

(1961) 01 AHC CK 0001
In the Allahabad High Court

Bhagwati Saran and Another

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 20-01-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Penal Code, 1860 (IPC) — Section 11, 21

Citation : (1961) CriLJ 24

Hon'ble Judges : B.P. Sinha, C.J;S.K. Das, J;N. Rajagopala Ayyangar, J;J.R. Mudholkar, J;A.K. Sarkar, J

Bench : Full Bench

Judgement

N. Rajagopala Ayyangar, J.—Having heard the learned Counsel for the appellants in full we did not consider it necessary to call on the respondent since, we were clearly of the opinion that the contentions raised in the appeal possessed no merit.

2. The legality of a prosecution for contravention of the notification fixing the maximum prices at which certain categories of iron and steel could be sold is the subject-matter of this appeal. The appellants are two in number, related to each other as husband and wife. The second appellant Sushila Devi -is " a Registered Stockholder" and is stated to be the proprietor of the firm " Balwanta Devi Sushila Devi " situated in Sultanpur in Uttar Pradesh and the first appellant Bhagwati Saran her husband, the manager of the said firm.

3. There has been some previous history before the present prosecution was initiated but it is sufficient for the purposes of this appeal to start with the report to the Judicial Magistrate Amathi by the officer in-charge of the Police station, Sultanpur, dated August 20, 1955. It was headed " Offence- Section 11-B Iron and Steel Control Order 1941" and set out the following facts:

"Bhagwati Saran used to work as a Karinda in the firm of Balwanta Devi Sushila Devi and had all along been doing sales and purchases at the shop, and also issued receipts under his signatures. Shrimati Sushila Devi is the wife of accused

Bhagwati Saran and she was the proprietor. Balwanta Devi has died. Hence she alone is the proprietor. In the course of investigation it was also revealed that Bhagwati Saran had from time to time sold some iron-bars On behalf of this firm after receiving price more than the control rate, which he had all along been getting printed, and had been getting some other receipts checked fictitiously under the Control Act from the office of the Supply Officer. An information relating to it was given to Shri. P. M Kapoor, the then D. M. Sultanpur, by his munim Kalapnath and on it a case was registered at this police station and the investigation was made...., On the report of the P. P. the S.P. order ed another charge-sheet to be submitted u/s 8 of the Essential Commodities Ordinance of 1955. Hence this charge-sheet u/s 11-B III, Iron and Steel Control of Production and Distribution Order, 1941, read with Section 8 of Essential Commodities Ordinance of 1955 is sent against both the accused. The accused persons after being arrested were released on bail. It is, therefore prayed that the accused persons after being summoned may be punished ".

4. The report further stated that 4 volumes of cash memos, and 5 volumes of register of Permits were deposited in the Malkhana and would be produced in evidence and followed it with a list of 13 prosecution witnesses. The Judicial Magistrate registered the case and issued summons to the accused on September 16, 1955, the case being directed to be called on September 30, 1955. The accused were thereafter examined before the Magistrate u/s 364 of the Criminal Procedure Code on March 23, 1956, and on the next day the Magistrate framed a charge against them which read as follows:

That you between 10th January 1952 and 27th February 1952, in Sultanpur sold 11 Cwt. 12 lb iron bars on 11th January 1952 and 3 Cwt iron-bars on 18-2-52 and 6 Cwt. Iron bars on 26th February 1952, at the rate of Rs. 21-13-9 per Cwt. though the controlled rate as notified in Government of India Gazette dated 1st July 1952, for the commodity was Rs. 21-2-4 per Cwt, and thus you charged Rs. 1-15-0, Rs. 2-2-3 and Rs. 4-4-6 respectively excess and more than the controlled price and thereby committed an offence punishable u/s 7, E. S. Temp. P. Act, 1946 read with Section 11-B (iii) of Iron and Steel Control of Production and Distribution Order of 1941 and I hereby direct that you be tried by the said Court on the said charge.

The two appellants thereupon moved the Court of the Sessions Judge, Sultanpur, to revise the order of the Magistrate dated March 24, 1956, framing charges against them u/s 7 of the Essential Supplies Temporary Powers Act, 1946-Act XXIV of 1946 referred to hereafter as the Act.

