

Kedari and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Oct-24-2002

Reported in : AIR2003Kant157

Judge : V. Gopala Gowda, J.

Acts : [Constitution of India](#) - Articles 14 and 73

Appeal No. : Writ Petn. No. 34551-34576 of 2002

Appellant : Kedari and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : B.V. Prakash Angadi, Adv. and ;Shobha Patil, Govt. Pleader

Advocate for Pet/Ap. : Krishna S. Dixit, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Gopala Gowda, J.

1. The petitioners who are sugarcane growers of Athani Taluk have questioned the legality and validity of the impugned order dated 29-5-2002 (Annexure-B) (Published in the Karnataka Gazette Notification on 25-7-2002) issued by the first

respondent in so far as it relates to sugarcane crop in Athani Taluka of Belgaum District and sought for quashing of the same. Further, in the alternative, the petitioners have sought for issuance of a writ of mandamus to respondents 1 to 3 not to enforce the impugned order against the sugarcane growers who have availed crop loan on or before 25-7-2002, urging various legal contentions.

2. The petitioners are sugarcane growers having their agricultural lands within a distance of about 3 kms. from the Krishna River in Athani Taluk of Belgaum District and they have availed loan from third respondent-Bank. The Government of India formulated the national Agricultural Insurance Scheme (NAIS) called 'Rashtriya Krishi Bima Yojana' (in short 'the Scheme') vide Annexure-A aiming to provide Insurance Coverage in respect of crops in the areas as notified by the State Governments concerned. The State Level Co-ordination committee on Crop Insurance (in short 'the Committee') was constituted under the abovesaid Scheme vide its report dated 4-5-2002 recommended for inclusion of sugarcane crop in Belgaum District and accordingly first respondent vide order dated 29-5-2002 vide Annexure-B has notified Sugarcane Crop in Eight Talukas of Belgaum District for compulsory Crop Insurance including the Taluka of Athani.

3. It is stated that, under the said Scheme the General Insurance Company shall, insure the notified crop of the Sugarcane Grower who avail crop loan on the application of the financing Agency and the Insurance Premium is fixed by the State Government at 3.85% of sum assured. It is the further case of the petitioners that their Association vide its representation dated 31-8-2002 vide Annexure-C requested respondent-Bank not to debit premium money to their loan accounts and warned that if any debit is made ignoring their request, it is at the risk of the Bank only. Further stated that, the Bank expressed its helplessness saying that under the Scheme it has no discretion. It is urged by the learned counsel appearing for petitioners Sri Krishna S. Dixit that the insurance scheme framed by the first respondent has no statutory force to insure the sugarcane crop compulsorily without the consent and willingness of the concerned grower.

4. The counsel for the petitioners further contended that, the impugned order is without jurisdiction and has been unilaterally passed. Further, second respondent-

Committee has not been duly constituted as required under the provisions of the Scheme, compulsory insurance scheme introduced by the first respondent and fixing the area by co-ordination committee the second respondent is a clear case of discrimination and arbitrary in nature. In support of said contention, the learned counsel for the petitioners has placed reliance upon the Judgment of Supreme Court reported in AIR 1967 SC 1170 in the case of State of Madhya Pradesh v. Thakur Bharat Singh wherein at paragraph-6 after interpretation of S. 73 and 162 of the [Constitution of India](#), the Apex Court has laid down the law at Paragraph-6 stating that the said Articles are concerned primarily with distribution of executive power between Union on one hand and States on the other, and not with validity of its exercise. The State or its officers in exercise of executive authority cannot infringe rights of citizens merely because Legislature of State has power to legislate in regard to subject in which executive order is passed.

5. The learned counsel submits that, the Scheme infringes the fundamental rights of the petitioners by making them to compulsorily insure the sugarcane crop grown in the area as notified vide Annexure-B by the committee on the basis of the Scheme framed by the Union of India which is not only discriminatory but also arbitrary in nature. Therefore, the petitioners' counsel has prayed for grant of relief as prayed in these writ petitions which is referred in the earlier paragraph of this order.

