(2003) 01 CAL CK 0037

In the Calcutta High Court

Case No : Case No. T/14 of 2003

Aditya Translink Pvt. Ltd. and Another APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 3

Citation : AIR 2003 Cal 281

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : H.K. Mitter, Ajoy K. Chatterjee, N. Patharia, S. Sen and A.K. Gandhi, for the Appellant;Shibdas Banerjee and Jayanta Kr. Banerjee, for the Respondent

Judgement

Amitava Lala, J.—In this writ petition, the petitioners challenged two notices in the form of letters being dated 13th December, 2002 and 11th January, 2003 respectively issued by the Jute Commissioner, under Government of India, Ministry of Textiles, 20-B, Abdul Hamid Street, Kolkata-700069. The subject matter of issuance of such notices are in respect of compulsory purchase of raw jute by manufacturers of jute goods from any person or agency as may be specified by Jute Commissioner in terms of Gazette Notification No. S.O. 1160(E) dated 1-11-2002 and on the subject of direct purchase of 2,50,000 bales of 665 G.M.B.T. Twill bags by Government of Haryana against tender opened on 22-12-2002.

2. Upon scanning the first letter I find that the various departments of the food and supplies of consumer affairs of the different States including State of Haryana were informed to incorporate a suitable clause in the tender enquiry for purchase of equal quantity of raw jute from Jute Commissioner of India, notified and the price so fixed has been intimated and it becomes compulsory u/s 5(1) of the Jute and Jute Textiles Control Order, 2002.

3. From the Gazette Notification dated 19th April. 2000 Central Government

made a Jute and Jute Textiles Control Order, 2000 in exercise of power conferred by Section 3 of the Essential Commodities Act, 1955. Order No. 3, Order No. 4 and Order No. 5 (before and after amendment) are essential for discussion. Order No. 3 gives the power to the Jute Commissioner to fix the price. Order No. 4 gives power to him to control production of the Jute textiles. Order No. 5 gives the power to regulate stocks of raw jute. Order No. 5 was duly amended by a further notification dated 1st November, 2002 by incorporating a clause, amongst others, to specify the maximum or minimum quantity of raw jute or any specified variety of jute which a manufacturer shall purchase from any specified person or agency or otherwise, during any specified period.

4. Against this background, let me take note of the factual aspect of the matter. The petitioners are participants of a tender issued by Directors, supplies and disposals of State of Haryana dated 5th December, 2002 calling the tenderers to deliver the jute bales for a total quantity of 2,12,000 in numbers within December, 2002, January, 2003 and February, 2003 respectively. A technical committee meeting was also called on 11th December, 2002. Schedule "A", although not annexed to the petition copy of which has been produced by the respondents, I find that quantity of supply in the month of December 2002 is 32,000 bales, in the month of January and February, 2003, 90,000 bales each. From the terms and conditions I find that the tender shall be given on the basis of the rates fixed by the Jute Corporation of India. A discount has been given by them on this account on 12th December, 2002. Government of Haryana accepted the tender on 15th December, 2002, Schedule of supply was made upto January, 2003 for the first lot of the bales; In between 1st February to 28th February, 2003 for the second lot of the bales; upto 1st March to 15th March, 2003 for the rest, According to the petitioners, 890 tonnes of Jute bales have already been supplied by them which the respondents did not admit. Be that as it may. I find from the Schedule "A" of the letter of acceptance that there is a penal clause for non-delivery of the goods in time. It says that in case supply is delayed then Government can take material by imposing penalty of 1% per week or part thereof in case the material is acceptable to Indenting Department and the lowest rates amongst two months would be applicable i.e. the month of scheduled supply and the month of actual supply.

5. Against this background a further notice was issued by the Jute Commissioner on 1st January, 2003 directing the petitioners amongst others under Clause 5(1) of the Jute and Jute Textiles Control Order, 2000 to purchase 70% raw jute from Jute Corporation of India i.e. 0.70 tonne of raw jute for 1 tonne of B. Twill due delivery by January, 2003 against direct orders placed by the Government of Haryana, as per the terms and conditions of the Jute Corporation of India. The petitioner company was further directed to give an undertaking to purchase required quantity of raw jute from Jute Corporation of India. As a result Whereof both the notices were challenged by the petitioners.

6. Mr. Hirak Kumar Mitter, Learned Senior Counsel, appearing in support of the

petitioners, contended that such notice cannot have any retrospective effect in respect of the concluded contract. Moreover, if the control order, unamended or amended, is properly read it will be understood that no effect of such control order has yet been given by the Jute Commissioner himself. Order 3 prescribes minimum price but, as yet no minimum price has been fixed but will be made. Maximum or minimum price or both will have to be fixed by the Jute Commissioner by way of notification in the Official Gazette which has not yet been done. That apart as per amended Order 5 no quantity has been specified. Therefore, mere introduction of control order will not serve the purpose but there should be an Implementation of the order by way of notification in respect of the quantity and price.

