

Hindustan Paper Corpn. Ltd.

Vs

Government of Kerala and Others

Civil Appeals Nos. 1871-76 of 1981

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

16.04.1986

JUDGMENT

VENKATARAMIAH, J. –

1. In these appeals by special leave we are concerned with the question of constitutional validity of Section 6 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (Act 29 of 1978) (hereinafter referred to as 'the Act').
2. The appellant Hindustan Paper Corporation Ltd. is a company owned by the Central Government carrying on the business of manufacturing newsprint at its factory in the State of Kerala. Before its factory was established an agreement was entered into between the appellant Hindustan Paper Corporation Ltd. and the Government of Kerala on October 7, 1974 under which the Government of Kerala agreed to grant to the appellant the right of free use of water from the Muvattupuzha river for the purpose of manufacturing newsprint and also to make available annually to the appellant 1,50,000 tonnes of eucalyptus wood. The Government of Kerala further agreed to keep reserved from the date of agreement the State plantations of eucalyptus grandis in Pamba, Kottayam, Punalur, Thenmalai and Trivandrum Forest Divisions as constituted then for the appellant and not to permit harvesting of eucalyptus wood and reeds by other parties and for the regeneration of the forest in the areas, the Chief Conservator of Forests, Kerala State was required in consultation with the appellant to prepare and implement a scientific management plan which would include fire protection and epidemic control programmes. The appellant agreed to pay to the Government of Kerala royalty for the raw materials supplied to the appellant at the rate of Rs 11 per tonne of green wood of eucalyptus grandis and eucalyptus tereticornis (both with 50 per cent moisture) and at the rate of Rs 12 per tonne of green reeds with 50 per cent moisture. There were several other conditions in the agreement with which we are not concerned in these cases. After the above agreement was entered into the appellant established its factory. The Punalur Paper Mills Ltd. and the Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. which were companies in the private sector had also established their factories in the State of Kerala which consumed forest produce as raw material. The Kerala State Bamboo Corporation Limited and the Travancore Plywood Industries Ltd. which were owned by the Government of Kerala were also carrying on business in the State of Kerala.
3. In the year 1978 the Act was passed by the Kerala legislature with the object of providing for the procedure to be followed in fixing the selling prices of certain important forest produce, for the prohibition of the sale of such forest produce at less than the prices so fixed and for matters incidental or ancillary thereto. The Act was also intended to provide for the proper regeneration and maintenance of the forests in the State. The Act governs only those forests which are considered as

reserved forests within the meaning of Kerala Forest Act, 1961 and forests vested in the government under Section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971. It provides for the determination of the selling price of certain forest produce specified in clause (c) of Section 2 of the Act. Section 3 of the Act requires the government to notify in the Gazette before the end of each financial year the selling price of every forest produce for the following financial year. The notified price has to be fixed by the government after taking into consideration the recommendations of the Expert Committee consisting of the officers mentioned in Section 4(2) of the Act. Sub-section (3) of Section 4 of the Act requires the Expert Committee to make its recommendation having regard inter alia to the market price of the forest produce, the cost of regenerating and maintaining the forest produce in cases where regeneration is necessary after selling the forest produce; and such other matters as may be prescribed. Section 5 is the crucial section in the Act. It reads as follows :

5. Forest produce to be sold at price not less than the selling price. - (1) After the date of the publication of the notification under sub-section (2) of Section 3, no forest produce shall be sold by the government or any forest officer at a price which is less than the selling price of that forest produce.

(2) The sale of any forest produce in contravention of sub-section (1) shall be null and void and shall not be enforceable in a court of law.

4. There is no prohibition of sale of forest produce at prices higher than the prices mentioned in the notification. Section 7 of the Act provides that 10 per cent of the amount obtained by the sale of forest produce after the commencement of the Act, subject to such rules as may be made under the Act, should be set apart for being utilised for the development of forests. Section 8 enables the government to make rules for the purpose of carrying into effect the provisions of the Act. We are concerned in these cases with the validity of Section 6 of the Act which reads thus :

6. Exemption. - The government may, in the public interest, by notification in the Gazette, exempt the sale of any forest produce -

(a) to any company owned by the Central Government or the Government of Kerala;

(b) not exceeding ten cubic metres, to any co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), from the provisions of Section 5, subject to such conditions and restrictions as may be specified in the notification.

