
(1992) 09 AHC CK 0102

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22411 of 1992

Cold Storage Association

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Uttar Pradesh Regulation of Cold Storages Act, 1976 — Section 29, 3, 4, 44A

Citation : (1992) 4 AWC 43 Supp

Hon'ble Judges : A.B. Srivastava, J

Bench : Single Bench

Advocate : Vinod Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

A.B. Srivastava, J.—The Petitioner Cold Storage Association. U.P., having its Office at Kanpur, a Society, registered under the Societies Registration Act, has filed the writ petition before this Court, claiming to be on behalf of its members carrying on business of storing potato in their Cold storages situated in the State of U.P., challenging the hiring charges at the rate Rs. 32.50 per quintal for storage of potato fixed by the State Government u/s 29 of the U.P. Regulation of Cold Storages Act, 1976 (hereinafter referred as the Act). The Petitioner has sought quashing of Notification dated 1-6-1992 fixing the aforesaid charges and directing the Respondents, the State of U.P. and the Cold Storage Advisory Board, Lucknow, to permit the members of the Petitioner to realise Rs. 42/- per quintal as hiring charges. The petition which was filed on 18-6-1992 along with an application for interim relief was admitted on 23-6-1992 by the learned Vacation Judge and while allowing time to the Standing Counsel on behalf of the Respondents to file counter affidavit, a time bound stay order was passed permitting the Petitioner to charge at the rate of Rs. 41.50 at par with the cold storages exempted u/s 44A of the Act, with condition that if the writ petition fails the petition shall be liable to refund the difference of the amount realised, for which he was to furnish security to the satisfaction of the District Magistrate

concerned. The said stay order, however, has not been extended after 17th August, 1992, and the application for interim relief as well as the objection thereto has come up for final disposal.

2. Apart from the two Respondents impleaded initially, a number of potato growers have also intervened in this petition and they have been directed to be impleaded as Respondents no. 3 to 17.

3. The contentions of the Petitioner are that the business of cold storages in the State of Uttar Pradesh is governed by the provisions of U.P. Regulation of Cold Storage Act, 1976 and the rules thereunder. Section 29 of the Act authorises the State Government to fix maximum charges which a licensee may charge for storing agricultural products. Sections 3 and 4 of the Act provide for constituting a Cold Storage Advisory Board, to advise the State Government amongst others in the matter of fixation from time to time of maximum charges for storing agricultural produce. It is alleged that ever since the enforcement of the Act the State Government has been exercising its power u/s 29 arbitrarily and hiring charged fixed have always been inadequate and unreasonable, making cold storage industry in U.P. a sick industry. The storage season for potato in the State is February to November each year. For the purposes of fixing the hiring charges the cost incurred under the following heads are taken into consideration :

1. Establishment.
2. Palledari.
3. Electricity.
4. Gas and Oil.
5. Generator.
6. Licence Fee.
7. Repairs and Maintenance.
8. Incidental and Maintenance Expenses.
9. Interest on loans.
10. Depreciation.
11. Return on capital.

4. Out of these cost factors electricity constitutes the major item and since 1975 the electricity rates have been increased by 13 times, from 0.20 p. per unit in 1975 to Rs. 2.60 in 1992 with the result that a number of writ petitions were filed in almost all these years challenging the fixation of hiring charges.

5. It is further alleged that for the year 1991 the hiring charges fixed by the Government were Rs. 29/- per quintal. When the electric charges payable to the U.P. State Electricity Board were 0.98 per unit plus demand charge at the rate of

