P. V. Sivarajan vs The Union Of India And Another on 11 December, 1958

Equivalent citations: 1959 AIR 556, 1959 SCR SUPL. (1) 779

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, S.K. Das, K.N. Wanchoo, M. Hidayatullah

PETITIONER:
P. V. SIVARAJAN

Vs.

RESPONDENT:
THE UNION OF INDIA AND ANOTHER

DATE OF JUDGMENT:
11/12/1958

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
DAS, SUDHI RANJAN (CJ)
DAS, S.K.
WANCHOO, K.N.
HIDAYATULLAH, M.

CITATION:
1959 AIR 556 1959 SCR Supl. (1) 779
CITATOR INFO :
RF 1970 SC 564 (191)
R 1986 SC1541 (10)

ACT:
Coir Industry, Regulation and Control of-Registration of exporter and licensee-Quantitative test-Constitutional validity-Coir Industry Act, 1953 (45 of 1953), S. 26, rr. 18, 19, 20(1)(a), 21, 22(a) -Constitution of India, Arts. 19, 14.

HEADNOTE:
The petitioner, an unsuccessful applicant for registration as an exporter and licensee for exporting coir products, challenged the vires of the rr. 18, 19, 20(1)(a), 21 and 22(a) made by the Central Government in exercise of its

powers under S. 26(1) of the Coir Industry Act, 1953 (45 Of 1953). The Act had for its object the regulation and control of the Coir industry in public interest. It was contended on his behalf that the impugned rules, which prescribed the quantitative, and not the qualitative, test for registration of established exporters, were inconsistent with the provisions of the Act and as such, ultra vires the Act and that they tended to create a monopoly in the export trade of coir commodities and thereby destroy the business of small dealers and discriminated between those who carried on large scale business and those who carried on small scale business and thus impugned Arts. 19 and 14 Of the Constitution.

Held, that the contentions were without substance and must be negatived.

There was no provision in the Coir Industry Act, 1953, that excluded or prohibited the application of the quantitative test and the rules were in no way inconsistent with the Act nor in excess of the powers conferred on the Central Government by s. 26 of the Act.

Where an Act sought to control an industry in public interest it would obviously be for the rule making authority to decide which rules and regulations would meet the requirement of public interest. Such rules and regulations, though reasonable within the meaning of Art. 19(6), might cause hardship to those who failed to comply with them. But once it was conceded that the regulation and control of the trade were justified in public interest, Art. 19(1)(g) could not be invoked to challenge the validity of the rules.

Nor did the impugned rules violate Art. 14 Of the Constitution. The classification of traders under rr. 18 and 19 was clearly founded on an intelligible differentia that had a rational relation to the object of the Act. The exemption made by the rules in favour of co-operative societies from some of the relevant tests indicated that the Legislature intended to encourage small

780

traders. It was not, therefore, correct to say that the rules would lead to a monopoly in the trade.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 121 of 1958. Petition under Article 32 of the Constitution for enforcement of Fundamental rights.

G. B. Pai and Sardar Bahadur, for the petitioner. M. C. Setalvad, Attorney-General for India, B. Sen and T. M. Sen, for the respondents.

1958. December 11. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-The

petitioner has been doing business as an exporter of coir products to foreign countries for the last twenty years. On July 4, 1958, he applied to respondent 2, the Chairman, Coir Board, Ernakulam, requesting that he should be registered as an established exporter. This application was accompanied by an income-tax clearance certificate and attested copies of bills of lading. Respondent 2 declined to register the petitioner on the ground that his application was defective inasmuch as the requisite certificate regarding his financial status bad not been produced and no evidence had been given to show that he had exported the minimum quantity required (500 Cwts.). The petitioner was told that unless he complied with the requirements asked for within seven days his application would be rejected without further notice. The petitioner found that he could not comply with the directions issued by respondent 2 and so it became impossible for the petitioner to get registration and licence applied for by him. That is why he filed the present petition under Art. 32 of the Constitution and prayed for the issue of a writ or order in the nature of mandamus to direct the second respondent to grant the petitioner registration and licence as applied for by him and to prohibit or restrain the said respondent from acting on, or implementing, the rules issued under the Coir Industry Act, 1953, by issue of a writ of certiorari, prohibition or such other writ or order appropriate to protect his rights. The petitioner also prayed that " if found necessary " the said rules should be declared to be ultra vires the powers of the Central Government and invalid being in violation of the fundamental rights guaranteed by Arts. 14 and 19 of the Constitution. The Union of India has, been impleaded as respondent 1 to the petition.

