

Madhya Pradesh Ration Vikreta Sangh Society and Others,

Vs

State of Madhya Pradesh and Another

Special Leave Petitions (Civil) Nos. 4034, 4350, 4270, 4536-4538 and 5074 of 1981

(R.S. Pathak, A.P. Sen JJ)

22.09.1981

ORDER

A.P. SEN, J. –

1. The only question involved in this and the connected special leave petitions directed against a judgment of the Madhya Pradesh High Court is whether the Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme, 1981, formulated by the State Government under sub-clause (d) of Clause 2 of the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960, introducing a new scheme for running of Government fair price shops by agents to be appointed under a Government Scheme giving preference to cooperative societies, in replacement of the earlier scheme of running such fair price shops through retail dealers appointed under Clause 3 of the Order, is violative of Articles 14 and 19(1)(g) of the Constitution.

2. To give a short resume. The Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 (hereinafter called the Control Order), was made by the State Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, read with Government of India, Ministry of Food and Agriculture (Department of Food), Order No. G.S.R. 1088 dated November 15, 1958, to provide for distribution of foodstuffs at fair prices under a Government Scheme. The Scheme of the Control Order is that with a view to distributing foodstuffs at fair prices through fair price shops, the Collector would, under the "Government Scheme", appoint any person as a retail dealer in respect of foodstuffs under Clause 3 of the Control Order. The Control Order was designed to enable the State Government to distribute foodstuffs at fair prices through fair price shops. In 1977, as a matter of policy it was decided to appoint unemployed graduates as retail dealers of Government fair price shops. The whole system of distribution of foodstuffs at fair price shops to the consumers, however, collapsed due to flagrant violations of the Control Order by the retail dealers. It was found that the shops were opened well after the appointed time shops were closed well before the time, the consumers were not able to obtain their ration easily and very often the traders would withhold the foodstuffs in stock and refuse to sell the same to the consumers, causing serious inconvenience and harassment to them. Another great drawback which the Government experienced was that stocks which were required to be lifted by the traders were not lifted within the time and more often than not the stocks would become wasted and rendered useless.

3. In July 1980, the Chief Minister called a Conference of high officials including the Director, Civil and Food Supplies and the Collectors of various districts. The Collectors narrated their experience about the unsatisfactory manner of working of the then existing system of running fair price shops through retail dealers and spoke of the plight of the poor consumer. There was a meaningful, close and in-depth discussion at the Conference and in the light of the experience gained, the Government

decided that it was necessary to replace the existing system of running fair price shops through retail dealers by the Government directly running these fair price shops through agents appointed by the Collector. It was also decided that these fair price shops should be run by consumers' cooperative societies. In the wake of the changes to be brought about, the State Government, on October 3, 1980, accordingly amended the Control Order by deleting the provisions relating to running of fair price shops through retail dealers and providing for running these shops under a Government Scheme. The expression "fair price shop" has been defined by the newly added Clause 2(bb) to mean a shop set up by the Government under the Government Scheme. On March 20, 1981, the State Government promulgated the Madhya Pradesh (Foodstuffs) Civil Supplies Public Distribution Scheme, 1981.

4. Under the impugned scheme, the Collector, by virtue of Clause 3, was to establish fair price shops. In establishing the fair price shops, the Collector was to follow certain guidelines. These are : (a) that a shop should be established for each area with a population of 2000 and the consumers should not be required to travel more than five kilometers for purchasing foodstuffs, (b) in the urban areas for the purpose of demarcation of areas, a Ward or a Mohalla is a unit and in rural areas the Panchayat is a unit, (c) the location of fair price shop shall be, as far as possible, in the centre of such area, for meeting the requirements of the residence for which it is established. Clause 4 provided that the fair price shops would be allotted by the Sub-Divisional Officer and the allottee will have no legal ownership over the fair price shops. Then a set of guidelines was also issued for the purpose of regulating the manner of allotment of fair price shops. In making the allotment of fair price shops, cooperative societies were to be given to priority. In the event of a cooperative society in an area expressing its inability in writing to run a fair price shop, or if there was no such cooperative society in existence in such an area, the fair price shop may be allotted to others. The allotment of a fair price shop was to be made after publication of a notification inviting applications for allotment from the public. The applications received were to be scrutinised on merits and the one who fulfilled the maximum qualifications shall be allotted the shop. Another set of principles was laid down dealing with the manner of working of fair price shops, but they are matters of detail. One important feature is that the fair price shops are to be run under the direct control and supervision of the Collector and the other important feature is that the fair price shop keeper was required to keep sufficient stocks of foodstuffs as specified by the State Government or the Collector in that behalf, to prevent hardship and inconvenience to the consumers.

