

Welcom Hotel and Others

Vs

State of Andhra Pradesh and Others

Writ Petitions Nos. 43, 51-53, 415-18 and 751-52 of 1981 and 5465-5562 and 7763-7890 of 1983

(D. A. Desai, O. Chinnappa Reddy JJ)

22.08.1983

JUDGMENT

DESAI, J. -

1. Should Article 32 of the Constitution lend its assistance to petitioners in this group of petitions so that the poor in Andhra Pradesh can be successfully deprived of their staple simple breakfast ? Even an imaginary marginal dent in the profits of the hoteliers stirs it into action by an easy resort to a writ petition under Article 32 and an ex-parte stay which itself is success even if the petition ultimately fails, because in the mean time the measure which may possibly affect their profits is kept under suspended animation and the profit being continuously derived from scattered consumers is not refundable and the unjust enrichment is enjoyed with impunity. This case amply illustrates the point.

2. Hoteliers of Andhra Pradesh raised a hue and cry when the Government of Andhra Pradesh, the first respondent, enacted and proclaimed in exercise of the powers conferred by Section 3 of the Essential Commodities Act, ('1955 Act' for short) read with the notification of the Ministry of Agriculture and Irrigation dated June 9, 1978, the Andhra Pradesh Catering Establishments (Fixation and Display of Prices of Foodstuffs) Order, 1978 ('1978 Order' for short) dated September 8, 1978 whereby it was made obligatory for the catering establishments to display the prices of all foodstuffs served by the establishment and simultaneously fixed the maximum price of seven items of food comprising the poor man's menu in the State of Andhra Pradesh. The seven items enumerated in the Schedule appended to the 1978 Order include idli, vada, upma, sada dosa, puree, coffee, tea and a rice plate ('scheduled items' for short). Clause 3 of the Order prescribed maximum prices of the scheduled items of food and Clause 4 makes it obligatory to display in English and principal language of the area the weight or measure and price of every item of foodstuff offered for sale in the establishment. There were consequential provisions such as power to issue directions, power to call for information, power of entry, search and seizure and power to grant exemption as also power to amend the Schedule. A clarificatory notification was issued on October 3, 1978 giving certain directions. The Schedule and the rates set out therein were modified by the Amending Order dated December 11, 1980. The amendment catered to an upward revision of the prices. It seems some further negotiations took place between the Minister of Civil Supplies and Labour on the one hand and hoteliers on the other which led to a Notification dated January 5, 1981 ('1981 Order' for short) giving further upward revision in maximum price of scheduled items and the scheduled items were reduced from 7 to 6 deleting rice plate. Ignoring this latest order which replaced the earlier orders, the petitioners approached this Court and obtained an ex-parte stay of the implementation of Orders dated September 5, 1978 and December 11, 1980. In fact, but for the intervention by the Court staying the operation of earlier orders, the Order dated January 5, 1981 was not stayed yet

effectively the petitioners succeeded in putting into cold storage the price fixation order leaving them free to charge any price unhampered and uninhibited by any governmental action.

3. Dr. L. M. Singhvi, who led on behalf of the petitioners made two submissions which have nothing to do with the validity or legality of the impugned Orders. He submitted that the Court should give a direction to the State Government to re-examine the prices of inputs and overhead charges so as to arrive at such maximum price of the scheduled commodities as to ensure a reasonable return on the investment which would render the restriction on the fundamental right to carry on trade, reasonable and satisfy Article 19(1)(g) of the Constitution. He next submitted that there are certain directions in the 1978 and 1981 Orders which are impossible of compliance and, therefore, the petitioners should be heard before they are compelled to implement the conditions. Neither of the submissions has any impact on the validity of the impugned Orders. It may, however, be pointed out how the petitioners suppressing material facts succeeded in obtaining an ex-parte stay order. In the counter-affidavit filed by one Mr. D. Muralikrishna, Director of Civil Supplies, it was stated that after the Order dated December 11, 1980 was issued the hoteliers resorted to some agitation which led to the Minister of Civil Supplies calling a meeting of the hoteliers. What transpired at this meeting may be extracted from the counter-affidavit :

The Minister for Civil Supplies therefore convened a meeting at Hyderabad on December 31, 1980 with the representatives of hoteliers all over the State and the Joint Collectors. At the said meeting all the issues involved were thoroughly discussed. After prolonged discussions, the hoteliers of the districts have agreed unanimously for reducing the prices in respect of 6 items of foodstuffs excluding meals and an undertaking to that effect was signed by the hoteliers at 1.30 a.m. on January 1, 1981.

