

In the High Court of Judicature of Andhra Pradesh at Hyderabad

The A.P. Gunnies Merchants Association

v.

The Govt. of A.P

Writ Petition No. 386 of 2000

21.06.2001 dd.

Sri. Satyabrata Sinha C.J. & V.V.S. Rao J.

Judgement:

1. In this writ petition, GO Rt. No. 515, dated 25-11-1999, issued by respondent No.1-Government, is called in question. The said order reads:

The orders issued earlier vide GO Rt. No. 149, dated 27-2-1999 of Environment, Forests, Science and Technology Department are reiterated.

2. The Gunny Bags cleaning and trading business shall be shifted by the occupier/A.P. Gunny Bags Merchants Association, from Maharajgunj within 30 days from the date of receipt of this order. The officers concerned shall enforce the direction issued vide GO Rt. No. 159, Environment, Forests, Science and Technology Department, dated 27-3-1999.

3. The factual matrix of the matter is not in dispute. The members of petitioner No.1-Association and five other petitioners are carrying on business in used gunny bags in a densely populated place, commonly known as Majarajgunj. There are various materials to show that deliberations were going on to shift the place of business of the petitioners since 1996 when a writ petition being W.P. No. 23464 of 1996 was filed before this Court complaining traffic congestion and air pollution. The said writ petition was disposed of directing the respondents therein to initiate proceedings under Section 23 of

the Environment (Protection) Act, 1986. Pursuant thereto, the Government issued GO Rt. No. 159, dated 27-3-1999, by reason whereof the District Collector, Hyderabad, the A.P. Pollution Control Board (for short 'the Board'), and the Special Officer of Municipal Corporation of Hyderabad, were directed to take steps to shift the place of business from Maharajgunj to Mahaboob Mansion Market at Malakpet or to any other place where it does not result in environmental hazards. Aggrieved thereby, the W.P. No. 12990 of 1999 was filed, but it was dismissed on 29-6-1999. When individual notices were issued for shifting of the businesses, the petitioners approached this Court by filing W.P. Nos. 14089, 15467 and 15469 of 1999, and a Division Bench of this Court by order dated 22-9-1999, disposed of the said writ petitions holding:

As the audi alteram partem rule is complained of and as the Government is not averse to give an opportunity to the President of the Association, of which the petitioners are the members, we are not dealing with the cases on merits, but we dispose of these writ petitions with a direction to hear the President of the Andhra Pradesh Gunnies Merchants Association and consider as to whether the above Governmental Order has to be retained with the same terms or has to be reconsidered. This exercise shall be made by the Government, within a period of two months from the date of receipt of a copy of this order. Pending such exercise, status quo as obtained on this day, shall be maintained.

4. Pursuant to and in furtherance of the aforementioned directions, the Principal Secretary to Government, Environment, Forests, Science and Technology Department, convened a meeting on 20-10-1999, and by letter dated 11-10-99 requested the President of the petitioner No.1-Association to attend the meeting, along with the representation/objections, if any. The President of the petitioner No.1-Association submitted his objections on 20-10-1999. The Board thereafter served notice on the President of the petitioner No.1-Association disclosing its intention to conduct sample analysis on 26-10-1999, 27-10-1999 and 28-10-1999, and it accordingly conducted the sample analysis and submitted its reports. Respondent No.1-State Government having considered the scientific findings furnished by the Board, held that the findings which are based on air quality monitoring data indicate that it is necessary to shift the gunny bags cleaning and trading business to improve the environment of Maharajgunj, and accordingly issued the aforementioned GO.

5. Sri. P. Sri Raghuram, the learned counsel appearing on behalf of the petitioners, raised several questions in support of the writ petition. He would firstly contend that the respondent No.1-State had no jurisdiction to direct the petitioners to shift their place of business, when the business carried on by them is not a polluting one. He would secondly contend that only five per cent of the traders dealing in gunny bags take recourse to dusting and cleaning of the old and used gunny bags, by reason whereof pollution is created, and therefore, the traders who take recourse to such dusting and cleaning of old and used gunny bags should be directed to close their business instead of the entire market. He would lastly contend that the impugned order suffers from the vice of colourable exercise of power inasmuch as the direction to shift the place of business could be given only in terms of A.P. (Agricultural Produce and Livestock) Markets Act, 1966.

6. In the instant case, the scientific findings arrived at the Board, are not under challenge. The logical corollary whereof is that the pollution of the air by reason of the activities of the traders doing business in gunny bags stands admitted.

