

KRISHNAN KAKKANTH  
v.  
GOVERNMENT OF KERALA AND OTHERS

OCTOBER 11, 1996

[G.N. RAY AND B.L. HASNARIA, JJ.]

*Constitution of India Article 19(1)(g)—Fundamental rights under the Article—Not absolute and are subject to various restrictions in the interest of general public—Imposition of reasonable restrictions—Held justified.*

*Right to Business—Held, one cannot insist Government or an individual for doing business with him.*

*Constitution of India Article 14—Reasonableness—Not necessary to enter upon any exercise for finding out wisdom of policy decision of Government, except for testing public policy and constitutionality.*

The government of Kerala issued a circular directing that the Regional Agro Industries Development Corporation (RAIDCO) and M/s. Kerala Agro Industries Corporation (KAICO) would supply pump sets to farmers, in 8 districts of Kerala. The appellants challenged the Constitutional validity of the circular in the High Court. The High Court upheld the circular. Aggrieved by the order of the High Court the appellant has approached this court.

The contention of the appellant was that the fundamental rights of the private dealers under Article 19(1)(g) of the Constitution was violated by the Government. The Circular impinges upon the right to trading activities of dealers in pump sets. The circular has created discriminatory monopoly in favour of two dealers and must be held violative of Article 14 of the Constitution.

On the other hand according to the respondent the trading activities of the pump sets have not been controlled or regulated. The Government only indirectly created some prejudice in carrying on trade or business and as such the action does not offend Article 19(1)(g). The respondent further contended that the government is duty bound to select appropriate dealers who would supply genuine pump sets to farmers with proper after sale service.

A Dismissing the appeal, this Court

B HELD : 1. Fundamental rights Guaranteed under Article 19(1)(g) of the Constitution are not absolute but are subject to reasonable restrictions to be imposed to strike a balance between the freedom guaranteed under Article 19(1) and the social control permitted by clauses (2) to (6) under Article 19. The reasonable restriction is to be determined in an objective manner and from the stand point of the interests of general public.

[498-F-G]

C 2. The infringement of fundamental right under Article 19(1)(g) must have a direct impact on the restrictions on freedom to carry on trade and not ancillary or incidental effects on such freedom. [500-E]

D 3. A citizen has a fundamental right to carry on trade or business but he has no fundamental right to insist upon the Government or any other individual for doing business with him. Any government or an individual has got a right to enter into contract with particular person or persons with whom he or it will deal. [499-H, 500-A]

E 4. It is not necessary to enter upon any exercise for finding out the wisdom in the policy decisions of the State Government to ascertain reasonableness and arbitrariness of Article 14 of the constitution. Unless the policy decision is demonstrably capricious or arbitrary or suffers from the vice of discrimination or infringes any statute or provision of the constitution, it cannot be struck down. Except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality Court should avoid "embarking on uncharted ocean of public policy".

F [501-G-H, 502-A]

*Kharak Singh v. State of U.P.*, AIR (1963) SC 1295, relied on.

G *Ramana Dayaram Shetty v. The International Airport Authority of India*, AIR (1979) SC 1628; *Viklad Coal Merchants Patiala v. Union of India*, [1984] 1 SCR 657, 682; *Hanif v. State of Bihar*, AIR (1958) SC 73; *Laxmi v. State of U.P.*, AIR (1981) SC 873, *Traveli v. State of Gujarat*, AIR (1968) SC 1323; *Harekchand v. Union of India*, AIR (1970) SC 1453; *Sagir v. State of U.P.*, [1955] 1 SCR 707; *P.T.C.S. v. RTA* AIR (1960) SC 801; *Meenakshi Mills v. Union of India*, AIR (1979) SC 3366 and *Lala Harichand Sardu v. Mizo District Council and Anr.*, [1967] 1 SCR 1012, referred to.

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13029 of 1996. A

From the Judgment and Order dated 7.2.96 of the Kerala High Court in O.P. No. 16115 of 1995.

K.K. Venugopal, Fazlin Ahmed and E.M.S. Anam for the Appellant. B

K.N. Bhat, Additional Solicitor General, Bina Prakash and G. Prakash for the Respondent No. 1.

