

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 11TH DAY OF APRIL 2024 / 22ND CHAITHRA, 1946

WP(C) NO. 14803 OF 2024

PETITIONER:

KERALA STATE CO-OPERATIVE CONSUMERS' FEDERATION LTD,
GANDHI NAGAR, ERNAKULAM, KOCHI, REPRESENTED BY ITS
MANAGING DIRECTOR., PIN - 682020

BY ADV M.SASINDRAN

RESPONDENTS:

- 1 THE CHIEF ELECTION COMMISSIONER, ELECTION COMMISSION
OF INDIA, NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI.,
PIN - 110001
- 2 THE CHIEF ELECTORAL OFFICER, KERALA VIKAS BHAVAN,
LEGISLATURE COMPLEX, THIRUVANANTHAPURAM, KERALA.,
PIN - 695033
- 3 STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT
OF CO-OPERATION , SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 4 REGISTRAR OF CO-OPERATIVE SOCIETIES, OFFICE OF THE
REGISTRAR OF COOPERATIVE SOCIETIES, JAWAHAR
SAHAKARANA BHAVAN, DPI JUNCTION, THYCAUD P.O,
KERALA, PIN - 695014

BY ADVS.

SRI. DEEPU LAL MOHAN - SC

SRI.P.P.THAJUDHEEN - SPL. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

‘Election Time’ is surely different from any other in any vibrant democracy. It promotes distinct temporal rhythms of election, subsuming modalities of democratic deliberation, structured differently from normal time; modulated by extraordinary regulations.

2. The Modal Code of Conduct (MCC), is an innovation in electoral governance, outside the frame work of electoral laws, as an expression of the voluntary political morality and collective ethics by political parties.

3. Indubitably, at these times, the Election Commission of India (ECI) is expected to be the ‘umpire’ of political morality.

4. This Court affirms the afore without reservation; but is today faced with the dilemma of balancing it versus people’s rights and aspirations, in contra-distinction to poll time populism.

5. These are extraordinary times even otherwise. Summer this year is oppressive; the State is concededly under economic constraints; prices of the most requisites, including food, are stated

to have escalated beyond the means of many; social justice, pension/pay outs to the weakest are stated to be pending, at least in part; purchasing power of most citizens is reportedly low, exacerbated by the lingering reverberation of the pandemic disruption – the list of woes may still be longer.

6. In fact, the afore remain uncontested even by the respondents.

7. Citizens have to first live and only then can they cast their ballot.

8. It is the most fundamental of the duties of a true welfare State to protect and sustain the lives of the citizenry – especially the vulnerable. There can be no two ways about this; and this obligation transcends electoral politics.

9. The Government does not offer gratis, but acts in inviolable duty in providing essential services and support to the people. The persons/parties in power can never seek any benefit of this; and if they do, it is morally and ethically abominable.

10. This is the right of ‘We the People’ and no Government or Administrator must even think of taking advantage of

something, which is their basic duty to provide.

11. The petitioner in this Writ Petition – the ‘Kerala State Co-operative Consumers’ Federation Ltd.’ (‘Consumerfed’), which is an Apex Consumer Society under the provisions of the Kerala Co-operative Societies Act, 1969 (‘KCS Act’ for short), says that they have proposed to conduct ‘Ramzan-Vishu Fairs’, offering 13 items of unexpendable food articles at subsidy to the most marginalized sections of the Society; and assert that 1,13,200 Ration Card holders would be benefited. They say that this necessitates the fiscal support of the Government, to offset the loss which they obviously will have to suffer in offering subsidy; and that the latter, in turn, has offered Rs.5 Crores for such.

12. Pertinently, both the ‘Consumerfed’ and the Government of Kerala justify this on the aforestated yardsticks.

13. However, the ‘ECI’ appears to have interdicted that part of the proposal of the ‘Consumerfed’, seeking an advance release of Rs.5 Crores from the Government towards offsetting the subsidy; and they are, of course, *prima facie*, justified in their stand of not permitting this since, at first glance, it runs counter to the Modal

Code of Conduct, particularly Clause 6A of Part 7 thereof, which is to the following effect:

‘From the time elections are announced by Commission, Ministers and other Authorities shall not – announce any financial grants in any form of promises thereof’.

14. But, it is common ground for all others in the party array, that the proposed fairs are for the benefit of people - more to those belonging to the middle and lower economic strata.