7. The Environment (Protection) Act, 1986 (for short 'the Environment Act) was enacted with a view to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property. The terms "Environment", "Environmental Pollutant", "Environmental Pollution", and "Handling" are defined in Section 2(a), (b) and (c) of the Environment Act, and they read:

(a) "Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) "Environmental Pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

(c) "Environmental Pollution" means the presence in the environment of any environmental pollutant.

(d) "Handling" in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;

8. By reason of Section 5 of the Environment Act, the Central Government is empowered to issue directions in writing to any person, officer or any authority, and such person, officer or authority shall be bound to comply with such directions. The explanation appended to Section 5 reads:

Explanation: - For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct -

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

It is not in dispute that the Central Government in exercise of the power conferred upon it by Section 23 of the Environment Act, has delegated its power in favour of the State Government vide Notification S.O. 152(E), dated 10-2-1989.

9. Before respondent No.1-State Government, the petitioners proceeded on the basis that they do business in old and used gunny bags. When questioned, the learned counsel for the petitioners failed to show that the petitioners had raised a contention before respondent No. 1-State Government to the effect that only a handful or five per cent of the traders, doing business in gunny bags take recourse to dusting and cleaning of the old and used gunny bags. The very fact that the old and used gunny bags are subject matter of

trade, would indicate that while handling such old and used gunny bags, their dusting and cleaning, cause lot of air and environmental pollution. Neither before respondent No. 1- State Government nor before us, any statement identifying the traders who are taking recourse to dusting and cleaning of the old and used gunny bags, and responsible for polluting the air and environment has been made.

10. The submission of the learned counsel for the petitioners that for the acts of a handful of the traders or five per cent of the traders, at whose instance air and environmental pollution is caused, the entire business community dealing in gunny bags should not be directed to be shifted, cannot be accepted for more than one reason. Causation of environmental pollution having been admitted, the onus is heavily upon the petitioners to prove that by reason of their activities no pollution is caused.

11. It stands admitted that the petitioners for the purposes of carrying on their business in gunny bags, have obtained licences from the Municipal Corporation of Hyderabad under Section 521 of the Municipal Corporation Act, 1955 (for short 'the HMC Act'). Section 521 of the HMC Act inter alia provides that except under and in conformity with the terms and conditions of a licence granted by the Commissioner no person shall keep, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule 'P' of the said Act. Gunny bags is one of the items, which finds place in Schedule 'P'. Under sub-section (2) of Section 521 of the HMC Act, a person shall be deemed to have known that a trade or operation is, in the opinion of the Commissioner, dangerous or likely to create a nuisance within the meaning of paragraph (ii) of Clause (e) of sub-section (1), after written notice to that effect, signed by the Commissioner has been served on such person or affixed to the premises to which it relates.

12. From the aforementioned provision, it is clear that a licence can be cancelled for creating nuisance. In terms of Article 19(1)(g) of the Constitution of India, the right to carry on business or trade is subject to any restriction that may be imposed by any law in force. The HMC Act, Air (Prevention and Control of Pollution) Act, 1981, and the Environment Act, provide for such regulations. Therefore, the right of the petitioners to carry on business in old and used gunny bags cannot be said to be absolute.

13. The submission of the learned counsel for the petitioners that the action of respondent No.1-State Government in issuing the impugned GO is afflicted with the vice of colourable exercise of power, cannot be accepted in as much as in terms thereof, the officers concerned were merely directed to enforce the direction issued in GO Rt. No. 159, Environment, Forests, Science and Technology Department, dated 27-3-1999, whereby and whereunder it was ordered that the place of business of the petitioners should be shifted from Maharajgunj to Mahaboob Mansion Market at Malakpet, or any other environmentally safer place.

14. Since the business carried on by the petitioners is endangering the lives of the people living in the area, more particularly the traders and the public in general, who visit the market day in and day out, as also the workers engaged therein, we are of the opinion, that no fault can be found in the impugned order which directs the shifting of the business

of the petitioners from a thickly populated area to a safer place to avoid air and environmental pollution.

15. For the reasons aforementioned, we are of the opinion that no case has been made out warranting interference by this Court in exercise of power under Article 226 of the Constitution of India. The writ petition has no merit, and it is accordingly dismissed. This order, however, shall not preclude any person/trader from making an application to the Municipal Corporation of Hyderabad for grant of fresh licence if he intends to carry on business in new and unused gunny bags. If any such application is made, the Municipal Corporation of Hyderabad, shall consider the same on its own merits. No costs.