

(1993) 07 MAD CK 0030
In the Madras High Court
Case No : Writ Petition No. 319 of 1991

A.K. Subbaraja and Others	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 23-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Criminal Procedure Code, 1973 (CrPC) — Section 100
Customs Act, 1962 — Section 25
Essential Commodities Act, 1955 — Section 2, 3

Citation : AIR 1994 Mad 104

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : R. Krishnamurthi, for A. Jinassenan, for the Appellant; Habibullah Badsha, for Nurjahan Razack, Addl. C.G.S.C., for the Respondent

Judgement

1. The petitioners, who are the manufacturers of kerosene non-pressure wick stoves, which according to them, constitute the cheapest heating

media in a common man's kitchen, have jointly filed the above writ petition for a writ of declaration declaring the order of the respondent made in

GSR 699 (E) dated 12-7-1990 viz., the Non-Pressure Stoves (Quality Control) Order, 1990, (hereinafter referred to as the Order) as

unconstitutional, illegal and void.

2. The impugned order dated 12-7-1990 issued by the Government of India, Ministry of Petroleum and Chemicals, department of Petroleum and

Natural Gas, is reproduced hereunder:

G.S.R. 699(E) -- In exercise of the powers conferred by S. 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government

hereby makes the following order, namely :--

1) This order may be called Non-pressure Stoves (Quality Control) Order, 1990.

2) It extends to the whole of India.

3) It shall come into force on 1st Feb. 1991.

2. Definitions : In this order, unless the context otherwise requires :--

(a) "Non-pressure Stoves" mean burning appliances intended for domestic and commercial use, burning kerosene oil at atmospheric pressure.

(b) "Specified Standard" means the following Indian Standard Specifications :--
Sl.

No. IS No. Title

3. No person shall by himself or by any person on his behalf manufacture or store for sale, sell or distribute any non-pressure stove which does not

conform to specification under this order and that it would be with ISI certification Mark, provided that nothing in this order shall apply in relation

to export of non-pressure stoves which do not conform to the specified standard but conform to any specification required by the foreign buyers

and by the Export (Quality Control and Inspection) Act, 1963 (22 of 1963).

4. The sub-standard or defective stoves or raw material components which do not conform to the aforesaid standard including the thermal

efficiency specified shall be deformed beyond use and disposed of as scrap.

5. Power of entry, search and seizure :

(1) Any Officer not below the rank of an Inspector of Police, authorised in this behalf by the Central Government or a State Government may, with

a view to securing compliance with this order or to satisfying himself that this order or any order made thereunder has been complied with,

(a) enter and search any place, premises or factory which the officer has reason to believe, has been, or is being or is about to be, used for the

contravention of this Order;

(b) seize stocks of non-pressure stoves, raw material or components which the officer has reason to believe has been or is being or is about to be,

used in contravention of this order.

(c) The provisions of S. 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, as far as may be, apply to

searches and seizures under this Order.

(Sd.) S. R. Shah,

Joint Secretary to Government of India

(File No. Q-33012/6/84-Dist./CC).

3. The Government have passed the above order u/S. 3 of the Essential Commodities Act. The said Order had to come into force on the 1st

February, 1991. As per the above Order, no person could by himself or through any person on his behalf manufacture or sell or distribute any

non-pressure stove which does not conform to the specifications under the aforesaid order and that the same should be with the ISI Certification

Mark. Clause 2(B) defines the specification to mean the Indian Standard Specification IS 2980-1979. The Order further provides that the stoves

or raw material components which do not conform to the standards specified in the Order including the thermal efficiency specified, shall be

deformed beyond use and disposed of as scrap. Thus, according to the petitioners, the effect and consequence of the Order is that on and from 1-

2-1991, they would not be entitled to manufacture, sell or distribute their products unless it conforms to the Indian Standard Specification IS

2980-1979 and it is certified with the ISI Certification Mark. The petitioners state that the aforesaid Order is patently arbitrary and unconstitutional

besides being ultra vires the Essential Commodities Act under which it is purported to have been issued. It is further stated that the Order is

incapable of compliance and would virtually compel the petitioners to close down their units. Thus, the petitioners have approached this Court for

the relief abovesaid.