Rs. 95/-per K.V.A. By its Notification dated 18-1-1992 Annexure "11" to the writ petition, the Electricity Board enhanced the energy charge to Rs. 1 66 and demand charge to Rs. 130/- per K.V.A. Without considering this hike and other cost factors, however, the Government by Notification dated 5-3-1992, Annexure "13" fixed hiring charges at Rs. 31/- per quintal. The same was challenged by Writ Petition No. 13250 of 1992 in which by order dated 17-4-1992. Annexure "14" a Division Bench of this Court directed the Petitioner to make representation to the State Government, to be decided within two months and ordered the petition to be listed for admission thereafter. The Petitioner submitted representation to the Government on 29-4-1992. Without deciding the same on merits the Government by impugned Notification dated 1-6-1992, Annexure "16" enhanced hiring charges to Rs. 32.50 per quintal. The same is ex facie illegal and arbitrary as the State Government has not taken into consideration the hike in cost of electricity, wages and insurance premium, general inflation and return on capital. This was despite the fact that the Board in its report had recommended the hiring charges to be fixed at Rs. 31/- plus increase in power tariff in the year 1992. The fixation of price is also discriminatory in so far as the cold storages in the cooperative sector and those set up with World Bank aid have been exempted from maximum hiring charges fixed by the Government and are charging upto Rs. 41.50 per quintal. The minimum capital investment in raising a cold storage of about 40000 quintal capacity is about Rs. 1 crore and on the basis of the highly inadequate hiring charges fixed by the State Government the profit margin would only be 0.60 per quintal i.e. Rs. 24,000/- per year, as a result of which many cold storages have been compelled to shut down in the past three years. The impugned Notification shut is hit also by Articles 14 and 19(3)(6) of the Constitution. Prayer has accordingly been made to stay the operation of the impugned Notification dated 1-6-1992 and permit the Petitioner and its members to realise storage charge at the rate of Rs. 42/- per quintal.

6. The Respondents, who have opposed the interim relief application have contended that the U.P. Regulation of Cold Storage Act was enacted with a view to control and regulate the said business and to remove the hardship of agricultural producers in public interest. Due safeguards have been provided in the Act to protect the interests of both the cold storage owners and the potato growers. The power u/s 29 of the Act of fixing the maximum storing charges has all through been exercised by (he Government on valid considerations, after duly considering the report of the Cold Storage Advisory Board and the various relevant factors in public interest. The validity of the Act, and the Notifications regarding hiring charges issued from time to time, were challenged by the cold storage owners by filing writ petitions in a number of years. In a series of judgments this Court upheld the validity of the Act as well as procedure prescribed therein for fixing the maximum hiring charges. The Notifications in this regard were also upheld except for the years 1984, 1985 and 1986, in which years the State Government re-determined the hiring charges as directed. The

concerned Petitioners who had charged amount in excess of the re-determined charges, on the strength of the interim order of this Court, have not refunded the same and have thus taken undue advantage of the interim stay order. For the year 1992 also the hiring charges Rs. 31/- per quintal were fixed by the I Government on a thorough consideration of the report of the Advisory Board and all the relevant factors. On account of the hike in electricity charges, and in view of the representation submitted in compliance of the order dated 17-4-1992 of this Court in Writ Petition No. 13250 of 1992 the State Government re-considered the matter and by the impugned Notification dated 1-6-1992 enhanced the hiring charges to Rs. 32.50, despite the contractual obligation of the cold storage owners towards the cultivators. Any further enhancement, it is alleged, would be detrimental to the cultivator. The contention of hike in expenditure under the head electricity by Rs. 8/- per quintal per season is not based on correct calculation. The total operational cost even after adding this hike comes to about Rs. 27/- per quintal and still there is a high profit margin of Rs. 5.50 and not .60p. per quintal to the cold storage owners. The expenditure in the various cold storage drastically differ, from each other. As such the fixation of charges by taking an average is the best method available.. Besides storing potato, the cold storage owners also store fruits and other agricultural items, manufacture ice and all these also yield huge profit, there being no price control on it. The Petitioner was not justified in filing a fresh writ petition despite the fact that earlier writ petition was pending for admission and two months' period from the date of representation as allowed by the Court had not expired. On all these counts neither prima facie case nor balance of convenience exists in favour of the Petitioner for granting interim relief.

7. learned Counsel for both sides have been heard and the materials placed on record have been gone through.

8. Certain preliminary objections raised on behalf of the Respondents may be dealt with before entering into merits.

9. It is contended on behalf of the Respondents that the present petition on behalf of the Petitioner Association is not maintainable as it neither owns nor runs a cold storage, running a cold storage is also not a purpose within the permissible activities of a Society, registered under the Societies Registration Act, even the names and particulars of the various cold storages have not been disclosed, the petition is bad for non-joinder of potato growers, the application of the Respondents for stay vacated not having been disposed of within two weeks from the date of its filing, the ex parte interim stay order dated 23-6-1992 stood vacated and the application for the said relief stood disposed of and is itself not available for disposal now.

