
(1962) 07 CAL CK 0018

In the Calcutta High Court

Case No : Civil Revn. Case No's. 2191 and 2543 of 1959

Bajoria Agency (Private) Ltd.

APPELLANT

Vs

Deputy Iron and Steel Controller and Others

RESPONDENT

Date of Decision : 23-07-1962

Acts Referred:

Constitution of India, 1950 — Article 245
Essential Commodities Act, 1955 — Section 3, 5
Iron and Steel (Control) Order, 1956 — Rule 11

Citation : AIR 1963 Cal 355 : 67 CWN 120

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : B. Das, Sitikantha Lahiri and Somendra Chandra Bose, for the Appellant; P.K. Roy, Debi Prosad Pal, Murari Mohan Dutta and Ajit Kumar Mukherjee, for the Respondent

Judgement

B.N. Banerjee, J.—This Rule is directed against two orders made against the petitioner company, under the Iron and Steel (Control) Order, 1956, hereinafter referred to as the "Control Order". The first order was made under Clause 11 of the Control Order, by which the petitioner company was directed not to remove or permit the removal of a specified tonnage of M. S. Plates, whether sold or unsold, from its stock yard or from any other part of its premises to any place outside thereof, without the written permission of the Iron and Steel Controller. The second order was made under Clause 12 (2) (b) of the Control Order, by which the petitioner company was directed to furnish a category-wise statement of iron and steel lying in its stock yard as on the date of the order. Both the orders are dated June 13, 1959. The petitioner company prays for a writ of Certiorari for the quashing of the orders and for a writ of Mandamus restraining the respondents from "giving effect thereto.

2. The circumstances under which the aforesaid two orders came to be made are hereinafter recounted. Pursuant to a tender, dated September 27, 1958, for import of 217.320 tons of steel from foreign countries for the specified purpose

of delivering the same to the Port Commissioners, issued by the Ministry of Steel, Mines and Fuel (Department of Steel), Government of India, the petitioner company made an offer which was accepted by the Ministry aforementioned, on December 10, 1958. The terms and conditions of the acceptance of the offer are hereinbelow quoted:

"Thomas Steel or steel produced by Basic Bessemer Process will not be acceptable.

The materials must be strictly manufactured by the process as stipulated in the specification as mentioned against each size in the schedule attached.

Cast number must be stamped on each piece. The materials shall be free from surface defects of any kind, free from cracks and conform to the section specified and finished in a workmanlike manner. Inspection Test Certificate must accompany each consignment.

Materials found to be defective or not in conformity with the specifications both in respect of size or quality will have to be replaced by you free of cost to the buyer.

The materials are to be imported from Continent/U.K/Japan.

The C. I. F. Calcutta prices per long ton as shown in the attached schedule are inclusive of all extras for quality, size, packing etc. and of your remuneration and are based on current conference liner ocean freight of Sh. 112/- less 9.1/2% per long ton. Any variation in the above rate on date of shipment will be on buyers account.

Shipment of the entire tonnage as promised by you must be completed by 6 weeks i.e. 25th January, 1959. In the case of failure to ship the materials in full within the aforesaid date and unless the Iron and Steel Controller is satisfied that the failure was due to reasons beyond the control of the importers, the Govt. of India will be entitled to take action in accordance with Clause (14) of the General Conditions of contract as per appendix "B" of the above tender.

The payment of C. I. F. value will be made out of the loan sanctioned by the World Bank for the Calcutta Port and will be made direct to the suppliers by the World Bank in the currency of the country of supply on production of the relevant documents".

3. Time for delivery, as fixed under the document quoted above, was extended from time to time.

4. Pursuant to the contract the petitioner company imported the steel plates from Bremen in Germany. Thereafter, on May 9, 1959, the petitioner company presented the relevant documents to the Commissioners for the Port of Calcutta and also its Bill for Rs. 1,15,125.27 nP. and called upon them to take delivery on payment. The Commissioners for the Port of Calcutta, however, neither paid for the goods nor took delivery of the same. The petitioner alleged that the conduct

of the Commissioners is wrongful and in breach of the petitioner's rights under the C. I. F. contract quoted above. Since the goods were lying in the Port wharfage and was carrying demurrage and since costs were increasing the petitioner company cleared the goods without prejudice to its rights and informed the Chief Engineer of, the Port Commissioners of such clearance by a letter, dated May 23, 1959. The Chief Engineer replied to that letter on May 29, 1959 to the following effect:

"Reference your letter No. 667/2378 dated 23-5-59, which has been received on the 27th May.