5. The Act came into force on its publication, i.e., on September 26, 1978. On March 9, 1979 the Government of Kerala published a notification exempting the appellant, i.e., Hindustan Paper Corporation Ltd., the Kerala State Bamboo Corporation Limited and the Travancore Plywood Industries Limited from the provisions of Section 5 of the Act. The relevant part of the notification and the Explanatory Note attached to it are given below :

#No. G.O. (MS) 100/79/AD Dated, Trivandrum March 9, 1979##

S.R.O. No. 313/79 :- In exercise of the powers conferred by Section 6 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (29 of 1978), the Government of Kerala, being satisfied that it is necessary so to do in the public interest, hereby exempt the sale of any forest produce to the Kerala Newsprint Project under the Hindustan Paper Corporation, the Kerala State Bamboo Corporation and the

Travancore Plywood Industries, Punalur from the provisions of Section 5 of the said Act.

By order of the Governor K. V. Vidhyadharan Additional Secretary to Govt.##

Explanatory Note

After government have notified selling price of forest produce under Section 3 of Act 29 of 1978, forest produce cannot be sold at prices less than the selling price. Under Section 6 of the Act, government can exempt in public interest, by notification, the sale of any Forest Produce to companies owned by the Central Government, by Government of Kerala. As Kerala Newsprint Project, Bamboo Corporation and the Travancore Plywood Industries, Punalur are undertakings of the Central Government and the Government of Kerala respectively, it is considered expedient to exempt these from the provisions of Section 5 of the Act. The notification is intended to achieve the above purpose.

6. The State Government issued the notification under Section 3 of the Act fixing the price below which forest produce covered by the Act could not be sold. Aggrieved by the notification granting exemption to the government companies, the two companies in the private sector, namely, Punalur Paper Mills Limited and the Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. filed writ petitions in the High Court questioning the constitutional validity of Section 6 and the notification granting exemption thereunder in favour of the appellant Hindustan Paper Corporation Ltd. and two other companies owned by the Government of Kerala. The writ petitions were opposed by the Government of Kerala, the appellant Hindustan Paper Corporation Ltd., the Kerala State Bamboo Corporation Ltd. and the Travancore Plywood Industries Ltd. In the counter-affidavit filed on behalf of the Government of Kerala the contention urged by the petitioners in the writ petitions were refuted and the State Government took the stand that Section 6 of the Act was constitutionally valid. At the hearing of the writ petitions before the High Court, the Additional Advocate General who appeared for the State Government conceded that in his opinion Section 6 of the Act was unconstitutional. Perhaps what he meant was that he was not able to offer any good answer to the contentions urged by the other side in support of the challenge to the constitutionality of the concerned provision. A reference to this concession which was neither here nor there is found at the end of paragraph 22 of the judgment of the High Court. The High Court held that Section 6 of the Act was violative of Article 14 of the Constitution and struck it down along with the notification. No appeal was filed by the State Government. The above appeals are filed by Hindustan Paper Corporation Ltd. The appellant herein which is one of the beneficiaries of the notification granting exemption. But, at the hearing of these appeal in this Court the learned counsel for the Government of Kerala stated that the concession made by the learned counsel for the State before the High Court was incorrect, and supported the validity of Section 6 of the Act the notification granting exemption issued thereunder.

7. These appeals are filed against the judgment of the High Court after obtaining the leave of this Court under Article 136 of the Constitution. Section 6 of the Act has already been set out above. It confers the power on the State Government to grant exemption from the provisions of Section 5 of the Act. The power conferred under Section 6 of the Act is not unfettered. The government can grant the exemption only in the public interest. Such exemption can be granted only to company owned by the Central Government or the Government of Kerala. There is also, however, a provision in clause (b) of Section 6 of the Act, which ununderstandably has also been struck down by the High Court, even though its validity had not been expressly challenged. Under this provision any

sale of forest produce not exceeding ten cubic metres effected in favour of any co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 may be exempted from Section 5 of the Act by the State Government. While issuing the notification granting exemption it is open to the State Government to impose appropriate conditions and restrictions. The State Government, of course, has to bear in mind the entire policy and object of the Act before exercising its power under Section 6 of the Act. At the outset it should be observed that the decision of the High Court to the extent it has quashed clause (b) of Section 6 of the Act which gave power to the State Government to exempt the sale of any forest produce in small quantities not exceeding 10 cubic metres to any co-operative society is liable to be set aside straightway without anything more as there was no challenge to that part of the section at all and the High Court has not at all scrutinized the constitutional validity of this provision.