Before dealing with the points raised by the petition it would be necessary to refer briefly to the provisions(of the Coir Industry Act, 1953 (45 of 1953), hereinafter called the Act, and the rules framed under it in 1958. This Act was enacted by the Parliament because it was thought expedient in the public interest that the Union should take under its control the coir industry (s. 2). Section 4 of the Act provides for the establishment and constitution of the Coir Board and s. 10 enumerates its functions and duties. Under s. 10(1) it shall be the duty of the Board to promote by such measures as it thinks fit the development under the control of the Central Government of the coir industry. Sub-section (2) enumerates the measures which the Board may take with the object of developing the coir industry without prejudice to the generality of the provisions of sub-s. (1). Amongst the measures thus enumerated, sub-s. (2) (b) refers to the regulation under the supervision of the Central Government of the production of husks, coir yarn and coir products by registering coir spindles and looms for manufacturing coir products, as also manufacturers of coir products, licensing exporters of coir yarn and coir products and taking such other appropriate steps as may be prescribed. Sub-section (2)(g) refers to the promotion of co-operative Organisation among producers of husks, coir fibre and coir yarn and manufacturers of coir products, and sub-s. (2)(1) refers to the licensing of retting places and warehouses and otherwise regulating the stocking and sale of coir fibre, coir yarn and coir products both for internal market and for exports. Section 26(1) confers on the Central Government power to make rules for carrying out the purposes of the Act subject to the condition of previous publication. Sub-section (2) enumerates the matters in res- pect of which rules may be made, in particular and without prejudice to the generality of the power conferred by sub-s. (1). Sub- section (2) (k) refers inter alia to the registration of manufacturers of coir products and the conditions for such registration and the ,,grant or issue of licences under the Act; and sub-s. (2)(1) deals with the form of applications for registration and licences under the Act and the fee, if any, to be paid in respect of any such applications.

Under the powers conferred by s. 26 the Central Government framed rules in 1958. For the purposes of the present petition it would be relevant to refer to rr. 17 to 22. Rule 17 deals with registration and licensing of exports; and it provides that no person shall, after the coming into force of the rule, export coir fibre, coir yarn or coir products unless he has been registered as an exporter and has obtained an export licence under these rules. The proviso deals with exemptions with which we are not concerned. Rule 18 lays down that any person who has in any of the three years immediately preceding the commencement of the rules exported not less than twenty-five tons of coir yarn or coir products other than coir rope, or exported any quantity of coir fibre or coir rope, may be registered an exporter of coir yarn, coir products other than coir rope or coir fibre or coir rope as the case may be. Rule 19 provides for the registration of persons other than those covered by r. 18 and it lays down inter alia that such persons may be registered as exporters of coir yarn if, during the period of twelve months immediately preceding the date of application, a minimum quantity of twenty-five tons of coir yarn had been rehanked or baled in a factory owned or otherwise possessed by the applicant and registered under the Indian Factories Act, 1948, or, if the applicant has had a total purchase turnover of one hundred tons of coir yarn. The proviso to this rule authorises the Chairman by notification to exempt from the operation of this rule any co-operative society the members of which are owners of industrial establishments or any Central Co-operative Marketing Society. Rules 20 and 22 prescribe the mode of making an application for registration as an exporter and for licence respectively while r. 21 provides for the cancellation of registration. The present petition does not challenge the validity of any of the provisions of the Act. It, however, seeks to challenge the vires of rr. 18, 19, 20(1)(a), 21 and 22(a).

There is no doubt that coir and coir products play an important role in our national economy. They are commodities which earn foreign exchange, the total' value of our exports in these commodities being of the order of Rupees Ten Crores per year. It was found that several malpractices had crept in the export trade of these commodities such as non-fulfilment of contracts, supplying goods of inferior qualities and cut-throat competition; and these in turn considerably -affected the volume of the trade. That is why Parliament thought it necessary that the Union should take under its control the coir industry in order to regulate its export trade. It is with the object of developing the coir industry that the Coir Board has been established and the registration and licensing of exporters has been introduced. The petitioner does not dispute this position and makes no grievance or complaint against the relevant provisions in the Act.