Please note that the payment against your bill No. 1272 of 9-5-59 can only be made if the goods are according to the contract and documents produced by you are found in order after verification by the Iron and Steel Controller. Hence the allegations contained in your letter contrary to what is stated above, are not correct".

5. It was at this stage that the petitioner company received the impugned order, dated June 13, 1959, from the Deputy Iron and Steel Controller. The petitioner company now moves against the two orders and challenges the same on several grounds hereinbelow indicated.

6. Mr. B. Das, learned Advocate for the petitioner company, contended, in the first place, that the petitioner company was neither a producer nor a stockholder but was merely an importer on behalf of the Government of India, under an import licence granted by the said Government itself, and no order under Clause 11 of the Control Order could be made against it. In order to test the force of this argument, it is necessary for me to examine the language of Clause (11) of the Control Order, which is hereinbelow set out:

"Power to prohibit removal--The Controller may order any producer (including a registered producer), any stockholder (including a controlled stock-holder) or any other person not to remove or permit the removal of any iron and steel, whether sold or unsold, from his stock yard or from any other part of his premises to any place outside the precincts of such stock yard or premises, except with the written permission of the Controller."

7. It appears from the above-quoted Clause that the Controller has power to make an order, prohibiting removal of iron and steel, not only on producer and stockholder but on any other person. There is no reason why the expression "any other person" should not include an importer like the petitioner company. Mr. Das, however, wanted to argue that the words "any other person" must be read ejusdem generis with the words "producers and stockholders." Ejusdem generis rule is one to be applied with caution and must not be pushed too far. To invoke the application of the rule there must be a distinct genus or category and specific words must apply not to different objects of varying or widely different character but to something which can be called a class or a kind of objects. Where this is lacking the rule cannot apply. In Clause (11) of the Control Order, it is difficult to

find out the genus and it is impossible to interpret the words "any other person" by application of ejusdem generis rule. Therefore, I have to hold that the words "any other person" mean persons who are neither producers nor stockholders and within the width of its meaning a person like the petitioner company may very well fall. The first line of attack made by Mr. Das, therefore, fails.

8. Mr. Das contended, in the next place, that Clause (11) of the Control Order invests the Controller with arbitrary and naked power and must be struck down for that reason. This argument, he made in two distinct branches. In his first branch of the argument, he invited my attention to the definition of "Controller", in the Control Order, which reads as follows:

"2(c). "Controller" means the person appointed as Iron and Steel Controller by the Central Government and includes any person exercising, upon authorisation by the Central Government, all or any of the powers of the Iron and Steel Controller".

He contended that the inclusion of

"any person exercising, upon the authorisation by the Central Government, all or any of the powers of the Iron and Steel Controller"

within the definition of the word "Controller", was bad for excessive delegation of power. Fortuitously the impugned order was made in this case by the Deputy Iron and Steel Controller but nothing prevented the Central Government from authorising an officer of a humbler rank to make the same order against the petitioner company. A provision of law, which entitles the Government to delegate powers to any person irrespective of whether he is fit to exercise such powers, must be, he contended, condemned as unreasonable. He relied on two decisions of this Court as authorities for the proposition, namely, *Khagendra Nath De Vs. District Magistrate of West Dinajpur*, and *Satchidananda Mukherjee and Others Vs. State of West Bengal and Others*, .

9. Where the delegation is unguided and unbridled that may be so; but where the legislature selects the instrumentalities or indicates the method of selecting the instrumentalities, the legislative wisdom must not be questioned on the plea that the Government has been vested with excessive power of delegation. Such a criticism is subversive of the rights which legislatures enjoy while dealing with matters falling within the class or subject in relation to which the Constitution has granted them legislative powers.

10. In the case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, the delegation as in Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act came up for consideration. Those two sections read as follows:

"3. (1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing the equitable distribution and availability at fair prices, may by order

provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.....

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide:

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity,

(b) x xx x x (c) x xx x x (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity.....

(4) The Central Government may by notified orders direct that the power to make orders u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government as may be specified in the direction".

11. In upholding the power of delegation contained in the section the Supreme Court repelled the criticism of unconstitutional delegation with the following observations:

"We think that Section 4 enumerates the classes or persons to whom the power could be delegated or Sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the legislature itself."