5. The points urged at that stage were mainly two : (1) That the notification by the Controller under Clause 11 B (1) fixing the maximum prices which were stated to have been contravened not having been filed before the Court, the Magistrate erred in framing a charge, and (2) that the report of the police was not in conformity with the provisions of S. II of the Act. The learned Sessions Judge upheld the second of the above contentions which was, that the report

made by the police officer did not set out " the facts constituting the offence" as required by Section 11 of the Act. He rejected the other point put forward by the appellants but in view of his conclusion that there was a defect in the report which went to the root of the jurisdiction of the Magistrate to take cognizance of the case, he made a reference to the High Court with a recommendation that the charge framed against the appellants be quashed. This reference was heard by a Single Judge of the High Court, who disagreed with the learned Sessions Judge in his view that the report did not satisfy the requirements of Section 11 of the Act. Before the learned Judge, however, a further point was urged, that Section 11-B of the Iron and Steel Control of Production and Distribution Order, 1941, which will be referred to hereafter as the Control Order was itself ultra vires. This further objection was referred to a Division Bench for decision. The point urged before the learned Judges of the Division Bench was that the power to fix prices vested in the Steel Controller by Clause 11-B of the Control Order was unconstitutional, as violative of the right to carry on business guaranteed by Article 19(1)(g) of the Constitution. The learned Judges answered this point against the appellants and the case thereafter came back before the learned Single Judge for final disposal of the reference by the Sessions Judge. The learned Counsel for the appellants once again made a submission to the learned Judge regarding the report of the police officer dated August 20, 1955, not satisfying the requirements of Section 11 of the Act, and pressed before him the view which found favour with the learned Sessions judge. In a more detailed judgment, the learned Judge again rejected this contention and dismissed the reference and directed the prosecution to continue. It is this order of the High Court of Allahabad that is the subject-matter of appeal now before us, on a certificate granted by that Court.

6. It would be seen that the only two points in controversy before the High Court were: (1) whether the report of the police officer dated August 20, 1955, contained "the facts constituting the offence" with which the appellants were charged, as to satisfy the requirements of Section 11 of the Act, and (2) whether Clause 11-B of the Control Order, violated the fundamental right to carry on business guaranteed by Article 19(1)(g). In the grounds of appeal to this Court and in the statement of case, however, the appellants have raised various other grounds and have also filed a petition for leave to urge these additional grounds. We desire to make it clear that grounds additional to those urged before the High Court would not be permitted to be raised before this Court as a matter of course and that petitions for such purpose would not be granted save in exceptional cases. It has to be noticed that in hearing and dealing with such additional grounds the Court is handicapped in not having the advantage of the opinions of the High Courts on the points urged. It is the correctness of the decisions of High Courts that are sought to be challenged in appeals and it is but proper that the correctness of these judgments should, save in exceptional cases like for instance subsequent legislation or questions of fundamental and general importance etc., be assailed only on grounds urged before such Courts. Besides,

when among the grounds thus urged as in this case is included a violation of Article 14, the handicap is accentuated, since the material facts on which the classification might rest could not be properly investigated or evaluated on the basis of the affidavits filed in this Court without a careful sifting of the facts which a consideration by the High Court would afford. If in the appeal now before us, we have departed from this rule and permitted the appellants to urge the additional grounds it was because of the circumstance that the prosecution was pending and learned Counsel submitted that he would seek to sustain his contention regarding the violation of fundamental rights on the materials already on record.

7. The ground regarding the constitutionality of Clause 11-B of the Control Order has been the subject of elaborate consideration by this Court in *Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others*, and is, therefore no longer open to argument. Learned counsel for the appellant therefore did not challenge the correctness of the judgment of the High Court upon this point.

8. Besides the ground based on a non. compliance with Section 11 of the Act which we shall consider later, learned Counsel urged before us two points with reference to the notification issued by the Steel Controller fixing the maximum prices at which the several categories of iron & steel could be sold by producers and stockholders. These were : (I) that the notification of the Controller dated : July 1, 1952, for the contravention of which the appellants were being prosecuted, was ultra vires the rule-making power conferred upon him by Clause 11-B I. of the Control Order, (2) If, however, the notification was held to be within his power, the same was unconstitutional in that it was discriminatory and violated Article 14 of the Constitution. As we have indicated earlier, these grounds of challenge to the validity of the notification were not made in any of the Courts below including the High Court, but for the reasons indicated we permitted learned Counsel to argue them before us.