5. The validity of the impugned scheme has been upheld by this Court in *Sarkari Sasta Anaj Vikreta Sangh, Tahsil Bemetra v. State of M.P.* [(1981) 4 SCC 471]. The main challenge was that the Scheme created a monopoly in trade in favour of cooperative societies and was thus violative of Articles 14 and 19(1)(g) of the Constitution. This Court, agreeing with the High Court rejected the contention view of *Mannalal Jain v. State of Assam* [(1962) 3 SCR 936 : AIR 1962 SC 386 : (1962) 2 SCJ 93]. In that case, the question was whether Clause 5(e) of the Assam Foodgrains (Licencing and Control) Order, 1961, which provided for giving preference to cooperative societies created a monopoly in trade in favour of cooperative societies. On a construction of Clause 5(e) which merely embodied a rule of preference in favour of cooperative societies, this Court in *Mannalal Jain case* [(1962) 3 SCR 936 : AIR 1962 SC 386 : (1962) 2 SCJ 93] held that Clause 5(e) did not have the effect of creating a monopoly in favour of cooperative societies. In upholding the validity of Clause 5(e), the Court observed : (at SCR p. 949).

We are of the view that by reason of the position which cooperative societies may occupy in the village economy of a particular area, it cannot be laid down as a general proposition that sub-clause (e) of Clause 5 of the Control Order, 1961, is

unrelated to the objects mentioned in Section 3 of the Essential Commodities Act, 1955. There may be places or areas where cooperative societies are in a better position for maintaining or increasing supplies of rice and paddy and even for securing their equitable distribution and availability at fair prices.

The Court, therefore, repelled the contention that Clause 5(e) had no relation whatever to the objects mentioned in Section 3 of the Act and went on to say : (at SCR p. 951)

Sub-clause (e) of Clause 5, we have already stated, enables the licensing authority to give preference to a cooperative society in certain circumstances; but it does not create a monopoly in favour of cooperative societies. The preference given has a reasonable relation to the objects of the legislation set out in Section 3 of the Act.

In the *Sarkari Sasta Anaj Vikreta Sangh* case [(1981) 4 SCC 471] the impugned scheme was also challenged on various other grounds but the Court negated all the contentions raised and we need to refer to them as they are not really relevant for our purposes. Suffice it to say, the Court pointed out that the Scheme had been framed by the State Government in exercise of its executive function under Article 162 of the Constitution; that under the Scheme the fair price shops were to be run by consumers' cooperative societies; that the Scheme was framed by the State Government in public interest with a view to securing equitable distribution of foodgrains at fair prices to the consumers, that the rule of preference to cooperative societies does not create a monopoly in trade and is, therefore, not violative of the petitioners' fundamental rights under Articles 14 and 19(1)(g) of the Constitution; and that no one had a fundamental right to be appointed a Government agent for running a fair price shop which was a matter of grant of privilege. The validity of the impugned scheme has, therefore, been upheld in all its aspects.

6. In support of these petitions, learned counsel for the petitioners contends that the real point was not pressed in the *Sarkari Sasta Anaj Vikreta Sangh* case. He contends that there is no objection to a State monopoly in trade, the action of the Government should not be arbitrary, irrational and irrelevant. If the governmental action discloses arbitrariness, it is to be invalidated as violative of Article 14. In support of the contention, he places reliance on certain observations of Bhagwati, J. in the *Airport Authority* case [*R.D. Shetty v. Airport Authority*, (1979) 3 SCR 1014, 1042 : (1979) 3 SCC 489]. In dealing with the question, Bhagwati, J. observed : (SCC pp. 511-12, para 21)

It is now well settled . . . that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principles which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because arbitrarily in entering into relationship, contractual or otherwise with the third party, but its action must conform to some standard or norm which is rational and non-discriminatory.

The observations made by Bhagwati, J. - in the *Airport Authority* case [*R.D. Shetty v. Airport Authority*, (1979) 3 SCR 1014, 1042 : (1979) 3 SCC 489] have been quoted with approval in *Kasturi Lal v. State of J&K* [*AIR 1979 SC 1628* (1980) 4 SCC 1].