12. Sections 4 and 5 of the Essential Commodities Act, 1955 are to the following effect:

"4. An order made u/s 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties".

"5. The Central Government may by notified order, direct that the power to make orders u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government."

13. u/s 5 of the Essential Commodities Act, the power to make orders (under Section 3 of the Act) may be exercised, inter alia, by an officer or authority

subordinate to the Central or the State Governments as may be specified by the notified order by the Central Government. The section, therefore, selects the instrumentality by whom the power under the Act may be exercised. "Any person" authorised by the Central Government becomes an authority subordinate to it and as such an instrumentality selected by the legislature. Exercise of power under the Act by such an authority must not be condemned on the ground of excessive delegation of power. In the instant case the power was exercised by an officer of the Central Government, also an instrumentality selected by the legislature. The making of the order by him cannot be condemned as an order made by a person on whom power was not lawfully delegated.

14. The next branch of the argument of Mr. Das to the effect that Clause (11) clothes the Controller with naked power and is therefore bad may be shortly disposed of. In the case of Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others, , the Supreme Court upheld the provision of Clause 11B of the Iron and Steel (Control of Production and Distribution) Order, "1941, clothing the Controller with plenary power to fix prices with the following observations:

"The challenge to the vires of Clause 11B has, "therefore, to be examined on the basis that Ss. 3 and 4 of the Act are valid. It is relevant to set out the implications of this position. When it is assumed that Sections 3 and 4 are valid it necessarily means that they do not suffer from the vice of excessive delegation. When the Legislature delegated its authority to the Central Government to provide by order for regulating or prohibiting the production, supply and distribution of steel and iron, it had not surrendered its essential legislative function in favour of the Central Government. The preamble to the Act and the material words used in Section 3(1) itself embody the decision of the Legislature in the matter of the legislative policy and their effect is to lay down a binding rule of conduct in the light of which the Central Government had to exercise its powers conferred on it by Section 3. The Legislature has declared its "decision that the commodities in question are essential for the maintenance and progress of national economy and it has also expressed its determination that in the interest of national economy it is expedient that the supply of the said commodities should be maintained or increased as circumstances may require and the commodities should be made available for equitable distribution at fair prices. The concept of fair prices which has been deliberately introduced by the Legislature in Section 3 gives sufficient guidance to the Central Government in prescribing the price structure for the commodities from time to time. With the rise and fall of national demand for the said commodities or fluctuations in the supplies thereof, the chart of prices may, in the absence of well-planned regulation, prove erratic and prejudicial to national economy, and without rational and well-planned regulation equitable distribution may be difficult to achieve; and so the Legislature has empowered the Central Government to achieve the object of equitable distribution of the commodities in question by fixing fair prices for them. Thus, when it is said that the delegation to the Central

Government by Section 3 is valid, it means that the Central Government has been given sufficient and proper guidance for exercising its powers in effectuating the policy of the Statute.

Similarly the validity of Section 4 postulates that the powers conferred on the sub-delegate do not suffer from the vice of excessive delegation. Sub-delegation authorised by Section 4 is also justified because, like the delegate u/s 3, the sub-delegate u/s 4 has been given ample guidance to exercise its powers when he is authorised by the Central Government in that behalf. If the Central Government chooses to exercise its powers u/s 3 itself it may pass appropriate orders to give effect to the policy of the Act in respect of matters covered by Section 3(1) and (2). When it adopts such a course the Central Government would have exercised its own authority u/s 3; and the exercise of its power cannot be challenged on the ground that it suffers from the vice of excessive delegation. Similarly, where by a notified order passed by the Central Government u/s 3 the Controller is authorised to pass appropriate orders, the notified order cannot be challenged on the ground that it suffers from the vice of excessive delegation. In our opinion, this position is implicit in the assumption that Sections 3 and 4 are valid.