8. The reasons given by the High Court for quashing Section 6 of the Act are these :

(1) if the government is given a power to sell the produce at a lower price than the notified rate to the government companies it will enable the government to cripple or in slow degrees to eliminate the other consumers in the field. This conferment of power on the State government is discriminatory and unreasonable,

(2) a government company is as such a legal entity as any other entity. It is a commercial corporation acting on its own behalf and all consumers of the forest produce should have an equal opportunity to get the goods. The government company could not, therefore, be given any favour,

(3) there is nexus between the object to be achieved by the Act and the exemption to be granted in favour of the government companies, and

(4) the submission made by the Additional Advocate-General to the effect that he could not support the validity of Section 6 of the Act.

9. We find it difficult to accept the grounds on which the High Court has held Section 6 of the Act to be unconstitutional. So far as consumers of forest produce who are not granted any exemption under Section 6 of the Act are concerned, any sale of forest produce in their favour cannot be affected at a price less than the price notified under Section 3 of the Act. The notified price has to be fixed on the basis of the recommendation to be made by the Expert Committee constituted under Section 4 of the Act and the Expert Committee is required to take into consideration the market price of the forest produce, the cost of regenerating and maintaining the forest produce in cases where regeneration is necessary after selling the forest produce and such other matters as may be prescribed. If Section 5 of the Act provides that the forest produce covered by the Act shall not be sold at a price less than the price which is determined on the basis of the factors referred to above which appear to be quite relevant they cannot have any grievance. They cannot claim that they must be shown any concession and that the forest produce should be made available to them at a price which would be lower than the market price. Even when it is stated that any company owned by the Central Government or the Government of Kerala or a co-operative society (subject to the limit as regards the quantity of forest produce to be supplied) may be supplied forest produce without the constraint contained in Section 5 of the Act, it does not mean that the forest produce would be made available to them at throw-away prices. It is reasonable to expect that the price payable for the forest produce in question by the government companies or co-operative societies would be determined after negotiations having regard to the public interest. In almost all the statutes by which the fiscal

or economic interests of the State are regulated, provision for granting exemption in appropriate cases would have necessarily to be there and the power to grant exemption is invariably conferred on the government concerned. The legislature which is burdened with heavy legislative and other types of work is not able to find time to consider in detail the hardships and difficulties that are likely to result by the enforcement of the statute concerned. It has, therefore, now become a well recognised and constitutionally accepted legislative practice to incorporate provisions conferring the powers of exemption on the government in such statutes. Such exemptions cannot ordinarily be granted secretly. A notification would have to be issued and published in the Gazette and in the ordinary course it would be subject to the scrutiny by the legislature. The power can be exercised only in the public interest as provided by the section itself. The validity of provisions conferring the power of exemption has been consistently upheld by this Court in a number of decisions commencing with the *State of Bombay v. F. N. Balsara* (1951 SCR 682 : AIR 1951 SC 318). The next question is whether Section 6 of the Act which restricts the power of the government to grant exemption to companies owned by the Central Government or the Government of Kerala to co-operative society only is valid. As far as government undertakings and companies are concerned, it has to be held that they form a class by themselves since any profit that they may make would in the end result in the benefit to the members of the general public. The profit, if any, enriches the public coffer and not the private coffer. The role of industries in the public sector is very sensitive and critical from the point of view of national economy. Their survival very often depends upon the budgetary provision and not upon private resources which are available to the industries in the private sector. They are often established to break the power of strangulation on economy which the industries in private sector may have developed and may be using to choke the industrial growth of the country. An exemption or a concession might provide them some breathing time or settling down time. It may be treated as a subsidy at the worst. This appears to be the policy behind Article 19(6)(ii) of the Constitution. In appropriate cases in order to place an industry owned by the government on an enquiring basis in the national interest, some concession may have to be shown to it. It is neither alleged nor established that if the exemption is annulled the petitioners will be richer by a single paise or if it is retained they will be poorer by a single paise. The only purpose hinted at is that if the public sector is made to pay more, it may use less raw material which in turn might be available to the private sector. Not a very laudable purpose to say the least of it. The action of the State Government in exempting the government companies from the operation of Section 5 of the Act does not in the instant case amount to the exclusion of the industries in the private sector from their business nor does it deny the usual supplies of forest produce used as raw material by these industries as alleged by them. The government is not shown to be taking any undue advantage of the monopoly it enjoys as the owner of the forests and the position it holds as the sole supplier of forest produce in fixing the minimum prices in order to preserve the national wealth from being wasted away. In the circumstances of this case it cannot be said that the provision is either arbitrary or unreasonable even though the government industries may be rivals in trade to the industries in the private sector. In *Sher Singh v. Union of India* ((1984) 1 SCR 464 : (1984) 1 SCC 107 : AIR 1984 SC 200) this Court has upheld Section 47 (1-H) of the Motor Vehicles Act, 1939 under which a statutory preference is shown to a State Transport Undertaking. In *Viklad Coal Merchant v. Union of India* ((1984) 1 SCR 657 : (1984) 1 SCC 619 : AIR 1984 SC 95) the preference shown to the government in allotment of railway wagons for transporting coal has been upheld. Learned counsel for the respondents however depended upon the decision of this Court in *State of Rajasthan v. Mukanchand* ((1964) 6 SCR 903 : AIR 1964 SC 1633) by which an exemption granted in respect of debts due to the State or a scheduled bank from the operation of Section 2(e) of the Jagirdar's Debt Reduction Act, 1937 was held to be not in conformity with the object of the Act and so violative of Article 14 of the Constitution. That case depended on the facts and circumstances surrounding the

