trade.

(3) The Act in the matter of grant of licences gives no guidance at all and even under rule 70 (4) two vague criteria have been laid down in the matter of issue of licences under the Act.

(4) The petitioners are required to provide a storage space to the producers for their agricultural produce going to the market and this obligation is also an unreasonable restriction on the fundamental right of the petitioners.

(5) Rule 76(1) is invalid and ultra vires Section 40 of the Act and has also placed unreasonable restrictions on the right to carry on trade or business.

3. Before we deal with these submissions, we may turn our attention to the Act. As the preamble shows the Act has to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence, and control of markets therefor in Uttar Pradesh. The Statement of Objects and Reasons gives a clear picture of the evils sought to be remedied by this legislation and a portion therefrom may be extracted below:-

"The present chaotic state of affairs as obtaining in agricultural produce markets is an acknowledged fact. There are innumerable charges, levies and exactions which the agricultural producer is required to pay without having any say in the proper utilisation of the amount so paid by him. In matters of dispute between the seller and the buyer, the former is generally put at a disadvantage by being given arbitrary awards. The producer is also denied a large part of his produce by manipulation and defective use of weights and scales in the market. The Government of India and the various committees and commissions appointed to study the condition of agricultural markets in the country have also been inviting the attention of the State Government from time to time towards improving the conditions of these markets...The Planning Commission stressed long ago that legislation in respect of regulation of markets should be enacted and enforced by 1955-56."

It is also mentioned that legislation in the State was first proposed in 1938 but lapsed. It also appears that most of the other States have already passed legislation in this respect. It is, therefore, clear that the principal object of this Act is to come in aid of the producers who are generally illorganised and are by far and large the exploited party in the bargain between unequals.

4. Section 2 contains the definitions. By Section 2(a) "agricultural produce" means such items of

produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, ram, shakkar, Khandsari and jaggery". By Section 2(f) " 'Committee' means a Committee constituted under this Act." By Section 2(k) " 'Market Area' means an area notified as such under section 6 or as modified under Section 8". by Section 2(p) " ' producer' means a person who, whether by himself or through hired labour produces, rears or catches, any agricultural produce, not being a producer who also works as a trader, broker or Dalal, commission agent or Arhatiya or who is otherwise ordinarily engaged in the business of storage of agriculture produce". We are not concerned with the proviso attached thereto. By Section 2(y) " 'trader' means a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a person, engaged in processing of agricultural produce". After notification by the State Government of its intention to declare a particular area as a Market Area under Section 5 and after inviting objections and consideration of the same, the State Government under Section 6 declares the whole or any specified portion of the area mentioned in the notification to be the Market Area in respect of such agricultural produce as may be specified. Similarly under Section 7, the principal Market Yard and Sub-Market Yards are declared. Section 9(2) which is material for our purpose, may be quoted:-

"No person shall in a principal Market Yard or any Sub-Market Yard, carry on business or work as a trader, broker, commission agent, warehouseman, weighman, palledar or in such other capacity as may be prescribed in respect of any specified agricultural produce except under and in accordance with the conditions of a licence obtained therefor from the committee concerned".

The petitioners make a great grievance of this licensing provision by the Market Committee called the Mandi Samiti of the Market Area. Section 13 provides for constitution of the Market Committee and provides for representation from different sources as detailed in (i) to (xi) thereunder. The learned Counsel draws our attention to clauses (vii) and (vii-a) of Section 13(1) whereby ten representatives of the producers are included in the committee. It is pointed out by the learned Solicitor General and not contradicted by Mr. Sen that the Committee under Section 13 consists of 23 members out of which ten are from the producers. Section 16 provides for functions and duties of the Committee and, inter alia, under Section 2(i) thereof "a Committee shall ensure fair dealings between the producers and persons engaged in the sale or purchase of specified agricultural produce." Under Section 17, "A Committee shall, for the purposes of this Act, have the powers to:-

(i) issue or renew licences under this Act on such terms and conditions and subject to such restrictions as may be prescribed, or, after recording reasons therefor, refuse to issue or renew any such licence;

(ii) suspended or cancel licences issued or renewed under this Act."

