
(1997) 01 CAL CK 0017
In the Calcutta High Court
Case No : C.O. No. 14046 (W) of 1996

Arun Kumar Dhara and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 CALLT 326

Hon'ble Judges : Dibyendu Bhushan Dutta, J

Bench : Single Bench

Advocate : Asok Banerjee and Pradip Roy, for the Appellant; J.N. Ram and Kanika Gupta and Kalimuddin Mondal, for Respondent Nos. 6-7, for the Respondent

Final Decision : Allowed

Judgement

Dibyendu Bhushan Dutta, J.—38 licensed dealers of soft coke have joined in the instant application that has been filed for writ in the nature of Mandamus and Certiorari.

2. In addition to this, the petitioners have filed two supplementary affidavits and the case that has been sought to be made out on behalf of the petitioners may in substance be stated as follows:

The petitioners are dealers of soft coke within sub-division of Chandannagore in the District of Hoogly. The District Magistrate, Hooghly, is the licensing authority for the District under the West Bengal Soft Coke Licensing Order, 1995. Every licensee is required to obtain permit for dealing in soft coke. The permits are issued by the sub-divisional controller, Food and Supplies, Chandannagore, Initially there was no ceiling on the quantity of soft coke to be lifted against permit by a licensee but from April 1996 onwards a ceiling limit of 10 Metric Tonnes has been fixed for every permit. After obtaining the permit a licensee is required to go to the coal dump at Serampore in the office of Coal India Limited

and deposited Bank Draft along with the permit and the said office issued delivery order on the basis of which the licensee is to take delivery of the soft coke from the dump and store it in his godown. Thereafter, according to the new system that has been introduced by the concerned authorities the licensees are required to take out a sale order from the sub-divisional controller, Food and Supplies for the purpose of selling the soft coke after it is lifted from the dump on the basis of delivery order issued against a permit, although there is no provision in the Soft Coke Licensing Order permitting issuance of sale order even after issuance of the permit against a valid licence. The concerned authorities have also introduced a system under which a licensee is also required to observe certain formalities before a sale order could be issued in his favour. He is to take recommendation of the councillor/commissioner or the Pradhan for Corporation, Municipality or Panchayat areas respectively. The formalities also required the police to be informed of the recommendations. The formalities further requires a visit by an Inspector of S.C. and S.T. to the shop or godown of the licensee and his report. According to the new system, it is only after the Inspector submits his report recommending issuance of the sale order, the sale order is issued. In Panchayat area even after getting sale order from the sub-divisional controller, further sale order is required to be taken from the Block Development Officer. In case of some of the licensees, permits were issued on 20.12.94 and after compliance with the formalities, the quantities allotted by the permits, were lifted in part from March 1995 onwards but surprisingly the permits were cancelled by the concerned authority as per order No. 24/Con dated 30.5.95 so far as it related to the balance quantity of the coal allotted against these permits. Such cancellation was done without any reason being assigned or any prior notice being given to the licensee. The new formalities which have been introduced for issuance of a sale order are being implemented only in the sub-division of Chandannagore and are not being followed in other sub-divisions of the District. The cancellation of the permits referred to above was not known to the petitioners. On 4.6.96 they were asked to produce their log-books and the entries regarding cancellation were made in the log-books only on 4.6.96. Since 30.5.95 no fresh permit is being issued to the petitioners. As a result the business of the petitioners has been virtually stopped and the petitioners are suffering loss for such stoppage of business. The new formalities have got nothing to do with the object of the Control Order and the restrictions that have been imposed by those formalities are illegal, unreasonable and arbitrary and they offend Article 19(1)(g) of the Constitution of India. The stoppage of issuance of new permit is also illegal and arbitrary. Accordingly the petitioners pray for writ of Mandamus directing the respondents concerned to act in accordance with law and to issue sale order to the petitioners without insisting on observance of the formalities referred to above and also to cancel the order dated 30.5.95 whereby the permits were cancelled in relation to the remaining parts of the quantities that were allotted against the permits but were not lifted. They have also prayed for writ of certiorari so that the impugned order No. 24/con dated 30.5.95 is set aside.

3. Appearance was entered on behalf of all the respondents who resisted the writ petition without, however, filing any counter affidavit.

