

Vikas Enterprises and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Mar-01-1982

Reported in : AIR1982All236

Judge : Satish Chandra, C.J. and ;A.N. Varma, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 2; Uttar Pradesh Excise Books Order, 1977; [Constitution of India](#) - Articles 14 and 39

Appeal No. : Civil Misc. Writ No. 6120 of 1981

Appellant : Vikas Enterprises and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.P. Goyal and ;P.K. Singhal, Advs.

Disposition : Petition allowed

Judgement :

A.N. Varma, J.

1. The petitioners are both engaged in the business of manufacturing and selling of exercise books at Hapur in the district of Ghaziabad. They are aggrieved by the refusal of the District Magistrate, Gaziabad to allot what has been described as

'concessional rate cultural variety of white printing paper' used for the purpose of fabricating exercise books.

2. 'Paper' is an essential commodity as defined in Section 2(vii) of the [Essential Commodities Act, 1955](#), under the scheme of allocation of paper to various States, the Controller (Paper), Government of India makes Statewise allocation of paper of the aforesaid variety as per requirements of various States. The State Government in its turn thereafter in consultation with the Ministry of Education and other representative bodies comprising exercise books manufacturers then makes the Districtwise allocation of the aforesaid paper. The paper allocated by the State Government to a particular district is hereafter allotted by the District Magistrate to various exercise books manufacturers of the district. The allotment is made in consultation with a committee consisting of the District Magistrate as its President, the District Inspector of Schools, the District Supply Officer, the District Industries Officer and one representative each of the manufacturers of the district and the President of district unit of U. P. Exercise Books Manufacturers Association,

3. With a view to securing equitable distribution of exercise books and their availability at fair prices, the State Government made an order, called the Uttar Pradesh Exercise Books Order, 1977. The said Order came into force on 9th Sept., 1977. 'Exercise book' has been defined under this Order as 'any exercise book or examination answering book fabricated with the concessional rate cultural variety of white printing paper made available by the Central Government direct or through the State Government and mentioned in the Schedule.' 'Dealer' has been defined as a person engaged in the business of manufacture, sale or storage for sale, of any exercise books, whether by wholesale (whether as manufacturer, supplier or distributor) or by retail, and includes his representative or agent. Under Clause 4 (1) of the Order it is provided that no dealer to whom concessional rate cultural variety of white printing paper is allotted shall use such paper for any purpose other than fabrication of exercise books, sell or distribute nor sell such exercise books in contravention of any directions such as may be issued from time to time by the State Government or the Prescribed Authority in this behalf. It further provides under Clause (2) that no dealer shall manufacture, sell or distribute for sale any exercise book in contravention of such directions as may be

given from time to time by the State Government or the Prescribed Authority in this behalf.

4. After the promulgation of the aforesaid Order a direction was issued by the State Government, a true copy of which is annexed as Annexure 1 to the counter affidavit filed on behalf of the District Magistrate, Ghaziabad on 16th Sept., 1978. By this direction while allocating a specified quantity of the aforesaid variety of paper for the manufacturers of the district of Ghaziabad the State Government laid down certain conditions for the guidance of the District Magistrate, Ghaziabad in making the allotment of paper to the manufacturers of the district. We are concerned here with condition No. 5 of that direction, which provides that if in any district at the end of the quarter July-Sept, 1978 there were already available 10 or more manufacturers of exercise books, allotment should not be made in favour of any new manufacturers. In the counter affidavit filed on behalf of the respondent No. 2, the District Magistrate Ghaziabad, it has been disclosed that the petitioners have been refused allotment of the said variety of paper on the ground that in the district of Ghaziabad there were already 12 manufacturers in the last quarter of 1978, namely Oct. to Dec, 1978 and as the petitioners started manufacturing the aforesaid variety of exercise books only after July-Sept, 1978 they could not be allotted the concessional variety of paper in view of the directions issued by the Government on 16-6-1978 as well as the subsequent directions of the State Government laying down that the aforesaid policy of confining the allotment to those manufacturers only, who were available in July-Sept., 1978, shall be continued. It is asserted in the counter affidavit that a radiogram dated 7-5-1980 was issued by the State Government to all the District Magistrates enjoining them not to allot concessional rate variety of paper to those manufacturers, who came on the scene after July-Sept., 1978- A similar radiogram dated 20th Apr. 1981 was issued by the State Government that the aforesaid policy shall be continued in the future also.