9. In order to appreciate the contention presented in the two forms, it is necessary to set out the terms of Clause 11-B (1) which conferred power upon the Controller to fix the maximum base-prices at which the several varieties of iron & steel could be sold. Clause 11-B (1) runs:

11-B. Power to fix prices.-(I) The Controller may from time to time by notification in the Gazette of India fix the maximum prices at which any iron or steel may be sold. (a) by a Producer, (b) by stock-holder including a Controlled Stockholder and (c) by any other person or class of persons. Such price or prices may differ for iron and steel obtainable from different sources and may include allowances for contribution to and payment from any equalisation fund established by the Controller for equalising freight, the concession rates payable to each producer or class of producers under agreements entered into by the Controller with the producers from time to time, and any other disadvantages.

10. Clause (2) of the Control Order defines "producer" as "a person carrying on the business of manufacturing iron or steel", and "registered producer" as "a producer who is registered as such by the controller". The same clause defines "stockholder" as "a person holding stocks of iron or steel for sale who is registered as a stockholder by Controller" and "Controlled stockholder" as "a stockholder appointed by the Controller to hold stocks of iron or steel under such terms and conditions as he may prescribe from time to time". The notification of the Controller dated July 1, 1952, impugned in these proceedings runs in these terms, quoting only the material words:

Under Ministry of Commerce and Industry Notification ...the prices of all items of steel under columns I, II and III in the schedule of Base Prices of the attached price circular No. 1 of 1951 have been increased by Rs. 50 per ton with effect from 1st July, 1952, except item 19(b), i.e., Billets which has been increased by Rs. 45 per ton.... The other General and Special Conditions of sale mentioned in the attached Price circular remain the same.

11. The price circular dated July 1, 1951, referred to here consisted of eight columns which ran thus:

Price in rupees per ton _____
 _____ maximum

Base Prices At Calcutta, Bombay and Madras _____

_____ Column I. Column II. Column III. _____

_____ For sales by all Base For sales by For sales by all persons other price
 Materials. Registered Pro- controlled than registered producers ducers.
 stockholders. and controlled Item stock- holders _____

_____ Item No. Untested. Tested. Untested Tested. Untested.
 Tested. Rs. Rs. Rs. Rs. Rs. Rs. _____

1 A-Bars, Structural and pistes etc. Bars and Rods 303 333 328 363 348 383
 (Rounds and squares below 3" and flats upto and including 5" wide). 2 to 42... _

This was followed by General Conditions and Special Conditions which inter alia made provision for the purpose of rounding off inequalities in freight caused by places being situated at varying distances from the place of production etc. It was the operation of some of these conditions" that was urged as giving rise to the discrimination complained of, but it will, however, be convenient to deal with them, later after disposing of the argument regarding the notification not being within the powers of the Controller under Clause 11-B 1.

12. The ground urged in support of the contention that the notification by the

Controller was not in conformity with Clause 11-B (1) was this: Whereas under Clause 11-B (1) the Controller was directed to fix the maximum prices which could be charged by three different classes, viz., (a) Producers, (b) Stockholders including Controlled stockholders, and (c) Other persons, the impugned notification departed from this scheme in two respects : (1) The clause contemplated that the notification should apply to all "producers" whereas "producers" other than "Registered producers" were wholly left out by the Controller with the result that no limitation was placed upon the price they could charge, (2) Whereas the clause directed the Controller to include both the types of stock holders-"Registered" as well as "Controlled" - within the same class and make the same limit of prices applicable to both the notification had included only "Controlled stockholders" as the second category of dealers and "registered stockholders" had not been specified eo nomine by him. This meant either that "Registered stockholders" were wholly outside the class of dealers governed by the notification or that they were intended to be included in the residuary class in column III. On these premises learned Counsel urged that if. "registered stockholders" like the second appellant were not within the notification, the prosecution must fail because the maximum : prices chargeable by her had not been fixed. If on the other hand such dealers had been separated from "Controlled stockholders" and included in the residual category, such a classification was not countenanced by Clause 11-B (1) and was therefore ultra vires.

13. We consider that these submissions are wholly without any substance. Before the argument that "producers" other than "registered producers" had not been included in the notification can be accepted, it has to be established that there is any such producer. There is a list of "registered producers" appended to the notification and learned Counsel admitted that he could not say that there were any besides these, who were "producers" of iron & steel within the ; meaning of the Control Order. If therefore every "producer" was registered, there is no scope for the argument that any persons had been left out and permitted to sell at prices of their choice.