4. Paragraph 4 of the West Bengal Soft Coke Licensing Order 1965 (for short the Control Order) prohibits trading of Soft Coke by any person unless he is in possession of a valid licence under paragraph 6 of that order. Paragraph 6 specifies the authorities to grant licence. Under sub-para (2) of paragraph 6, a licence shall contain such conditions as the authorities concerned may consider necessary. Sub-para (3) of paragraph 6 prohibits sale, supply or transfer of Soft Coke by a dealer to any person other than a dealer duly licensed or consumer. Under paragraph 8, a licensee is to specify the premises or the area in which the licensee is to carry on business and the premises or the place where soft coke may be stored by the licensee. Sub-para (2) prohibits carrying, trading or storing of any soft coke except in the premises, are or place specified in the licence. Paragraph 10 provides for temporary suspension of a licence in case it appears to the concerned authorities that a dealer has indulged in any malpractice or contravened any provision of the Control Order or any condition of the licence or any direction given under paragraph 12 of this order. Sub-para (1) of paragraph 12 requires every licensee to comply with any special or general directions as may be issued in writing by the licensing authorities for carrying out the purpose of the control Order and also with such conditions as may be specified in the the licence. Sub-para (2) of the said paragraph illustrates some of the directions that may be issued under sub-paragraph (1) without prejudice to the generality of the powers. Such directions may provide for the manner in which applications for licences shall be made and the accounts and registers to be maintained or the returns and reports to be submitted by a dealer. Paragraph 14 empowers the licensing authorities as well as some other authorities to do certain acts with a view to maintaining supplies and securing compliance with the provisions of the control order. They can require any person to give any information in his possession regarding stock of soft coke, enter and inspect the premises of any dealer for the purpose of verifying where the conditions of the licence or the directions issued are being complied with or not and to seize any stock if they have reason to believe that contravention of the control order is being made. They recalls empowered to require a dealer to produce accounts, registers, vouchers or other documents relating to the sale or purchase of soft coke. Paragraph 15 empowers the licensing authorities to specify the maximum price to wholesale or retail, by notification in the official gazette and paragraph 16 prohibits sale or purchase of the commodities at a price higher than the maximum price specified. From "B" is the form prescribed for a license to be issued under the Control Order. It specifies the conditions subject to which the licensee is to hold the licence. The conditions are specified in clauses (1) to (6) of item No. 1 of the form and Clause (4) provides that the licensee is required to comply with all directions that may be given by the licensing authorities under paragraph 12 of the control order. Admittedly, the writ petitioners hold valid licences under the control Order and the said licences conform to the prescription

made in form "B".

5. The petitioners have assailed the legality of certain directions issued by the licensing authorities. The impugned directions relate to taking of recommendations from councillor/commissioner/Prodhan, information to the police about such recommendations and visit to the shop or godown of the licences and submission of report by the Inspector of SC and ST and in case of Panchayat area requirement of further sale order from the Block Development Officer in addition to one already taken from the sub-divisional controller. Besides these formalities alleged to have been newly introduced for issuance of sale order, cancellation of the permits that issued on 20.12.94 and against which only a part of the quantity allotted was lifted as well as refusal to grant new permits form the subject-matter of challenge in the instant writ application.

6. On behalf of the respondents nothing has been produced to show that the impugned formalities were introduced by any general or special direction given in writing by the licensing authorities. The respondents have also not placed anything on record to show why actually the permits dated 20.12.94 which were already Issued in favour of the writ petitioners against their licences were cancelled after they were allowed to lift some part of the soft coke out of the total quantity for which the permits were issued. There is nothing on record to suggest that in cancelling the said permits the concerned authorities did assign any reason whatsoever. On scrutiny of the relevant provisions of the control Order it is found that the control Order itself does not specifically provide for issuance of any permit or any sale order authorising sale of soft coke after a licensee is allowed to lift soft coke on the basis of a permit. The impugned formalities do not directly own their origin to any of the provisions of the control Order. They also do not form part of the conditions that have been specified in the licence in Clauses (1) to (3), 5 and 6. The impugned formalities can at best own their origin to any directions special or general issued in writing by the licensing authorities as contemplated under sub-paragraph (1) of paragraph 12 of the control Order. Now, on a plain reading of the said sub-paragraph it becomes clear that such directions could be issued only for carrying out the purpose of the control Order. I have already observed that in support of the alleged introduction of the impugned formalities the respondents have not filed anything to show that they were covered by any special and general direction issued in writing in terms of sub-paragraph (1) of paragraph 12. Assuming for the sake of argument that such directions were, in fact, issued in writing by the licensing authorities, the licensing authorities would be within their jurisdiction to issue such directions only if the said directions were meant for carrying out the purposes of the control Order. Apparently the said directions cannot have any bearing with any of the purposes of the control Order and on behalf of the respondents any particular purpose could be pointed out for carrying out of which the impugned directions could have been deemed to have been issue. In the circumstances, the said directions cannot be said to have been issued in conformity with the provisions of paragraph 12 of the control Order. The learned

Advocate appearing for the respondents Nos. 1 to 5 and 8 wanted to resist the instant application on the ground that the instant application is incompetent in challenging the legality of the directions inasmuch as virus of sub-paragraph (1) of paragraph 12 which gives power to the licensing authorities to issue such directions has not been challenged here. I am afraid. I do not find any substance in this contention. The licensing authorities may have jurisdiction to issue directions, special or general, in writing for carrying out the purpose of the control order from time to time and there may not anything wrong with the control Order itself or its provision when it delegates the power to the licensing authorities to issue such directions. But whenever the licensing authorities exceed their powers, limited by sub-paragraph (1) of paragraph 12 or assume jurisdiction which is not vested by sub-paragraph (1) of paragraph 12 in issuing any direction, the licensees aggrieved by such directions are perfectly entitled to challenge the legality of such directions and approach this court for quashing them in exercise of its jurisdiction under Article 226 of the Constitution. After all, sub-paragraph (1) of paragraph 12 gives the power or for that matter, jurisdiction to the licensing authorities to issue directions only if they are meant for carrying out any of the purposes of the control order and not otherwise. In the instant case, It cannot be argued that the impugned directions were meant for carrying out any of the purposes of the control order.

Thus, giving the matter my anxious consideration, I have no hesitation to, hold that the impugned directions purporting to introduce the formalities regarding the recommendations of certain authorities is totally unreasonable, outside the scope and purview of the control Order. In such view of the matter, there is no other option than to quash the said formalities. The materials on record do not contain anything so as to justify the cancellation of the permits that were already issued in the year 1994. The orders of cancellation of the permits concerned are also liable to be set aside.

In the result, the writ application succeeds and is allowed. Let appropriate writs be issued accordingly.

There will be no order as to costs.