

(2003) 03 KAR CK 0012
In the Karnataka High Court
Case No : W.A. No's. 6344-6360 of 1999

A.J.C. Estates and Others

APPELLANT

Vs

The Coffee Board

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Coffee Act, 1942 — Section 32
Constitution of India, 1950 — Article 12, 14

Citation : (2003) 3 KCCR 1769 : (2004) 138 STC 557

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : B.V. Acharya for B.L. Sanjeev, for the Appellant; M.V. Seshachala, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The appellants are the coffee growers from the State of Tamil Nadu and they filed the writ petitions Nos. 2153 to 2169 of 1995 calling in question the power of the Coffee Board to deduct purchase tax at the rate over and above what is prescribed by the Government of Tamil Nadu while fixing the price of the coffee payable to the growers of coffee in the State of Tamil Nadu. The appellants have prayed for the following reliefs in the writ petitions :

- (1) Declare that the Board can only deduct purchase tax at the rate specified by respective State Governments ;
- (2) Declare that the executive action of the Coffee Board in deducting purchase tax in excess of the amount levied by the Tamil Nadu General Sales Tax Act as being ultra vires the Tamil Nadu General Sales Tax Act, without authority of law, arbitrary, unreasonable and contrary to the provisions of the Constitution of India ;
- (3) Direct the Board to refund such amounts illegally withheld by them with interest thereon.

A learned single Judge of this Court, having opined that the issue brought before the court is a contractual matter between the coffee growers and the Coffee Board and that there are no statutory provisions governing fixation of prices of coffee payable to the growers of the coffee, has dismissed the writ petitions by order dated June 7, 1999. Hence, these writ appeals by the growers of coffee in the State of Tamil Nadu.

2. The facts of the case in brief are as follows :

The appellants are conglomerate of the estates known under the generic name of Silver Cloud Tea Estate. The appellants grow both coffee and tea in their estates situated at Gudalur in the Nilgiris district. The appellants have been selling the coffee grown in their estates to the Coffee Board as per the provisions of the Coffee Act, 1942 (for short, "the Act"). The appellants had been pooling coffee with the Coffee Board under the name Silver Cloud Estates from 1974/75 to June 30, 1980 and they had also been pooling coffee under the name Chikmoyar Estates Syndicate from 1974 to 1980/81. Both these above mentioned estates were partnership firms. Further, both these estates are situated in the State of Tamil Nadu. From June 3, 1981 as per a deed of dissolution, the partners have been pooling coffee in their individual names. The Coffee Board, the respondent herein, has been deducting purchase tax at the rate over and above what is prescribed by the State of Tamil Nadu under the provisions of Tamil Nadu General Sales Tax Act. According to appellants, under the Tamil Nadu Act, purchase tax is levied at the rate of 4 per cent on coffee whereas purchase tax leviable under the Karnataka General Sales Tax is at the rate of 11 per cent and it is 8 per cent in the State of Kerala. Therefore, according to the appellants the respondent-Coffee Board's action in deducting purchase tax at a uniform rate regardless of the different rates prevailing in different States is unconstitutional, arbitrary and violative of article 14 of the Constitution. The appellants have contended that the Coffee Board being a statutory authority under the Act is a "State" for the purpose of article 12 of the Constitution and therefore, its action should be in conformity with the postulates of article 14 of the Constitution.

3. The respondent-Board, opposing the writ petition, has filed a detailed statement of objections. In the statement of objections, it is contended by the Coffee Board that irrespective of quantum of coffee grown in different States, the rate of price ultimately paid to the growers throughout India is one and the same. The Board has contended that having taken into consideration all the aspects of the matter, a policy decision to pay uniform price to the growers has been taken by the Board after deducting the overheads. It is also contended by the Board in its statement of objection that the allegation of the appellant that the Board is deducting purchase tax at a rate over and above the rate prevailing in the State of Tamil Nadu is totally misconceived allegation and that the Board is not an authority to deduct tax at any rate under the provisions of the Tamil Nadu General Sales Tax Act. It is also contended by the Board that purchase tax is leviable on the Board and not on the growers of the coffee and the liability of the

Board to pay the purchase tax is met by the Board from and out of the "pool fund" created u/s 32 of the Act.

4. We have heard Sri. B.V. Acharya, learned Senior Counsel for the appellants and Sri M.V. Seshachala, learned Senior Standing Counsel for the Coffee Board. The learned counsel for the parties have reiterated the same contentions raised by their clients in their pleadings.

