
(1982) 08 RAJ CK 0013

In the Rajasthan High Court

Case No : C.W. Petition No"s. 1121, 1123 to 1125, 1126 and 1221 of 1981

Bhanwar Lal Brij Gopal and

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-08-1982

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : AIR 1983 Raj 104 : (1987) 54 FLR 216 : (1983) RLW 50 : (1982) WLN 497

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : M.L. Garg and J.D. Arora, for the Appellant; D.S. Shishodia, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—In all these 6 writ petitions identical questions of law have been involved and learned counsel for the parties made request to decide them by a common judgment. I have accepted the request of the parties.

2. The petitioners are businessmen dealing in whole-sale business in pulses, Oil-seeds and Foodgrains etc., at Sri-Karanapur and they are holding the licences for the same under the provisions of Rajasthan Trade Articles (Licensing & Control) Order, 1980.

3. According to petitioners, the Rajasthan State issued an order and notified the Rajasthan Trade Articles (Licensing & Control) Order. 1980 (hereinafter referred as "the order of 1980"), which came into force on 27th of August 1980. The petitioners obtained license under it. According to this, as per terms of license, no restrictions were imposed on the petitioners and petitioners were authorised to keep any quantity of wheat in the storage. According to petitioners, a Notification dated 23-5-1981 was issued, which is Ex. 1. This Notification Ex. 1 reads as under:--

"GOVERNMENT OF RAJASTHAN FOOD & CIVIL SUPPLIES DEPARTMENT
NOTIFICATION

Jaipur

Dated 23-5-1981

S. O. In exercise of the powers conferred by Sub-Clause (ii) of Clause 18 of the Rajasthan Trade Articles (Licensing & Control) Order, 1980 the State Government with prior concurrence of the Central Government hereby fix the maximum limit of 200 quintals of wheat to be possessed by a dealer at any one time.

It shall come into force with effect from 27th May, 1981.

No. 17 (iii) F/5/Legal/80

By Order of the Governor

Sd/-

R.P. Nag.

Dy. Secretary to the Government."

4. This order was made effective and came into force from 27-5-1981.

5. The petitioners" (case) is that they came to know of this order on 25th May 1981 and they could not dispose of the goods before 27th May 1981, as the time was too short. The petitioners" case is that time was unreasonable and insufficient.

6. The Enforcement Officer came to the shops of the petitioners and noted the stock as on 27th May 1981.

7. According to petitioners, they handed over the excess stock to the respondent No. 5 because of coercion threat was given by the Enforcement Inspector of prosecution. The grievance of the petitioner is that apart from not granting reasonable time, the respondents are paying only Rs. 130/- per quintal for the stock taken. At that time there was no control over the price of wheat. This price was only supporting price.

8. The petitioners have challenged this order Ex. 1 and wants it to be declared as ultra vires and void as an unreasonable restriction imposed on Trade, and being violative of Articles 14 & 15 of the Constitution of India.

9. The petitioners claim the following reliefs :--

"(i) That the order Ex. 1 issued by the State Government be quashed on the grounds submitted in the writ petition.

(ii) That the respondents be restrained from enforcing the order Ex. 1 and from taking any action against the petitioner under the provisions of the 1980 Order.

(iii) That Clause 18 of the 1980 Order be declared void being in contravention of Article 14 of the Constitution of India.

(iv) That the verbal orders given by Respondent No. 4 under order or the instructions of Respondents Nos. 2 and 3 be declared to be illegal, void, without jurisdiction.

(v) That Respondent No. 5 be asked to deliver back the wheat taken from the petitioner.

(vi) That in case this Hon''ble Court does not want the redelivery of wheat to the petitioner then it may be ordered that the State Government should pay up the price to the petitioner according to prevailing market price at that time and market Committee fee and the Sales tax paid by the petitioner and other expenses which were incurred by petitioner.

(vii) That in case this Hon''ble Court comes to the conclusion that wheat purchased from the petitioner was the requisitioning of stocks according to Clause 19 of the Rajasthan Trade Articles (Licensing and Control) Order, 1980 in that case the respondents should be ordered to pay the price according to the provision of law in force at that day.

