
(2003) 02 GAU CK 0054
In the Gauhati High Court
Case No : Writ Appeal No. 191 of 2000

Assam Roller Flour Mills Association	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 GLR 223 : (2003) 2 GLT 278

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : A.K. Saraf, K.K. Gupta, S.K. Agrawal and K. Jain, for the Appellant;
A. Hazrika, for FCI and D. Gowami, G.A., for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, C.J.—The appellant Assam Roller Flour Mills Association, a society registered under the Societies Registration Act, 1860 and other Flour Mills in the State of Assam twenty five in number are represented by the appellant No. 1. The Members of the appellant Association are engaged in the business of converting what into different products in their floor mills. The appellants have challenged the circular issued by the Under Secretary to the Government of India, Ministry of Food dated 30.3.1993, Circular dated 13.1.1994 issued by the Joint Manager (Sales), Food Corporation of India, Circular dated 5.2.1994 issued by the Assistant Manager, Food Corporation of India, Regional Office, Assam Region, Guwahati and the W.T. Message dated 11.3.1994 issued by the Commissioner and Secretary to the Government of Assam, Food and Civil Supplies Department fixing purchase price of wheat from the retrospective date by filing the writ petition.

2. Facts, on the basis of which the writ petition was filed challenging the aforesaid circulars in brief are - that the distribution and wheat and wheat products is controlled by the provisions of the Assam Public Distribution of Articles Orders, 1982 (hereinafter referred to as "the Order of 1982"). The

purchase of wheat by the members of the appellant association and utilisation of the said wheat and the sale of wheat products are controlled by the aforesaid Order of 1982. As per the Order of 1982 the Central Government allots quantities of wheat to different State Governments which in turn allots every month quotas of wheat for the various Roller Flour Mills, other nominees and agencies located within the State. After getting the allotment, the Flour Mills purchases the allotted quota of wheat from the Food Corporation of India (FCI). The State Government also controls utilisation of the allotted quantity of wheat and the members of the appellant association can produce wheat products in the extraction percentage fixed by the State Government. The wheat products produced by the Flour Mills are sold mainly to the nominees of the Deputy Commissioners or the Sub-Divisional Officers against permit obtained by such nominees from the Deputy Commissioners/Sub-Divisional Officers. The State Government also fixes the maximum price within which products are to be sold. The price at which the members of the appellant Association purchase wheat from the FCI is also fixed by the Central Government. Thus, the margin of procurement price and the price at which the procured wheat can be sold is a profit of the dealer. The members of the appellant Association purchase wheat from the FCI after getting allotment from the State Government and produce whole mill Atta and Bran from such wheat under the Public Distribution System. As per the Assam Public Distribution of Articles Order, 1982 no person in charge of the Roller Mill shall sell any of the wheat products produced out of Public Distribution System allotment of wheat at a price exceeding the price specified by the State Government from time to time. The members of the appellant Association who have been purchasing monthly quota of wheat from the FCI at the price fixed by the Government and selling the products manufactured as per the price specified by the State Government from time to time.

3. The issue price of wheat was revised by the Government of India with effect from 1.2.1994 from Rs. 330 per quintal to Rs. 402 per quintal vide circular No. 200(1)/90-FC/A/C/G dated 30.3.1993 addressed to all the Food Secretaries of the State Government and Union Territory Administration, informing them about the change in procedure for recovery of the differential cost from the States and the Union Territories on revision of central issue prices of food grains for distribution under the PDS and TDP, etc. In the said Circular it was stated that the release orders issued by the FCI to the States/Union Territories and/or their nominees upto 7 days prior to revision of central issue price would be treated as the stock in pipe line on which the State Governments/Union Territories and/or their nominees would be required to pay difference between the old price and the revised price after two months following the revision of the issue price. It was also informed that failure to do so will result in stoppage of the issue of the further stock of grains by FCI from June, 1993 and issue of reduced quantity after adjustment of the differential cost recoverable. Basing on this Circular, the Joint Manager (Sales) of the Food Corporation of India, New Delhi issued the Circular No. 1/9/931/S.V. dated 13.1.1994 to Zonal Managers, FCI and the

Senior Regional Managers, FCI, Regional Offices as well as Joint Managers (Operation), FCI for necessary action. The Assistant Manager, Office of the Senior Regional Manager, Food Corporation of India, Regional Office, Guwahati thereafter issued Circular No. SSSb(1) 92 dated 5.2.1994 addressed to the District Managers, FCI for their information and compliance of the circulars dated 13.1.1994 and 30.3.1993.

4. The effect of the circular is that the stock in trade which was purchased by the members of the appellant No. 1 from date seven days prior to 1.2.1994 shall be deemed to have been purchased at price fixed by the Government of India at Rs. 402 per quintal instead of Rs. 330 per quintal then fixed by the Government of India and the difference of price of wheat was required to be paid or adjusted in the future purchase of wheat. The petitioners - appellants having felt aggrieved by the circulars issued where under the price of wheat has been fixed from retrospective date have approached this Court by filing the writ petition registered as Civil Rule No. 1203/94. The learned Single Judge by judgment and order dated 21.5.1999 dismissed the writ petition following the judgment and order delivered by the leading Single Judge in Civil Rule No. 1341/94 (*Dibrugarh Co-operative Consumers' Wholesale Society Ltd., Dibrugarh v. State of Assam and Ors.*) decided on 21.5.1999 wherein the Court has refused to entertain the petition under Article 226 of the Constitution on the ground that the cause of action which has been sought to be agitated in the writ petition arose out of contractual obligation, if any, and thus the Court did not find it necessary to exercise powers under Article 226 of the Constitution and directed the petitioner to seek remedy in the ordinary forum of civil court.

