
(1998) 11 AHC CK 0025
In the Allahabad High Court
Case No : C.M.W.P. No. 21732 of 1990

Chawla Home Products (P.) Ltd.

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 4 AWC 382 : (1998) AWC 382

Hon'ble Judges : D.S. Sinha, J;D.K. Seth, J

Bench : Division Bench

Advocate : Shashi Nandan, for the Appellant; S.C. and Ashok Kumar Shukla, for the Respondent

Judgement

\\ D. S. Sinha, J.—Heard Sri Jai Kishan Tewari, holding brief of Sri Shashi Nandan, learned counsel of the petitioner and Sri Ashok Kumar Shukla, learned counsel representing the respondents.

2. By means of this petition under Article 226 of the Constitution of India, the petitioner prays that this Court may issue a writ, order or direction in the nature of mandamus directing the respondents not to enforce against him the provisions of the Uttar Pradesh Scheduled Commodities Dealers (Licensing and Restriction of Hoarding) Order, 1989, (hereinafter called the Order) and to restrain the respondents from interfering with his business of manufacturing the foodstuff known as DALMOT.

3. Indisputably, the petitioner purchases foodgrains, pulses and oilseeds and after mixing the same in specified quantities, manufactures DALMOT.

4. The petitioner contends that inasmuch as he is not engaged in the business of purchase or sale of any scheduled commodities, he would not be subject to the provisions of the Order.

5. In the opinion of the Court, the contention of the petitioner is wholly misconceived.

6. Paragraph 3 of the Order, as it stood at the relevant time, provides that no person shall carry on business as a dealer or a commission agent or a manufacturer or a producer without obtaining a licence under the Order.

7. Admittedly, the petitioner is a manufacturer, and he obtained a licence also for manufacturing DALMOT as is evident from Annexure-1 to the petition. The expression manufacturer is defined in paragraph 2 of the Order. According to the definition, Manufacturer means a person carrying on the business of milling or processing of foodgrains or manufacturing any foodstuffs, therefrom. It cannot be gainsaid that the petitioner is manufacturing a foodstuff, namely. DALMOT. Therefore, he cannot escape from the applicability of the provisions of the Order. The petitioner being a manufacturer, as defined in the Order, is obliged to take licence for carrying on his business of manufacturing the foodstuff-- DALMOT.

8. A feeble attempt to support the contention of the petitioner has been made by his learned counsel by referring to clause (d) of sub-para (4) of paragraph 1 of the Order which exempts certain persons from the provisions of the Order. The clause extends to only to a person (i) who stores foodgrains, pulses or oilseeds produced by him by personal cultivation : and (ii) who is not engaged in the business of purchase and sale of foodgrains, pulses or oilseeds.

9. Reliance upon clause (d) of sub-para (4) of paragraph 1 of the Order by the learned counsel of the petitioner is totally misconceived. Clearly, the petitioner does not fall in the category of the persons exempted under the said provision. Obviously, the exemption applies only to the one who stores foodgrains, pulses and oilseeds produced by him by personal cultivation, and to the one who is not engaged in the business of purchase and sale of foodgrains, pulses or oilseeds. A manufacturer of the foodstuff does not fall in any of the aforesaid two categories.

10. Paragraph 3 of the Order obliges the persons falling in any of the three categories to obtain licence under the Order. They are (a) persons carrying on the business as a dealer, (b) persons carrying on business as a commission agent, (c) persons carrying on business as a manufacturer, and (d) persons carrying on business as a purchaser.

11. As noticed earlier, the petitioner is a manufacturer as defined in paragraph 2 of the Order. Therefore, the petitioner is not entitled to exemption from the operation of the provisions of said Order. He is bound to take licence under the Order. The respondents would be well within their jurisdiction to take action against the petitioner in case he contravenes any provision of Order.

12. The petition has no substance. It fails, and is hereby dismissed. The interim Order dated 27th August. 1990 is vacated. There is no Order as to costs.