(viii) Any other relief which this Hon''ble Court may deem fit and proper in the circumstances of the case be also granted in favour of the petitioner.

(ix) Award the costs of the writ petition to the petitioner from the non-petitioner."

10. The respondents have controverted the above allegations and their case is that it is valid and notification was upheld by the Hon''ble the Supreme Court in S. B. C. Writ No. 334/81 Surajmal v. Kailash Chand decided on 28-9-81 (?) Suraj Mal Kailash Chand and Others Vs. Union of India (UOI) and Another, and Prasan Lal v. State decided on 4-9-81 (?) Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others,

11. The respondents have denied that threats were given for prosecution. Their case is that on 30th May 1981 Vyapar Mandal Sri Karanpur sent the deputation to the District Supply Officer and the Collector of Ganganagar and voluntarily offered their co-operation for obeying the notification and prayed that their excess stock may not be ceased as they are ready and willing to give the wheat to the State Government if they are paid the price of Rs. 130/- per quintal which was being paid to the Agriculturists. The Collector as a goodwill gesture accepted the offer of the petitioners to voluntarily surrender the wheat and sell it to the respondents at the rate of Rs. 130/- per quintal.

12. During the course of the arguments, Mr. Garg relied upon the judgment of this Hon''ble Court M/s. Pokar Chand Jeevraj 1981 WLN 561 in which impugned order/Notification places unreasonable restrictions on the petitioners.

13. Undoubtedly in Pokar Chand Jeevraj's case, the learned Bench of this Hon''ble Court has held, that on account of the fact that only 3 days time was

given, the impugned notification deserves to be struck down as having placed unreasonable restriction on petitioners right to trade.

14. Mr. Garg, then submitted that in any case he should be allowed the price according to explanation of Clause 19 of the Rajasthan Trade Articles (Licensing and Control) Order, 1980. Clause 19 reads as under:--

"Requisitioning of stocks of trade articles. Every person holding stock of trade articles mentioned in Schedule I and Schedule II shall sell to the State Government or to any person or class of persons the whole or a part specified in the order of the Collector or any other Officer not below the rank of Naib-Tehsildar authorised by the State Government in this behalf.

Explanation:-- For the purposes of this clause the prices payable to a person who is required to sell the whole or a specified part of his stock of trade articles shall be determined by the authority concerned, in accordance with the provisions of Sub-section (3-B) of Section 3 of the Essential Commodities Act, 1955.

15. Mr. D. S. Shishodia, Government Advocate refuted the above submissions on the ground that Clause 19 was never applied because respondent never wanted to purchase the wheat and they never directed the petitioners under Clause 19 to sell the wheat. In view of this Mr. D. S. Shishodia's contention is that Sub-section (3-B) of Section 3 of the Essential Commodities Act, 1955 cannot be invoked by the petitioners.

16. I have given a thoughtful consideration to the above controversies.

17. It is true that the impugned Notification has been quashed by this Court on the ground of unreasonableness in Pokar Chand's case. M/s. Pokar Chand Jeevraj's case was decided, on 4-9-1981. reported in 1981 WLN 561 by the Hon'ble single Bench of this Court. A very interesting and curious coincident which happened, that about this very notification on that very date i.e. on 4-9-81 the Hon'ble Supreme Court declared this notification as valid, and held that it is not violative of Article 19(1)(g) and is reasonable restriction under Article 19(6). It appears that some of the Traders approached to the Hon'ble High Court and others at the same time approached to the Apex Court and the decisions were given on the same date in Delhi and Jodhpur. On 25th September, 1981, the same Notification which was earlier declared valid by the Hon'ble the Supreme Court was again affirmed in Suraj Mal Kailash Chand and Others Vs. Union of India (UOI) and Another, and other writ petitions and was again declared valid being not violative of Articles 14 and 16 of the Constitution of India, and two of the Hon'ble Judges who were sitting with Hon'ble Mr. Justice Chinnapa Reddy in Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others, reiterated the same view.