7. It is true that according to the rule laid down in the *Airport Authority* case [*R.D. Shetty v. Airport Authority*, (1979) 3 SCR 1014, 1042 : (1979) 3 SCC 489] if governmental action disclosed arbitrariness, it would be liable to be invalidated as offending against Article 14. There can be no

quarrel with the principles laid down in that case, but the difficulty is about the application of those principles to the facts and circumstances of the present case. We have given a brief outline of the impugned scheme and it cannot be said that it suffers from arbitrariness or is irrational to the object sought to be achieved. The State Government after due deliberation, took a responsible decision to run the fair price shops directly, being satisfied that it was necessary so to do with the object of distributing foodstuffs at fair prices to the consumers, after taking into consideration the fact that the earlier experiment of running these shops through retail dealers was an utter failure. The scheme has been designed by the State Government by executive action under Article 162 of the Constitution with a view to ensuring equitable distribution of foodstuffs at fair prices. As already stated, the Court has found in the *Sarkari Sasta Anaj Vikreta Sangh* case [(1981) 4 SCC 471], the entire system of distribution of foodstuffs had collapsed and had become wholly unworkable due to flagrant violations of the provisions of the Control Order by the retail dealers. The action of the State Government in entrusting the distribution of foodstuff to consumers' cooperative societies, though drastic, was an inevitable step taken in the interests of the general public. The State Government was not bound to give the fair price shops to the retail dealers under a Government Scheme. The governmental action in giving preference to consumers' cooperative societies cannot be construed to be arbitrary, irrational or irrelevant. The impugned scheme does not confer arbitrary or uncanalised power on the Collector in the matter of grant or refusal of applications for appointment as agents for the purpose of running fair price shops. The Schemes lays down detailed guidelines regulating the manner of grant or refusal of such applications.

8. The wider concept of equality before the law and the equal protection of laws is that there shall be equality among equals. Even among equals there can be unequal treatment based on an intelligible differential having a rational relation to the objects sought to be achieved. Consumers' cooperative societies form a distinct class by themselves. Benefits and concessions granted to them ultimately benefit person of small, means and promote social justice in accordance with the directive principles. There is an intelligible differential between the retail dealers who are nothing but traders and consumers' cooperative societies. The position would have been different if there was a monopoly created in favour of the latter. The Scheme only envisages a rule of preference. The formulation of the Scheme does not exclude the retail traders from making an application for appointment as agents. It is, however, urged that the impugned scheme is not being implemented as to carry out its avowed object. It was said that there was arbitrariness in selection of cooperative societies of all descriptions, not necessarily consumers' cooperative societies. There is no merit in the contention that there was preferential treatment given to cooperative societies in the matter of allotment of fair price shops. Our attention was drawn to the fact that a fair price shop has been allotted to Adhivakta (Advocate) Sangh, Jabalpur. Advocates are also consumers and there is nothing to prevent them from forming a consumers' cooperative society for lawyers as a class if they fulfil the conditions laid down in the law. We have no reason to think that the State Government was not actuated with the best of intentions in bringing about a change in the system of distribution of foodstuffs through fair price shops.

9. The question whether fair price shops in the State of Madhya Pradesh under a Government Scheme should be directly run by the Government through the instrumentality of consumers' cooperative societies as its agents or by retail dealers to be appointed by the Collector under Clause 3 of the Control Order, is essentially a matter of policy with which the Court is not concerned. The learned counsel for the State reiterated the assurance given in the *Sarkari Sasta Anaj Vikreta Sangh* case [(1981) 4 SCC 471], as was done by the learned Advocate General before the High Court, that by the expression "cooperative societies" in the Scheme, the Government intended and meant "consumers' cooperative societies", and that if by mistake there was a wrong allotment made to a

"cooperative society" which was not a "consumers' cooperative society", the Government would take steps to cancel the allotment.

10. The constitutionality of the impugned scheme is also challenged as abridging Article 19(1)(g) of the Constitution. The short answer to the challenge is that the Scheme in no way infringes the petitions' right to carry on their trade in foodgrains. They are free to carry on business as wholesale or retail dealers in foodgrains by taking out licences under the Madhya Pradesh Foodgrains (Licencing) Order, 1964. There is no fundamental right in any one to be appointed as an agent of a fair price shop under a Government Scheme.

11. Accordingly, we dismiss the special leave petitions with costs.

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