5. Having heard the learned counsel for the parties, the only question that arises for decision is whether the long-standing method adopted by the Board in fixing the price the coffee payable to the growers of coffee at a uniform rate is vitiated on any permissible ground, legal or factual and whether such method could be condemned as irrational or arbitrary or violative of the postulates of article 14 of the Constitution.

6. The enactment of the Coffee Act in 1942 and creation of the Board, as a statutory authority for purchase and sale of coffee in domestic markets as well as international markets, has had a long history. After the out break of second world war, the Indian Coffee that enjoyed prime export markets before in European and other advanced countries lost them and the Industry was facing crisis. With the object of rehabilitating the Industry and placing it on a sound footing, the then viceroy and Governor General of India, accepting the recommendations of a Committee constituted in that regard, promulgated the Coffee Market Expansion Ordinance (Ordinance No. 13 of 1940) on December 14, 1940 inter alia, establishing the Board from December 21, 1940. The said Ordinance continued by another Ordinance and ultimately was replaced by a permanent enactment of the then British Indian Legislature titled as the Coffee Market Expansion Act (Act 7 of 1942), but by later amendments made, is now briefly titled as "The Coffee Act".

7. The Board is constituted u/s 4 of the Coffee Act. The Board is charged with the duty of administering the "Coffee Act" and to exercise the powers and functions enjoined on it under that Act.

8. The scheme of the Act is to provide for a single channel for sale of coffee grown in the registered estates in India. Hence, the Act directs the entire coffee produced except the quantity allotted for internal sale quota, if any, to be sold to the Coffee Board through the modality of compulsory delivery and imposes a corresponding obligation on the Coffee Board to compulsorily purchase the coffee delivered to the pool. Section 25 of the Coffee Act provides for delivery of coffee to the Board by registered estate owners. Section 25 of the Act reads as follows :

"(1) All Coffee produced by a registered estate in excess of the amount specified in the internal sale quota allotted to the estate (or when no internal sale quotas have been allotted to estates, all coffee produced by the estate), shall be delivered to the Board for inclusion in the surplus pool by the owner of the estate or by the curing establishment receiving the coffee from the estate :

Provided that where no internal sale quotas have been allotted to estates, the Chairman may allow the owner of any estate to retain with himself for purposes of consumption by his family and for purposes of seed, such quantity of coffee as the Chairman may think reasonable :

Provided further that where the Central Government is satisfied that it is not practicable for any class of owners producing coffee in any specified area to comply with the provisions of this sub-section on account of the small quantity of coffee produced by them or on account of their estates being situated in a remote locality, the Central Government may, by notification in the official Gazette exempt such class of owners from the provisions of this sub-section.

(2) Delivery shall be made to the Board in such places (at such times) and in such manner as the Board may direct, and such directions may provide for partial delivery to the surplus pool at any time whether or not at that time the internal sale quota has been exceeded : and the coffee delivered shall be such as to represent fairly in kind and quality the produce of the estate. The Board may reject any consignment offered for delivery which does not satisfy this requirement, but shall not reject any consignment merely for a defect in curing.

(3) Coffee delivered for inclusion in the surplus pool shall upon delivery to the Board remain under the control of the Board which shall be responsible for storage, curing where necessary, and marketing of the coffee.

(4) The Board shall (.....) (from time to time) prepare a differential scale for the valuation of coffee, and shall in accordance with that scale classify the coffee in each consignment delivered for inclusion in the surplus pool according to its kind and quality, and shall make an assessment of its value based on its quantity, kind and quality.

(5) The Board may, with the consent of a registered owner (.....) treat as having been delivered for inclusion in the surplus pool any coffee from such estate which the registered owner may agree to have so treated.

(6) When coffee has been delivered or is treated as having been delivered for inclusion in the surplus pool, the registered owner whose coffee has been so delivered or is treated as having been so delivered shall retain no rights in respect of such coffee except his right to receive the payments referred to in section 34.

9. The Board is vested with the powers of selling the coffee included in the surplus pool as per section 26 of the Act which reads as under :

"1. The Board shall take all practical measures to market the coffee included in the surplus pool, and all sales thereof shall be conducted by or through the Board.

2. The Board may purchase for inclusion in the surplus pool coffee not delivered for inclusion in it."

The amount realised by the Board will be deposited in a pool fund account in

accordance with section 32 of the Act. Section 32 provides-

"(1) To the pool fund shall be credited all sums realised by sales by the Board of coffee from the surplus pool.

