

KERALA HIGH COURT

Babu Joseph

Vs

State of Kerala

(M.P.Menon,J.)

27.09.1984

JUDGEMENT

M.P.Menon,J.

(1.) A question of some importance,as to the status of territorial waters in the constitutional law of India and the competence of coastal States to regulate fishing in such waters,is raised in these two writ petitions challenging the validity of the Kerala Marine Fishing Regulation Act,1980(Act 10/81.)

(2.) FISHING in the coastal waters with the aid of country crafts,canoes and catamarans has been the traditional occupation and source of livelihood for many fishermen communities in the State.With the dawn of independence and the emphasis on all -round development through Five - Year Plans,steps were taken to expand marine fishing by introducing mechanised boats and trawlers using more sophisticated gears and technologies.The Indo Norwegian Project sponsored by the State Government marked the beginning of this process.Private enterprise soon stepped into the area,introducing all sorts of mechanised vessels and gears,and setting up peeling sheds,ice factories and freezing plants.And a conflict soon arose,as often happens with modernisation,between the old and the new,the fishermen communities complaining that they were being squeezed out of existence in an unfair competition.Proests and agitations followed,occasionally developing into clashes between these two groups in the territorial sea.The developments in the other coastal states must also have been on similar lines,because by 1976,the Central Government became seized of the problem and appointed the Majumdar Committee to examine the question of demarcating separate areas for different types of fishing boats and vessels.Even without waiting for the report of the Committee the Centre advised the concerned States,as an interim measure,to set apart waters up to 5 kilometres from the shore for the exclusive use of traditional crafts.And after receipt of the report,a model bill for giving legislative protection to the policy was also forwarded to the States,some time in 1979.The Kerala Marine Fishing Regulation Ordinance,1980 was promulgated to give effect to the above advice.The impugned Act replaced the Ordinance,with the assent of the President,with retrospective effect

from 29 -11 -80. S.4(1)of the Act empowered the State Government,by orders notified in the Gazette,to regulate,restrict or prohibit,in specified areas,fishing by prescribed classes of vessels,catching of specified classes of fish,use of prescribed fishing gears etc .,after taking into account the matters specified in Sub -s.(2).'Specified area was defined in S.2(h)as such area in the sea along the entire coast line of the State,but not beyond territorial waters,as may be specified by the Government,by notification in the Gazette ; 'State 'was defined in S.2(i)to include the territorial waters along the entire coast line of Kerala.In November and December,1980 Government issued a series of notifications under S.2(h)and S.4(1).Stated briefly,the combined effect of the these notifications was: - (i)to prohibit use of purse seine,ring seine,pelagic trawl and mid water trawl fishing gears in the territorial waters along the coast line of the State; (ii)to prohibit fishing by all mechanised vessels in the territorial waters,except for certain small specified zones;and (iii)permit fishing,by way of exemption,in part of the prohibited area,by motorised country crafts ;. The grievance of the petitioners who are owners of mechanised vessels using the prohibited types of gears,is that the Act and the notifications issued thereunder have the result of destroying their occupation or trade.

(3.) THE validity of the Act as a whole is challenged on two major grounds: (i)Entry 21 List II of the VIIth Schedule of the Constitution authorises the State to legislate only on 'fisheries 'and not on 'fishing '; the impugned Act is a law on fishing; (ii)Territorial waters do not form part of the territory of the State;and under Art.245(1),the State has no competence to make a law having extra territorial operation. ;