What does the order purport to do? It purports to prescribe a scheme for the guidance of the Controller or other authorities specified in it when they exercise their powers and attempt to effectuate the policy of the Act. There can be no doubt that in exercising its powers u/s 3 the Central Government could itself have prescribed a price structure for steel and iron from time to time. Similarly, if by a notified order issued u/s 3 the Central Government had authorised the Controller to do so, he could have himself pre-scribed the price structure in respect of steel and iron from time to time. Instead of passing a bare notified order authorising the Controller to take appropriate steps to effectuate the policy of the Act, the order purports to give him additional guidance by making several relevant provisions in regard to the production, supply and sale of steel and iron. The several clauses of the Order constitute an integrated scheme which would enable the Controller to take steps to give effect to the policy laid down by Section 3 of the Act. Clause 11B itself provides for the fixation of maximum prices for iron and steel. First of all the Controller has to classify iron and steel into different categories according as they are tested or untested; and Equalisation Fund has to be established by him for equalising freight, and he has to take into account the concession which is payable to each producer or class of producers under existing valid agreements and any other disadvantages. He is empowered to require the parties concerned to make a contribution to the Equalisation Fund, and the maximum prices which he has to fix have to be fixed separately for the producers, the stockholders including the controlled stockholders and other persons or; class of persons,

X X X X X It is obvious that by prescribing the maximum prices for the different categories of iron and steel Clause 11B directly carries out the legislative object prescribed in Section 3, because the fixation of maximum prices would make

stocks of iron and steel available for equitable distribution at fair prices. It is not difficult to appreciate how and why the Legislature must have thought that it "would be expedient either to define or describe in detail all the relevant factors which have to be considered in fixing the fair price of an essential commodity from time to time. In prescribing a schedule of maximum prices the Controller has to take into account the position in respect of production of the commodities in question, the demand for the said commodities, the availability of the said commodities from foreign sources and the anticipated increase or decrease in the said supply or demand. Foreign prices for the said commodities may also be not irrelevant. Having regard to the fact that the decision about the maximum prices in respect of iron and steel would depend "on a rational evaluation from time to time of all these varied factors the Legislature may well have thought that this problem should be left to be tackled by the delegate with enough freedom, the policy of the Legislature having been clearly indicated by Section 3 in that behalf. The object is equitable distribution of the commodity and for achieving the object the delegate has to see that the said commodity is available in sufficient quantities to meet the demand from time to time at fair prices. In our opinion, therefore, if Clause 11B is considered as a part of the composite scheme evidenced by the whole of the Order and its validity is examined in the light of the provisions of Sections 3 and 4 of the Act, it would be difficult to sustain the plea that it confers on the delegate uncanalised or unbridled power".

15. In the instant case Section 3 of the Essential Commodities Act leaves it to the Central Government by order to provide for regulation and prohibition of production, supply and distribution of essential commodities and trade and commerce therein, if in its opinion it is necessary to do so for increasing supplies or securing equitable distribution thereof. The Statute supplies the guidance for the exercise of power under the Control Order (and also under Clause 11 thereof), and it cannot, therefore, be said that the provisions of Clause (11) invest the Controller with arbitrary powers. The second branch of the attack made by Mr. Das, therefore, also fails.

16. Mr. Das lastly argued that the possession of the imported steel plates has been taken over by the financier of the petitioner company and it is no longer possible for the petitioner company to obey the impugned order. This argument is based on the allegation contained in paragraph 13 of the petition, which reads as follows:

"While your petitioner was thus feeling quite helpless in the matter and the goods had already been taken delivery of by the financiers of your petitioners who had to take the help of other financiers to finance the deal, they were surprised to receive a Memorandum No. CS/58/1/N/58/NS dated 13th June, 1959 from the opposite party No. 1, the Deputy Iron and Steel Controller".

That paragraph is affirmed by the affidavit of Sri Shankarlal Bajoria, Manager of the petitioner company. He affirmed the paragraph as true to his information derived from "records of the case". When I asked which records of the case were

contemplated, Mr. Somendra Chandra Bose, Advocate, who followed Mr. Das, submitted that I should read "records of the company" for the words "records of the case". The records of the company, on which the aforesaid statement was allegedly founded, were not produced before me and I cannot, therefore, test the veracity of the statement which is not an admitted fact. If the petitioner company has already been deprived of the possession of the steel plates, it may try to satisfy the Controller about its inability to comply with the order and I believe the controller will deal with such representation according to law.

17. If the Controller can make an order under Clause (11) of the Control Order, it is not disputed that he also can make an order under Clause 12 (2) (b) against the petitioner company. In my opinion, the Controller has the power under the Control Order to make both the orders.

18. All the arguments made on behalf of the petitioner company, therefore, fail and this Rule must be discharged with costs.

19. C. R. 2543 of 1959: It is not disputed that if my judgment in Civil Rule No. 2191 of 1959 is correct, then Civil Rule 2543 of 1959 must also be discharged with costs. I order accordingly.