Dipankar Gupta and T.T. Kunnikannan for the Respondent No. 2. C

C.N. Sree Kumar and Shaju Francis for the Respondent No. 3.

The Judgment of the Court was delivered by

G.N. RAY, J. Leave granted. D

Heard learned counsel for the parties. The constitutional validity of the circular dated 19.5.1995 issued by the Secretary to the Government of Kerala directing that for distribution of pumpsets under Comprehensive Coconut development Programme and other similar schemes of the Agriculture Department and in order to streamline the implementation of the schemes specifying specific role and responsibilities for different agencies involved, M/s. Kerala Agro Industries Corporation (KAICO) and Regional Agro Industries Development Corporation (RAIDCO) would arrange supply of pumpsets in the districts of Kesarkoda, Kanner, Vyanad, Kozhikode, Malaopuram, Palekkad, Trissur and Kottayam and in the remaining districts supply will be effected by private dealers along with KAICO and RAIDCO, since challenged by the appellants in O.P. No. 16115 of 1995, but upheld by the impugned judgment of the High Court dated February 7, 1996 is in question in this appeal. Such writ petition was disposed by a common judgment along with other writ petitions being O.A. Nos. 13936 and 14454 of 1995. In the said other writ petitions, the constitutional validity of the circular dated 30.3.1989 issued by the Registrar of Co-operative Societies *inter alia* directing that all the Land Development Banks, District Co-operative Banks and Service Co-operative Banks in the State of Kerala would patronise RAIDCO to the fullest extent in preference to private dealers in the matter of purchase of Agro Machine under the scheme financed by the Banks/Societies and at in any rate not H

A less than 75% of total requirement of such Agro Machines should be purchased through RAIDCO, was challenged. The High Court has also upheld the validity of such circular by the impugned judgment.

It may be stated that in the circular dated 19.9.1995 issued by the Secretary to the Government of Kerala it was also indicated that pumpsets and accessories of the farmer's choice alone should be supplied and after sale service facility should be provided by suppliers/dealers. It was also indicated that the cost of pumpsets and accessories would be supplied at a lesser price than that fixed by the State Level Technical Committee and necessary advance amount would be provided to KAICO and RAIDCO for taking advance action for implementing the scheme.

It will also be appropriate to state that in the circular dated 30.3.1989 issued by the Registrar of Co-operative Societies, it was indicated that RAIDCO was the only co-operative in the state under the Co-operative Department, having a net work of branches for distribution of all sorts of pumpsets etc. RAIDCO has dealership of almost all important pumpsets manufactures in the country and RAIDCO was sole distributor for Villiers Petrol/Kerosene engines manufactured by M/s. Enfield India Ltd. In addition, RAIDCO has set up its factory at Palghat with NCDG assistance for the manufacture of pumpsets in collaboration with M/s. Kirloskar Bros. Explaining the justification of the said circular, it was also indicated :

"Though this is a Co-operative Institution, it is felt that the Co-operative bank including the Land Development Banks in the State do not patronise, this society faces stiff competition with private dealers. The District Co-op. Banks, Cannanore and Kasargode have taken policy decisions to the effect that the loans sanctioned by them to the primary societies, for the purchase of Agricultural implements shall be routed only through this Co-operative. This being a society assisted by the Government substantially, it is necessary in the interest of Government also that it functions properly with good business.

In the circumstances, all the Land Development Banks, District Co-op. Banks and Service Co-operative Banks in the State are directed to patronise RAIDCO to the fullest extent in preference to private dealers. At any rate not less than 75% of the total requirement of Agro Machineries under the scheme financed by

the Banks/Societies should be purchased through RAIDCO." A

Mr. Venugopal, learned Senior counsel appearing for the appellant, has submitted that the circular dated 19.5.95 issued by the Secretary to the Government of Kerala Directing that in eight districts mentioned in the circular only RAIDCO and KAICO would arrange supply of pumpsets and in other parts of the State of Kerala the said RAIDCO and KAICO along with private dealers would arrange the distribution of such pumpsets under Comprehensive Coconut Development Programme and other similar schemes, offends Articles 14 and 19(1)(g) of the Constitution. B

