M. A. Rasheed and Others

Vs

The State of Kerala

Civil Appeals Nos. 2064 of 1973 and 64, 65, 163, 164 and 189 of 1974

(CJI A. N. Ray, V. R. Krishna Iyer JJ)

18.09.1974

JUDGMENT

RAY, C.J. -

1. These appeals are by certificate from the judgment dated November 19, 1973 of the High Court of Kerala.

2. These appeals challenge the validity of the notification dated July 26, 1973 issued by the State Government under Rule 114(2) of the Defence of India Rules, 1971 hereinafter referred to as the Rules.

3. Rule 114(2) is as follows :

If the Central Government or the State Government is of opinion that is is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order provide for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt practice or abuse of authority in respect of any such matter.

The impugned notification is an follows :

> #No. 19768/E2/73/ID Dated Trivandrum July 26, 1973.##
>
> S.R.O. No. 474/73 :- Whereas use of machinery for the extraction of fibre from coconut husk increased considerably in the districts of Trivandrum, Quilon and Alleppey in recent times;

And whereas mechanisation in the production of such fibre results in very high consumption of coconut husk and the consequent enhancement of the price of such husk.

And whereas due to the very high Consumption of coconut husks for the production of fibre by using machinery and the enhancement of the price of such husks, sufficient quantity of such husks are not available at fair prices in the said districts for use in the traditional sector :

And whereas the Government are of opinion that for securing the equitable distribution and availability at fair prices of coconut husks in the said districts for production of fibre in the

traditional sector it is necessary to prohibit the user of a machinery in those districts for the production of such fibre;

Now, therefore, in exercise of the powers conferred by Sub-rule (2) of Rule 114 of the Defence of India Rules, 1971, the Government hereby prohibit the production of fibre from coconut husks by the use of the machinery in the said districts.

By order of the Governor.

4. The appellants are owners of Small Scale Industrial Units. They employ mechanised process for decortication of ratted coconut husks. The main processes involved in the manufacture of coir yarn are these : First is retting of green husks. The green husks are covered with leaves and mud. The retted husks are then pounded or beaten. The fibre and pith then separate. The fibre is extracted, cleaned and dried. Next comes spinning either with the help of ratt or by hand. Ratt is a mechanical contrivance. The final stage is bundling of coir yarn for marketing. Government declared defibring of coconut husks by mechanical means as a small scale industry eligible for financial assistance under the Small Scale Industries Development Scheme. Most of the appellants availed themselves of loans under the Scheme. The appellants alleged in the petitions before the High Court that the cost involved in installing machinery in a proper building for the purpose would range from Rs. 22,000 to Rs. 35,000.

5. The appellants challenged the notification on the ground that the formation of opinion by the State Government for the purpose of exercise of power under sub-rule (2) of Rule 114 of the Rules is a justiciable issued and that the Court should call for the material on which the opinion has been formed and examine the same to find out whether a reasonable man or authority could have gone to the same conclusion that in its opinion for securing the equitable distribution and availability of retted husks at fair prices, a regulation or prohibition of the manufacture of fibre from retted husks by mechanical means is necessary. The appellants allege that the reasons given in the notification as justifying the imposition of the total ban on the use of machinery for defibring husks are wholly erroneous and prime facie no reasonable person will consider them as justifying the said ban. The appellants also allege that there is no application of the mind of the authority to any genuine materials or to any relevant considerations in the exercise of the drastic power vested in the authority under Rule 114(2) of the Rules.

6. The High Court held that the appellants did not establish by material that the opinion formed by the State Government could not stand.

7. There is no principle or authority in support of the view that whenever a public authority is invested with power to make an order which prejudicially affects the rights of an individual whatever may be the nature of the power exercised, whatever may be the procedure prescribed and whatever may be the nature of the authority conferred, the proceedings of the public authority must be regulated by the analogy of rules governing judicial determination of disputed questions (see Sadhu Singh v. Delhi Administration ((1966) 1 SCR 243 : AIR 1966 SC 91 : (1966) 1 SCJ 215)).

8. Where powers are conferred on public authorities to exercise the same when "they are satisfied" or when "it appears to them", or when "in their opinion" a certain state of affairs exists; or when power enable public authorities to take "such action as they think fit" in relation to a subject matter, the courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is

predicated.

9. Where reasonable conduct is expected the criterion of reasonableness is not subjective, but objective. Lord Atkin in Liversidge v. Anderson (1942 AC 206, 228-229) said :

If there are reasonable grounds, the Judge has no further duty of deciding whether he would have formed the same belief any more than, if there is reasonable evidence to go to a jury, the Judge is concerned with whether he would have come to the same verdict.

The onus of establishing unreasonableness, however, rests upon the person challenging the validity of the acts.

10. Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the courts' own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis.

