
(1982) 07 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 485 of 1981 (R)

Badal Krishna Chatterjee

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1983 Patna 55

Hon'ble Judges : Sushil Kumar Jha, J; Satyeshwar Roy, J

Bench : Division Bench

Advocate : S.B. Sinha and R.K. Marathia, for the Appellant; T. Bodra, Govt. Pleader No. 2 and Vijoy Pratap Singh, Jr. Counsel to Govt. Pleader No. 2, for the Respondent

Final Decision : Dismissed

Judgement

1. In this application under Articles 226 and 227 of the Constitution, the petitioner has challenged the legality and validity of the order/direction dated 5th May, 1981, issued by the Sub-Divisional Officer (Supply) Dhanbad, respondent No. 2 (hereinafter to be referred to as "the Licensing Authority". The copy of the impugned order/direction has been marked Annexure "1" to the writ application. By the impugned order/direction respondent No. 2 in purported exercise of the powers conferred on him under Clause 5 of the Bihar Coal Control Order, 1956 (hereinafter to be referred to as "the Control Order") has directed all the licensees including the petitioner of the district of Dhanbad to shift their place of business, namely, the coal depots mentioned in the respective licences beyond the radius of 8 kilometres from the coal mines and after such a shifting to such a place they have been called upon to furnish the situs of their business within one week to the Licensing Authority in order to enable him to suitably modify the place of business in the license in question. It has further been directed that if the place of business is not shifted beyond a radius of 8 Kilometres from the coal mines it will be treated as a violation of the terms and conditions of the licenses

for which the petitioner along with the other licensees of the district may incur cancellation of their licenses treating the same to be in contravention of the terms of the licenses and the dealers may further be liable for other actions under the law. The aforesaid order was received by the petitioner on 9th May, 1981. The petitioner has challenged this order on a number of grounds.

2. Before, however, we embark upon the question of law canvassed at the Bar, it is worthwhile to set out the admitted facts as are borne out by the petition and the counter-affidavit filed on behalf of the respondents in this case. The facts are that the petitioner along with the other licensees in the district of Dhanbad were carrying on their retail coal business within a radius of 8 kilometres from the coal mines. It was felt by the State Government that such a location of the coal depots where the business of the licensees was being carried on was neither commercially expedient nor suitable to the administrative exigencies. After deliberating from time to time the State Government took a decision that all such licensees be directed to shift their situs of business to a place beyond the radius of 8 kilometres from the coal mines in question. It was very well be presumed at this stage at least that the commercial expediency which the State Government thought of was to stop the clandestine delivery of coal from the coal mines leading not only to loss of public exchequer, but holding the society to ransom in so far as the supply and distribution of coal for cooking purposes were concerned, to the loss of business of the licensees and to the discomfiture of the domestic consumers of coal. The State Government having taken such a decision, the Commissioner for Food, Supply and Commerce was directed to issue a circular who accordingly sent a circular to the Deputy Commissioner, Dhanbad, Ranchi, Hazaribagh, Giridih and Santhal Pargana. It may not be out of place to mention here that only five districts have got coal mines beneath their surface. The circular issued by the aforesaid Deputy Commissioner is Letter No. 3688 Supply and Commerce/Patna 15, dated 25th April, 1981. A copy thereof has been marked as Annexure "B" to the counter affidavit. It has been stated therein that the State Government having decided and having felt that the situation of coal dumps of private traders of the concerned coal mines is not desirable from the commercial and administrative point of view and having thoroughly gone into the matter the Government had decided that all the private traders must be shifted for the purpose of their coal business to a place beyond the radius of 8 kilometres from the coal mines. As a result of this circular having been issued at the instance of the State Government, a letter was addressed by the Deputy Commissioner, Dhanbad, to the Sub-Divisional Officer, Dhanbad, Chas, respondent No. 2, to give effect to the decision of the State Government. It was also directed that at least fifteen days" time should be given to the licensees to shift the situs of their business to such a place which was beyond the radius of 8 kilometres from the coal mines. A copy of this letter of the Deputy Commissioner dated 30th April, 1981, has been marked as Annexure "A" to the counter affidavit. It was only pursuant to the aforesaid decision of the State Government and the letter issued by the Deputy Commissioner (Annexures "B"

and "A" respectively) that respondent No. 2 issued order/direction as contained in the impugned annexures to all the licensees in the district of Dhanbad including the petitioner. We are, however, not concerned in this case with other licensees who have filed a separate writ application. We confine ourselves only to the notice issued to the present petitioner alone, being an individual.