Mr. Venugopal has contended that private dealers in the State of Kerala have a fundamental right under Article 19(1)(g) of the Constitution to carry on the business of sale of pumpsets and dealership in the pumpsets without being subjected to any unreasonable restriction in such trading activities. The aforesaid circular imposes embargo on the farmers of eight districts covered by financial schemes introduced by the Government to purchase such pumpsets from any dealer of their choice. They have been compelled to select pumpsets to be offered by RAIDCO and KAICO only even if better terms and conditions of sale and after sales service are offered by private dealers. C D

Mr. Venugopal has submitted that it does not require any imagination to accept that majority of the farmers will take the financial assistance under the schemes introduced by the Government for purchase of pump sets. If such majority of consumers of pumpsets are compelled to purchase from the said two organisations, namely, RAIDCO and KAICO, the private dealers' right guaranteed under Article 19(1)(g) to carry on trading activities without being subjected to unreasonable restriction, is bound to suffer. E F

Mr. Venugopal has further submitted that fundamental right guaranteed under Article 19(1)(g) may not be an absolute right and such right may be subjected to reasonable restriction but such reasonable restriction may be imposed by statutory law and regulation on cogent grounds justifying the reasonable restriction imposed with reference to the object for which reasonable restriction is imposed. In this connection. Mr. Venugopal has relied on a decision of this Court in *Kharak Singh v. State of U.P.* AIR 1963 SC 1295. A constitution Bench of this Court considered the validity of Regulation 236 clause (b) of U.P. Police Regulations. It has been held H

A in the said decision that if the petitioner who has challenged the constitutional validity of the Regulation is able to establish that the impugned Regulation constitutes an infringement of any of the freedom guaranteed to him by the Constitution, then the only manner in which this violation of the fundamental right can be defended is by justifying the impugned action taken by the police under the said Regulation by reference to a valid law, B i.e. *be it a statute, a statutory law or a statutory regulation* (emphasis supplied)

The regulation contained in Chapter XX of the U.P. Police Regulations under which Regulation 237 is placed, have no such statutory basis C but are merely executive or departmental instructions framed for the guidance of the police officers. They are, therefore, not 'a law' which the State is entitled to make under relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several clauses under Article 19(1) nor can the same be "a procedure established D by law," within Article 21 of the Constitution.

Mr. Venugopal has submitted that as the said circular of the Government clearly impinges upon the right to trading activities of dealers in pumpsets etc. and such restriction against free and uncontrolled trading activities guaranteed under Article 19 of the Constitution is sought to be E imposed, not through any statute or statutory rules and regulations or by any procedure established by law, but only on the basis of executive direction of the State Government, the said unreasonable restriction sought to be introduced by the said impugned circular must be held violative of Article 19(1)(g) of the Constitution.

F Mr. Venugopal has contended that it had not been demonstrated that as a matter of fact that private dealers in the said eight districts were not supplying genuine pump sets etc. or they were charging price for such implements at a rate higher than that offered by RAIDCO or KAICO or G that after sales service of the private dealers is unsatisfactory thereby causing hardship to the farmers purchasing pump sets etc. from the private dealers. Accordingly, there can not be any reasonable ground to give a favourable treatment to a particular dealer or dealers and by giving unjustified favourable treatment to such dealers, an unfortunate situation has been created by which right to free trading activities of the dealers in pump H sets etc. is seriously infringed.

Mr. Venugopal has also submitted that a vast majority of the purchasers of such pump sets etc. are also being deprived of their unfettered right to choose the dealers of their choice of such pump sets because of the embargo on such farmers who have been given financial assistance under the schemes of the State Government that they are to take delivery of pump sets only from two dealers namely RAIDCO and KAICO. While the farmers covered under financial assistance in areas outside the said eight districts are free to choose their dealers and to strike better bargain in an open competitive market, the farmers in eight districts have been deprived of such free choice and consequential opportunity of striking better bargain on account of open competition. Mr. Venugopal has submitted that when the Government has taken a decision to give largesses to the farmers by introducing benevolent schemes of financial assistance, the Government cannot discriminate between farmers of one area and farmers of another area in controlling the recipients of such largesses. In this connection reference to the decision of this Court in *Ramana Dayaram Shetty v. The International Airport Authority of India*, AIR (1979) SC 1628 has been made. In the said decision this court has held :

"It must, therefore, be taken to be the law that where the Government in dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power of discretion of the Government in the matter of grant of largess including award of job contracts, quota, licences etc. must be confined and structured by rational, relevant and non-discriminatory standards or norm and if the Government departs from such standard or norm in any particular case of cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory".