4. The respondent filed a counter affidavit through its Under Secretary. According to them, the Order is fully enforceable and legally valid under

the Essential Commodities Act and its objectives are in conformity with the objectives of the Act. The Essential Commodities Act empowers the

Government to take steps for regulation of production, trade and commerce in essential commodities for the common good. Section 3 of the Act

provides for regulating or prohibiting production, supply and distribution of any essential commodity to achieve the objective enshrined in the Act.

Under S. 2(xi), the Government has declared a number of items as essential commodities and Item No. 44 includes household appliances such as

electric irons, heaters and the like. The kerosene wick stove comes within the

purview of this item. As kerosene stove is an essential commodity, the Government has rightly exercised the power to ensure production of fuel efficient wick stoves so as to conserve kerosene as such stoves are 20-25% more efficient than the ordinary (non-ISI stoves) available in the market which consume more kerosene. The Order has, therefore, been issued for the good of the public and in the overall interest of the country and as such, it is legally valid. The Government is competent to issue the impugned Order u/Ss. 2 and 3 of the Essential Commodities Act to prohibit the production and sale of inefficient wick stoves to conserve kerosene in the over-all interest of the country.

5. I have heard Mr. R. Krishnamurthi, learned Senior Advocate for the petitioners and Mr. Habibullah Badsha, learned Senior Advocate for the respondent.

6. At the time of hearing, Mr. R. Krishnamurthi, learned Senior Counsel for the petitioner, urged the following grounds :

a) Section 3 of the Essential Commodities Act could be exercised only if it is necessary to increase the supply or for securing their equitable

distribution and availability at fair prices of any essential commodity. The impugned Order cannot be said to subserve the objectives contained in S.

3 of the Act and therefore, the said order is ultra vires S. 3 of the Act. I

b) The Order is violative of Art. 19(1)(g) of the Constitution and not saved by Art. 19(6) of the Constitution.

c) The petitioners have been manufacturing non-pressure kerosene wick stoves using various materials in such a manner that it satisfies the

requirements of the common man at a fair price without there being any complaint from any point.

d) There had been no orders providing for any specification to be adopted in the manufacture of such stoves. The manufacture of the stoves

carried out by the petitioners constitute a lawful trade or business inasmuch as by the said Order, no person could manufacture any non-pressure

stove except in accordance with the specifications set out in the said Order and with ISI Certification Mark.

e) The learned Senior Advocate, therefore, contends that the impugned Order is clearly ultra vires Art. 19(1)(g) of the Constitution as it prohibits

and winds up the lawful trade or business that the petitioners are carrying on.

f) The impugned order cannot be construed as a reasonable restriction in order to be saved by Art. 19(6) of the Constitution, under which the

restrictions that are contemplated by Art. 19(6) of the Constitution should be in the interest of the general public besides being reasonable from the

stand point of the guidelines laid down by the Apex Court.

g) The impugned Order is, therefore, neither in public interest nor is that reasonable and therefore, would have to be struck down as violative of

Art. 19(1)(g) of the Constitution.

h) As per the impugned Order, the non-pressure stoves manufactured on and from 1-2-1991 should conform to Indian Standard Specification IS

2980-1979 and should be with ISI Certification Mark. In order to comply with the aforesaid requirements, it would be necessary for the

manufacturers to procure the various raw materials that are specified in the ISI specifications, which would be wholly impracticable if not

impossible by the small scale units like the petitioners. As per the aforesaid specifications, the basic raw material would be cold rolled steel sheets

of a specified gauge which would besides being expensive would also not be available for small manufacturers like the petitioners.

i) The other components are also equally expensive and beyond the reach of a small manufacturer besides rendering the finished product to be

beyond the reach of a common man.

j) The impugned Order is arbitrary and unreasonable and bears no nexus to the object sought to be achieved by the Act, under which it is

purported to have been made.

The learned senior counsel for the petitioners also invited my attention to the relevant rules under the Essential Commodities Act and also cited the

decisions reported in Hamdard Dawakhana (Wakf), Delhi and Another Vs. Union of India (UOI) and Others, and Pathumma and Others Vs.

State of Kerala and Others, .

