IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.980 of 2020

K.R.Selvakumar ...Appellant/Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by its Secretary
   Animal Husbandry
   Dairy and Fisheries (FS-3) Department
   Fort St. George
   Chennai 9.

2. The Director of Fisheries
   Chennai 6.

3. The State of Tamil Nadu
   rep. by its Secretary
   Commercial Taxes Department
   Fort St. George
   Chennai 9. ... Respondents /Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 28.02.2020 made in W.P.No.5246 of 2018.

W.P.No.5246 of 2018:
Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to order of the 1st respondent made in G.O.(Ms).No.238 Animal Husbandry Dairy and Fisheries (FS-3) Department dated 11.12.2017 and the consequential order of the 2nd respondent made in Rc.No.21066/J4/2007 dated 19.02.2018 and to quash the same and to consequently direct the respondents to issue allotment to the petitioner's bunk towards supply of sales tax exempted diesel.

For Appellant : Mr.L.Chandrakumar

For Respondents : Mr.V.Jayaprakash Narayanan
State Govt. Pleader

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The matter pertains to a Government Order providing exemption to certain government operated agencies and not extending the exemption to private diesel bunk operators. The writ petitions filed by the appellant herein and others of his ilk have been dismissed on the ground that they were unmeritorious.

2. The appellant says that the appellant operates a private diesel bunk, but the appellant supplies diesel only to fishermen and not to any other person. The appellant claims that since the appellant's operations are restricted to fishermen who ought to be regarded as a separate and favoured class, the exemption should also have been extended to the appellant. The other writ petitioners were apparently similarly placed private diesel bunk operators.

3. The appellant refers to a previous Division Bench judgment of this Court rendered on November 26, 2013 in W.A.Nos.1798 to 1800 of 2011. By such judgment, the writ petitions filed by authorised and recognised private diesel outlets seeking supply of diesel at par with government operated outlets were allowed. The State was the appellant.

4. While dismissing the writ appeals, the Division Bench observed in the order of November 26, 2013, inter alia, as follows:

> "24. Similarly, as rightly observed by the learned single Judge, when such restrictions were not imposed by the Government Orders, under the guise of memo / recommendations, the respondent cannot impose such restrictions. From the facts placed before us, we also see that there is more demand in the areas where Authorised Private Dealers operate and the Government outlets are unable to sell their indented quota. Therefore, the argument that when sale is made, the revenue goes directly to the Government Agency cannot be applicable to the present facts. Because of the restriction imposed, the objects of the Government Orders are defeated. Not even a single

case where there is misuse of the exemption in the sale made by Authorised Private Outlets is reported before this Court. Therefore, mere apprehension cannot be the ground for imposing restrictions, not contemplated under the Government Orders. The indent itself contains check and balance measures.

"25. Therefore concurring with the view of the learned single Judge and keeping in mind the public interest, we hold that the actions of the appellants are discriminatory and arbitrary and affirm the Common order dated 15.06.2010. However, we make it clear that the Government if in public interest decides to restrict the tax exemption for sale of diesel to Government operated outlets alone, necessary modifications have to be brought about in the Government Orders."

5. The appellant asserts that the matter dealt with by the Division Bench did not preclude any exemption being granted to private diesel bunk operators who supply diesel exclusively to fishermen. Indeed, the last sentence of paragraph 25 of the Division Bench judgment is cited to indicate that the State was left free to grant exemption to government operated outlets. The appellant submits that as a private diesel bunk operator supplies exclusively to fishermen, it is the same duty which is discharged by the appellant as a government outlet. As such, the appellant contends, when it is not open to the appellant to sell diesel to any or sundry who may approach the appellant, the exemption could not have been confined only unto certain government agencies and not extended to other outlets, albeit private, but operating exactly as the government outlets.

6. The judgment and order impugned dated February 28, 2020 have also come in for criticism from the appellant on the ground that the Writ Court found that there was an element of public interest involved. The appellant seeks to suggest that the element of public interest involved would weigh with the extension of the exemption to the appellant and other private diesel bunk operators.

7. The impugned Government notification in this case reflects a policy adopted by the State. It is always open to the State to make a distinction between several classes of persons and treat them differently as long as there is some justification therefor. It is equally open to the State to not treat different classes of persons differently and treat them on the same basis. This, essentially, is a matter of policy. Merely

because government outlets operating for the same purpose as the present appellant had been granted exemption does not imply that private parties carrying out the same duties would also be entitled to exemption. Apart from the fact that the government granting or not granting exemption to another government body is of no great significance at the end of the day, the anomaly or aberration would have been apparent if any other private body had been extended the courtesy and the appellant or others like the appellant denied the same. In this case, a distinction has been made between the government outlets and other outlets and all other outlets have been treated at par notwithstanding the fact that the appellant and others similarly placed supply diesel only to fishermen and do not sell it otherwise. It was possible for the State, in its wisdom, to make a distinction between government outlets and other outlets not being government outlets. It was equally possible for the State to make a distinction between private outlets supplying only to fishermen and other private outlets supplying to all and sundry. That the State did not make such a distinction is a matter of policy and within the exclusive domain of the State. Judicial review will not extend to such an aspect of administrative functioning to supplant the Court's decision over the legislature's or the executive's.

For the reasons aforesaid, the judgment and order impugned dated February 28, 2020 do not call for any interference. W.A.No.980 of 2020 is disposed of without any further orders. There will be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Secretary
   Animal Husbandry
   Dairy and Fisheries (FS-3) Department
   Fort St. George
   Chennai 9.

2. The Director of Fisheries
   Chennai 6.

3. The Secretary
   Commercial Taxes Department
   Fort St. George
   Chennai 9.

1cc to Mr.L. Chandra Kumar, Advocate, S.R.No.5408.

W.A.No.980 of 2020

SR(CO)
NRA(24/02/2021)