7. Mr. Sibdas Banerjee, Learned Senior Counsel, appearing for the contesting respondents Joined issue therein by saying that the Control Order itself has its statutory force, therefore, the necessary notices given by the Jute Commissioners are the appropriate executive action within the force of the control order. He has drawn my attention to a letter of the Department dated 25th November, 2002 issued by the Deputy Jute Commissioner to apprise the Court that the Jute Commissioner has been empowered to direct manufacturers of Jute goods to purchase specified quantity and quality of raw Jute from any person or agency. Mr. Banerjee relied upon a judgment reported in AIR 1981 1127 (SC) to establish that a Rule making authority has his competence to make the Rule, therefore, the same is reasonable.

8. In reply, Mr. Mitter said that the letter is an indication about the power of Jute Commissioner but not the implementation or exercise, of power of such authority.

9. I have no doubt or hesitation about the proposition of law. But I am hesitant in accepting the submission of Mr. Banerjee at this stage because of various reasons, The principle of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, says that if a Governmental action even in the matters of entering or not entering into the contracts fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and Rule against arbitrariness and discrimination, Rules of fair play and natural justice are part of the Rule of law applicable in situation or action by State instrumentality in dealing with the citizens.

10. Therefore, if I scan the facts of this case on the test of reasonableness I shall be able to find out that the direction to follow the Control Order, 2000 and purchase of 70% raw jute from them were issued by Jute Commissioner only on 1st January, 2003, much after, the acceptance of tender by the State of Haryana on 15th December, 2002. Therefore, such letter cannot be invalidate the valid agreement made in between the private parties and State of Haryana which is also a Governmental authority prior thereto. Lot of arguments were made by saying that in effect the notice was given on 13th December, 2002 but the same was issued to the different States including the State of Haryana. Therefore, State of Haryana could have been estopped from receiving such goods. But it

appears from the notice of the Jute Commissioner, that they thought it is not an easy task to condemn a State from entering into contract with a private party and proceeded other way round to control the petitioners by the subsequent notice but by that time contract was concluded. Moreover there was no condemnable offence unless a suitable clause is inserted in the tender document. Before that such State is not bound by the same. However, it is not a good stand on the part of the Jute Commissioner that since a State is not yet acceded to their proposal indirectly a contract in between themselves and private parties will be given frustration and push them to face penal consequences. Moreover, the import of the letter is not a direction but a request to incorporate a suitable clause in the tender enquiry for the future purchase by such State bodies, therefore, how letter dated 1st January, 2003 will have a mandatory force and that too in respect of a contract already executed by or between the parties is best known to them. The Learned counsel appearing for the Jute Commissioner placed a photocopy of the letter dated 13th December, 2002 by showing its internal page 3 is not annexed to the writ petition which says that direction u/s 5(1) of the Control Order 2002 was also given to all the Jute Mills. If it is sufficient what is the purpose of issuance of the notice on 1st January, 2003 upon the petitioners is not known to this Court. Therefore the earlier notice has to be declared insufficient notice. From the construction of two letters it appears to me that there might have been a notice to the Jute Mills in general but in effect the import of the letter is to fix a future policy for supply to the State authorities through the Jute Corporation and when found there is a specific case of a supply is available, the notice has been issued on a subsequent date i.e. 1st January, 2003 upon the petitioners. Therefore, such notice has to have its prospective effect.

11. Mr. Banerjee has contended that the Control Order is made for the purpose of protection of the farmers who are cultivating the jutes. Therefore, the rates which are fixed or to be fixed and regulation of the supply through the office of the Jute Commissioner is made only to protect their interest.

12. According to me, equitable Justice is not one way traffic. It is based on various factors. The Control Order is a remedial statute but not the charging statute. But the action on the part of the Jute Commissioner appears to me more chargeable less remedial. The main purpose of forming the Control Order is made not only to give protection to the farmers but also to the industry as a whole. There is an indication to that extent i.e. relaxation of linkage from 100% to 70%. The process will operate gradually by taking into account all aspects of the matter but not abruptly in effect, in making a force sale ignoring Articles 14 and 19 of the Constitution of India.

13. Therefore, I am of the view that at this stage the Jute Commissioner should not interfere with the supply made or to be made by the petitioners without further satisfaction of the test of reasonableness by the Court on the basis of affidavit to be filed by them. Therefore the respondents are directed to file their

Affidavit-in-opposition within a period of two weeks from this date i.e. by 4th February, 2003. Affidavit-in-reply if any, by 13th February, 2003. Matter is treated as ''specially fixed matter'' on 14th February, 2003. However the balance of convenience speaks that there will be an interim'' order in terms of prayer ''e'' and ''f from giving effect or further effect of the letters dated 13th December, 2002, 1st January and 7th January, 2003 till 18th February, 2003.

14. Prayer for stay is made, considered and refused.

15. Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.

16. All parties are to act on a signed copy minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the Officer of the Court in respect as above. Order accordingly.