A copy of the undertaking is produced at Annexure 'B' to the counter-affidavit which inter alia also provided that the rates of the scheduled items determined with the consent of the hoteliers will be reviewed after three months. What is now demanded is that the State Government should examine the prices of inputs and overhead charges and determine afresh the maximum prices of the scheduled items, which was very much an integral part of an overall agreement between the State Government and the hoteliers. After suppressing this material fact from the Court in the petition, the petitioners obtained an ex-parte stay order on January 12, 1981 and this was suppressed of such a material fact as would disentitle the petitioners to any relief at the hands of this Court. That apart review at reasonable interval is implicit in any price fixation measure.

4. The second submission that the petitioners be heard to point out the impossibility of complying with some of the conditions of the Orders is merely to be stated to be rejected. If the real bone of contention was the maximum price of scheduled items which was to be thrashed out by discussion, it is not possible to accept the submission that the petitioners would not have put forth their grievances about the impossibility of complying with some of the conditions of the impugned orders. There is not a whisper about it in the agreement Annexure 'B' and we do not find anything very unusual or impracticable in the conditions prescribed in the impugned Orders.

5. Mr. B. Kanta Rao who appeared for some of the petitioners urged that the State Government is not competent to issue any price control measure in respect of cooked food because the Essential Commodities Act, 1955 which confers power to issue orders in respect of essential commodities does not confer any power to issue any order in respect of cooked food. Section 3 of Essential Commodities Act, 1955 confers power on the Central Government by an order to provide for

regulating or prohibition the production, distribution and supply and trade in essential commodity or for securing their equitable distribution and availability at fair prices. The power to fix price of essential commodity is implicit in the power conferred by Section 3 of the Act and what is implicit in Section 3(1) is made explicit by clause (c) of sub-section (2) of Section 3 which provides that an order made under Section 3(1) may provide - (c) for controlling the price at which essential commodity may be brought or sold. Clause (a) of Section 2 defines 'essential commodity' to mean any of the items which include... (v) foodstuffs, including edible oilseeds and oils. The submission is that the expression 'foodstuffs' in its etymological and grammatical sense would mean raw foodstuffs or appropriately called food grains such as wheat, rice, jawar, bazra, maize etc. but not cooked food which is a perishable commodity. We see no justification for giving a restricted meaning to the expression 'foodstuffs'. If power to control prices of raw foodstuffs such as rice or wheat is conferred by Section 3, we see no justification for that power not comprehending within its fold the power to regulate prices of articles made out of such raw foodstuffs. Expressions such as 'foodcrops', 'spices' and 'condiments' indicate different spices or articles of food but the general expression 'foodstuffs' was interpreted to include spices and condiments also. In the State of Bombay v. Virkumar Gulabchand Shah [1952 SCR 877 : AIR 1952 SC 335 : 1952 SCJ 496 : 1952 Cri LJ 1406] this Court construed the expression 'foodstuffs' in clause (3) of the Spices (Forward Contract Prohibition) Order of 1944 read with Section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946 to include turmeric. After examining the definition of expression 'foodstuffs' in Oxford English Dictionary and Webster's International Dictionary and some decisions bearing on the subject, this Court held that the expressions 'food' and 'foodstuffs' can be used in both a wide and a narrow sense and that the circumstances and background can alone determine which is proper in any given case. After examining the object and the intent underlying enactment of Essential Supplies (Temporary Powers) Act, 1946, this Court held that if turmeric is a commodity essential to the life of the community it must be covered by the expression 'foodstuffs'. Accordingly, it was held that the expression 'foodstuffs' has been used in a wider sense in 1946 Act. It may be recalled that the Essential Commodities Act, 1955 was enacted for the control of the production, supply and distribution of and trade and commerce in essential commodities. It has the same object as the 1946 Act and therefore, the expression 'foodstuffs' in 1955 Act must receive the same construction. If that be so, the expression 'foodstuffs' must obviously include cooked food also.

6. Further the expression 'food' has generally been understood to mean nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital process. What human beings consume is styled as food and what animals consume is described as animal feed. This distinction has to be borne in mind. Expression 'foodstuffs' is made of two expressions, 'food' plus 'stuff' is made of two expressions, 'food' plus 'stuff'. In other words, the stuff which is used as food would be foodstuff. Therefore, foodstuff is that which is taken into the system to maintain life and growth and to supply waste of tissue. If the raw foodstuff with a view to making it consumable by human beings undergoes a change of its conditions by the process of cooking, the derivative is none the less foodstuff. If raw rice is foodstuff, does rice when boiled in water cease to be foodstuff? As the Chinese by an accidental fire in a hut where there were pigs learnt the advantage of consuming cooked food in place of raw food, the submission of Mr. Kanta Rao would make us march backward by centuries and be a disgrace to modern culinary art. And 'food crop' is another expression defined in the 1955 Act. Therefore the expression 'foodstuff' as used in the 1955 Act comprehends cooked food. The contention of Mr. Kanta Rao, therefore, must be negated.

