(2007) 12 DEL CK 0002

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6691 of 2007

Bharat Gupta APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Citation : (2008) 100 DRJ 721

Hon'ble Judges : Dr. M.K. Sharma, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : T.K. Ganju, A.K. Thakur and R.K. Mishra and Party-in-Person, for the Appellant; A. Sharan, Addl. Solicitor General of India, Mukesh Anand, Shailesh Tiwari and Amit Anand Tiwari for Union of India and Ashok Desai and P.H. Parekh, Sameer Parekh, D.P. Mohanty and Sumit Goel for State Trading Corporation of India Ltd., for the Respondent

Judgement

Mukundakam Sharma, C.J.—The present writ petition is filed by the petitioner by way of a public interest litigation questioning the action of the Union of India in procurement of wheat from outside source. The petitioner who is an advocate and believes in upholding the majesty of law appears to be concerned with the aforesaid procurement of wheat by the Government of India which, according to him, is being done at an unreasonable and arbitrary price causing huge loss to the public exchequer.

2. An advance copy was served on the respondent No. 1 Union of India upon which the said Union of India entered appearance and represented by the Addl. Solicitor General of India. At the subsequent stage, State Trading Corporation of India also entered appearance. Although no notice was issued, the parties filed their pleadings by way of counter affidavits and rejoinders. The very filing of the writ petition in this Court is challenged by the respondents on various grounds including raising of preliminary objections regarding maintainability of the writ petition. It was submitted on behalf of the respondents that apart from the fact that the petition has no merit, the petitioner has no locus standi to file the

present petition. It is also submitted that the present writ petition is not maintainable as the impugned policy is nothing but a financial and economic decision taken by the Government in exercise of its administrative power. Since the aforesaid preliminary objections have been raised while hearing the petition we also heard the rival contentions of the parties on the aforesaid two pleas as well.

3. The issue that is raised in the writ petition is stated to be the arbitrary action of the Union of India with regard to the procurement of wheat at an unreasonable and arbitrary price causing huge loss to the public exchequer. During the course of arguments it transpired that there is a proposal to procure wheat from the international market. The petitioner is an advocate. May be he is concerned with the welfare of the people in terms of the objective in the Constitution but he is not directly involved in any manner with the aforesaid policy of procurement of wheat by the respondents from international market. He is neither a producer of wheat nor a dealer or trader of wheat and, Therefore, he is no way concerned with the pricing policy directly as a producer, a dealer or a trader of wheat. The respondents have stated that the aforesaid procurement of wheat by the respondents from international market is due to the unavoidable circumstances and situation. The petitioner has also raised a plea in the writ petition contending, inter alia, as to why the Government floated a second tender in the month of June instead of waiting till September when the international prices were expected to fall.

4. In our considered opinion all the aforesaid issues and pleas which are raised in the writ petition relate to the domain of economic policy decision of the Government. Those decisions were taken in exercise of the administrative power exercised by the Government. There is no plea raised in the petition that the wheat was purchased by the Union of India at a price higher than what was prevailing in the international market at the time of purchase. The suggestion that is given by the petitioner is that the Government should have waited for some more time for procurement of such wheat as the prevailing price in the international market was sure to fall with the passage of time.

5. The respondents have stated in their counter affidavits that the Government procures wheat for the Central Pool (buffer stock) from farmers during the months of April to June every year. The Central Government has stated in the counter affidavit that the Food Corporation of India and State agencies always made efforts to increase the quantum of procurement of wheat yet some farmer leaders had advised the farmers to hold back their wheat on the expectation that a higher price could be obtained later during the year. The procurement of wheat for the Central Pool was affected and consequently the Government was able to procure only 111.00 lakh tonnes as against a requirement of 150.00 lakh tonnes. The Government also has to maintain the public distribution system for the economically backward population who are to be provided with wheat at a subsidized rate. Considering the aforesaid requirement for public distribution

system and other welfare schemes for emergencies like flood etc. it is estimated that the gap in the Central Pool stocks for 2007-08 would be up to about 5 million tons of wheat. It was also considered that if the aforesaid gap was to be made up by purchasing wheat from the domestic market, after the procurement season, it would adversely affect the market sentiments and then market prices of wheat would have gone up, compelling the consumers to pay higher prices. In view of the aforesaid situation and also taking into consideration other circumstances as mentioned in the said counter affidavit, the Government decided on 29th March, 2007 that an action plan to import up to 5.00 million tonnes of wheat may be kept ready in case procurement falls short of the requirement. On 18th April, 2007, the Government decided to import one million tons of wheat in appropriate trances through the State Trading Corporation who has the expertise in international trade. Whatever we have stated hereinbefore are disclosed from the pleadings of the parties. There cannot be any dispute to the fact that all the aforesaid decisions are decisions pertaining to financial and economic field and, Therefore, the decisions taken by the Government in exercise of their administrative powers and the same were taken keeping in view welfare of the people.