3. Learned counsel for the petitioner challenges the legality of the aforesaid order/ direction on the following grounds. To use the language of Mr. S. B. Sinha, learned counsel for the petitioner himself, learned counsel submitted that the impugned order was issued in the purported exercise of the powers under Clause 5 of the Control Order as already noticed above and the impugned direction/ order is illegal because the condition precedent to the exercise of the power under Clause 5 of the Control Order being the need of the people of the locality, having been absent in Annexure "1", Licensing Authority has no jurisdiction to issue such a direction/order in view of the fact that the power to choose a policy for a particular place being expressly conferred upon the Licensing Authority, such power could not be exercised by the State Government. It was contended in this regard that although the State Government was higher authority but could not impose its own policy decision upon the Licensing Authority. The State Government could not itself exercise the power under condition 8 of the License in Form A of the Control Order by way of policy decision, as condition 8 of Form A of the Control Order confers no such general blanket power on the State Government. In any view of the matter it was contended that since condition 8 of the license speaks of sale, storage or accounting, these terms could not include the place or situs of business because of its being expressly the subject matter of the aforementioned Clause 5 of the Control Order itself. As such, it was submitted that the impugned order/direction was ultra vires Clause 5 of the Control Order and in any event condition 8 of the License in Form A having conferred no such blanket power on the State Government, condition 8 itself was ultra vires Clause 5 of the Control Order. Lastly, it was submitted that such a policy decision which has already been mentioned above and the order/direction issued under the provisions of law which have given an arbitrary and unbridled power to the State Government to issue such order/direction, as has been issued from time to time, have all violated the provisions of Article 14 of the Constitution of India. It was further submitted in this connection that it is well settled that a public body incorporated under the statutory power must take care not to exceed or abuse its power. It must be kept within the limits of the authority opted to it. It must act in good faith and it must act reasonably. In this case it has been strenuously contended that neither the State Government kept itself within the limits committed to it nor acted in good faith and reasonably. In support of this contention learned counsel placed a number of decisions which are Tahir Hussain Vs. District Board, Muzaffarnagar, , Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, , R.M. Seshadri Vs. The District Magistrate, Tanjore and Another, ; Bharat Coking Coal Ltd. Vs. The Raneegunge Coal Association Ltd. and Others, Commissioner of Police, Bombay

Vs. Gordhandas Bhanji, , Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, , Nirendra Kumar Bose and Another Vs. District Magistrate and Others, ; Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , "Nageshwar Prasad Singh v. Kashinath Singh" 1958 BLJR 820 No one can take exception to this well established principle of law. As a matter of fact the decisions are legion on this point. But to our mind, none of these principles is attracted to the facts of the present case nor any of these decisions is relevant to the point in issue.

3-A. It has not been contended that the Control Order is ultra vires the Essential Commodities Act, 1955 (hereinafter to be referred to as "the Act"). The submission which has been the sheet anchor of the petitioner's counsel is that the order/direction impugned is ultra vires Clause 5 of the Control Order and is not covered by condition 8 of the license in Form A. We are, therefore, called upon to decide this limited question. The Control Order has been issued in purported exercise of the powers conferred by Section 5 of the Act (X of 1955), read with serial No. 1 of the schedule appended to notification of Government of India, the Ministry of Production, No. S. R. O. 1299 dated the 10th June, 1956 and S. R. O. 2423, dated the 27th Oct, 1956, and in supersession of the order of the Government of Bihar published with the Supply and Commerce Department notification No. 23597 P. dated the 9th Oct., 1947, by the Governor of Bihar. Some of the clauses of the Control Order need be taken note of here. Clause 3 of the Control Order prohibits dealing in coal except under license. Clause 4 deals with the application for grant of license and stipulates that every application for the grant of license under this Order shall be made in Form B to the Licensing Authority and shall be accompanied by a treasury chalan showing that a fee of thirty rupees has been deposited in a Government treasury to the credit of the State Government. Thereafter comes the crucial Clause 5 which speaks of the grant of license which needs to be reproduced here and which runs thus:--

"On receipt of an application under Clause 4, the Licensing Authority shall if he is satisfied that the application is in order, the applicant is of sound financial capacity, enjoys good reputation and that there is a need for a dealer at the place or places where the dealer intends to carry on business as such, grant the applicant a license in Form "A. The license shall specify the place or places at which the licensee may carry on the business in coal, and shall be subject to such conditions or exceptions as the Licensing Authority may from time to time, specify". The other sub-clauses of Clause 5 are not relevant for the present purpose. The only relevant clause that needs to be reproduced, for that shall have an important bearing on condition 8 in Form A, is Clause 8 of the Control Order and which runs thus:--

"Restriction against storage:-- No person other than a dealer shall keep or store in any premises occupied by him or permit any other person to keep or store in any such premises a quantity of coal exceeding ten maunds in standard weight,

unless he has obtained a written permit from the licensing authority of the area in which the coal is kept or stored authorising him to do so and every such permit shall specify the quantity of coal permitted to be so kept or so stored".

4. From the aforesaid provisions it shall be seen that an application in Form B is to be made to the Licensing Authority for the grant of the license and having regard to it the Licensing Authority may grant a license under Clause 5 in Form A to the intending licensee mentioning, of course, the place where the business is to be carried on. Condition 8 of the license granted in Form A reads as follows :--

"The licensee shall comply with any direction that may, from time to time, be given by the State Government or by the licensing authority about the sale, storage or accounting of coal."