11. In Rohtas Industries Ltd. v. S. D. Agarwala ((1969) 3 SCR 108 : (1969) 1 SCC 325) an order under Section 237(b) (i) and (ii) of the Companies Act for investigation of opinion of the Government is subjective, the existence of the circumstances is a condition precedent to the formation of the opinion. It was contended that the Court was not precluded from going, behind the recitals of the existence of such circumstances in the order, but could determine whether the circumstances did in fact exist. This Court said that if the opinion of an administrative agency is the condition precedent to the exercise of the power, the relevant matter is the opinion of the agency and not the grounds on which the opinion is founded. If it is established that there were no materials at all upon which the authority could from the requisite opinion, the Court may infer that the authority passed the order without applying its mind. The opinion is displaced as a relevant opinion if it could not be formed by any sensible person on the material before him.

12. It is appropriate to refer to the Report of the Committee appointed by the State Government to hold inquiries and advise the Government in respect of revision of minimum wages fixed for employment in Coir Industry. The Committee was constituted in the year 1969. The Committee gave its final report on January 25, 1971. The Report is published by the Government of Kerala in 1971. The findings of the Committee are these. With the help of high-powered machines, fibre from husks of 1,000 coconuts could be extracted in 25 to 30 minutes. Ten workers would be required for effective attending to that work. Ten workers in eight hours in an average could defibre husks of about 12,000 coconuts. Thirty workers would be required to remove the skins of the retted husks. In the usual course, 120 workers would have to be employed for beating husks of 12,000 coconuts by hand. In short, by the introduction of a singe high-powered machine, 80 persons would lose their employment. The Committee felt that under the circumstances when unemployment is acute especially in that State, it is not practicable to encourage mechanisation for fibre production till alternative source of employment is developed. Therefore, it is a wise course to regulate the expansion of the use of machinery with high productive capacity in order to retain the labour force already working in this field.

13. One high-powered machine does the work of about 90 workers employing only 10 workers to

operate it. The fibre extracted with the help of machinery is not used for the production of coir yarn by a majority of employers in North Malabar area. The fibre is sold to outside agencies in Coimbatore, Salem, etc. and not used for spinning coir yarn. The Committee recommended that the Government might appoint a separate committee to study the various problems on account of mechanisation in the industry and make suitable recommendations in that behalf.

14. A Study Group was appointed to make a report on mechanisation in Coir Industry in Kerala. The report of the Study Group is dated April 13, 1973. It is published by the State Planning Board in May, 1973.

15. The Study Group at pages 33 and 34 of the Report stated as follows. In a country like ours where unemployment and under-employment loom large, any situation which brings in unemployment is not to be favoured. Where again exceptional benefits are to flow in as a result of mechanisation, and by thoughtful and timely State action, the painful effects resulting from mechanisation could be checkmated it is not always desirable to persist with age-old methods. Coir Industry brings employment or partial employment to an area where there is chromic unemployment and under-employment. Any kind of mechanisation is bound to cause some displacement of people. But human values should be given the highest priority and any measure which brings suffering to those engaged in an industry cannot be acceptable. Mechanisation can bring steady employment to the few. It would also promote better remuneration. The only difficulty is that it can take in lesser number of persons.

16. The Study Group suggested that a composite plan should be thought on these lines. The Coir Industry should be woven into the pattern of area development or regional development which will bring prosperity not only to the Coir Industry but also to many other ancillary industries and avocation. The objective should be to provide at least 300 days work in a year at reasonable wages to all those engaged in the Coir Industry. The Study Group recommended that the pace of mechanisation should be such that none should be thrown out of employment, and for those who are displaced, alternative work is to be found in the general development that is envisaged in the all round development plan which should think of not only the Coir Industry but also the other industries and avocations possible to the introduced in an area.

17. It is in evidence that mechanisation progressed at a fairly high rate in the three districts of Trivandrum. Quilon and Alleppey. Out of 414 mechanised units in the whole of the Kerala State consisting of 11 districts, 283 are in these three districts alone. There is a heavy concentration of mechanised units in the three districts. The figure given is that only 10 workers are required for defibring husks of 12,000 coconuts a working day of 8 hours by the use of machines as against 120 workers by the process known as hand-method. The mechanical work is done quickly to consume coconut husks in very large quantities. There has been large scale unemployment of labour engaged in the traditional method and there is serious unrest in the area.

18. The State Government found in the context and background of the Reports and materials that the use of machinery for the purpose of extraction of fibre from husks in the region other than Trivandrum. Quilon and Alleppey Districts has not affected the supply and availability a fair prices of husks for extraction of fibre in the traditional sector as in the case of the districts of Trivandrum, Quilon and Alleppey. The situation in other eight districts, according to the State, does not require action under Rule 114 of the Defence of India Rules. Price increase of husk in these eight districts was not comparable with that in the district of opinion that for securing the equitable distribution and availability of fair prices of coconut husks for production of fibre in the traditional sector in the

remaining eight districts of the State it is not necessary in the prevailing circumstances to prohibit the use of machinery in the remaining eight districts for the production of fibre.