statute in question. We may refer here to the decision of this Court in Fatehchand Himmatlal v. State of Maharashtra ((1977) 2 SCR 828 : (1977) 2 SCC 670 : AIR 1977 SC 1825) where it is observed at page 849 of the Reports thus : (SCC p. 688, para 41)

There is no merit in the plea. Liabilities due to government or local authorities are not tainted with exploitation of the debtor. Likewise, debts due to banking companies do not ordinarily suffer from overreaching, unscrupulousness or harsh treatment. Moreover, financial institutions have, until recently, treated the village and urban worker and petty farmer as untouchables and so do not figure in the picture. To exempt the categories above referred to is reasonable.

10. Hence preferred shown to government companies under Section 6 of the Act cannot be considered to be discriminatory as they stand in a different class altogether and the classification made between government companies and others for the purposes of the Act is a valid one. Same is the case with the clause which gives power under Section 6 of the Act to the government to exempt sales of forest produce in favour of co-operative societies up to the limit mentioned therein. In *P. V. Sivarajan v. Union of India* (1959 Supp 1 SCR 779 : AIR 1959 SC 556) the exemption granted in favour of traders carrying on export business in a small scale who formed co-operative societies was upheld. In *Orient Weaving Mills (P) Ltd. v. Union of India* (1962 Supp 3 SCR 481 : AIR 1963 SC 98) this Court upheld the exemption granted in favour of power-loom weavers in a co-operative society from the levy of central excise duties. We do not find any substance in the contention that the provision granting exemption in favour of government companies and the co-operative societies as stated above is unconstitutional. We must, however, express our disapproval of one of the reasons given by the High Court for striking down Section 6 of the Act, namely, "private sector consumers generally show more concern in the speedy production of goods, in the finished products and in the sale of them which is in public interest as well". The above observation is not warranted and is presumably based on the personal opinion of the learned judges. It is misleading and cannot in the circumstances of the case serve as a prop to support the contention of the respondents.

11. Therefore, the decision of the High Court that Section 6 of the Act was violative of Article 14 of the Constitution is liable to be set aside. We do not also approve of the finding of the High Court that even assuming that the section was valid, the notification issued thereunder was invalid. It may be stated here that the writ petitioners on whom the burden lay have not given any valid reason as to why we should hold that the impugned notification was not in the public interest. As mentioned earlier the appellant, Hindustan Paper Corporation Ltd. established its factory after entering into an agreement with the State Government as regards the regular supply of raw material from the forests in the State of Kerala for production of newsprint and that the said factory was employing a large labour force. The other two concerns in whose favour the exemption is granted by the impugned notification are the concerns of Kerala Government itself. We have no material in this case to hold that the impugned notification was not in the public interest. We accordingly set aside the finding recorded by the High Court on the validity of the notification also.

12. In the result, we allow the appeals, set aside the judgment of the High Court and dismiss the writ petitions filed in the High Court. There shall, however, be no order as to costs.

</html