15. Pertinently, Sri.Deepu Lal Mohan – learned Standing Counsel for the ‘ECI’, in response to the prayers made by the petitioner in this case, submitted that his client is not against the conduct of Fairs or distribution of food articles to the citizens on subsidy; but has taken objection only to the proposal of the Government offering Rs.5 Crores to the petitioner, which can only be seen to be a financial grant – which, as long as the ‘MCC’ remains, is impermissible. He reiterated that the ‘Consumerfed’ can conduct their Fairs, thus bringing solace to the countless people who rely on the same; and contended that, therefore, this Writ Petition is without basis and in fact, filed with confutative intent.

16. Sri. Deepu Lal Mohan added that, when the 'Consumerfed' admits before this Court, through their pleadings and submissions made at the Bar, that they have already purchased the articles to be sold in the 'Fairs' and that it is being done through their outlets and such other methods, a Writ Petition of this nature, seeking that the Government be directed to release an amount of Rs.5 Crores immediately, can only be construed to be questionable. He concluded his submissions pointing out that, in Ext.P7, it is the Government which has informed the 'Consumerfed' that the Chief Electoral Officer, Kerala, has directed them to defer the proposal for financial grant; and hence, that the 'Consumerfed' ought not to have approached this Court in this manner.

17. Sri. P.P.Thajudeheen – learned Special Government Pleader, however, submitted that the amounts sought for by the 'Consumerfed' falls within the budgetary allocation made by the Government to support such 'Fairs'; and that, in fact, the proposal in question was made to them by the 'Consumerfed' through the Registrar of Co-operative Societies, on 06.03.2024 - which was, in

turn, based on their resolution namely, Ext.P3. He explained that, on the proposal of the Registrar reaching the Government, they placed it before the Finance Department on 11.03.2024; but that, before a final decision could have been taken thereon, the 'MCC' came into force on 16.03.204, consequent to which it was then placed before the "Screening Committee", which also recommended it; but which still found disapproval at hands of the 'ECI'. He submitted that, it is in such manner, that Ext.P7 order came to be issued.

18. Sri. M.Sasindran – learned Standing Counsel for the 'Consumerfed' replied to the afore, affirming that his client has already made purchases for the purpose of conducting the 'Fairs'; and further that they are already selling the articles on subsidy through their outlets own/direct. He explained that the only objection is with respect to the conduct of the 'Fairs' through the Primary Co-operative Societies, for which, the permission of the Registrar of Co-operative Societies is necessary; but which has been now withheld by the Government through Ext.P7. He, therefore, prayed that, if this Court is not inclined to allow the Government

to disburse the amount of Rs.5 Crores - or such other figure, as has been requested to offset the amount of loss which his client would suffer due to the subsidy offered to the customers, then, the Government be, at least, permitted to authorise the Registrar of Co-operative Societies to allow them to conduct the 'Fairs' through the Primary Co-operative Societies, as has been proposed in their original proposal, namely Ext.P3.

19. As I have already said above, the facts of this case warrants a situation where this Court must balance the requirement of the integrity of the electoral process to be maintained; as also the support essential to the common man and the most vulnerable.

20. The afore narrative would render it perspicuous that the 'ECI' is not in any manner hampering or fettering the right of the petitioner - 'Consumerfed' to conduct the 'Fairs' - either through its own outlets, or through the Primary Co-operative Societies, as they have proposed in Ext.P3; but that they take umbrage only to the Government paying Rs.5 Crores - being a financial grant - which, they say, is impermissible under the 'MCC'.

21. As rightly argued by Sri. Deepu Lal Mohan – learned Standing Counsel for the 'ECI', when the 'Consumerfed' concedes before this Court unequivocally that they have already purchased the articles for sale, one fails to understand what stops them from selling it to the worthy and deserving. Awaiting payout of the subsidy in future for this, particularly when they also admit that this is provided for in the budgetary proposals, seems rather strange.

22. Indubitably, therefore, a balance of the rival interests becomes easily possible, if the Government is allowed to sanction the sale of the articles under Ext.P3 proposal by the 'Consumerfed' through the Primary Co-operative Societies also, in addition to their exclusive outlets – which is stated to be ongoing; however, within an injunction against them in honouring any financial grant until such time as the 'MCC' is in force.

23. Even when the the 'Fairs' that are now proposed, certainly operate to the benefit of the citizens, it can never be permitted to be used by the Government or any of his agencies as a method of a political propaganda, or as a means of garnering

electoral support.

24. As I have said earlier, the Government is expected to protect and nurture its people; and any support that they give, can never be construed to be gratuitous in any form, but to be only of fulfillment of their constitutional obligation, which is protected in favour of every citizens.