6. Heard the learned counsel for the petitioners and also the Government Pleader appearing on behalf of Respondents 1 and 2 at the preliminary hearing stage itself. Smt. Shobha Patil, the learned Govt. Pleader on behalf of respondents 1 and 2 sought to justify the Scheme in question and the order at Annexure-B contending that said Scheme is beneficial to the farmers to take care of their interest and it is the policy of the Government of India to protect the interest of the farmers of the area in question which cannot be said to be neither arbitrary nor discriminatory in nature and without authority of law for which, the Union of India in exercise of its power under Article 73 of the [Constitution of India](#) has framed the Scheme which is produced at Annexure but the same is not challenged in these petitions. Therefore, she has submitted that there is no merit in these writ petitions and requested this Court to dismiss them as they are devoid of merit and this

Court cannot interfere with the policy matters of the Union of India and grant the relief of quashing the order of the first respondent passed by it to implement the NAIS Scheme framed by the Government of India.

7. After hearing the learned counsel for the parties, I have examined the scheme framed by the Government of India which is an agricultural insurance scheme. The objective of the said Scheme reads thus :

'1. To provide insurance coverage and financial support to the farmers in the event of failure of any of the notified crop as a result of natural calamities, pests and diseases.

2. To encourage the farmers to adopt progressive farming practices, high value inputs and higher technology in Agriculture.

3. To help stabilise farm incomes, particularly in disaster years.'

8. At the outset the reliefs sought for by the petitioners cannot be granted by this court for the reason that the Government of India who has framed the impugned scheme has not been impleaded in these petitions though it is a proper and necessary party and the NAIS Scheme framed by it is exercise of its executive power under Art. 73 of the [Constitution of India](#) is not challenged in these petitions. Therefore the petitions are not maintainable in law. Further, unless the scheme is not quashed the consequential order of constituting committee for implementation of the scheme by the first respondent-State Government also cannot be granted by this Court for the following reasons :

9. By a careful reading of the abovesaid objectives of the Scheme referred to supra, it is evident that, the Union of India in exercise of its executive power under Article 73 of the [Constitution of India](#) has framed a Scheme to safeguard the interest of the farmers who avail loan from the Nationalised Banks by making them to insure the crops grown in the areas which are determined by the State Government after getting report from the experts. In my considered view, the Scheme framed by the Union of India is a policy matter. It is being implemented after collecting necessary data regarding the need and requirement of the farmers

with a view to protect their interest to see that farmers interest is safeguarded in the event of natural calamities, pests and diseases which is a laudable object of the Union of the India to protect the farmers in the event of natural calamities to see that they are not exposed to economic hardship that would be caused due to natural calamities which will have far reaching consequences upon their economic conditions.

10. Further, on a careful examination and consideration of the scheme, the contention urged by the petitioners' counsel that the scheme has no statutory force is not tenable in law in view of express provision under Article 73 of the [Constitution of India](#) wherein it has been specifically spelt out in the above paid provision stating that subject to the provisions of the [Constitution of India](#), the Union of India has got executive power extending to the matters for administration of laws and the parliament has got power to make laws to exercise such authority and jurisdiction as are exercisable by the Government of India. It is not the case of the petitioners that the compulsory insurance of either sugarcane crop or any other agriculture crop is governed by the law. The contention urged by the learned counsel for the petitioners that framing of compulsory insurance scheme to the agricultural crops falls under Entry No. 14 of List-II 'State List' therefore, framing of scheme by the Government of India under Entry No. 47 of List I 'Union List' (VII Schedule) is not sustainable in law and the said legal contention cannot be accepted by this Court for the reason that Government of India has exercised its executive power under Article 73 in the absence of law enacted by the Parliament on the insurance of Agricultural Crops and it has rightly invoked its executive power in framing the Scheme under Entry-47 of the above list which is relevant for the purpose of framing compulsory Insurance Scheme for the agricultural crops grown by the farmers in the area notified by respondents 1 and 2.

