

Karan Singh and Another

Vs

State of M. P. and Others

Special Leave Petition (Civil) No. 3732 of 1986

(E. S. Venkataramiah, M. P. Thakkar JJ)

15.04.1986

JUDGMENT

VENKATARAMIAH, J. -

1. This is a petition under Article 136 of the Constitution of India praying for special leave to file an appeal against the judgment dated January 2, 1986 of the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition 889 of 1985 filed under Article 226 of the Constitution of India.
2. Petitioner 1 is a commission agent (adhatia) carrying on business within the jurisdiction of the Agricultural Produce Market Committee, Bhind in the State of Madhya Pradesh and petition 2 claims to be an agriculturist residing in village Lawan, District Bhind (hereinafter referred to as "the Market Committee") constituted under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as "the Act") passed a resolution on February 25, 1981 resolving the abolish the "Kachhi Adhat System" [which could not co-exist with a direction issued under Section 32 (5) of the Act] in the market area at Bhind in exercise of its powers under sub-section (5) of Section 32 of the Act and submitted the resolution for the approval of the Director of Marketing. The Director accorded his approval to the resolution on December 4, 1981. The said resolution was, however, kept in abeyance for some time but on February 21, 1982 the Market Committee adopted a further resolution resolving to continue the "Kachhi Adhat System" till necessary alternative arrangements were made. On August 29, 1982 the Market Committee passed another resolution requesting the Collector to fix the wages of hambals (coolies). On October 6, 1982 the Market Committee decided to bring into force its decision to abolish the "Kachhi Adhat system". But in the meanwhile one Ganga Ram had instituted a civil suit against the Market Committee for an injunction restraining the Market Committee from giving effect to its resolution and applied for the issue of a temporary injunction in the same terms during the pendency of the suit. The Trial Court refused to pass the interim injunction. In the appeal filed against the order of the Trial Court refusing to grant the interim injunction, a temporary injunction was issued as prayed for on October 6, 1982. Against the order passed on appeal a civil revision petition was filed before the High Court in Civil Revision 25 of 1984. In that civil revision petition by consent of parties, an order was passed directing that the order of temporary injunction should remain effective for a period of three weeks only and that in the meanwhile the Trial Court was directed to try the issue relating to the maintainability of the suit as a preliminary issue and to record its finding thereon. The Trial Court by its order dated October 31, 1985 dismissed the suit holding that it was not maintainable. On the suit being dismissed "Kachhi Adhat system" which had continued by virtue of the order of temporary injunction came to an end. Immediately after the dismissal of the suit the petitioners herein filed the writ petition out of which this special leave petition arises questioning the validity of the resolution passed by the Market Committee abolishing the "Kachhi Adhat system". The High Court after hearing the parties

dismissed the petition. This petition is filed under Article 136 of the Constitution of India against the order of the High Court.

3. It is contended by the learned counsel for the petitioners that the abolition of the "Kachhi Adhat system" by issuance of the directive under Section 32 (5) of the Act was violative of Article 19 (1) (g) of the Constitution since according to them it imposed an unreasonable restriction on the right of the traders operating within the market area of Bhind. Section 32 (5) of the Act reads thus :

32 (5). The Market Committee may, by a resolution, passed in that behalf and with the prior approval of the Director, direct that no commission agent or a broker or both shall act in any transaction between the producer-seller or trader-purchaser on behalf of a producer-seller nor shall he deduct any amount towards commission or dalali from the sale proceeds payable to the producer-seller nor shall he act on behalf of both the buyer and the seller.

Provided that the resolution so passed shall not be revoked by the market committee until a period of one year has expired from the date of its approval.

4. Under Section 32 (5) of the Act, set out above, the Market Committee is empowered with the prior approval of the Director to pass a resolution directing (i) that no commission agent or a broker or both shall act in any transaction between the producer-seller or trader-purchaser on behalf of a producer-seller; (ii) that a commission agent shall not deduct any amount towards commission or dalali from the sale proceeds payable to the producer-seller; and (iii) that a commission agent shall not act on behalf of both the buyer and the seller and thus to abolish the "Kachhi Adhat system". It is contended on behalf of the petitioners that the "Kachhi Adhat system" is not an illegal business, the adhatias, like petitioner 1 provide very useful service to the agriculturists by providing space to store their produce and providing financial accommodation until their goods are actually sold, by receiving a reasonable amount for the services rendered by them. It is argued that the system has been prevailing in the market area for a number of years and that there is no justification for its abolition.

5. The submission made on behalf of the petitioners does not appeal to us. The object of bringing the Act into force itself is that the commission agents should not have any opportunity to exploit their dominant position and to make illegal and excessive gain at the cost of the producers. The Act has been passed to protect innocent agriculturists who bring their produce to the market areas from the clutches of the commission agents. The Royal Commission on Agriculture in India which was appointed in 1928 observed inter alia that "the keynote to the system of marketing agricultural produce in the State is the predominant part played by middlemen". "It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies". The Expert Committee appointed by the Government of Madras to review the Madras Committee Crops Markets Act, 1933 in its report observed thus :

The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluk of district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought it is stored in the commission agent's godown at the cultivators' expense and as the latter generally cannot afford to wait about until the sale is affected he leaves his produce to be sold

by the commission agent at the best possible price, and it is doubtful whether eventually he receives the best price. The middle class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent, because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore, he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market price, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middleman occupies and his methods of sale and the terms of his dealings have long ago been realized.

6. The observations in the report of the Expert Committee were relied upon by the Court in *M. C. V. S. Arunachala Nadar v. State of Madras* to uphold the provisions of the Madras Commercial Crops Markets Act, 1933 which had been brought into force with the object of eliminating as far as possible the middlemen and to give reasonable facilities for the growers of the crops to secure best prices for their commodities. In that case the court came to the conclusion that the said Act was not violative of Article 19 (1) (g) of the Constitution of India. What was observed by the Expert Committee appointed by the Government of Madras applies with equal force to the commission agency system (Kachhi Adhat system) prevailing throughout India in all the mandies where the agricultural produce is brought for sale. The legislature of the State of Madhya Pradesh has enacted sub-section (5) of Section 32 of the Act in the public interest in order to remedy the evil in the system of commission agency (Kachhi Adhat system). We do not, therefore, find any substance in the contention of the petitioners that the abolition of the "Kachhi Adhat system" brought about by the impugned resolution of the Market Committee is in any way violative of Article 19 (1) (g) of the Constitution of India or unconstitutional. We fail to see how Article 19 (1) (g) of the Constitution will be violated if no commission agent shall act in the manner prohibited by Section 32 (5) of the Act or he cannot deduct any commission or dalali from the sale proceeds payable to the producer or that he cannot act both for the buyer as also for the seller. In prohibiting such practices Article 19 (1)(g) of the Constitution cannot be said to be violated in any manner. Such restrictions being in the interests of the general public are protected by Article 19 (6) of the Constitution. There is no merit in this petition.

7. The petition is, therefore, dismissed.

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