5. It is submitted by the learned counsel, for the appellants that the scope and ambit of the cause raised by the petitioner does not arise out of contractual obligation. The petitioners - appellants do not act as the agents of the Central Government or the State Government or the Food Corporation of India. The purchase of wheat by the appellants is through the agency of the Government at a fixed price only and the ultimate product of the wheat so purchased is also sold at the fixed price, i.e., by virtue of the provisions of the Assam Public Distribution Order, 1982 and there is no contract or agency between the appellants and the Government so as to enable the Government to claim any part of the profit made by them.

On the other hand, the submission of the learned counsel for the respondents is that the appellant - petitioners were working as agent of the State and thus the difference of price is remuneration paid to them as an agent of the Government, which can be reduced by the Government, by the executive orders.

6. In the matter of *A. A. Venkata Subba Rao Vs. State of Andhra Pradesh*, the Supreme Court decided similar question and in that matter the Government of Madras issued various orders under the Essential Supplies (Temporary Powers) Act, 1946 for procurement and distribution of rice. Under the orders rice could be only procured by the Government or by the procuring agents appointed by it and

disposed of according to the orders of the Government. Under these orders licensed wholesalers and retailers were also appointed. The appellants therein were procuring agents and wholesalers under the system. They entered into various agreements with the Government for the purpose. Their duty was to procure rice from the specified areas at prices fixed by the Government from time to time and to deliver it at prices so specified, to the Government or to persons nominated by it or to other licensed purchasers. The procurement price in each case was lower than the selling price and the procuring agents were under the contract entitled to difference between the two prices, the difference being termed as "remuneration". During the years 1947 and 1948 the Government specifying the prices made three successive orders and in each case there was an increase. On the dates on which each of these orders came into force, each appellant had lying with them in stock certain quantity of rice which have been procured by the agents earlier and, therefore, at the then prevailing lower purchase price. The appellants had to sell these rice at the new increased price and hence became entitled to a larger sum than they were before the increase. The enhancement of procurement agents' profit was entirely due to Government action in increasing the prices and the Government thought that they were not entitled to it and insisted that the excess sums should be paid to it by them. These excess sums were directed to be collected as "surcharge". It is this action of the Government, which was challenged by filing petitions. The Apex Court has held that the margin between the procurement price and the price at which the procured paddy or rice could be sold could not be termed as "remuneration" because there was also a similar margin between the price at which a wholesaler could buy rice and that at which he could sell and similarly, it was the case of the retail dealers, but it was hardly possible to call these as "remuneration". This margin or difference in the purchase and the sale price was necessary in order to induce anyone to engage in this business and was of the essence of a control over procurement and distribution, which utilised normal trade channels. It would, therefore, be a misnomer to call it "remuneration" or "commission" allowed to an agent and a procuring agent never stood as agents of the Government entitled to claim excess profits earned by them. As a result thereof the levy of surcharge was held to be a tax and struck down.

7. In the present case, the appellants are the purchasers of wheat not for and on behalf of the Government. The purchase of wheat was on their own account with their own money, though at a price fixed by the Government because of the Control Order of 1982. They could sell the end products to the buyers that too at a controlled price and the margin between the purchase and selling price is their profits. The moment they purchase the property, i.e., wheat of their own money they become owner of the property (wheat) at the price fixed by the Government at that time. That price cannot be increased or decreased artificially by the Government by issuing orders fixing price from a retrospective date. In the similar nature of orders issued by the Government in the year 1982 batch of writ petitions registered as Civil Rule Nos. 1008, 1009, 1010, 1011, 1013 and 1014 of

1982 were filed challenging the validity of the orders and a Division Bench of this Court allowed the writ petition by quashing the orders where under demands were made for differences between the old price and the revised price.

8. The cause, which has been agitated by the writ petitioners in the writ petition, does not arise out of the contract. The petitioners have challenged the competence of the State Legislature to issue orders under the Assam Public Distribution of Articles Orders, 1982 and thus it cannot be said that the cause accrued to the petitioners on the basis of the contract entered into between the petitioners and the State Government. In our view, the learned Single Judge has erred in rejecting writ petitions on the basis that the petitioners have alternative efficacious remedy before the Civil Court of reinforcement of their contractual right. The Court has also lost sight of the fact that the similar nature of levy was challenged before this Court and the Division Bench has allowed the writ petitions and, therefore, there was a law laid down by this Court on the issue involved in the case before the learned Single Judge. It is difficult to hold that merely because source of right, which the respondent claims was initially in a contract, for obtaining relief against arbitrary and unlawful action on the part of the State authority, the petitioner must resort to suits and not by way of writ. The Court's powers under Article 226 of the Constitution is wide enough to adjudicate upon disputes between the parties even in contractual matters in a given facts and circumstances of a case.

9. For the reasons stated above, the appeal is allowed and the order passed by the learned Single Judge is set aside. Circulars issued by the Under Secretary to the Government of India, Ministry of food dated 30.3.1993, Circular dated 13.1.1994 issued by the Joint Manager (Sales), Food Corporation of India, Circular dated 5.2.1994 issued by the Assistant Manager, Food Corporation of India, Regional Office, Assam Region, Guwhati and the W.T. Message dated 11.3.1994 issued by the Commissioner and Secretary to the Govt. of Assam, Food and Civil Supplies Department fixing purchase price of wheat from the retrospective date are also set aside. However, in the facts and circumstances of the case there shall be no order as to cost.