
(2017) 01 MP CK 0189
MADHYA PRADESH HIGH COURT
Case No: 8966 of 11

Chhunna alias Rajjan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Jan. 20, 2017

Acts Referred:

- Constitution of India, Article 19 (1)(g), Article 19 (6) - Protection of certain rights regarding freedom of speech, etc - Protection of certain rights regarding freedom of speech, etc
- <a

Hon'ble Judges: Rajendra Menon, Subhash Kakade

Bench: Single Bench

Advocate: Ahadulla Usmani, Swapnil Ganguly

Judgement

1. This petition was filed in public interest in the year 2011 and the relief claimed for in this writ petition reads as under :-

7.1 To issue writ, order or direction declaring the M. P. Gau Vansh Vadh Pratishod Adhiniyam, 2004 as unconstitutional, ultra vires, null and void and arbitrary as there cannot be different acts in different States of one nation.

7.2 To issue writ, order or direction declaring the Act of 2004 as ultra vires as the State of M. P. has failed to rehabilitate the person who have been economically affected by this act.

7.3 Any other appropriate writ, order or direction which this Hon"ble Court deems just and proper may also be passed in the interest of justice.

7.4 Costs of the petition.

2. As far as relief no. 1 is concerned, at the stage of admission in the year 2014 itself after observing as under :-

The principal relief claimed in this petition is to declare that Madhya Pradesh Govansh Vadh Pratished Adhiniyam, 2004 (for short the "Act of 2004") as ultra vires.

To buttress this prayer the sole argument canvased before us is that the law enacted by the Madhya Pradesh State Legislature is not similar to the law enacted by other States on the same subject. That results in discriminatory treatment meted out to the residents of Madhya Pradesh, unlike the advantages flowing from similar enactment of the other States.

This argument is on the basis of Article 19 (1) (g) of the Constitution of India that the petitioner and similarly placed persons have right to practice any profession, or to carry on any occupation, trade or business throughout the territory of India and in the same manner. This argument, in our opinion, clearly overlooks the cardinal issue, that, undeniably, the State Legislature is competent to enact law on the subject dealt with by the Act of 2004. The argument of the petitioner is not about absence of legislative competence of the State Legislature. Moreover, it is also not argued before us that the Act of 2004 travels beyond excepted category specified in Article 19 (6) of the Constitution. Moreover, it is not open to argue that the State Legislature cannot legislate on the subject dealt with by the Act of 2004 and is obliged to make provision identical to the provision made by other States in the similar law enacted by them. No such prohibition is stipulated in the Constitution. Learned counsel for the petitioner has not invited our attention to any such provision in the Constitution or any enactment of the Union of India to point out that the provision in the Act of 2004 is ultra vires to such enactment. In that view of the matter, the question of entertaining payer clause 7.1 does not arise. The same will have to be rejected.

The second relief claimed in this petition is essentially to direct the respondents to rehabilitate the affected persons on account of coming into force of Act of 2004.

We are conscious of the fact that the relief as has been couched gives an impression that the Act of 2004 is ultra vires due to inaction of the State to rehabilitate the affected persons. Inaction of the State cannot be the basis to hold that the Act of 2004 is ultravires. In that case, at best, the Court can be persuaded to issue writ of mandamus to direct the State Authorities to give effect to the provisions of Act of 2004 or for that matter, because that obligation of the State flow from other provisions of Constitution of India.

3. This prayer has been rejected and, therefore, now, we need not go into this aspect of the matter. As far as prayer 7.2 is concerned, it pertains to the right available for rehabilitation under Section 12 of the M. P. Govansh Vadh Pratishod Adhiniyam, 2004 available at page 21 and petitioners submit that proper rehabilitation has not been done in accordance with the aforesaid provision in the State of M. P.

4. Petitioners are residents of District Burhanpur and they have infact ventilated the grievance with regard to not providing the benefit of Section 12 to the residents of the District in question but during the course of hearing, it was tried to be indicated that in the entire state, the benefit of rehabilitation under Section 12 has not been granted.

5. However, in the return filed by the State, Shri Swapnil Ganguly invites our attention to the averments made in para 2 of the return and points out that on the enquiry conducted through the Municipal Council, Burhanpur, it has been found that no person has claimed the benefit of rehabilitation in the District of Burhanpur and, therefore, no indulgence within the District of Burhapur is called for.

6. In para 2 of the return filed by respondent no. 2, the following assertions have been made on the affidavit :-

It is pertinent to mention that the petitioner (Sheikh Azeez) is having licence during 1996-97, 2005-06, 2012-13 of Butchar (Kasai). Copy of the license which has been issued by the Municipal Corporation, Burhanpur is annexed as Annexure R-1. That as clear from the above license that the petitioners are involved in the aforesaid business as indicated hereinabove. It is pertinent to mention that as per Section 12 of M. P. Govansh Vadh Pratishedh Rules, 2012 provided that the competent authority of Municipal Corporation or Nagar Panchayat shall prepared a list (iv) of the persons who are partially or fully affected by the Provisions of Act and after proposal of the aforesaid list the aforesaid list of affected person will be sent to the Collector of the respective district and after receiving the list of the affected person they can be granted benefit after necessary formalities. That from the office of

Municipal Corporation Burhanpur the Dy. Director took the specific information in this regard. In response to the aforesaid the Commissioner, Municipal Corporation Burhanpur has specifically stated that nobody has filed any application for rehabilitation or no such proceeding is pending as per Section 12 of the act in question. A copy of the communication dated 11.6.14 is annexed as Annexure R-2. It is also relevant to mention that the petitioners are still running the shop of meat in District Burhanpur. In these circumstance the petitioners cannot claim that they are affected by the Rule of 2012, further if such grievance or some of the persons those who are affected by the Act of 2012 then if they approach to the authority then the appropriate action in accordance with Act of 2012 will be taken by the competent authority in accordance with law. Further in the present case the Municipal Corporation Burhanpur is not a party. In these circumstance the factual aspects have already been stated by the answering respondents in the instant reply.

7. Shri Swapnil Ganguly, learned Govt. Adv. argued that for the purpose of rehabilitation, the aggrieved persons should approach the competent authority by filing an appropriate application under Section 12 of the Adhiniyam of 2004 along with the statutory rules framed and on the same being done, the State Govt. shall consider the application in accordance with law and in this Public Interest Litigation without there being any example of single instance of non-grant of rehabilitatory benefit, interference be not made.

8. However, we find that by filing certain intervention applications I. A. No. 8343/14 certain citizens in Jabalpur and by filing another application for intervention I. A. No. 7494/11 one Dr. Jai Ram Tiwari has tried to interfere into the matter.

9. We find that now in this petition, in the absence of there being any specific pleading to non-grant of benefit of rehabilitation to a particular class of persons, we cannot conduct a roving enquiry and direct the State Govt. to implement the rehabilitation policy, instead persons who are entitled to the benefit under Section 12 of the Adhiniyam of 2004 and who have been deprived with the benefit of rehabilitation are at liberty to file an appropriate application before the competent statutory authority or the applicants and the interveners therein are directed to give the particulars of the persons who are entitled for rehabilitatory benefit and other documents and if the same is done, we hope that the competent authority is directed to proceed in the matter in accordance with the Adhiniyam of 2004 and decide the grievance of rehabilitation.

10. Accordingly, finding no indulgence to be made into the matter, we dispose of the writ petition.