6. In this connection, we may refer to the decision of the Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, . In the said decision it was held that judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government and that in the sphere of economic policy or reform the court is not the appropriate forum. It was further held that financial or economic decisions taken by the Government in exercise of its administrative power cannot be challenged in a public interest litigation unless there is violation of Article 21 of Constitution of India and persons adversely affected are unable to approach the Court. In the said decision note of caution was issued by the Supreme Court that there is a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged. It is filed to project a dereliction of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties.

7. Counsel appearing for the petitioner, however, drew our attention to the decision of the Supreme Court in Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, to show and establish that the petitioner who is an advocate has locus standi to file a writ petition of the aforesaid nature. The Supreme Court in the said decision considered as to whether or not the petitioner can be said to be person aggrieved and concerned directly with the subject matter of the writ petition. In the said case, the writ petition was filed by the Union against the management and Union of India regarding sale and disposal of property including the factory. The allegation made

was that the Government company has acted in a malafide manner and has dissipated public property by selling the aforesaid factory from which the petitioner was earning their bread and butter. In the aforesaid facts the Supreme Court has held that the union would have locus standi to challenge a decision to sell a property at a lower price than what it could probably fetch. Reliance was also placed by the counsel appearing for the petitioner on the decision of Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, . The aforesaid decision was rendered in respect of an allegation of misappropriation of public funds by the Chief Minister of a State. In such background facts the Supreme Court has stated that although the petitioner may not be directly concerned with the subject matter to entertain the public interest litigation to subserve the public interest and public morality but the petition should be entertained because a Chief Minister should not function under a cloud and it would also be in the interest of respondent themselves that such an independent enquiry be conducted to have their honour vindicated by establishing that the allegations are not true. However, the Supreme Court issued a note of caution while saying so that the public interest litigation is not maintainable to probe or enquire into the returns of another taxpayer except in special circumstances, when scams take place allegations of disproportionate assets are required to be looked into.

8. The facts of aforesaid two cases are clearly distinguishable from the facts of the present case where what is being questioned is the economic and financial decision taken by the Government considering the interest and requirement of making wheat available in the domestic market and while doing so it was decided purchase was required to be made immediately at whatever price it is available at that time and even if necessary at a higher price from the international market for wheat was not available in the domestic market for procurement. Whether or not the same was a prudent and a wise decision, it is not for the court to decide. It is a matter of economic policy dealing with buffer stock, price maintenance etc. We cannot while exercising our power of judicial review direct the Government to act one way or the other. The issue and questions raised in the writ petition have to be raised and examined in other forum but not before this Court. It is not possible for this Court to investigate and adjudicate on a petition of this nature. In our considered opinion the decision of the Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, would be applicable.

9. In this connection, we also derive support from the decision of the Supreme Court in Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, wherein also the Supreme Court declared that the courts are not to enquire into economic policies which are the functions of the experts and it is not the function of the courts to sit in judgment over matters of economic policy which must be left to the expert bodies for it was held that even in such matters experts can also seriously and doubtlessly differ.

10. Reference may also be made to another decision of the Supreme Court in

center For Public Interest Litigation and Another Vs. Union of India and Others, . In the said case the Supreme Court held that it will be very difficult for the Courts to visualise the various factors like commercial/technical aspects of the contract, prevailing market conditions, both national and international and immediate needs of the country etc. which will have to be taken note of while accepting the bid offer. Whether or not Government should have entered into a contract was the subject matter to be decided by the Government and in that context it was held that it will not be possible for the courts to come to the conclusion that such a contract cannot prima facie or otherwise be held to be vitiated so as to call for an independent investigation as desired for by the petitioners.

11. The aforesaid observations of the Supreme Court are binding on us. In our considered opinion, the ratio of the aforesaid decisions are squarely applicable to the facts of the present case also in as much as what is being assailed in this writ petition is nothing else but the decision of the Government taken in exercise of the administrative powers which pertains to the domain of financial and economic policy matters of the Government.

12. In that view of the matter, we hold that this writ petition is not maintainable in the light of the aforesaid observations made and, Therefore, we are not inclined to entertain this petition.