19. The appellants also contended that Section 3(2)(21) of the Defence of India Act does not support Rule 114 and secondly Section 38 of the Defence of India Act is violated. Section 3(2) (21) of the Defence of India Act confers power on the authority to make orders providing inter alia for the control of trade or industry for the purpose of regulating or increasing the supply of or for maintaining supplies and services essential to the life of the supply of, or for maintaining supplies and services essential to the life of the community. Rule 114 is in complete consonance with the powers conferred under the aforesaid Section 3(2)(21). Section 38 of the Defence of India Act states that any authority or person acting in pursuance of this Act shall interfere with the ordinary avocation of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence. It is a matter of policy for the State Government to decide to what extent there should be interference in relation to the enjoyment of property. The public interest is of paramount consideration. In the present case the steps taken area in the larger interests of labour engaged in the Coir Industry. The pre-eminent question is that it is an emergency legislation. In emergency legislation the causes for inducing the formation of the opinion are that coir is one of the most labour-intensive industries in Kerala and it is estimated that more than 41/2 lakhs of workers are employed in the various processed of Coir Industry like retting, hand-spinning, spindle-spinning and manufacture of coir mats and matting and that about 10 lakhs of people depend upon this industry for their sustenance. Mechanisation in Coir Industry has been taking place in different parts of the State. The non-mechanised sector of this industry is so labour-intensive that mechanisation of fibre production is strongly opposed by workers because mechanisation results in very high consumption of coconut husks by the mechanised units and the consequent enhancement of price of husks and the non-availability of sufficient quantity of husks at fair price for use in the traditional sector, viz., hand-beating of husks. There have been serious tensions including law and order situations.

20. Because of the very high Consumption of coconut husks for the production of fibre by using machinery and the enhancement of the price of such husks, sufficient quantity of such husks are not available at fair prices in the Districts of Trivandrum, Quilon and Alleppey for use in the traditional sector. Therefore for securing the equitable distribution and availability at fair prices of coconut husks in the said three districts for production of fibre in the traditional sector, it is necessary to prohibit use of machinery in these three districts.

21. The State Government found on materials that use of machines affected the availability of retted coconut husks for equitable distribution at far prices. The notification is on the consideration of relevant and useful material. The opinion of the State Government cannot be said to be based on any matter extraneous to the scope and purpose of the relevant provisions of the statute. The materials supporting the subjective satisfaction indicate that there are reasonable grounds for believing that the prescribed state of affairs exists and a course of action is reasonably necessary for the given purpose of equitable distribution of coconut husks at fair prices.

22. The notification is issued after due care and caution on the basis of reliable and sufficient data obtained by proper investigation and inquiries. The Government took notice of Section 38 of the Defence of India Act. The Government became satisfied about the public interest. The notification does not interfere with the avocation and enjoyment of property any more than is necessary for those purposes of equitable distribution of husks at fair price to the traditional sector.

23. An argument was advanced that the notification offended Article 14. The course of action which the State adopted is that if became necessary to prohibit the use of machinery in the districts of Trivandrum, Quilon and Alleppey in the traditional sector. It appears that out of 414 mechanised units in the State 283 units are in the southern region of Kerala State consisting of Trivandrum, Quilon and Alleppey and the balance 131 mechanised units are in the remaining 8 districts of the State. The use of machinery for the purpose of extraction of fibre from husks in the region other than Trivandrum, Quilon and Alleppey districts has not at present affected the supply and availability at fair prices of husks for extraction of fibre in the traditional sector as in the case of the three Districts. The situation in the eight districts does not require action at the present moment. The classification is reasonable. It bears a nexus to the objects sought to be achieved by the impugned notification. In order to secure equitable distribution and availability at fair prices of coconut husks in the remaining eight districts of the State for production of fibre in the traditional sector, it is not necessary in the prevailing conditions to prohibit the use of machinery in the remaining eight districts.

24. It was also submitted that the notification offended Article 301, Article 302 states that the State can impose restrictions on the freedom of trade, commerce or inter-course between one State and another or within any part of the territory of India. It was said that the Defence of India Act is not a low made by Parliament, imposing restrictions as contemplated under Articles 302. The Defence of India Act has been passed by Parliament. The Rules under the Act have legislative sanction. The restrictions are imposed in the interest of the general public. The restrictions are reasonable in the interest of the industry and public.

25. For the foregoing reasons the judgment of the High Court is upheld. The appeals are dismissed. In view of the fact that the High Court directed the parties to bear their own costs we also direct that the parties will pay and bear their own costs.

</html