Mr. Venugopal has submitted that there is no demonstrable foundation on fact that there was impelling reasons to treat the farmers of eight districts, who got financial assistance under the schemes of the State

- A Government differently, thereby compelling them to take delivery of pump sets from only two dealers. Hence, such action must be held to be arbitrary, capricious and discriminatory without being informed by reason. The circular is therefore liable to be struck down also on the score of offending Article 14 of the Constitution. Mr. Venugopal has submitted that the impugned circular has resulted in creating a discriminatory monopoly in favour of only two dealers in the eight districts of the State in the dealership business because by and large most of the farmers purchasing pump sets etc. are covered by schemes introduced by the Government. Mr. Venugopal, therefore, has submitted that the hostile discrimination meted out to the farmers of eight districts and also dealers in pump sets etc. without any just reason, must be held violative of Articles 14 and 19 of the Constitution and should be struck down by this Court by allowing this appeal.

- D Mr. K.N Bhat, learned Additional Solicitor General appearing for the State of Kerala, has however disputed the contentions of Mr. Venugopal. He has submitted that no action has been taken by the Government to regulate or control the business of dealership of pump sets etc. in the State of Kerala. Hence question of violating the fundamental right guaranteed under Article 19(1)(g) of the Constitution does not arise. Mr. Bhat has submitted that unless any action has a direct impact on the right to carry on any trade or business, such action cannot be held to be violative of fundamental right guaranteed under Article 19(1)(g). If the action of the executive only indirectly creates some prejudice in carrying on any trade or business such action *per se* does not offend Article 19(1)(g). In support of such contention, Mr. Bhat has referred to the decision of this Court in *Viklad Coal Merchant Patiala v. Union of India*, [1984] 1 SCR 657 (682). In the said case, the Coal Merchants challenged the vires of Section 27A of the Indian Railways Act and the circular issued thereunder relating to Preferential Traffic Schedule providing for priorities for movement of different goods. A circular was issued by the Ministry of Railway in connection with movement of some goods including coal. The petitioners who were coal merchants, alleged that sum total of various restrictions imposed by giving appreciation GX against all way side stations in the coal belt and restricting loading of coal in wagons from the stations categorised as GX and introducing Preferential Traffic Schedule, in their cumulative effective resulted in total ban on transport of coal by Railways at their instance and such actions were violative of Articles 14 and 19(1)(g) of the

Constitution. Repelling such contention, it has been held by this Court that whenever the court is called upon to examine the complaint that restrictions imposed on the freedom to carry on trade are unreasonable, it is necessary to find out what is the trade and business of the complainant-petitioner and to what extent the restriction, if any, is imposed upon the freedom to carry on trade business and then to determine whether restriction is reasonable or not. *It is the direct impact of the restriction on the freedom to carry on trade that has to be kept in view and not the ancillary or incidental effects of the governmental action on the freedom to carry on trade.*

(Emphasis supplied)

It has also been indicated that *prima facie* it appears that petitioners business or trade as coal merchants is in no way interfered with by the Railways by not being able to provide transport facilities. Railway is not the only means of transport. There are other means of transport by which coal can be transported by the petitioners to their respective place of business. *Even assuming that the direct impact of the policy laid down by the Railway administration pursuant to the orders of the Central Government under Section 27A results in denial of the allotment of wagon to the petitioners, the restriction will none-the-less be reasonable because petitioners are not wholly denied the allotment of wagons.* (Emphasis Supplied)

Mr. Bhat has contended that trading activities in pump sets etc. have not been controlled or regulated. Even within the area comprising the said eight districts, any dealer is free to carry on its trading activities in respect of pump sets. By the impugned circular, the State Government has only ensured that farmers in the said eight districts who have been given financial assistance under a scheme of the Government, should take delivery of pump sets from RAIDCO and KAICO. Any other farmer or purchaser is quite free to choose his dealer. Such limited restriction is also not there in respect of farmers, even though covered by the financial assistance under the schemes of the Government, who are outside the area comprising the said eight districts. It is, therefore quite apparent that there is no total ban of purchase of pump sets from private dealers in the State of Kerala.