Section 25 provides for appeals against the orders of the Committee to the Director of Agriculture who is to decide the same in accordance with the rules. Under Section 32, the State Government also has powers of revision and may call for the records of the proceedings of the Committee and pass orders modifying, annulling or reversing the same. Section 40 enables the State Government to make rules for carrying out the purposes of this Act.

5. The rules, inter alia, provide for matters relating to the functions, powers and duties of the Committee, licensing fee or market fee which may be levied and realised by the Committee and their mode of recovery and the terms and conditions for assessment and renewal of licences under this Act (Section 40 (2)). There is a schedule to the Act which contains the description of the agricultural produce under eight different heads. Chapter VII of the rules deals with transaction of business in Market Yards and the opening Rule 70 provides for licensing by the Market Committees. By sub-rule (3) "any person desiring to hold licence under sub-rule (1) shall make, in form No. XI of Form No. XII. as the case may be, a written application for a licence to the Market Committee and shall pay the licence fees prescribed under Rule 67". Rule 70(4) (i) may now be quoted:

"On receipt of such application together with the amount of fee prescribed under Rule 67, the Market Committee may issue him the licence applied for, if-

(a) it is satisfied that the applicant is solvent;

(b) it is satisfied that the applicant is a desirable person to whom a licence may be granted:

Provided that the provisions of sub-clause (a) shall not apply to weighmen, mesurers, palledars, truck plyers and Thela plyers".

This rule will have to be read with Section 17 quoted above. By Rule 73, the order of refusal, cancellation or suspension of a licence by the Committee shall be communicated to the person concerned in the specified manner indicated therein. Rule 76(1) which is impugned may be quoted:

"Every consignment of specified agricultural produce brought for sale into the principal Market Yard or any Sub-Market Yard shall be sold by open auction;

Provided that nothing in this sub-rule shall apply to a retail sale as may be specified in the bye-laws of the Committee."

6. Some provisions of similar Acts of the States of Madras, Bombay and Gujarat had earlier been the targets of unsuccessful attack in this Court and hence the constitutional challenge in the present applications against the U. P. Act is necessarily on different grounds (see *M. C. V. S. Arunachala Nadar v. The State of Madras*, 1959 Supp (1) SCR 92 = AIR 1959 SC 300). *Mohammad Hussain Gulam Mohammad v. The State of Bombay*, (1962) 2 SCR 659 = (AIR 1962 SC 97) and *Jan Mohammad Noor Mohammad Begban v. State of Gujarat* (1966) 1 SCR 605 = (AIR 1966 SC 385).

7. We may now turn to the submissions. With regard to the first submission as earlier noted, the grievance is not factually accurate. Out of 23 members of the Committee only 10 are from the producers. Therefore, there is no question of a perpetual majority of the producers in the Committee. Besides under Section 13(1) (vii), 3 producers are elected. It may be even a legitimate expectation of the legislature that there may be reasonable likelihood that producers of eight categories of agricultural produce mentioned in the schedule may be represented. Under Section 13(1) (vii-a) which was introduced by an amendment in 1970, two producers belonging to the scheduled castes are to be nominated by the State Government. This provision is made in the interests of the people belonging to the scheduled castes who may not be able to get due representation in the elections. We do not find any unreasonable features in the scheme of representation in the Committee under section 13. This will be clear even from Section 14 whereby the first Committee appoints suitable members "to represent different interests referred to in sub-section (1) of Section 13". The first submission of the petitioners is, therefore, of no avail.

8. We may now take up consideration of the second and the third submissions which may be dealt with together. It is submitted that the licensing of the traders should not be left in the hands of the Market Committee. We find it difficult to appreciate how the performance of this duty by the committee will at all prejudice the traders. To say the least it is a hypothetical objection in this case, as, we understand, none of the petitioners have been refused a licence. It is true that usually some governmental authority is charged with the duty of granting of licences under various local Acts. That, however, does not prove that the duty cannot be properly and impartially exercised by the Committee representing various interests which are vitally interested in the trade of agricultural produce. Whether in a particular case the action of the Committee is mala fide or otherwise objectionable, may be a different matter and such a grievance can be properly dealt with. That would, however, not make the provision invalid nor can it be said to place an unreasonable restriction on the right of the petitioners to trade.

