

(1996) 01 KL CK 0047

High Court Of Kerala

Case No: O.P. No. 19089 of 1995

Kerala State Horticultural
Products Development
Corporation Employees
Association

APPELLANT

Vs

Agricultural Production
Commissioner and Another

RESPONDENT

Date of Decision: Jan. 25, 1996

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 226

Hon'ble Judges: P. Shanmugam, J

Bench: Single Bench

Advocate: M. Rajasekharan Nair, for the Appellant; Hemalatha, Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

P. Shanmugam, J.

The Original Petition is filed against the Government Order (Ext. P-1) to wind up the Kerala State Horticultural Products Development Corporation and to convert it into a new company with 70 per cent shares to the farmers and retaining 30 per cent with the Government.

2. Petitioner is an association of the employees of the Corporation which is sought to be wound up. According to them, if the Corporation is wound up, it will create unemployment and it will not be beneficial to the public. The impugned Government Order did not take note of the interest of the workers. Learned Counsel also pointed out that this Court in O.P. No. 4779/95 has directed the Respondents to pass appropriate orders on the representation within a period of one month and that no orders have been passed so far.

3. The 1st Respondent has filed a statement. According to him, the initiation of the Corporation was in pursuance to a financial agreement between the Government of India and the European Economic Community which contemplated privatisation of the Corporation. The Kerala Horticulture Development Programme involves the establishment of six pilot projects producing 3 to 5 tonnes of fruits and vegetables a day. Hence it is essential to provide marketing facilities for the implementation of the programme. It was advised that in order to make an effective marketing enterprise the Corporation had to be privatised by giving 70 per cent of the shares to the farmers and retaining 30 per cent with the Government.

4. According to him, the representation said to have been submitted, has not been received by the Government. But Ext. P-3 letter was examined and found no merit in it. It is further stated that as per the directions issued in O.P. No. 4779/95, dated 24th March 1995 the Government is considering the question of accommodating seven employees in the Corporation. The counter further stated that the majority of the workers are working on ad hoc basis on daily wages employed by the Managing Director. The existing Corporation is not operating on a commercial profit basis. The counter also stated that the Chairman would become jobless when the horticulture farmers become majority shareholders and hence he has vested interest in seeing that the Government Order is not implemented. Similarly the Managing Director may lose his position and it was only at their instance the O.P. was filed.

5. The main contention of the Petitioner is that the members of the Petitioner-Association will be deprived of employment if the proposal of the Government to reconstitute the Corporation is implemented. But the said apprehension has no basis because para 4 of the impugned Government Order states that the Kerala Horticulture Farmers Marketing Company will absorb the permanent employee of the Corporation. The staff who are working on deputation/contract/daily wages will be disbanded with effect from the date of formation of the new Company. All the seven employees recruited through the Employment Exchange will be allowed to continue in the new company on a temporary basis. The Petitioner cannot have any objection to the scheme of the Government since the employees recruited through the Employment Exchange are permitted to continue and only the employees who are working on deputation/contract/daily wages will be disbanded. In any event if the members of the Petitioner-Association are aggrieved, they can always resort to legal recourse for employment or for compensation, as the case may be. However, that cannot be a ground for the purpose of preventing the Government to constitute their own Company. It is within the province of the Government to decide about the commission of the new company by winding up the existing Corporation. The constitution of a new company cannot be the subject-matter of challenge under Article 226 of the Constitution.

6. Learned Counsel for the Petitioner referred to the decision in Fertilizer Corporation Kamagar v. Union of India AIR 1981 S.C. 344 in support of the contention that the workers are entitled to object to the sale of the plant and machinery of a factory where they were employed. But the said judgment is actually against the contentions of the Petitioner. The Supreme Court held in that judgment that the workers have no right to hold a particular job or to occupy a particular post of one's choice. When the redundant and/or retired plants and equipments of the factory of a Government Company are sold the right of workers (concerned) under Article 19(1)(g) is not violated. The Supreme Court also held that the closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1)(g) of the Constitution. Even assuming that some of the workers may eventually have to be retrenched it will not be possible to say that their right to carry on an occupation has been violated. Thus even though the writ petition is maintainable on the ground of personal interest, the Petitioner-Association has no right to claim to hold on to the jobs held by them. The Supreme Court also took note of the fact that the Board of Directors was authorised and the decision could not be held to be unreasonable. Following the said judgment we cannot term the decision of the Government to constitute a new company in the place of the existing Corporation as arbitrary.

7. Learned Counsel also referred to the decision in Gurmail Singh and Others Vs. State of Punjab and Others, to support his contention that the transfer of the undertaking was not fair and arbitrary. This decision also is in effect does not support the case of the Petitioner. The Supreme Court held that the employees of a predecessor had no right to claim re-employment by the successor in business save in exceptional circumstances. Even where available, that claim was not a matter of absolute right but one of discretion, to be judicially exercised, having regard to all the circumstances. The Labour Court had to examine whether the refusal to give re-employment was capricious and industrially unjustified on the part of successor in business or whether he could show cause for such refusal on reasonable and bona fide grounds. Only if it comes under these exceptional cases, the Supreme Court held that it will be open to the Court to review overall aspects of transfer of the undertaking and the arrangement between the State Government and the Corporation and to issue appropriate directions that no injustice results from the changeover. Applying the principle set out by the Supreme Court I do not find that the State Government acted unfairly in transferring/winding up the undertaking. No injustice has resulted in the changeover. On the contrary, it is found to be for the better management and in public interest. Learned Counsel for the Petitioner has not pointed out any other ground to sustain his plea that the transfer itself is illegal. On the contrary the stand of the 1st Respondent is that the Chairman and Managing Director of the Kerala State Horticultural Products Development Corporation have got vested right and therefore, requested for review of the matter to cancel the

Government Order.

8. For all these reasons I hold that no objection can be taken to the Government Order to constitute a new company with the name "Kerala Horticulture Farmers" Marketing Company" under the Companies Act, 1956 in the place of the Corporation. Hence the Original Petition is dismissed.