Mr. Bhat has submitted that it is quite open to the Government to select appropriate dealers in pump sets for supply of pump sets to farmers or agriculturists to whom financial assistance has been given under schemes

A of the State Government. After all, that State Government will be within  
its right to ensure supply of genuine pump sets at a desired price and  
proper after sales service through its approved dealers so that the schemes  
are effectively implemented by appropriate utilisation of the pump sets  
over a reasonable period and, on such utilisation, the concerned farmer  
B may pay back the financial assistances received by him.

Mr. Bhat has further submitted that the impugned circular clearly  
indicates that for "distribution of pump sets under the schemes of the  
Government and for streamlining the implementation of the schemes  
specifying specific roles and responsibilities of different agencies involved,  
C the directions contained in the circular have been given.

Mr. Bhat has also submitted that there is no compulsion to any of  
the farmers to get covered under the scheme. If any farmer within the said  
eight districts, feels that it will be more advantageous for him to take  
D delivery of pump sets from a dealer of his choice, instead from the said  
two specified dealers, he may not avail the financial assistance under the  
scheme. It is only when assistance is to be taken the choice of selecting  
dealer has not been left to his discretion.

Mr. Bhat has contended that it is immaterial if some of the dealers  
E are prepared to supply pump sets on more favourable terms. In the instant  
case, the Government has felt that pump sets should be supplied to farmers  
covered under the financial assistance scheme through the dealers of its  
choice in eight districts. The choice of dealers has also not been made on  
the *ipsi dixit* of the governmental authorities. The circular issued by the  
F Secretary of Co-operative Societies has indicated that RAIDCO is the only  
state sponsored Co-operative Society having dealership of almost all  
varieties of pump sets. It has been ensured that both RAIDCO and KAICO  
will sell pump sets at a price lower than that fixed by State Level Technical  
Committee and will give proper after sales service. In the impugned  
G circular, it has been indicated that necessary advance amount will be  
provided to RAIDCO AND KAICO for taking advance action for im-  
plementing the scheme. Mr. Bhat has submitted that it is not feasible to  
give advance to large number of dealers. Nor is it a practicable proposition  
to keep proper watch and supervision in the functioning of large number  
of dealers. Therefore selection of the said two dealers is neither un-  
H reasonable nor capricious.

Mr. Bhat has also submitted that for the entire state of Kerala, the said two dealers could have been selected by the State Government as approved dealers. But as Co-operative movement is less organised in areas outside the said eight districts, the State Government did not feel any necessity to ensure purchase of pump sets in such areas only from the said two dealers. Mr. Bhat has, therefore, submitted that any interference by this Court against the impugned judgment is not called for and the appeal should be dismissed.

Mr. Dipankar Gupta, learned senior Counsel, appearing for the other respondents, has also supported the contentions of Mr. Bhat. Mr. Gupta has submitted that RAIDCO is a state owned co-operative society having large number of branches in the State of Kerala. It has also the dealership of almost all brands of pump sets. It also manufactures pump sets in collaboration with Kirlosker. RAIDCO has elaborate arrangement for after sales service. KAICO is also an established Co-operative Society having dealership in pump sets. The Government, providing finance to farmers and agriculturists, certainly has anxiety to ensure that such farmers and agriculturists should get supply of pump sets from such dealer on which the Government may repose confidence.

If on such consideration, the two dealers have been selected for supplying pump sets in the said eight districts, to the farmers and agriculturists, no exception can be taken by alleging that such course of action infringes Article 14 and 19 of the Constitution.

Mr. Gupta has submitted that dealership business in the State of Kerala or in the region comprising the said eight districts has not been regulated and controlled. It is still open to all the dealers to carry on trading activities in the dealership of pump sets in such areas. Mr. Gupta has further submitted that the executive instruction of the State Government in fixing two dealers in the eight districts has been issued for streamlining and safeguarding the interest of the Government because of large scale malpractices prevalent and found to be indulged in by the private pump set dealers contrary to the interest of the economy of the State.