18. Normally after the pronouncement of the Apex Court there remains no room for doubt and all the similar matters are to be decided in accordance with the view taken by the Hon'ble Supreme Court. However, Mr. Garg pointed that the

question which weighed before the single Bench of this Hon''ble Court, was neither adjudicated nor approved by the Hon''ble the Supreme Court. Above referred cases were argued on the same point and prayer and in wide principles and dimensions before the Hon''ble the Supreme Court but this can be said that exact challenge on the ground of the unreasonableness on account of want of time to dispose of the wheat was not adjudicated in the proposed terms as it was done before this Court.

19. Be that as it may, broadly speaking that the Hon''ble the Supreme Court discussed the question wherein unreasonableness to Trade, Commerce and Intercourse was imposed by this Notification and it was held that since this notification is designed to prevent the hoarding of food grains, it would be reasonable restriction within the meaning of Article 19 Clause 6 of the Constitution of India.

20. Again in Surajmal Kailash Chand's case the question of violation of Article 14 was considered at length. It is significant in para No. 10 of this judgment that the question of permitting some more time for disposing of the stocks was considered. The Hon''ble the Supreme Court observed in Clause 25, "traders can move before the State Government to issue necessary direction for the disposal of the excess quantity of weight in their possession and State Government would allow the reasonable time." It was also mentioned in this paragraph that the State Government shall be at liberty to take over the excess weight under Clause 19 on the procurement price.

21. It would thus be seen that it cannot be said that the Hon''ble the Supreme Court was not alive on question of insufficiency, unreasonableness of time which was alleged by the petitioners before the other benches, at that time of arguments, although, it was not argued before the Hon''ble the Supreme Court in the manner it was put up before the Rajasthan High Court.

22. This raises a serious question as to what would be the effect of the decision of the Hon''ble Supreme Court, more so when the same Notification being declared valid by the Hon''ble the Supreme Court and the High Court has declared invalid on the same day. Undoubtedly Article 141 makes it explicit and beyond doubt that the law laid down by the Hon''ble the Supreme Court is to be obeyed by all concerned. Even otherwise so far as the High Court is concerned the Supreme Court is of a superior jurisdiction and law laid down by the Hon''ble Supreme Court is binding, even if Article 141 and Article 144 would not be there.

23. Here I may deal with a problem which is not there, in this case but which may have legal and topical implication if it would, even in existence. Suppose, in the first case decided on 4-7-1981, the challenge to this Notification would not have rested on all grounds mentioned therein, but in the next case which was decided after about 20 days i.e. on 25-9-81, the challenge would have been raised on the very ground which was raised in the Rajasthan High Court and upheld in the writ how the Hon''ble Supreme Court would have reached to it, The

answer to this problem need not be given by me but in *Ambica Prasad Mishra v. State of U. P.* (: AIR 1980 SC 1762), the Supreme Court have taken pains to answer what would be the effect of raising additional points or such points later. It was observed as under:--

"Constitution of India, Article 141 -- Reconsideration of binding precedent -- when permissible. Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. It is fundamental that the nation's constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action, on vital issues deterred by the brooding threat of forensic blow-up. This, if permitted, may well be a kind of judicial destabilisation of State action too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake-up.

It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned."

24. Applying the above dictum of law by the Apex Court there is no doubt that challenge made to the Notification by the Hon'ble the Supreme Court met its Waterloo on 4-9-81 when it was repelled. Again, the challenge was repelled On 25-9-81 both under Articles 14 and 19 of the Constitution of India that being so all that can be said by Mr. Garg is that the case was not properly argued before the Hon'ble the Supreme Court, as this aspect that availability of 3 days time was unreasonable and is violative of Articles 14 and 19, was not put up in a proper perspective when judgment was given on 4-9-81 and second bunch of cases were argued before the Hon'ble the Supreme Court and judgment was given on 25-9-81. The members of the bar in the Supreme Court did not think it worthwhile to raise the important points on which the Notification have been struck down by the High Court earlier. It is difficult to speculate what would be the reasons, but it is obvious that the judgment of this Court was in existence yet neither the members of the Bar at Delhi and Supreme Court Judges were shown this judgment for whatever worth it was there. It will have to be assumed for all intents and purposes, that on 25-9-81, the two bunches of writ petitions were decided by the Hon'ble the Supreme Court, in *Suraj Mal Kailash Chand and Others Vs. Union of India (UOI)* and Another, the judgment of this Court referred by Mr. Garg was assumed to be not to be good law,