10. The question regarding the frame and the maintainability of the writ petition need not detain at this stage of interim relief, because the same will be a matter to be taken notice of by the Bench having jurisdiction of final hearing. Prima facie the provisions of the Societies Registration Act do not appear to come in the way

of filing of a writ petition by the Petitioner's Society to protect the interest of its members. Of course, it may be desirable that a list with full particulars of such members be also appended, so as to follow up the directions which may emerge from the final orders which may be passed in the petition, more so in view of the observations in *Sheet Grah Sangh, U.P. Kanpur v. State of U.P.*, 1988 ALJ 14, pointing out that in the nature of the things as they stand there is no method to ensure that the advantages gained by the cold storages under various interim orders are restored back to the potato growers.

11. As to the objection regarding non impleadment of the potato growers it has already been held in the *Ice and General Mills v. State of U.P.* 1987 ALJ 689, that potato growers are at most proper parties and not necessary parties. Then in this case a good number of potato growers have also been impleaded as Respondents on their application. So, the interest of the potato growers have not gone unrepresented.

12. The question pertaining to application of Article 226(3) of the Constitution has also become virtually academic on the facts of this case. The interim stay order dated 23-6-1992, which was a time bound order, exhausted on 17th August, 1992 in the absence of any extension. Under these circumstances, what this Court is seized of presently, is the final disposal of the application for interim relief on merits. Even if it may be assured that the interim order dated 23-6-1992 stood automatically vacated on 7th August, 1992 on account of non disposal of the stay vacation application dated 24-7-1992, there is no reason to hold that the interim relief application itself stood exhausted. The same is available for disposal on merits.

13. Coming to the merits, it would be found that the Petitioner though has based its claim to relief mainly on the validity of the Notification dated 1-6-1992 fixing Rs. 32.50 per quintal as hiring charges, it has also covertly challenged certain provisions of the Act, particularly section 29 regarding powers of the State Government to fix charge and 44-A regarding exemption to cold storages under the cooperative sector or established with the World Bank Aid: This is so despite the fact that repeated attempts by means of writ petitions filed in the previous years, to assail the validity of the Act in general and these provisions in particular have met with no success.

14. Two Division Benches of the Lucknow Bench of this Court, in Writ Petition No. 2356 of 1975 *M/s. Durga Bansal Cold Storage and Ice Factory v. State of U.P.*, decided on 20-11-1978 and Writ Petition No. 395 of 1979 *Swarup Cold Storage and Ice Factory v. State of U.P.*, decided on 16-3-1979, upheld the validity of the Act and the various provisions dealing with price fixation. More recently another Division Bench of this Court in *Sheet grah Sangh U.P. Kanpur v. State of U.P.* and another decided on 7-10-1987, reported in 1988 ALJ 14, has upheld the validity of the Act particularly, sections 29 and 44A as well as the Notification fixing hiring charges for the year 1987. It, this, is not open to Petitioner, alleging to be representative body of the cold storage owners, to role up these questions again

and again, to seek stay of the Notification issued u/s 29 of the Act on the ground of the enabling provisions being ultra vires.

15. Now coming to the Notification itself, it has to be seen, as to whether the Petitioner has been able to make out a prima facie case of the said Notification being arbitrary, and the price fixed thereunder to be against law on the ground of relevant consideration being not taken into account and irrelevant considerations having gone in, or the guidelines prescribed being ignored, as contemplated in the proposition of law laid down by the Supreme Court in *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, , *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, and *Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI)*, .

16. It will also have to be seen whether or not the balance of convenience lies in granting the interim relief prayed for.

17. The powers conceded to the courts in this regard, however, are not without limitations. The Supreme Court in the case of *Union of India v. Cynamide India Limited* (supra) held that --

Price fixation is neither the function nor the forte of the Court. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the Legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And we will not reevaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different "cup of tea" altogether.

18. Their Lordships have also held in the case of *Prag Ice & Oil Mills v. Union of India* (supra) that a price fixation measure is ordinarily a legislative activity. It does not concern itself with the interests of individual manufacturer or producer. It is a direction of a general character conceived in the interests of the general consumer public. Further that in the ultimate analysis the mechanics of price fixation has necessarily to be left to the judgment of the executive and unless it is patent that there is a hostile discrimination against a class of operators the processual basis of price fixation has to be accepted in the generality of cases as valid.