Referring to the counter affidavit of respondent No. 2 RAIDCO, Mr. Gupta has submitted that it was brought to the notice of the Agricultural Department of the State Government that false invoices had been issued without effecting actual sale of the pump sets with a view to draw loans,

A subsidies and other financial benefit from the Government. There had been newspaper reports about this wide spread manipulations and irregularities in the activities of various private dealers in the matter of sale of pump sets against subsidies and financial assistance from the Government.

B Mr. Gupta has also contended that it has been indicated in the counter affidavit of respondent No. 2 that co-operative movements are stronger in northern regions comprising the said eight districts where pump sets are sold in large numbers. There was, therefore, a felt necessity to fix approved dealers in such area by the Government. Mr. Gupta has further contended that the dealers are not recipients of loans or financial assistance from the Government. The farmers have not raised any dispute that by the impugned Government circular, they have suffered any prejudice whatsoever. The selection of two dealers in northern region of the State is not only within the right and competence of the State Government but such selection is not also otherwise arbitrary, capricious and unreasonable.

C Hence, question of infringement of Articles 14 and 19 of the Constitution does not arise. The appeal should, therefore, be dismissed.

D

After giving our careful consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that the fundamental right for trading activities of the dealers in pump sets in the State of Kerala as guaranteed under Article 19(1)(g) of the Constitution has not been infringed by the impugned circular. Fundamental rights guaranteed under Article 19 of the Constitution are not absolute but the same are subject to reasonable restrictions to be imposed against enjoyment of such rights. Such reasonable restriction seeks to strike a balance between the freedom guaranteed by any of the clauses under Article 19(1) and the social control permitted by the clauses (2) to (6) under Article 19.

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The reasonableness of restriction is to be determined in an objective manner and from the standpoint of the interests or general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders *Hanif v. State of Bihar*, AIR (1958) SC 73. In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the

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underlying purposes of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict AIR (1981) SC 673 *Laxmi v. State of U.P.*, AIR (1986) SC 1323 *Treveli v. State of Gujarat* and *Harekchand v. Union of India*, AIR (1970) SC 1453. A

Under Clause (1)(g) of Article 19, every citizen has a freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interest of public welfare and the other grounds mentioned in clause (6) of Article 19. But it may be emphasised that the Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest (*Saghir v. State of U.P.*, [1955] 1 SCR 707). B C

It may be indicated that where a right is conferred on a particular individual or group of individuals to the exclusion of others, the reasonableness of restrictions has to be determined with reference to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of specified individual has been held reasonable by this Court where vital interests of the community are concerned or when the business affects the economy of the country (*P.T.C.S. v. R.T.A.*, AIR (1960) SC 801; *Meenkashi Mills v. Union of India*, AIR (1974) SC 366 and *Lala Harichand Sarda v. Mizo District Council and Anr.*, [1967] 1 SCR 1012). D E

It is true that even for imposing reasonable restriction on the fundamental right guaranteed under Article 19(1), the restriction is to be imposed under a valid law, be it a statutory law or statutory regulation, and not by any executive instruction of the Government. [*Kharak Singh's case* (supra)]. F

But in the instant case, no fundamental right guaranteed under Article 19(1)(g) of the Constitution has been infringed. Hence, question of invalidity on account of imposition of reasonable restriction of the exercise of such right by executive order instead by a statute does not arise in the facts of the case. G

It may be indicated that although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the Government or any other individual for doing business with him. Any government or an individual has got a right to enter into contract with a H

A particular person or to determine person or persons with whom he or it will deal.

In the instant case, the farmer or agriculturist who has chosen to receive subsidies or financial assistance under the schemes of the Government has an obligation to accept the terms and conditions for such assistance. One of such conditions is that in the northern region of the State, pump set for which financial assistance has been given is to be purchased from the approved dealers of the Government. The private dealer cannot insist that the Government is also to enter into contract with any such private dealer to make it an approved dealer. Since the Government has every right to select dealers of its choice for delivery of pump sets at the price agreed upon and to render after sales service to the purchasers of pump sets covered by its financial assistance scheme. It is not open to challenge such selection of dealers on the score that such selection amounts to unreasonable restriction imposed on the dealers of the State to carry on trading activities in pump sets. It is nobody's case that all the farmers and agriculturists have been compulsorily covered under such schemes. On the contrary, it is open to any farmer or agriculturist not to volunteer for taking such assistance.

