Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others

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Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala and Others

Case No.: C.A. Nos. 1732 & 1733/2006, dated: 24.03.2006
Judges: Justice S.B. Sinha & Justice P.K. Balasubramanyan

Facts of the Case:
The Kerala State Government banned the sale of arrack on 1 April 1996 and the persons who lost their jobs were paid a compensation of Rs. 30,000. In addition to this, the said workers were entitled to benefits prescribed under the Akbari Workers Welfare Fund Board Act. After a lapse of six years from the date of ban on the sale of arrack, the government framed rule 4(2) of the Kerala Abkari Shops Disposal Rules 2002 (Rules 2002) of Kerala Abkari Act, 1902, (Act 1902). Under this rule it was made mandatory for each licensed toddy shop to absorb one arrack worker. In fact, this benefit given to the arrack workers was also extended to the toddy workers, of the toddy shops that were closed having no limit in number for absorption. The benefit was given only to those workers who were registered with the Toddy Workers Welfare Fund Board as on 31st March 2000.

Aggrieved by the Rule 4(2), the Kerala Samsthana Chethu Thozhilali (Toddy Tappers) Union and the Toddy Shop Owners (license holders) filed a case before the learned single Judge of the Kerala High Court. They questioned the validity of rule 4(2). The learned single judge upheld the validity of rule 4(2) on the ground that the action of State as a Welfare State banning the sale of liquor is valid. The State is entitled to make such rule for the protection of workers who were unemployed. Further, it held that the State is empowered to frame such rule on the basis of entries 23 and 24 of List III of the Seventh Schedule of the Constitution of India.

Dissatisfied with the decision of the learned single Judge, the parties of dispute filed an appeal to the Division Bench of the High Court. The Division Bench upheld the judgment of the learned single Judge. Aggrieved by the decision of the division bench, the toddy workers union appealed to the Supreme Court of India.

Contention of the Parties:
- **Appellants**

The following are the contentions made by the learned counsel of the appellants:

- The State in framing rule 4(2) acted beyond its power of delegated legislation because the Act does not contain any provision of welfare measures to be taken by the State.
- The social purpose for which the said rule was made is also governed by the provisions of the Industrial Disputes Act, 1947.
- The matter relating to the terms and conditions of employment of workmen is covered by the parliamentary legislation. Thus, the State had no competence to make such a rule.
- The entries contained in the three lists of the Seventh Schedule of the Constitution of India enumerate only the legislative field, specifying the source of legislation by the Parliament and the State legislatures and in terms thereof. Thus, the State has no power to make the concerned rule.
- The State has the exclusive privilege of carrying on business in liquor but the same would not mean that while parting with the said privilege, the State can impose any unreasonable restriction which would be violative of Article 14 of the Indian constitution.

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**Respondent**

The following are the contentions of the respondent:

- Imposition of such a condition is within the domain of the State within the terms of the Act 1902 inasmuch as while granting a license for sale of toddy. The State merely parts with a privilege which is exclusively vested in it and in that view of the matter if in terms of the policy decision of the State, arrack workers were to be rehabilitated, it could direct employment of unemployed arrack workers. Thus, there was absolutely no reason as to why such a condition cannot be imposed while parting with the privilege by the State which enables the State to impose such conditions or restrictions as it may deem fit for the purpose of grant of a license to sell intoxicating liquor.

- As arrack and toddy both come within the purview of the Act, the State is entitled to exercise its control. In turn, it would mean that a provision enabling the arrack workers thrown out of employment, to be employed in toddy shops has a reasonable nexus with the purposes of the Act and such a provision cannot be said to be extraneous to the provisions of the Act and would come within the purview of the Act.

- The rules which are impugned in these appeals enable the State to direct employment of toddy workers also who are displaced by the relocation of the toddy shops or reduction in their number and as such the workers cannot successfully question the validity of the Rules.

- The right of the State to impose conditions is recognized by the Act and in that view of the matter while considering the validity of the Rules made in terms of the Act, the jurisdiction of this court should not be confined only to looking at the object and purport of the Act but also look to the purposes which are served thereby.

- The Act also confers a statutory flavor on the rules made under the Act and rules validly made in terms thereof become a part of the Act itself.

**Issue**

Whether Rule 4(2) of the Kerala Abkari Shops Disposal Rules 2002 of Kerala Abkari Act, 1902, is valid?

**Court Observations**

The following are the observations made by the court:

- While framing the rules, the legislative policy cannot be abridged. The Rules must be framed to carry out the purposes of the Act. The Act 1902 was enacted to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating drugs in the state of Kerala. It does not lay down any provisions for employment of a worker.

In the given case, the rule 4(2) of Rules 2002 clearly states that the workers who lost employment due to banning of arrack shops shall be provided employment in the licensed toddy shops. This rule on employment is not within the ambit of the provisions of the said Act.

- In course of providing employment to the unemployed workers, the State has violated Article 14 of the Indian Constitution (Right to Equality). Article 14 is violated because the unemployed workers to take up the employment in the licensed toddy shops. Instead
of making such rule, it would have been better for the State to provide them with alternative opportunities giving them a choice to accept or not.

- Article 14 is violated even with regard to the license holders of the toddy shops. Because an employer is allowed to employ the persons of his choice and not otherwise. An employer is entitled to employ any person he likes and no person can be forced on the unwilling employer for employment unless there exists a provision in a special statute operating in the field. Thus, framing of Rule 4(2) by the State is invalid because such a provision empowers the State to exercise its power under delegated legislation which is not within the objective of the Act. And unless the same is expressly conferred by the Statute, if any, provision are made is ultra vires.

- In terms of Indian Contract Act, 1972, a contract of employment shall be entered into when an employer and employees enter into a contract. The rights of the citizen to enter into any contract holds good unless it is specifically prohibited by law, or is opposed to public policy. However in the given case it is nowhere discussed by the High Court while adjudicating the case as to the extent of the legislative power that can be exercised in their behalf. The rules made are therefore contrary to the Indian Contract Act, 1972 and also the Specific Relief Act, 1963.

- In general sense, the work of toddy employees is much tedious when compared to that of the arrack employees. Because toddy workers not only work in the shops but they also work as toddy tappers. In simple words, a specialized skill is required for most of the toddy workers, which is not necessary for an arrack worker. Thus, there exists no reasonable explanation for replacing the unemployed arrack workers in the toddy shops.

**Judgment**
The Supreme Court allowed the appeal by setting aside the impugned judgment.

**Critical Appraisal**
The judgment given by the Supreme Court in this case is right because no one can be forced to accept any kind of employment against his wishes. If the State wants to protect the unemployed workers of the banned arrack shops then it should give them the alternatives to select. The employees may be given this discretion.

The judgment would have been different if the State has taken some action for rehabilitation of workers under Article 39 (certain principles of policy to be followed by the State), Article 42 (provision for just humane conditions and maternity benefit) and Article 43 (Living wage, etc., for workers) of the Indian Constitution instead of taking shelter under a State Act of 1902.