11. Having regard to the plight of the farmers of the country in the event of natural calamities on account of which various commercial crops and agricultural crops are destroyed and thousands of families are put to great hardship and there have been innumerable suicidal death of farmers on account of failure of crops and not clearing the loans raised by them either from the Banks or private persons, therefore to protect the agriculturists in the rural India the Union of India has rightly

framed the said scheme. Therefore, it cannot be termed as either arbitrary or discriminatory and violative of Article 14 of the [Constitution of India](#) and it is not the case of the petitioners that, Union of India has no legislative power to enact the law to introduce compulsory insurance scheme for agricultural crops grown by the farmers in the area that is notified on the basis of relevant material data collected by respondents 1 and 2 for implementation of NAIS Scheme framed by the Government of India.

12. In view of Article 73 of the [Constitution of India](#), the Union of India has exercised its executive power and framed the scheme by passing the order keeping in view the laudable object of protecting the interest of farmers who constitute larger number of population of the country in Rural India in discharge of its constitutional obligations towards them. Further, merely because the area is determined under the Scheme by the committee the second respondent, it cannot be termed as either arbitrary or discriminatory and therefore it is violative of Art. 14 of the [Constitution of India](#). The classification regarding the crop of the area made by respondents 1 and 2 is reasonable classification after taking into consideration the relevant material data which are collected by the experts of the committee with regard to crops of the area and whether those crops require coverage of compulsory insurance or not. Such reasonable classification made by respondents 1 and 2 is on the basis of relevant material aspects collected by the executive of the committee and therefore it cannot be termed as neither (sic) arbitrary nor discriminatory. The reliance placed upon the Judgment of Supreme Court by the learned counsel for the petitioners wherein the Apex court, at Paragraph-6 has laid down the law with reference to executive power of the Union Government under Art. 73 and State Governments under Article 162 of the [Constitution of India](#), has no application to the case on hand. The said Articles are extracted hereunder for the purpose of appreciating legal submission made on behalf of the learned counsel for the petitioners :

'73(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement :

162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

13. By a careful reading of the exposition of law laid down in the aforesaid case the Apex Court has clearly held that State Government has exercised its executive power as a matter of policy in the interest of citizens. It cannot be termed as violative of fundamental rights guaranteed under Art. 13 of the [Constitution of India](#) . Therefore, the statement of law laid down in the aforesaid case justifies the scheme framed by the Government of India in exercise of its executive power under Article 73 of the [Constitution of India](#). The reliance placed upon the Judgment of Supreme Court referred to supra does not support the case of the petitioners but, on the other hand, it supports the case of respondents in justification of formulation of scheme by the Union of India in exercise of its executive power under Article 73 of the [Constitution of India](#) in the absence of law enacted by the Parliament in exercise of Its Legislative power from relevant Entry No.47 of List-1 with regard to compulsory insurance coverage of agricultural crops grown by the farmers in the area notified by the State Governments.

14. Further, the Supreme Court has laid down the law in the case of Balco Employees Union (Regd.) v. Union of India reported in 2001 AIR SCW 5135 with regard to Court exercising its extraordinary and discretionary power under Art. 226 of the [Constitution of India](#) In the policy matter which is relevant for the present purpose. At Paragraph-86 of the said Judgment, the Apex Court has referred to its earlier majority decision in the Judgment rendered in Narmada Bacho Andolan v. Union of India : AIR 2000 SC3751 : (Para 258, 259 and 260 of AIR) which are

extracted hereunder :

'232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court; has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in a public interest to require the Court to go into and investigate those areas which are the functions of the executive. For any project which is approved after due deliberation the Court should refrain from being asked to review the decision Just, because a petitioner is filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is

possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision,'

15. For the reasons stated supra, none of the grounds urged in these petitions warrant interference of this court with regard to either framing of the scheme or constitution of committee or determination of area for growing crops and whether the crops grown in that area are required to be compulsorily insured as the scheme is framed and being implemented for betterment of farmers of the area in question. I do not find any good reason to interfere with the scheme and the order of determination of area for growing crops' and applying the scheme for compulsory coverage of the crops raised by raising loans either from Nationalised or Scheduled Banks.

16. For the foregoing reasons, the petitions must fail. Accordingly, the petitions are dismissed.

17. The learned Govt. Pleader is permitted to file memo pf appearance within two weeks.

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