9. It is further submitted that there is no guidance in the Act in the matter of grant of licence and the relevant rule 70(4)(i) prescribes only two vague criteria in the matter. This submission fails to take note of the fact that the Committee which is entrusted with the duty of granting licences consists of people from different sources vitally interested in the marketing of agricultural produce. The

Committee consists also of representatives from local bodies, co-operative marketing societies, Central Warehousing Corporation, State Warehousing Corporation, representatives of traders and commission agents, Government officials of whom one shall be a representative of the Agriculture Department and the other of Food and Supplies Department, and so forth. It is, therefore, a fairly well-represented Committee which is expected to know the object and purpose of the Act of which it is a creature. One may legitimately expect that the members are well aware of the difficulties of the producers, interests of the traders and the intricacies of the trade. There is sufficient guidance from the preamble and other provisions of the Act with which the members of the Committee owe their duty to be conversant. For example under Section 16 the Committee is charged with the duty of enforcing the provisions of the Act, the rules and the bye-laws. It has to exercise its powers and perform its duties and discharge its functions in accordance with the provisions of the Act and the rules. Under sub-section (2) of Section 16, the Committee shall ensure fair dealings between the producers and the traders besides performing other functions, Form No. XI in which a trader has to submit his application for a licence also gives various particulars from which the Committee would be able to consider his claim for a licence. It will be seen that in this form the applicant has to undertake to abide by the conditions of the licence and the provisions of the Act and the rules. The conditions of the licence which are noted in Form No. XIII would also give an indication of the obligations of the licensee. All these would be known to the Committee.

10. At any rate with the help of the Government officials in the Committee there is no reason to think that the work of the Committee will not function smoothly and that there will be any reason to apprehend that licences would be refused arbitrarily. Even the scope for such an apprehension is sought to be done away with by providing a provision of appeal against the decision of the Committee and also a further revision to the State Government. There is a further limitation on the power of the Committee by insisting upon recording of reasons while refusing a licence. It is, therefore, clear that a speaking order has to be passed when refusing a licence and it will have to justify that the licence is refused only on relevant considerations with regard to solvency and fitness in terms of the provisions of the Act.

11. It is submitted that the choice of the two criteria under Rule 70 (4)(i) is bad and there is no proper guidance in these criteria which are not capable of objective determination. The two criteria laid down are solvency and desirability. The applicant has to satisfy the Committee that he is solvent as opposed to insolvent that is bankrupt. We are informed that the original Hindi version of the rule which is translated into English give the equivalents as follows:-

"It is satisfied that the applicant is not a bankrupt (rindiwali)".

"It is satisfied that the applicant is a proper (upoyukta) person to whom a licence may be granted."

12. Mr. Sen candidly admits that the criterion on the score of "bankruptcy" is well known and

cannot be said to be vague or indefinite. He, however, submits that the second criterion is not at all precise and definite.

13. Although perhaps a more expressive guidance could have been given, we have already observed that the Act itself provides sufficient guidance to the Committee in the matter of deciding whether a particular applicant is or is not a proper person to hold a licence and we cannot accede to the submission that the two criteria taken with the other guidelines from the provisions of the Act and the rules offer no proper guidance to the Committee in the matter of grant of licence. The second and the third submissions of the petitioners are, therefore, devoid of substance.

14. With regard to the fourth submission, it is sufficient to point out that under Section 16(2)(vii) the Committee has to provide, inter alia, accommodation for storage and such other facilities as may be prescribed. Under Rule 52(4) storing of the specified agricultural produce shall be subject to the payment of such storage fee and such other conditions as may be specified in the bye-laws. That being the position, this may be even an interim measure pending arrangements by the Committee for proper storage. Even otherwise the storage by the traders in the Market Yards will be always paid for under Rule 52(4). There is, therefore, no substance in the fourth submission of the petitioners.