5. The petitioners have stated in their petition that with a view to doing business of manufacturing and selling exercise books fabricated with the concessional rate cultural variety of white printing paper, they acquired the necessary equipment consisting of ruling, cutting and stitching machines of their own and also get

themselves registered as a Small Scale Industry, they asserted that this was so done in pursuance of the aforesaid directions issued by the State Government on 16-9-1978, which laid inter alia that the said variety of paper shall be allotted only to those manufacturers, who had their own ruling, cutting and stitching machines and further that the said manufacturers should also be registered as a small scale industry. The petitioners had in pursuance of this policy also got themselves registered as a small scale industry respectively in September and November, 1978. Having equipped themselves in this manner, the petitioners made applications to the District Magistrate, who asked them to file affidavits to the effect that they had their own ruling, cutting and stitching machines and that they were registered as a small scale industry. The petitioners filed affidavits to the aforesaid effect. Thereafter the District Magistrate allotted two Tonnes of the said variety of paper to each of the two petitioners in February, 1979.

6. The petitioners continued to receive their quotas of the paper until March, 1981. A meeting was thereafter held in April, 1981' presided over by the Additional District Magistrate (Supplies), Ghaziabad, at which it was decided not to allot paper to the petitioners and one other manufacturer of the district of Ghaziabad. Petitioners felt aggrieved by this decision and have filed this petition. The only ground on which quotas were refused to the petitioners is as already mentioned earlier in the judgment, namely that allotments could not be made in favour of those manufacturers, who were not already manufacturing the aforesaid variety of paper in July-September, 1978.

7. The aforesaid refusal of the district authorities to allot the said variety of paper to the petitioners was assailed in the writ petition on a variety of grounds. In the course of arguments, however, learned counsel challenged the said decision mainly on the ground that the policy and the decision adopted by the respondents for refusing quotas to the petitioners are clearly violative of Article 14 of the Constitution. It was submitted that the decision to limit the allotment of the paper only to those manufacturers, who were manufacturing the said variety of paper in the quarter July-September, 1978 has absolutely no nexus with the object of the aforesaid statutory order. The policy creates a monopoly in favour of such manufacturers, who are private individuals and that not being related in any way

with the declared object of the Order, the same is clearly liable to be struck down as impinging on Article 14 of the Constitution.

8. Having heard the learned counsel for the parties we are clearly of the opinion that the above contention is well founded.

9. The declared object of the Uttar Pradesh Exercise Book Order, 1977 is to secure equitable distribution of exercise books and their availability at fair prices. The allotment of the aforesaid variety of paper is being done for the equitable distribution of exercise books and their availability at fair prices. The petitioners have been doing the business of manufacturing and selling exercise books at least since the beginning of 1979, if not earlier. They have asserted that for the purpose of doing this business, they have purchased their own ruling, cutting and stitching machines and are besides registered as a Small Scale Industry respectively since September and November, 1978. They would, therefore, be entitled to be considered for allotment of the paper, but for condition No. 5 of the direction issued by the Government on 16th September, 1978 and the subsequent radiograms mentioned above.

10. The question that falls for consideration is whether the classification limiting the allocation of the paper only to these 10 or more manufacturers, who were receiving their quotas in July-September, 1978 has any rational relation to the object. In order to ascertain whether a classification is valid under Article 14 of the Constitution, their Lordships of the Supreme Court have repeatedly laid down certain tests. It is not necessary to encumber this judgment with all those decisions. It is sufficient to extract here a quotation from one of the recent pronouncements, namely, *State (Delhi Administration) v. V. C. Shukla*, reported in AIR 1980 SC 1382 (para 52 of the report):

'Therefore, we might mention here that the classical tests laid down for the application of Article 14 are the following:--

1. The classification must be founded on an intelligible differentia which distinguishes persons, who are placed in a group from others, who are left out of the group.

2. Such differentiation must have a rational relation to the object sought to be achieved by the Act.

3. There must be a nexus between the differentiation, which is the basis of the classification and the object of the Act.'

We will assume that the classification in the case in hand was founded on intelligible differentia, in that the manufacturers, who are entitled under the impugned decision to receive the quota, being manufacturers, who were engaged in the business of manufacturing and selling the said variety of paper in July-September, 1978, are a clearly identifiable group of persons and are distinguishable from the others, who have been left out from the group. The impugned executive action may, therefore, be said to have passed the first of the aforesaid three tests laid down by the Supreme Court. We are, however, firstly of the view that the differentiation does not have any rational relation to the object sought to be achieved by the aforesaid Order. There is, in our opinion, no nexus between the differentiation, which is the basis of the classification, and the object of the statute. In the counter affidavit filed on behalf of the Dist Magistrate it has not been asserted or even faintly hinted that the manufacturers, who were already receiving quotas in July-September, 1978, were endowed with any special skill or experience or equipment not possessed by the petitioners and the like, which might justify the conclusion that the object and the purpose of the Order, namely, securing the equitable distribution of exercise books and their availability at fair prices would be in any way jeopardized in the slightest degree, if allotment is made to the new manufacturers, who came on the scene after September, 1978.