6A. Per contra, Mr. Habibullah Badsha, learned Senior Counsel appearing for the respondent, states that the petitioners' business of

manufacturing and selling kerosene wick stove will in no way be affected so long as their products conform to ISI specifications and they have

obtained ISI mark for continued production of wick stoves conforming to these specifications. Thus, he submits, that the Control Order is fully

enforceable and legally valid under the Essential Commodities Act, and its objectives are in conformity with the objectives of the Act. By way of reply to the argument of Mr. R. Krishnamurthi, Mr. Habibullah Badsha submits that the Essential Commodities Act empowers the Government to take steps for regulation of production, trade and commerce in essential commodities for the common good. S. 3 of the Act provides for regulating or prohibiting production, supply and distribution of any essential commodity to achieve the objective enshrined in the Act. Under S. 2(xi) of the Act, Government has declared a number of items as essential commodities and item No. 44 includes "household appliances such as electric irons, heaters and the like". As kerosene stove is an essential commodity, the Government has rightly exercised the power to ensure production of fuel efficient wick stoves so as to conserve kerosene as such stoves are 20-25% more efficient than the ordinary non-ISI stoves available in the market, which consume more kerosene.

7. Mr. Habibullah Badsha further submits that the thermally efficient stoves are more economical, particularly to the poor people who use kerosene for cooking purposes. Further, the country is not self-sufficient in kerosene and its import in substantial quantity every year causes a great strain on the State exchequer. Its use in thermally inefficient stoves, which results in avoidable consumption of additional quantity, is detrimental to the country's balance of payments position apart from being avoidably expensive for the consumer. Therefore, Mr. Habibullah Badsha submits that the impugned Control Order has been issued for the good of the public and in the overall interest of the country and therefore it is legally valid and enforceable and as such, the Government is competent to issue the impugned Order u/Ss. 2 and 3 of the Essential Commodities Act to prohibit the production and sale of inefficient wick stoves to conserve kerosene in the overall interest of the country.

8. While replying to the arguments of Mr. R. Krishnamurthi that the impugned Order cannot be construed as a reasonable restriction in order to be saved by Art. 19(6) of the Constitution and the restrictions that are contemplated by Art. 19(6) of the Constitution should be in the interest of the general public, Mr. Habibullah Badsha asserts that the impugned Order provides for production and sale of wick stoves as per ISI specifications

to conserve kerosene, which is a national imperative. The impugned order, has, therefore, been issued in the national interest and to subserve the

common good and hence the same is legally valid and not violative of Art. 19 of the Constitution.

9. I have also gone through the Indian Standard Specification for Non-Pressure Stoves (Second Revision) -- IS : 2980-1986. The impugned

Order provides for production and sale of wick stoves as per ISI specification No. 2980-1986 and should bear ISI mark with effect from 1-2-

1991. According to Mr. Habibullah Badsha, at present, there are about 16 units which have got ISI mark and are getting the required material for

manufacture of thermally efficient wick stoves as per ISI mark. While answering the apprehension raised by the petitioners that the raw materials

which are required to comply with the ISI specifications are not available with the Government agencies like SIDCO, etc., Mr. Habibullah Badsha

submits that the small scale units can be provided with necessary assistance by the oil companies and the concerned department of the States and

Central Governments if there is any problem in getting the raw material by some units. Mr. Habibullah Badsha has also assured that necessary

assistance would be provided to such units including the getting of raw materials. Thus, I am of the view, that the apprehension in regard to the raw

materials expressed by the petitioners has been dispelled by the respondent in its counter-affidavit.

10. With reference to the argument of Mr. R. Krishnamurthi that the stoves would be costlier than the present finished products of the petitioners

by anything between 50 and 100% and that the kerosene non-pressure wick stoves are the only heating media which caters to the lower and lower

middle class people, it is stated by Mr. Habibullah Badsha that the fuel efficient stoves having efficiency of 60% and above are no doubt costlier

than the stoves having lower than this efficiency available in the market, but the extra cost is more than off-set by the lower consumption of

kerosene since the fuel efficient stoves consume 20-25% less kerosene besides being better in quality. As such, according to the respondent, the

consumer stands to gain and the impugned order has been issued in the public interest to conserve kerosene without affecting the kerosene

consumers.