Admittedly the license has been granted to the licensee in Form A under the provisions of Clause 5 of the Control Order. Un-disputedly, therefore, condition 8 in Form A of the license is a part of the license granted under the provisions of Clause 5. It shall be seen from the expression mentioned in condition 8 in Form A of the license that the licensee must comply with any direction that may, from time to time, be given by the State Government or by the Licensing Authority about the sale, storage or accounting of coal. Much was harped upon the points that the term "sale, storage or accounting" of coal" could not include the situs of business. It was contended that all the three items, namely, "sale, storage or accounting of coal" are related to the mode of either sale, storage or accounting or sale and storage with regard to any particular amount of coal. This argument has to be noted merely for the purpose of being rejected. As has already been noted above, Clause 8 of the Control Order itself, while speaking of restriction against storage, speaks of the premises occupied by the businessman. Manifestly, therefore, sale or storage as well as the accounting shall have surely connection with the situs of business where the coal is to be sold, stored or accounted for. There is thus no merit in this submission. The contention is that under Clause 5 of the Control Order the place where the business was to be carried on by the licensee was to be fixed by the Licensing Authority only, having regard, inter alia, to the needs of the people in general or the residents of a place in particular. The State Govt. could not override its decision by any order/direction under condition 8 of the licence. This submission is one of desperation, for the simple reason that Clause 5 itself speaks of the licence in form A being granted and, as has already been noted above, condition-8 of the licence in form A is an inseparable part of Clause 5 of the Control Order. Now the only remaining question is as to whether the order/ direction issued by the State Government with regard to the fixation of the venue or situs of the business of the licensee is based upon unreasonable consideration and is arbitrary. It is needless to say that such a policy decision in the interest of commercial expediency or administrative exigencies is not meant only for particular needs but for all the licensees in the areas concerned keeping in view the needs of all the people in the area in general. This cannot be said to be either arbitrary or unreasonable. It may be

worthwhile to mention here as to what is meant by reasonable exercise of the discretion. "It is true", said Lord Greene M. R. in *Associated Provincial Picture House, Ltd. v. Wednesbury Corporation* (1948) 1 KB 223 "the discretion must be exercised reasonably. What does that mean ? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably"." But a decision can be called unreasonable only if it is "proved to be unreasonable in the sense that the Court considers it to be a decision that no reasonable body could have come to. It is not what the Court considers unreasonable, a different thing altogether". In the instant case can it be said that the State Government has not called its own attention to the matters which it is bound to consider ? Can it be said that it has excluded the matters which are relevant and which it has to consider ? The answer obviously is in the negative, because the matters which have weighed with the State Government have clearly been given out in Annexure "B" of the counter-affidavit, namely, commercial expediency and administrative exigencies. Nothing has been shown to us as to how the exercise of such a power in pursuance of a public policy amounts to any illegal exercise of discretion or smacks of any indiscretion.

5. Although it may not be very necessary to refer to the two Bench decisions of this Court in this connection to which, of course, Mr. Sinha was fair enough to invite our attention, we may as well add a few words about those decisions. Those two Division Bench decisions of this Court are in the cases of *R. K. Coal Depot, Panchamba v. Sub-Divisional Officer, Giridih* (C. W. J. C. No. 259 of 1980 (R)) and *Ramchandra Rajbanshi v. Sub-Divisional Officer, Giridih* (C. W. J. C. No. 260 of 1980 (R)). Both the cases were decided on 19th July, 1980. In both those decisions the order of cancellation of the licence of the respective licensees was quashed on the ground that no area or limit of the radius within which the licensee can carry on its business had been indicated. But it was added by the learned Judges that if the State Government or Licensing Authority had fixed the situs of business being beyond a particular radius, that could have been very well justified in law. This position had been conceded at the Bar in those cases. In *C. W. J. C. No. 259 of 1980 (R)* aforementioned, judicial notice was also taken of the clandestine activities of the licensees participating in illegal pilferage and trade in coal. Mr. Sinha rightly argued that this observation could at best be treated as merely an obiter dictum. We are of the same view as has been held in the aforesaid decisions and respectfully agree with the observations made therein.

6. It was ultimately contended that since the place of business was mentioned in

the licence in form A the licensee could not move to any other place of business because that would cause him a loss in transaction. This argument is again of no avail. In the order/ direction it has been specifically stated, as has already been noted above, that after the petitioner moves its place of business to a venue beyond 8 kilometres of the mines in question it may intimate such place of business and the licence would be granted accordingly. There is thus, no merit in this submission also.

7. No other point was advanced before us in this application. We accordingly find no merit in this application and it is dismissed accordingly. In the circumstances of this case, there will be no order as to costs.