19. In the instant case the contentions upon which the Petitioner has challenged the impugned Notification as prima facie illegal, arbitrary and an example of

hostile discrimination against cold storage owners are that from year to year, since the Act came into existence, hiring charges have been fixed by the State deliberately ignoring the cost factor, and the price fixed has been illusory as compared to the expenditures involved, resulting into a very meagre profit margin, culminating into closure of a number of cold storages. In the year under reference, 1992, the hike in electricity charges which has been a little less than double, resulting into an increase of Rs. 9/- per quintal per season, has virtually been ignored, giving a marginal rise only of Rs. 1.50 per quintal by revising the original rate of Rs. 31/- to Rs. 32.50. With the result, a large share of the increased cost of electricity has to be borne by the cold storage owners without any corresponding return. This is despite the report of the Board that the charges be fixed at Rs. 31/- plus the increase in the cost of electricity vide Notification dated 18-1-1992 of the Electricity Board. It has also ignored the present cost of insurance, wages, general inflation and return of capital. In this way instead of considering the relevant cost factors and the report of the Advisory Board, the Government has arrived at abrupt and arbitrary conclusion in the matter of the price.

20. The Respondents, on the other hand, have denied that the hike in costs of electricity is to the extent stated by the Petitioner. According to them the said hike as well as other cost factors, and the positive and negative aspects of the other relevant factors, qua the interest of the cold storage owners, potato growers and consumers in general, were duly kept in mind by the State Government while fixing the price at Rs. 32.50 per quintal by means of the impugned Notification. The same is neither illusory nor arbitrary and also does not suffer from any hostile discrimination.

21. So far as the contention that the price fixed for the year 1992 by the impugned Notification is arbitrary because the Cold Storage Advisory Board recommended the same to be Rs. 31/- plus the hike in the electricity charges, is concerned, it is not borne out from any material; none of the documents of either party indicate that such a recommendation was made.

22. Of course, it is undisputed that w.e.f. 18-1-1992 the U.P. Electricity Board has revised the rate of electricity charges. Energy charge has been enhanced from, .98 p. to Rs. 1.60 per unit and demand charge from Rs. 95/- to Rs. 120/- per K.V.A. Undisputedly, the average consumption of electricity per year per quintal, by the cold storages have been worked out to be 9 units and is being accepted as a reasonable basis for calculation of energy charge. Out of which, 0.5 unit is deducted as energy consumed in respect of other items stored in these cold storages and the basis for Working out the cost of electricity is 8.5 units per quintal per annum. Now the stand of the Petitioner is that the increase resulting from the revision of rates comes to about Rs. 8/- per quintal, the stand of the Respondents, however, is that it works out to be around Rs. 5/ -- per quintal per annum. According to the Petitioner in fixing the hiring charges at Rs 31/- per quintal for the year 1992 initially and at Rs. 32.50 subsequently by the

impugned Notification dated 1-6-1992, the State Government has acted arbitrarily, being guided by irrelevant considerations, keeping the relevant considerations out of the process of determination. The Respondents, on the other hand, seek to justify the Notification of price fixation, stating that it is legislative in character. It cannot be judged on isolated factors. What has to be seen is whether it has been arrived on a cumulative consideration of all relevant factors, materials and data. In fixing the charges at Rs. 32.50/- per quintal the Government has acted precisely in this manner and in the processes, while protecting the interests of the potato growers, ensuring the supply of the essential commodity in a fair manner has also not put the cold storage owners to any loss rather, they still retain sufficient profit margin to the tune of over Rs. 5/- per quintal.

23. It will be worth mentioning here that although the Petitioner has made a generalised statement about a large number of cold storages closing down in the past few years on account of lack of profits due to inadequate pricing. No detail of any such cold storages nor any relevant data has been given. Even no annual balance-sheet of any of the cold storages has been filed to show that they are not getting any profits or the profit margin is as low as Rs. 0.60 per quintal and not Rs. 5/- per quintal as asserted by the State.