25. This Court has full confidence in the electorate of the State, who will fully understand that the Government is doing them no favour, but is only offering what is due to them; and hence, it is imperative that they be not allowed to project this as a method of propaganda, in whatever manner as may be feasible or possible.

26. In fact, Sri.P.P.Thajudeen – learned Special Government Pleader and Sri.M.Sasindran – learned Standing Counsel for the petitioner, undertook specifically that there would be no publicity or propaganda attached to the conduct of the 'Fairs', so as to influence the voters or electorate in any manner; nor, will there be any projection made by the Government that it has authorized the conduct of the same.

In the afore circumstances, I allow this Writ Petition to the limited extent of directing the Government to permit the Registrar of Co-operative Societies to authorise the 'Fairs' proposed by the petitioner 'Consumerfed', through the Primary Co-operative Societies mentioned in Ext.P3; however, making sure that there would be no publicity attached to this, as being a Government sponsored programme, or to be in a manner that to cause benefit to any particular section of the political arena.

The 'ECI', of course, is at full liberty to ensure the full compliance with the afore directions and to take any action if it is found to be contrary to it; for which purpose, every power available to them is hereby reserved.

Needless to say, in view of my afore directions, Ext.P7 would stand modified to the extent ordered above.

After I dictated this part of the judgment, Sri.M.Sasindran intervened to say that, it may be also clarified that, after the 'MCC' ceases to be in operation, his client can approach the Government for the amount mentioned in Ext.P3 proposal. I do not propose to answer this request in any manner because, it is upto the

Government to take note of the same and act upon it, as may be sanctioned in law at the relevant time, but not until such time as the 'MCC' is in force.

RR/LSN

Sd/-
DEVAN RAMACHANDRAN
JUDGE

APPENDIX OF WP(C) 14803/2024

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF HE RELEVANT PAGES OF THE BY-LAWS OF THE PETITIONER SOCIETY
- Exhibit P2 A TRUE COPY OF THE NEWSPAPER STATEMENT OF EASTER FESTIVAL MARKET FOR THE YEAR 2021
- Exhibit P2(a) A TRUE COPY OF THE NEWSPAPER STATEMENT OF VISHU-EASTER-RAMZAN FESTIVAL MARKET FOR THE YEAR 2022 (DT.09-04-2022)
- Exhibit P2(b) A TRUE COPY OF THE NEWSPAPER STATEMENT OF ONAM FESTIVAL MARKET FOR THE YEAR 2023
- Exhibit P2(c) A TRUE COPY OF THE NEWSPAPER STATEMENT FOR CHRISTMAS FESTIVAL MARKET OF THE YEAR 2023
- Exhibit P3 A TRUE COPY OF THE PROJECT REPORT FOR GRANTING SUBSIDY FOR CONDUCTING RAMZAN-VISHU FESTIVAL MARKET
- Exhibit P4 A TRUE COPY OF THE LETTER NO.CFED/AC5/368/RAMSAN-VISHU SBDY2024/2023-24 DATED 28.02.2024 SENT TO THE 4TH RESPONDENT
- Exhibit P5 A TRUE COPY OF THE E-TENDER NOTICE NO.CFED /PHD /CP-G&P / APRIL/2024 DATED 06.03.2024
- Exhibit P6 A TRUE COPY OF THE PURCHASE ORDER OF THE RAMZAN-VISHU VIPANI
- Exhibit P7 A TRUE COPY OF THE COMMUNICATION NO. A3/82/2024/CO-OP DATED 05.04.2024 ISSUED BY THE 3RD RESPONDENT
- Exhibit P8 A TRUE COPY OF G.O(MS) NO. 172/2021/CO-OP DATED 26.02.2021
- Exhibit P8(a) A TRUE COPY OF G.O(MS) NO. 202/2022/CO-OP DATED 24.03.2022

Exhibit P9 A TRUE COPY OF G.O.(P) NO.3/2024/F&CS
DATED 16.02.2024

Exhibit P10 A TRUE COPY OF THE INTERIM ORDER DATED
29.03.2021 IN WP(C) 8237/2021

Exhibit P11 A TRUE COPY OF THE RELEVANT EXTRACT OF
THE BUDGET FOR THE YEAR 2024-2025 OF
GOVERNMENT OF KERALA

Exhibit P12 A TRUE COPY OF THE RELEVANT EXTRACTS OF
THE MODEL CODE OF CONDUCT PUBLISHED BY
THE ELECTION COMMISSION OF INDIA FOR THE
LOK SABHA ELECTION, 2024