(2) Subject to the provisions of sub-section (4) of section 13, the pool fund shall be applied only to-

a) the making to registered owners of estates of payments proportionate to the value of the coffee delivered by them for inclusion in the surplus pool ;

b) the costs of storing curing and marketing coffee deposited in and of administering the surplus pool ;

c) the purchase of coffee not delivered for inclusion in the surplus pool :

Provided that where, after the requirements of the clauses of this sub-section have been met, there remains any excess in the pool fund, the Board may, with the previous sanction of the Central Government, transfer the whole or any part of such excess to the credit of the general fund."

10. The Board, on realisation of the coffee sold will pay the price to the growers after deducting the cost of expenses incurred in storing, curing and marketing of Coffee. The purchase tax payable under the Karnataka Sales Tax Act and the Tamil Nadu General Sales Tax Act and that of other States is treated as marketing expenses as per section 32(2)(b) of the Act payable out of the pool fund.

11. The Board does not deduct purchase tax from the growers individually. The Board meets all its liability towards tax from the pool fund. It is trite, once coffee supplied to the Board, the Board becomes the absolute owner of the coffee and the grower is entitled to the price after deducting the cost of storing, curing and marketing coffee including taxes paid. The question of the growers paying purchase tax in accordance with the rate prevailing in the respective States never arises, because, the tax is paid by the Board in respect of the coffee owned by it and not the coffee owned by the growers. It is borne out from the records and the pleadings that it has been the long-standing practice of the Board that after coffee is delivered to the Board by the growers, the Board fixes the prices that shall be paid to the growers uniformly throughout India after deducting overhead charges like cost of storing, curing, marketing and various other expenses incurred in the disposal of the coffee both in the domestic market and international market.

12. The Board is to meet the demands of the coffee first in the domestic market and the excess stock of coffee would be sold in the international market. In the statement of objection, the Board has stated that :

"In a particular year there may be failure of the coffee crop in Tamil Nadu. In such an event, the coffee grown in Karnataka is supplied to the consumers in Tamil Nadu. This would drastically reduce the export of coffee and thus reduce

the sale price which would ultimately affect the growers in Karnataka. Further, in the usual course, most of the coffee grown in Tamil Nadu is sold in the export market. The coffee sold in the export market in the usual course secures a much higher value than coffee sold in the domestic market. However, every year irrespective of the amount of the coffee grown in each State the price which is ultimately paid to the growers is one and the same. There are several other instances where growers in one State have to bear the hardship of the growers in the other State which results in hardship to one grower or the other from one State to another. Taking into consideration all these aspects a uniform price has been fixed by the Board payable to the growers each year after deducting the overheads. This procedure adopted by the Board is in accordance with the provisions of the Act."

13. The method followed by the Board in fixing uniform rate of price to be payable to the growers throughout India is in pursuance of a policy decision taken by the Board. It is well-settled that the policy decision taken by the State or an instrumentality of the State cannot lightly be interfered with by the Court unless the Courts finds that the impugned policy decision violative of any of the postulates of the article 14 of the Constitution and/or violates any of the fundamental rights guaranteed in Part III of the Constitution. Therefore, it becomes necessary for us to consider whether the above method adopted by the Board, in the facts and circumstances set out by it in the pleading could be regarded as the one which attracts the wrath of article 14 of the Constitution. Before considering that question, it needs to be noticed that the Board from its inception has been following the above policy of fixing the uniform price for the coffee payable to the growers throughout India. It is not that the Board, for the first time, innovated a new method to fix the price of the coffee. It also needs to be noted that there is an element of consensuality between the growers and the Coffee Board in the transaction of the compulsory delivery of coffee to the Board as mandated by section 25 of the Act. The Coffee Act requires that the entire coffee produced except the quantity allotted to the internal sale quota, if any, should be sold to the Coffee Board through the modalities of the compulsory delivery and correspondingly the Coffee Act requires Board to purchase the coffee delivered to it by the growers as a matter of legal obligation. The Board, in the scheme of the things envisaged under the Coffee Act, is entitled to fix the final price of the entire coffee purchased by it and stored in the pool after taking into account all overheads which will be incurred by the Board from and out of its pool fund.

14. The contention of Sri. B.V. Acharya, learned Senior Counsel for the appellant, that Board is collecting purchase tax at a rate higher than the rate at which the purchase tax is liable to be paid on purchase of coffee in the State of Tamil Nadu under the provisions of the Tamil Nadu General Sales Tax Act is misconceived. The Board is not an authority to collect taxes or to refund the tax under the provisions of the Tamil Nadu General Sales Tax Act. The price fixed by the Board, of course, would include the purchase tax paid by the Board while acquiring the

ownership of the coffee, the same being one of the overheads. It is pointedly stated in the statement of objection that there has been fluctuation in demand and supply of coffee in the domestic market as well as the international market and therefore, the Board, in order to maintain the stability in supply of coffee to the domestic consumers at a reasonable rate, has been following the consistent policy of fixation of uniform price for the coffee grown in the country. Therefore, it cannot be said that the long standing method evolved and practised by the Board for decades as irrational or arbitrary which could attract the wrath of article 14 postulates.