24. While judging the prima facie validity or otherwise of the price fixation, we cannot proceed in a straight narrow jacket, taking into consideration the storage of potato as the only sphere of activity of these cold storages. According to the respondents' version as spelt out in their counter affidavit and Annexure C.\\."15", the reasoned order of the State Government on the representation submitted by the Petitioner in view of this Court's order in writ petition No. 13250 of 1992, which gives in detail the various factors which weighed with the Government in fixing the price, almost all the cold storages keep fruits and other agricultural products also. Besides, they also manufacture ice. All these yield quite good profit as there is no price control in regard to it. There is no reason at this stage to disbelieve this version, so as to take us to a prima facie conclusion that the fixation of hiring charges at Rs. 32.50 per quintal will virtually shut the profit margin or reduce it to a mere eye wash as contended by the Petitioner, necessitating a restraint on implementing the Notification and permitting the Petitioners to charge what they, in their own interest consider to be the reasonable charges without any "reasonable chances of restitution being made to the cultivators in the event of the Notification being ultimately upheld. In adjudging a legislative measure like price fixation all the plus factors adding to the income and profit of the cold storage owners will be a relevant consideration. These when considered negative the Petitioner's contention regarding the price fixation being prima facie, invalid or arbitrary.

25. It has been contended by the Respondents, and prima facie not without substance, that out of the 12 items considered in price fixation, only 7, establishment, palledari, cost of electricity, gas and oil, expense of generator,

licence fee and stock insurance are the actual items of expenditure incurred. The rest of the items of maintenance, incidental, expenses, interest on borrowing, depreciation and return to capital are intended simply to augment the profit, and it was open to the State Government to abolish or reduce the indulgence granted on any or all these items while considering re-fixation of price vis-a-vis rise in the cost of electricity in order to strike a fair balance between the interests of the cold storage owners, the growers and consumers. This, in my opinion, goes to prima facie meet the attack against the Notification that although the hike in electricity charges has been somewhere between Rs. 5 and 8 per quintal, the increase allowed is only Rs. 1.50. According to Respondents most of the Cold storages having paid up their borrowings, there was no justification allowing weightage for interests on borrowings, yet it has only been reduced from the earlier year and not done away with. Disproportionate amount of Rs. 3/- per quintal according to them was allowed earlier for depreciation, and if in fixing the latest hiring charges in consequence of rise in cost of electricity it has taken some of these items into consideration and pruned it, it cannot be said to have acted arbitrarily or on irrelevant consideration, to render the Notification prima facie illegal. It may also be mentioned here that the rise as compared to the 1991 rate of Rs. 29/- has been to the tune of Rs. 3.50 per quintal and not Rs. 1.50 as alleged. All these, factors when taken into consideration together go to show that the Petitioner has not been able to make out prima facie case of the impugned Notification being arbitrary, illegal or illusory so as to entitle it or its members to the interim relief prayed for.

26. As far as the balance of convenience is concerned, the same also is not in favour of the Petitioner. It has been stated [in the counter affidavit and is also borne out from the observations in the Sheetgarh case (supra) that, the interim stay granted against Notifications in some of the years in the past has only resulted into the cold storage owners realising excess amount with no chance or method of refund to the growers. Despite categorical plea to this effect nothing has been shown by the Petitioner to indicate refund of such excess amount realised in any of the previous years. The fact of the cold storage owners being possessed of these amounts and having obviously utilised the same in their business activity, is a factor which will mitigate to a great extent hardship, if any, which may ultimately be found to have been caused in year 1992, in case in final analysis in the petition, the price is found to be inadequate and directed to be fixed again. Yet another factor tilting the balance of convenience against the Petitioner is that ways are always open to the cold storage owners as their representative body, to make a fresh representation giving authentic data to scientifically prove that the price fixed should be more than what has been done by the impugned Notification, instead of relying on the usual cry of the industry not being able to survive without the profit it has been getting so far. Now since they know the mind of the Government on this subject clearly as spelt out in Annexure "C.A.-15" to his counter affidavit, there could also be no difficulty in so doing.

27. In view of all the above facts and circumstances, the Petitioner, in this petition has not been able to make out any case for interim stay of the impugned Notification, during the pendency of the petition. This application accordingly deserves to be rejected. It will, however, as observed above, not debar the Petitioner from making a fresh representation to the State Government and in case such a representation is made giving scientifically reliable and authentic data, in rebuttal of what has been the basis of Government's decision, Annexure C.A. 15, the Government would be duty bound to re-consider the same and take a decision at an early date.

28. Subject to the above observations the application for interim stay of the impugned Notification is hereby dismissed.