11. The offending condition is that where 10 or more manufacturers were already available in July-September, 1978, no new manufacturer will be entitled to receive the quota. One could understand limiting the number of persons who might be allotted the paper on the hypothesis that having regard to the limited quantity of the paper available for allotment it might not be feasible to make allotment in favour of all the applicants regardless of their number on the ground that it would not be a worthwhile commercial proposition, if the quantity of paper made available was below a certain minimum. If, therefore, within the specified number a

selection would have been made on relevant considerations from amongst all the applicants, there would not have been any objection on the score of Article 14 of the Constitution. However, we cannot see any relevant or rational basis, keeping in view the object sought to be achieved by the Order, for confining the allotment only to those particular manufacturers, who were receiving the quotas in July-September, 1978-Indeed such a policy cannot in the slightest degree subserve the object of the statute, but clearly results in a monopoly in favour of those fortunate manufacturers, who happened to be in the field in July-September, 1978. Such a policy apart from other objections would be opposed to Article 39(c) of the Constitution, which provides that the State shall not pursue an economic policy which results in the concentration of wealth and means of production.

12. It may be conceded that, as has been held by the Supreme Court in several decisions (AIR 1980 SC 271, AIR 1960 SC 923 and AIR 1965 SC 139) a law which applies generally to all persons which come within its ambit as from a specified date from which it becomes operative, cannot per se become exposed to the charge of discrimination under Article 14 of the Constitution. It may also be assumed that the choice of date with reference to which the classification is made may appropriately be left to the Legislature or the authority exercising statutory powers keeping in view considerations which may be relevant and proper for the effective administration of the law. But it cannot be disputed that the point of time fixed by the Executive must have some rational relation to the object. In the present case we find absolutely no nexus between the date fixed and the object of the statute. In *Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir* reported in AIR 1980 SC 1992 it has been held that every activity of the Government has a public element in it and it must be based on reason and guided by public interest. It has been further ruled there that if the Government awards a contract or leases out or other-wise deals with its property or grants any other largess, it would be liable to be tested on the touchstone of reasonableness and public interest. It has also been observed that the Government is not free like an ordinary citizen in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute discretion.

13. Testing the impugned action in the light of what has been laid down in the above decision of the Supreme Court, there is no manner of doubt that the same is not in consonance either with reasonableness or rationality and it does not seem to serve public interest of any kind. The object of equitable distribution of exercise books at fair prices is, in our opinion, not advanced in the slightest degree by limiting the privilege to these 10 or 12 or more of the manufacturers, who happened by chance to have the good fortune of having received the quotas of paper on concessional rate before October-December, 1978.

14. The said policy or decision of the State Government, has spelled out by the aforesaid direction of the Government dated 16-9-78 and the radiograms dated 7-5-1980 and 20-4-1981 excluding altogether manufacturers like the petitioners from the field of eligibility and confining the distribution of quotas only to those manufacturers, who were getting the same in or before September, 1978, without doubt perpetuates a monopoly in favour of those manufacturers, who were getting the quotas before the specified date. As the policy or the classification does not have any rational relation to the object of the statute, the same clearly becomes open to the charge of violation of Article 14 of the [Constitution of India](#).

15. As the petitioners have been refused allotment of the paper solely on the ground that they were not among the manufacturers receiving quota and as the said decision suffers from the vice of unwarranted discrimination prohibited by Article 14 of the Constitution, they have clearly become entitled to the reliefs claimed in the petition.

16. By an interim order dt. 10-7-1981 which was confirmed on 12-8-1981, this Court had directed the respondents not to allot the petitioners' quota to others for the period July, 1981 to Oct., 1981. The petitioners have, as a result of what has been held above, clearly become entitled to receive their quota. They are also entitled to be considered for allocation of quota for the future months along with the others who may be entitled to receive the same in accordance with law.

17. The result of the aforesaid discussion is that the radiograms dated 7-5-1980 and 20-4-1981, issued by the Government of U. P. (referred to in para 12 of the counter-affidavit of Shri Pramod Chand Pant, filed on behalf of the District

Magistrate, Ghaziabad) directing the District Magistrates to consider the cases for allotment of paper on concessional rate, only to those manufacturers who were available for allotment in July-September, 1978 to the exclusion of all others, are liable to be quashed as being violative of Article 14 of the [Constitution of India](#).

18. In the result the petitioner succeeds and is allowed. The radiograms dt. 7-5-1980 and 20-4-1981 referred to above, are quashed. The respondent No. 2 is directed to release the quota of the petitioners for the period July, 1981 to October, 1981 (in regard to which the aforesaid interim orders were passed by this Court) immediately. In regard to allotment for future months, the petitioner's claim shall be considered by the said respondent according to law along with that of the others who may be so entitled. The petitioners are entitled to their costs from the respondents Nos. 1 and 2.

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