14. The other part of learned Counsel's argument that "registered stockholders" were not governed by the notification because they were not included in column II thereof and that dealings by them were not subjected to the maximum of prices fixed by it, has only to be stated to be rejected. The heading of the last column shows that all categories of dealers other than "registered producers" and "controlled stockholders" were included in the residuary category. The related contention that the Controller acted outside his powers in differentiating between "controlled stockholders" and "registered stockholders" and in fixing different maximum of prices that could be charged by the two categories of dealers, does not deserve serious consideration either, If we understand the classification aright. it is like one between wholesale dealers and retailers and it is on this basis that the maximum price that could be charged by the "Registered Stockholders" who fall under column 111 is fixed at Rs. 20 per ton above that

permissible to "Controlled Stockholders" in respect of the category of steel which we have extracted earlier. The classification which gives persons in the category of the appellants this advantage is certainly not one regarding which a complaint could be made. Even when this advantage conferred on registered stockholders by the classification by the Controller was pointed out to learned Counsel for the appellant he persisted in his argument that "registered stockholders" should have been put in column II along with "controlled stockholders" and should have been permitted to sell only at the same maximum prices. This is sufficient to show that the argument regarding the classification was frivolous and could not have been urged with any seriousness. This apart, we consider that even on the terms of Clause 11-B (1), the Controller is not prevented from drawing a distinction within the three classes which are specified in it. The purpose and policy of the enactment is to ensure that an essential commodity like iron & steel is made available to the consumer at reasonable prices and in the achievement of this objective classification of producers or of other stockholders based upon rational grounds would obviously be within the power of the Controller. Taking for instance the last class (c) "any other person or class of persons", it cannot be that this group could not be sub-classified, if there was any reason or necessity to do so. If head (c) is susceptible of this interpretation, as it obviously must, we see no reason why head (b) should not be similarly construed. We have therefore no hesitation in rejecting the contention of learned Counsel, that the notification of the Controller fixing maximum prices is beyond his power, as not warranted by the terms of Clause 11.B (1) of the Control Order,

15. The argument next advanced in challenge of the validity of the notification was, that some of the General Conditions appended to the notification were discriminatory of the class of "registered stockholders" as compared with the "controlled stockholders" invoking for this purpose Article 14 of the Constitution. Learned counsel did not challenge the legality of the creation of the equalization fund by the allowances for what is termed as "place extra". Learned counsel, however, urged two matters wherein facilities had been afforded or price increases permitted, to "controlled stockholders" which were denied to "registered stockholders" and that these had been done without any rational basis. These were : (1) The 3rd of the special conditions for sale by "controlled stockholders" read : "The question of credit facilities will be a matter for negotiation between the customers and the controlled stockholders". (2) Similarly, Condition 5 also relating to ""controlled stockholders" read : "The base-prices are for sizes and length available in stock. Customers requiring material cut to length or size not available in stock will be required to pay cutting and wastage charges agreed between the customers and the stockholders". Coming now to the special conditions for sale "by persons other than producers and controlled stockholders," i.e., the conditions which governed sales like those by the second appellant, special condition 1 read : "The base rates given in column III above are ex-site and apply to sales by all persons other than Producers and Controlled Stockholders ...and are not subject to additional charges for cutting or

for credit facilities " Neither of these points-cutting charges or credit facilities - could be held to be discriminatory without a full investigation of the facts and circumstances which led to the imposition of these special conditions. Differentiation could never per se be discrimination, nor is there any presumption that the adoption of different rules for groups differently situated is unequal treatment violative of Article 14. On the other hand, the presumption is the other way and the party that alleges unjustifiable discrimination should establish it to the satisfaction of the Court. We consider that there is no material on the basis of which an argument could be sustained that the special conditions to which learned Counsel adverted contained any element of unfair or irrational discrimination to attract Article 14.

16. There was a slight and subsidiary point raised in regard to the allowance of credit facilities and cutting charges. It was said that these charges were indeterminate and that the Controller having been directed by Clause 11-B (1) to fix definite maximum prices had departed therefrom by permitting increases of undefined amounts. This argument again has no substance. The base-price for the commodity having been fixed, there are incidentals which by their very nature were incapable of definite quantification since they were dependant on each individual case. This contention also we therefore reject. In passing, we might observe that the matter before this Court in *Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others*, related to a prosecution for a contravention Of a notification of an earlier date, but in terms identical with the present, except as to the prices, wherein the dealers in the commodity were classified in the same manner as has been done in the notification now before us and with the same general and special conditions. The respondent then before this Court was "a registered stockholder" who was being prosecuted for effecting sales in excess of the maximum prices fixed. The fact that on that occasion no contention was urged challenging the validity of the notification as beyond the powers of the Controller, on the grounds now put forward clearly indicates, that the matters now urged never appeared then, as a possible source of grievance to a party situated similarly as the second appellant. We hold that the notification fixing the prices together with the conditions appended thereto are valid and enforceable.