15. This Bench, while dealing with the question as to whether the Minerals and Metal Trading Corporation Limited (MMTC) could sell the gold to domestic purchaser taking into account the hike in the customs duty subsequent to the import of gold in Writ Appeal No. 5569 of 1999 and other connected matters disposed of on February 21, 2003 has held as under :

"Even otherwise, we do not find any case for the appellants-petitioners on merit. The contention of Sri K.G. Raghavan that the impugned action of the respondent-corporation is in direct contravention of article 265 of the Constitution of India on the assumption that what is sought to be recovered from the petitioners is nothing but customs duty and the power to collect the customs duty is not available to the respondent-corporation, in our considered opinion, is totally misconceived as well as distorted. The Corporation like any other importer imports gold and sells the same to the domestic buyers. It may be true that the gold was imported by the Corporation before January 5, 1999. It may also be true that the Corporation paid the customs duty as per the then existing rates. But, only on that count, the Corporation cannot be denied the right to sell the gold after January 5, 1999 at the rates fixed by it taking into consideration not only the increase of customs duty, but also other consequential increase of sales tax etc., These are the attributes of any business carried on by any trading organisation. As already pointed out supra, when the Corporation established its relationship with the petitioners as suppliers of gold, in pursuance of the agreements entered into between the parties, it was acting as a purely trading organisation with the risk of incurring loss or profit in the trade. It is needless to state that there is always such risk involved in every business of purchase and sale and the authorities concerned will be making profit or incurring loss due to several factors such as exchange fluctuations and other pricing methods. In the present case, the petitioners lifted the gold long time after sale price was increased in the market. Suppose, the sale price was reduced on account of decrease in the customs duty or decrease in other duties, the Corporation would not have a right to insist that though the prevalent market value is lesser than the previous rate, the buyers of the gold should pay the price of the gold at the previous higher rate. This example is given by us only to show that incurring loss or making profit in a trade like this is very much inherent in the trade itself and therefore, simply because the petitioners are required to pay the price of the gold at the higher rate, consequent upon the increase in the customs duty and

consequential increase in the sales tax etc., it is not the right of the petitioners to insist that the Corporation should sell the gold to them at the rate at which the Corporation imported gold".

16. On matters affecting the policy and those requiring financial and technical expertise, the court should show deference to the policy and follow the recommendations of the export body like the Coffee Board which is more qualified to address the issue relating to fixation of price payable to the domestic coffee growers unless the policy is inconsistent with the Constitution and the laws. Unless the fixation of price by the Board is unconstitutional or contrary to the provisions of the Act or arbitrary, irrational or in abuse of power, the Court will not interfere with the matters of the policy decisions taken by the Board to achieve a needed uniformity to sub-serve the interest of the domestic consumers of coffee in the country. In so opining, we may draw support from the judgments of the Supreme Court in *Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others* and *Industrial Development Corporation of Orissa Ltd., , W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others*, and *Smt. Darothi Clare Parreira and others Vs. State of Maharashtra and others*, .

17. The Government policy or a policy evolved by an instrumentality of the State or a statutory authority like the Board is not subject to judicial review unless it is demonstrably arbitrary, capricious, irrational, discriminatory or violative of constitutional or statutory provisions. Greater latitude is given to the State and instrumentalities of the State and statutory bodies to evolve policies and to change the existing policies from time to time taking into account the current requirements and needs of the time and place and under changing circumstances. In *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , the apex Court upheld the right of the State to change its policy under the changed circumstances, though the changed policy deviated from the judicial pronouncement of the Supreme Court. Although the policy decision taken by the Board is not a sacrosanct against the unreasonableness doctrine, the court must take special care, for constitutional reasons, not to pass judgment on such policy, particularly when such policy falls within the domain of finances in the absence of the court finding any apparent constitutional flaw or element of irrationality and arbitrariness. Therefore, we are of the considered opinion that the impugned policy evolved by the Board in fixing uniform rate of price for coffee payable to the coffee growers throughout India is in consonance with the duty cast on the Coffee Board and the objectives to be achieved by it under the Act.

In conclusion, we hold that no ground is made out by the appellants to interfere with the order of the learned single Judge. We do not find any merit in these writ appeals and they are accordingly dismissed with no order as to cost.