11. It is seen from the Control Order that it is applicable to all manufacturers and sellers of kerosene wick stoves including the petitioners equally

and uniformly and that the ISI specifications have already been made mandatory for oil pressure stoves, burner of such stoves, multi-burner

pressure stoves and oil pressure stoves off-set burner type -- Vide Pressure Stoves (Quality Control) Order, 1985. Mr. Habibullah Badsha,

learned Senior Counsel for the respondent therefore submits that the Control Order, is in the interest of the public as also in the interest of the

manufacturers including the petitioners to produce and sell kerosene wick stoves in accordance with the ISI specifications and that the Control

Order would not affect the people already employed in the stove manufacturing units or lessen the opportunities of employment in such units. On

the other hand, it would generate more employment when these units upgrade their technology and set up testing facilities as per the ISI

specifications,

12. This apart, it is submitted by the learned Senior Counsel for the respondent, that the Central Government is also taking various steps to curb

the consumption of petroleum products through their conservation as it is causing a great strain on the exchequer. One of the steps taken in this

direction is the issuance of the impugned order viz., the Non-Pressure Stoves (Quality Control) Order, 1990, to ensure economical use of

kerosene for cooking purposes through use of fuel efficient wick stoves manufactured as per ISI specifications.

13. I have carefully considered and analysed the arguments of both the learned Senior Counsel and I am of the view that the case put forward by

the respondent merits acceptance, since, I am of the view, that the impugned order has been issued for the good of the public and in the over-all

interest of the country. Therefore, I hold that the impugned order is legally valid. I am also of the view that the Central Government is competent to

issue the impugned order under Ss. 2 and 3 of the Essential Commodities Act to prohibit the production and sale of inefficient wick stoves to

conserve kerosene in the over-all interest of the country. As stated supra, the Essential Commodities Act empowers the Government to take steps

for regulation of production, trade and commerce in essential commodities for the common good. Section 3 of the Act provides for regulating and

prohibiting production, supply and distribution of any essential commodity to achieve the objectives enshrined in the Act. The impugned order is,

therefore, fully enforceable and legally valid under the Essential Commodities Act and its objectives are in conformity with the objectives of the

Act. I am also of the view that the petitioners' fundamental rights are not in any manner infringed. The petitioners are free to carry on their trade or

business and no restriction is imposed on them and the only restriction is that they have to manufacture and sell or distribute any non-pressure

kerosene stove which conforms to the specifications under the Control Order and that it would be with ISI Certification Mark. This, in my opinion,

is a reasonable condition and requirement. This is the view I have taken in the decision reported in *Danya Electric Company v. The State of Tamil*

Nadu, 1992 WLR 429.

14. The decision of K. S. Baktha-vatsalam, J., reported in *Leather India v. Union of India*, 1992 WLR 540, can also be usefully referred to in this

context. The question raised in that case was, that when a policy decision was taken with respect to all finished leathers, whether the restrictions to

the effect that the finished leather should be dyed so as to import a medium/darker shade, would be arbitrary and irrational. The learned Judge held

that the Order of Court granting stay cannot be a ground for attack on Government's Notification, since the Government had ample powers to

revise the guidelines in view of the amendment to the Export Trade Control Order, and the Government's decision to review is not arbitrary. The

learned Judge has further held that the Courts cannot interfere with policy decisions of the Government.

15. In the said case, the Government of India constituted a Leather Sectional Committee viz., Indian Standards Institution, in 1976 to evolve

guidelines for determination and identification of finished leather and they were approved and later published in the same year. The Indian

Standards Institution made its first revision of guidelines in 1979, followed later by second revision, which according to the petitioners therein, was

detrimental to the interests of trade and industry. The third revision was instrumental in the Government issuing a Notification granting under S. 25

of the Customs Act, and resulting in benefits like more profit, inflow of foreign exchange, etc. When the Government set at naught the said third

revision and brought back the second revision into force, writ petitions were filed earlier and stay of operation of the impugned order dated 30-7-

1985 was granted. During the pendency of the stay order, the Government continued to introduce and to issue quota system for exporting finished

leather, subject to allocation by the Council of Leather Exports. It was alleged that the impugned order was ex facie arbitrary, unreasonable and

violative of Articles 14 and 19(1)(g) of the Constitution of India and that the impugned order is liable to be set aside on the ground of it being

unreasonable making certain orders of this Court nugatory. The learned Judge (K. S. Bakthavatsalam, J.) in his elaborate and detailed judgment,

has also considered the question with regard to the jurisdiction of this Court to interfere with the policy decisions taken by the Government and has

observed that the national policy should not be interfered with by Courts unless compelled by glaring unconstitutionality. I am of the view that it is

not for this Court to direct that a particular raw material alone can be used for manufacturing non-pressure kerosene wick stoves, I am also of the

view that the impugned order cannot be attacked on any of the grounds raised by the learned Senior Counsel for the petitioners. The learned

Senior Counsel for the petitioners was also not able to point out any glaring unconstitutionality in enforcing the impugned order.