It is, however, urged that the relevant rules which prescribe the quantitative test for the registration of established exporters are ultra vires because the introduction of the said test is inconsistent with the provisions of the Act. In this connection Mr. Pai, for the petitioner, sought to rely on the report submitted by the Ad-Hoc Committee for external marketing which the Coir Board had appointed on August 20, 1954. His grievance is that the report of the said Committee does not recommend the adoption of the quantitative test, but seems to suggest that a qualitative test would be more appropriate ; and that, according to Mr. Pai, also indicates that the quantitative test had been improperly prescribed by the rules. We are not impressed by these arguments. It is clear that there is no provision in the Act which excludes or prohibits the application of the quantitative test in making rules for registration of exporters or for issuing licences for export trade. In fact the Act has deliberately left it to the rule-making authority to frame rules which it may regard as appropriate for

regulating the trade; and so it would be impossible to accept the argument that the rule-making authority was bound to prescribe the qualitative rather than the quantitative test. Besides, it does not appear that the report of the Committee on which Mr. pai relied definitely indicated its partiality for the adoption of the qualitative test. Indeed Appx. XI to the said report would suggest that the Committee in fact was not averse to the adoption of a quantitative test; but even if the Committee had expressly recommended the adoption of a qualitative, not a quantitative, :test, it would be idle to suggest that the Coir Board was bound to accept the said recommendation or that the Central Government was not competent to make rules contrary to the recommendations of the Committee. The validity of the rules can be successfully challenged if it is shown that they are inconsistent with the provisions of the Act or that they have been made in excess of the powers conferred on the rule-making authority by s. 26 of the Act. In our opinion, no such infirmity has been established in respect of the impugned rules.

It is then contended that the relevant rules would ultimately tend to establish a monopoly in the export trade of coir commodities and would thereby extinguish the trade or business of small dealers like the petitioner. It is also contended that the application of the quantitative-test discriminates between persons carrying on business on a large scale and those who carry on business on a small scale. That is how Arts. 19 and 14 of the Constitution are invoked and the validity of the relevant rules is challenged on the ground that they violate the fundamental rights of the petitioner under the said Articles. We think there is no substance in this contention.

If it is conceded that the regulation of the coir industry is in the public interest, then it would be difficult to entertain the argument that the regulation or control must be introduced only on the basis of a qualitative test. It may well be that there are several difficulties in introducing and effectively enforcing the qualitative test. It is well-known that granting permits or licences to export or import dealers on the basis of a quantitative test is not unknown in regard to export and import of essential commodities. It would obviously be for the rule-making authority to decide which test would meet the requirements of public interest and what method would be most expedient in controlling the industry for the national' good. Beside,%, even the adoption of a qualitative test may tend to extinguish the trade of those who do not satisfy the said test; but such a result cannot obviously be treated as contravening the fundamental rights under Art. 19. Control and regulation of any trade, though reasonable within the meaning of Art. 19, sub-Art. (6), may in some cases lead to hardship to some persons carrying on the said trade or business if they are unable to satisfy the requirements of the regulatory rules or provisions validly introduced ; but once it is conceded that regulation of the trade and its control are justified in the public interest, it would not be open to a person who fails to satisfy the rules or regulations to invoke his fundamental right under Art. 19(1)(g) and challenge the validity of the regulation or rule in question. In our opinion, therefore, the challenge to the validity of the rules on the ground of Art. 19 must fail.

The challenge to the validity of the said rules on the ground of Art. 14 must also fail, because the classification of traders made by rr. 18 and 19 is clearly rational and is founded on an intelligible differentia distinguishing persons falling under one class from those falling under the other. It is also clear that the differentia has a rational relation to the object sought to be achieved by the Act. As we have already pointed out, the export trade in coir com- modities disclosed the existence of

many malpractices which not only affected the volume of trade but also the reputation of Indian traders; and one of the main reasons which led to this unfortunate result was that exporters sometimes accepted orders far beyond their capacity and that inevitably led to non-fulfilment of contracts or to supply of inferior commodities. In order to remedy this position the trade had to be regulated and so the intending exporter was required to satisfy the test of the prescribed minimum capacity and to establish the prescribed minimum status before his application for registration is granted. In this connection it may also be relevant to point out that -the rules seem to contemplate the granting of exemption from the operation of some of the relevant tests to co-operative societies; and that shows that the intention of the Legislature is to encourage small traders to form co-operative societies and carry on export trade on behalf of such societies; and so it would not be possible to accept the argument that the impugned rules would lead to a monopoly in the trade. It is thus clear that the main object which the rules propose to achieve is to remove the anomalies and malpractices prevailing in the export trade of coir commodities and to put the said trade on a firm and enduring basis in the interest of national economy. We are, therefore, satisfied that the challenge to the impugned rules on the ground of infringement of Art. 14 of the Constitution must also fail.

In the result we hold that there is no substance in the petition. It accordingly fails and is dismissed with costs.

Petition dismissed.