It has already been indicated that in *Vikalad's* case (supra), it has been held by this Court that infringement of fundamental right under Article 19(1)(g) must have a direct impact on the restriction on the freedom to carry on trade and not ancillary or incidental effects on such freedom to trade arising out of any governmental action. It has also been held in that case that unless the trader or merchant is not wholly denied to carry on his trade, the restriction imposed in denying the allotment of wagon in favour of such trader or merchant to transport coal for carrying out trading activities does not offend Article 19(1)(g) of the Constitution. No restriction has been imposed on the trading activity of dealers in pump sets in the State of Kerala including northern region comprising eight districts. Even in such area, a dealer is free to carry on his business. Such dealer, even in the absence of the said circular, cannot claim as a matter of fundamental right guaranteed under Article 19(1)(g) that a farmer or agriculturist must enter into a business deal with such trader in the matter of purchase of pump sets. Similarly, such trader also cannot claim that the Government should also accept him as an approved dealer of the Government. The trading activity in dealership of pump sets has not been stopped

or even controlled or regulated generally. The dealer can deal with purchasers of pump sets without any control imposed on it to carry on such business. The obligation to purchase from approved dealer has been fastened only to such framer or agriculturist who has volunteered to accept financial assistance under the scheme on various terms and conditions.

In our view, the impugned circular does not offend Article 14 of the Constitution. The direction contained in said circular cannot be held to be vitiated being arbitrary, capricious or unreasonable. The impugned circular specifically mentions that in order to implement the schemes introduced by the Government for streamlining specific roles and responsibilities of different agencies involved, the directions contained in the circular have been given. It has been placed on record that it was brought to the notice of the agricultural department of the State Government that false invoices had been issued by dealers without effecting actual sales with a view to draw loans, subsidies and other financial benefits from the Government. Reports were published in newspapers about wide spread manipulation and irregularities in the activities of various dealers in the pumpsets. It is also not in dispute that RAIDCO is only government controlled co-operative society in the State of which eighty per cent capital was subscribed by the Government. The other approved dealer KAICO is also a Co-operative society involved in dealership of pump sets. If the State Government on consideration of such facts and circumstances and to ensure genuine sale of pump sets at proper price with effective after sales service has felt that farmers covered by financial assistance scheme should be fastened with an obligation to purchase pump sets only from approved dealers in a region where according to State Government there is a felt need of purchase from such approved dealers, it cannot be held that such action of the State Government lies in its *ipsi dixit*, without being informed by any reason.

To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the

A Constitution, the policy decision can not be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, court should avoid "embarking on uncharted ocean of public policy."

B The contention that the impugned circular suffers from hostile discrimination meted out to the farmers in northern region of the State covered by the financial assistance under the Government schemes, by fastening such assistance with an obligation to purchase pump sets only from two approved dealers, cannot be accepted in the facts of the case.

C The reasons for fastening the farmers of northern region with the obligation to purchase pump sets from the said two dealers have been indicated by Mr. Bhat and Mr. Gupta and, in our view, it cannot be held that such reasoning suffers from lack of objectivity. The law is well settled that even in the matter of grant of largesse, award of job contracts etc. the Government is permitted to depart from the general norms set down by it, in favour of particular group of persons by subjecting such persons with

D different standard or norm, if such departure is not arbitrary but based on some valid principle which in itself is not irrational, unreasonable or discriminatory [*Dayaram Sherry's case (supra)*].

E It may be stated here that Mr. Venugopal's contention that the impugned circular has resulted in black listing of the private dealers of pump sets without even giving them an opportunity of being heard cannot be accepted. In our view, it cannot be reasonably contended that if the Government selects a dealer as its approved dealer, the same may mean that all the other dealers have been black listed. The question of black listing does not arise because it is nobody's case that all other dealers were

F previously approved dealers of the Government but by the impugned circular, they have been suddenly stripped of such status without affording them an opportunity of being heard.

G In the aforesaid facts, we do not find any reason to interfere with the impugned judgment of the High Court. The appeal therefore fails and is dismissed without any order as to cost.