16. The Hon'ble Supreme Court in the decision reported in *Pathumma and Others Vs. State of Kerala and Others*, , while interpreting the

constitutional provisions for judging the impact of an enactment on the fundamental rights of the citizens has observed that the approach of the

Courts is to interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep

awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues

facing the people which the Legislature in its wisdom, through beneficial legislation, seeks to solve. The Supreme Court has further observed that

the judicial approach should be dynamic rather than static, pragmatic rather than pedantic and elastic rather than rigid. It must take into

consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people and that the

Courts must strike a just balance between the fundamental rights and the larger and broader interests of society.

17. Applying the above test to the case on hand, I am of the view, that the impugned order is reasonable and also in public interest. The object of the impugned order is to secure the common good of the people and it clearly fulfils the directives of the Constitution of India. The restrictions imposed under the impugned order are not arbitrary or excessive in nature and that they are only in the interest of the general public. There is a direct and proximate nexus and reasonable connection between the restriction imposed and the object sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen, the object of the statute is really fulfilled or frustrated. I am of the view that the restrictions imposed on the petitioners will not in any way frustrate the object of the statute.

18. Let me now consider the decision cited by Mr. R. Krishnamurthi, learned Senior Counsel for the petitioners, reported in Hamdard Dawakhana

(Wakf), Delhi and Another Vs. Union of India (UOI) and Others, which deals with the provisions of the Essential Commodities Act and the Fruit

Products Order. The Act was passed in the year 1955 for the purpose of controlling the production, supply and distribution of, and trade and

commerce in certain commodities in the interests of the general public. The commodities which were intended to be brought within the purview of

the Act were essential commodities as defined by S. 2(a) of the Act. Amongst them are included foodstuffs including edible oil seeds and of

commodity for the purpose of this Act covered by S. 2(a)(xi) and any other class of commodity which the Central Government may, by notified

order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make

laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

19. While referring to the above decision, Mr. R. Krishnamurthi submits that the power can be exercised only if the condition precedent prescribed

by S. 3(1) of the Act is specified and that is, that the Central Government should be of opinion that it is necessary or expedient to regulate the

production of any essential commodity for one of the purposes mentioned in it. It was also urged before the Supreme Court in the above cited case

that the Fruit Products Order itself is invalid because it does not purport to say that before it was issued, the Central Government had formed the

opinion that it was necessary or expedient to issue the order for maintaining or increasing the supplies of the commodity in question. It was further

urged that the condition prescribed by the first part of S. 3(1) of the Act is a condition precedent and it is only when and after the said condition is

satisfied that the power to issue a regulatory order can be exercised by the Central Government. However, the said contention was not allowed to

be raised for the first time in the appeal because if it had been raised before the High Court, the respondent would have had a chance to meet it.

Therefore, in the absence of any specific averment made by the Fruit Order that the Central Government had formed the necessary opinion, no

presumption can be drawn that such opinion had been formed at the relevant time; but it would have been open to the respondents to prove that

such an opinion had been formed at the relevant time; and it cannot be suggested that the failure to mention that fact expressly in the Fruit Order

itself would preclude the respondents from proving the said fact independently. By so observing, the Supreme Court has not permitted the counsel

to urge the said contention at that stage in the Supreme Court.

20. I have also gone through the grounds of challenge in the present writ petition and nowhere it is alleged that the impugned Control Order is

invalid because it does not purport to say that before it was issued, the Central Government had formed the opinion that it was necessary or

expedient to issue the impugned order, for the purpose of manufacturing and for sale or distribution of any non-pressure kerosene wick stove,

which does not conform to the specifications under the order and that it would be with ISI Certification Mark. This contention has not been raised

in the affidavit filed in support of the writ petition. Hence, I reject this contention on the short ground that what is now urged does not find a place

in the pleadings.

21. For the foregoing reasons, I am of the view that there are absolutely no merits in any of the contentions raised by the writ petitioners and

accordingly, the writ petition is dismissed. However, there will be no order as to costs.

22. Petition dismissed.