25. In any case as per the decision of *Ambica Prasad Mishra v. State of U. P.* (: AIR 1980 SC 1762), if the Hon'ble Supreme Court is not competent to consider the infirmity on the basis of insufficient of arguments or the ground that case was not properly argued or fallaciously argued and decided, then it would be too much for Mr. Garg to expect that this Court can now strike down the Notification. I have no hasitation to hold that judgment of this Court *Pokar Chand Jeevraj and 11 Ors. v. The State of Rajasthan* 1981 WLN 561 cannot be treated as good law

in view of authoritative pronouncement of the Hon''ble Supreme Court in Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others, ; Suraj Mal Kailash Chand and Others Vs. Union of India (UOI) and Another, . In both the later decisions this notification has been declared valid.

26. That being so I am not competent to now permit to reagitate the same matters which have been decided at the Apex Court level and in view of what Hon''ble Judge of the Supreme Court said, in Ambica Prasad Mishra's case that it is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned.

27. The second limb of submission of Mr. Garg is that I must direct the respondents to pay the price according to Section 3(b) of the Essential Commodities Act, raises extremely complicated question of fact about the alleged support price. Whereas the petitioners case is that they were forced to deliver the wheat which was excessive on account of coercive threats of the Enforcement Officer, and it was on pain of the prosecution to deliver the goods, the respondents have controverted the same and have taken plea that Traders of Sri Karanapur and shopkeepers and their Vyapar Mandal met in deputation and requested the Collector to direct the District Supply Officer to take delivery of wheat and pay the price at the rate of Rs. 130/-. Mr. Garg has vehemently contested the plea of the State and submitted that in the very nature of thing, even if it was a submission of the petitioners, it was not voluntary and it was on account of compulsion and coercion and threats of the State functionaries,

28. Although, it is difficult to rule out that some element of compulsion and coercive threat, but it is equally difficult for this Court to adjudicate to give positive finding that reply of the State in this respect is false or untenable. All that can be said is that this question of fact requires evidence and for a just and valid adjudication, the evidence is to be led by both the parties, which can only be done before a Civil Court.

29. Before this Court all that the material available is, oath against oath, and one affidavit from the side of the petitioner and another one rebutting it on behalf of the respondents. How can this Court come to a positive finding about the compulsion or coercion threat, because in a situation of this nature all possibilities cannot be ruled out.

30. Obviously there is no order under Clause 19 in writing directing the petitioners to sell or deliver the excessive quantity of wheat to District Supply Officer and that being so the question whether price be given to the Traders would be according to the market rate as required u/s 3B of the Essential Commodities Act is not free from doubt.

31. On the one hand if threats and coercive threats were given by the State, to the Traders, and there was compulsion on the part of State then they should be given fair price, according to Clause 19 which directs that the price would be

according to Section 3B of the Essential Commodities Act.

32. On the other hand, other possibilities that Traders voluntarily requested the Collector to direct the District Supply Officer to purchase wheat at the rate of Rs. 130/- in order to avoid the follow-up action under the notification cannot be ruled out. It is on account of this complex and complicated disputed questions of fact, that I have restrained from adjudicating this important question whether excessive amount of wheat was delivered voluntarily and the Traders accepted price at the rate of Rs. 130/-per quintal, voluntarily or they were forced to do so on account of causing threats by the Enforcement Officer and other officers. The petitioner would be at liberty to move Civil Courts if so advised to adjudicate the matter of claim for price as required u/s 3-B of the Essential Commodities Act if they are so advised and it would be for the Civil Court to decide after taking evidence whether Section 3-B or Clause 19 is applicable in the present case, and what price should be paid. The respondents would be at liberty to prove before the Civil Court, that it was a voluntary act and price was accepted which constitutes waiver or estoppel as the case may be.

33. Be that as it may, I am convinced that no challenge to the impugned Notification which has been declared valid by the Apex Court, can be sustained. Further, no direction under Article 226 can be issued to the respondent for the payment of price in accordance with Section 3B of the Essential Commodities Act.

34. The net result of the above discussion is that these writ petitions are dismissed without any order as to costs.