7. It was next contended that the maximum price of scheduled items under the impugned orders is economically unprofitable and the same have been arrived at without scientifically examining the

price if inputs and overhead charges and the reasonable return on investment and therefore, the exercise of fixing maximum price suffers from the vice of arbitrariness and must be declared unconstitutional as being violative of Article 14. While canvassing the submission, some attempt was made both on the side of the petitioners as well as on the side of the State to take us through the labyrinth of the tables drawn up by both sides showing prices of inputs and overhead charges. We declined to be involved in the vortex of this cost accountant's exercise as we are neither experts of the subject nor we consider it necessary to undertake this exercise. The argument proceeded that the prices of inputs have escalated so high that the maximum prices determined by the impugned orders have become uneconomical. For this malaise, petitioners have to thank themselves because it was an integral part of their agreement with the Minister of Civil Supplies on December 31, 1980 that the maximum prices fixed by the impugned Orders would be re-examined on the expiration of the three months from the date of the agreement. Instead of honouring this agreement, the petitioners within a span of 12 days rushed to this Court and obtained ex-parte stay wholly suppressing the fact that the Orders impugned in these petitions have already been replaced by the latest Order dated January 5, 1981. Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court.

8. In order to illustrate how the Court is not the forum for scientifically structuring prices of commodities, it may be pointed out that the petitioners in their prices structure tables have added in respect of each scheduled item 25 per cent of wages. Totalling the wages for seven items the wage bill accumulates at 175 per cent. And that is equally true of other overhead charges. Add to this numerous other items of food sold by petitioners in their establishments and the utter unsustainability of their claim becomes manifest.

9. We would however, reject the contention about the mechanics of price fixation on the short ground that petitioners ordinarily do not serve only the scheduled items, but they have large establishments catering to various tastes and delicacies. No price fixation order need guarantee profit to an establishment in respect of each unit of article served or sold. It is the overall picture in the trade or commerce that needs to be examined. Petitioners have not shown that in their overall turnover they have since the promulgation of impugned orders suffered losses. And this situation never fructified because the 1978 Order was kept in suspended animation for a period of two years and when the latest Order dated January 5, 1981 was promulgated, it was still-born at the hands of the Court because of the ex-parte stay order obtained by the petitioners. And we reject this contention for the additional reason as laid down by a Constitution Bench of seven learned Judges of this Court in *Prag Ice & Oil Mills v. Union of India* [(1978) 3 SCR 293, 325 : (1978) 3 SCC 459, 490 : AIR 1978 SC 1296 : 1978 Cri LJ 1281] where Chandrachud, C.J. observed as under : (SCC p. 490, para 52)

In the ultimate analysis, the mechanics of price fixation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of operators, the processual basis of price fixation has to be accepted in the generality of cases as valid.

Not the slightest case is made out for departure from the proposition laid down by this Court as extracted hereinabove.

10. Before we conclude, we would like to pin-point the unfair advantage which the petitioners have obtained by ex-parte stay suppressing the material fact that the later order had already replaced the earlier orders and the latest order was issued with their consent. In the Writ Petition No. 43/81 the prayer clause reads as under :

Issue a writ of mandamus or any other appropriate writ or order holding that G.O.Ms. No. 548 dated September 8, 1978 and G.O.Ms. No. 626 dated December 11, 1980 of the Government of Andhra Pradesh and the notification issued by the Collector, the second respondent herein dated December 16, 1980 in pursuance of the said impugned Orders as ultra vires, unconstitutional and void and quash the same.

The bone of contention was not the power exercised by the State Government but the maximum prices fixed in exercised of the power conferred on the State Government. The maximum prices were to be regulated as per the Order dated January 5, 1981, and even though this Court was moved for ex-parte stay on January 12, 1981, the fact that the latest Order dated January 5, 1981 has replaced the earlier orders was suppressed from the Court. And peculiarly the State Government did not pursue vigorously its latest notification dated January 5, 1981 because its operation was not stayed by the Court. However, the entire notification fixing the price of the menu of the poor men was put under suspended animation leaving the hoteliers to extort any price to suit their greed. Now that we are dismissing these petitions and vacate the state orders, the notification fixing the maximum prices will revive and can be enforced. But in the meantime the poor of Andhra Pradesh were made to pay by their nose for their simplest menu and the difference between maximum price fixed by the impugned notification and the prices charged by the hoteliers would be unjust enrichment of the hoteliers undeservedly enjoyed with the assistance of the Court by the exercise of the constitutional power under Article 32 of the Constitution, and there is no way of depriving this unjust enrichment. The Court set up for justice, including socio-economic justice, unfortunately lent its assistance to such unjust enrichment and yet we are helpless.

11. For the reasons herein discussed, we find no merits in any of the contentions canvassed on behalf of the petitioners and therefore, these petitions fail and they are dismissed with costs in each.

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