15. With regard to the last submission regarding invalidity of rule 76(1), we are not satisfied that the same is ultra vires Section 40 of the Act. Section 40 empowers the State Government to make rules for carrying out the purposes of the Act. R. 76(1) is well within the rule making power of the State Government under Section 40(2), clause (xxvii). Section 9(2) restricts the right to carry on trade except under and in accordance with a licence. Section 17 provides for issuing or renewal of licences subject to the restrictions under the rules. Section 9(2) and Section 17 are not challenged before us. Rule 76(1) prescribes the mode of sale that is to say by open auction under the rule making power under Section 40 read with clause (xxvii). The rule is not ultra vires Section 40 of the Act. It is said that prohibiting private sales by confining only to sale by open auction puts an unreasonable restriction on the right to trade of the petitioners. If Section 9(2) and Section 17 are not challenged as invalid, it is not understood how rule 76(1) which is within the rule making power can be said to be unreasonable. In order that the producers obtain the best price for their commodity, sale by open auction is prescribed under Rule 76(1) to fulfil one of the important purposes of the Act. Sale by auction is a well-known mode of sale by which the producers for whose interest this Act has been made, can obtain the best price for their commodities. The definition of sale and purchase to which our attention has been drawn by the petitioners do not run counter to the provisions for auction-sale under rule 76. It cannot by any stretch of imagination be held to be an unreasonable mode in the entire scheme of the Act. The legislature is intervening to see that the producers get the maximum pecuniary return possible in their transactions and, as a necessary concomitant, eliminated the mode of private sale by individual negotiations resulting in malpractices. Besides by the proviso to Rule 76(1) this restriction is not allowed to operate in the case of retail sales. There is therefore, no substance in the submission that Rule 76(1) violates the fundamental right of the petitioners under Article 19(1) (g) of the Constitution.

16. Mr. Sen particularly drew our attention to two decisions of this Court. The first is given in *Lala Hari Chand Sarada v. Mizo District Council* (1967) 1 SCR 1012 = (AIR 1967 SC 829). That was a case where the Executive Committee of the Mizo District Council refused to renew the temporary licence issued to the appellant therein who was a non-tribal trader under section 3 of the Lushai Hills District (Trading by non-Tribals) Regulation, 1963. This Court by majority struck down Section 3 as violative of Article 19(1)(g) of the Constitution. This decision is clearly distinguishable from the present case. In that case there was no right of appeal to any superior authority against a refusal to grant or renew a licence and the non-tribal trader had no remedy whatsoever against such an order. This Court also observed in that case that "a perusal of the Regulation shows that it nowhere provides any principle or standard on which the Executive Committee has to act in granting or refusing to grant the licence" (Emphasis added).

17. The second decision is in *Harakchand Ratanchand Banthia v. Union of India* (1970) 1 SCR 479 = (AIR 1970 SC 1453). This was a case under the Gold (Control) Act and Mr. Sen drew our attention to the expression "suitability of the applicant" in Section 27(6)(a) of the Gold (Control) Act which was held to provide no objective standard or norm and as such was held to be constitutionally invalid. This Court while dealing with the objection to Section 27 of the Gold (Control) Act which relates to licensing of dealers held as follows:-

"Section 27 (6)(a) states that in the matter of issue of renewal of licences the Administrator shall have regard to the number of dealers existing in the region in which the applicant intends to carry on business as a dealer. But the word 'region' is nowhere defined in the Act. Similarly Section 27(6)(b) requires the Administrator to have due regard to the anticipated demand, as estimated by him, for ornaments in that region, but the expression 'anticipated demand' is vague and incapable of objective assessment and is bound to lead to a great deal of uncertainty. In the same way the expression 'suitability of the applicant' in Section 27(6)(e) and 'public interest' in Section 27(6)(g) do not provide any objective standard or norm. Further, the requirement in the section imposing the same conditions for the renewal of the licence as for the initial grant is unreasonable as it renders the entire future of the business of the dealer uncertain and subject to the caprice and arbitrary will of the administrative authorities. Therefore, clauses (a), (b), (e) and (g) of S. 27(6) are constitutionally invalid."

In the instant case we have already examined the two criteria laid down under Rule 70(4)(i) and have held that they do not place any unreasonable restriction on the right of the applicants to obtain a licence. By rule 70(4) (i)(b) the Committee has to be satisfied that the applicant is a fit and proper person (upoyukta) to whom a licence may be granted. This is not the same thing as the suitability simpliciter which this Court has to deal with in the Gold (Control) Act case. The decision is, therefore clearly distinguishable.

18. In the result all the applications fail and dismissed. The parties will pay and bear their own

costs.

Petitions dismissed.