17. The last point that remains to be dealt with, is the contention that the initiation of the prosecution against the appellants was invalid for non-compliance with the requirements of Section 11 of the Act. This Section runs:

11. Cognizance of offences. - No Court shall take cognizance of any offence punishable under this Act except on report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code XLV of 1860.

Learned counsel for the appellants urged that though two of the conditions specified by the statute, viz., (1) a report in writing, (2) by a public servant were satisfied, the third requisite, viz., that the report should set out the "facts

constituting such offence" was lacking and that by reason of this defect the Magistrate could not lawfully take cognizance of the case against the appellants. In elaboration of this point learned Counsel pointed out that the report did not specify : (a) the date when the alleged sales took place, (b) the quantity sold, (c) the person in question who was the buyer and who paid the excess over the controlled price, (d) the class or category of iron & steel which was the subject of the sale by the appellants, e) the precise maximum price which had been fixed for such variety, (f) the amount which the appellants were, alleged to have received in excess. The learned Judge of the High Court rejected this contention and, in our opinion, correctly. In the report which we have already extracted the provision of the law which the appellants were stated to have contravened was set out, and it was there stated that being "registered stockholders" they had sold the goods above the price notified and that they had further, in order to conceal their crime, fabricated evidence. It is to be noticed that the report is required to contain only "a statement of facts constituting the offence" and its function is not to "serve as a charge-sheet against the accused. The function or purpose of the second of the above three requirements of Section 11 is to eliminate private individuals such as rival traders or the general public from initiating a prosecution and for this purpose before cognizance is taken the complaint is required to emanate from "a public servant". The two further requirements, viz., that the report should be in writing and regarding the contents of the report, are to ensure that there shall be a record that the public servant is satisfied that a contravention of the Jaw has taken place. If the contravention in question is sufficiently designated in the report, and in the present case that cannot be disputed, since besides a reference to the notification stated to have been contravened, the report states that the accused had effected sales; above the maximum prices specified in the notification, the requirements of the section are satisfied. The details which would be necessary to be proved to bring home the guilt to the accused and which comprised the several matters enumerated by learned Counsel which we have set out, will be details which would emerge at a later stage, when after notice to the accused a charge is framed against them, and of course at the stage of the trial. They would all be matters of evidence and Section 11 does not require the report to be or to contain either the charge-sheet or the evidence in support of the charge, its function being merely to afford a basis for enabling the Magistrate to take cognizance of the case.

18. In support his submission regarding the construction of Section 11 reliance was placed on two decisions : Dr. N.G. Chatterji and Another Vs. Emperor, and Rajpal Singh v. Rex, 50 Cri L J 469 : AIR 1949 Oudh 66. Both these were cited before the learned Judge and we agree with the manner in which he has dealt with and distinguished them. No doubt, in both these cases it was held that the requirement of Rule 130(1) of the Defence of India Rules whose language was similar to Section 11 of the Act as to the statement of "facts constituting the contravention" was not complied with, but the "reports" dealt with in them, bear

no resemblance to the report in the case before us. In the first of these decisions Dr. N.G. Chatterji and Another Vs. Emperor, the recital in the report was that the accused was guilty of a "prejudicial act to the interest of the public" and "had prejudiced the success of financial measures with a view to the efficient prosecution of the war". These words were held to be absolutely vague, even the particular rule or provision of law which was said to have been contravened, not even being mentioned in the report. The other decision in 50 Cri L J 469 : AIR 1949 Oudh 66 does not bear any analogy to the present case either. The report there in question ran:

On the statement of the informant an offence u/s (Rule 7) 81(2), Defence of India Rules, has been committed for which the charge-sheet is being submitted.

On this it was held that the facts alleged to constitute the contravention were not set out in the report and that the Magistrate had therefore no jurisdiction to take cognizance of the case. Obviously this case could not assist the learned Counsel to sustain a contention that the report in the present case was defective. We consider that the report on which the prosecution was launched satisfied the requirements of Section 11 of the Act.

19. In the result the appeal fails and is dismissed.