

(1978) 11 AHC CK 0021

In the Allahabad High Court

Case No : Writ Petition No. 2356 of 1975 Connected with W.P. Nos. 2377, 2427 and 2429 of 1975

Durga Bansal Cold Storage and Ice Factory

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 20-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Regulation of Cold Storages Act, 1976 — Section 23, 27

Uttar Pradesh Regulation of Cold Storages Ordinance, 1975 — Section 27

Citation : (1978) 11 AHC CK 0021

Hon'ble Judges : K.N.Goyal, J and K.B.Verma, J

Final Decision : Dismissed

Judgement

K.N. Goyal, J.

The petitioners in this group of writ petitioners are owners of Certain Cold Storages. The State Government issued a notification on 6th October, 1975, under Section 27 of the U. P. Regulation of Cold Storages Ordinance, 1975, whereby Maximum charges that a Cold Storage may charge have been laid down. Both the Ordinance and the notification are assailed as ultra vires.

It appears that subsequently the said Ordinance has been replaced by the U.P. Regulation of Cold Storages Act, 1976 (U.P. Act No. 11 of 1976). Although no amendment was made in the writ petitions for challenging the validity of the Act, we have permitted the petitions to be argued on the basis that the validity of the Act is also in question.

The validity of the Act and of the notification has been challenged on a number of grounds which have been rebutted in the counteraffidavits filed on behalf of the State.

We may first deal with the vires of the act. Two points have been urged by learned counsel for the petitioners in this connection. It has been said that the

Act was inconsistent with the Warehousing Corporations Act, 1962 (Central Act 59 of 1962) and, as such, the President's assent was necessary. This point has no substance, inasmuch as the Central Act, as its long title shows, was merely an Act to provide for the incorporation and regulation of Corporations for the purpose of warehousing of agricultural produce and certain other commodities and for matters connected therewith. The Act did not even purport to control or regulate cold storage business. The act thus fell within entry 43 of List I (Union List) of the Seventh Schedule to the Constitution, which deals with the incorporation, regulation and winding up of trading corporations, but not including cooperative societies. The U.P. Cold Storages Ordinance, 1972, on the other hand, falls within entry no. 24 of the State List, which reads "Industries subject to the provisions of entries 7 and 52 of List I". As Warehousing Cold Storage is not an industry mentioned in the Industries (Development and Regulation) Act, 1951 (Act No. 65 of 1951), entry 52 of List I is out of way. Entry 7 of List I obviously does not apply. Accordingly, the State Legislature was competent to enact this law. When one Law falls in the State List and the other in the Union List, Article 254 is not attracted and the President's assent is not necessary.

The second ground on which the Act is alleged to be ultra vires is that it deals with "insurance" which is the subject of entry no. 47 of List I. Section 23 of the Act provides that every licensee shall insure the agricultural produce stored in his cold storage against loss or damage by fire, break down (whether mechanical or otherwise) or such, other like cause. This section appears in Chapter IV which lays down the rights and duties of a licensee in relation to the goods stored in his Cold Storage. Chapter III provides for licensing of Cold Storages. Chapter V provides for fixing of services charges. Chapter VI provides for cold storage receipts. Chapter VII provides for the constitution of a Tribunal with power to hear appeals against orders of the Licensing Officer. Chapter VIII deals with penalties and procedure. The long title of the Act states that the Act is meant to provide for the licensing, supervision and control of Cold Storages in Uttar Pradesh and for matters connected therewith. The provisions of section 23 have to be read in the context of all these provisions. It would thus appear that the requirement of compulsory insurance of goods stored in a cold storage was only meant to protect both the hirer and the licensee. The law, in pith and substance, clearly falls within the entry no. 24 of List II, and the encroachment, if it can be so called, on entry no. 47, of List I is merely incidental and cannot affect the competence of the State Legislature.

Thus, the only two grounds, on which the validity of the Act was assailed, fail.

As regards the validity of the notification, it appears from the counteraffidavit that an Advisory Board was duly constituted by the State Government under Section 3 of the Act. Section 4 (2) of the Act lays down that the business of the board shall be conducted in such manner as may be prescribed. Our attention has been invited to the Rules made by the State Government laying down the

manner in which the Business of the Board shall be conducted. It has, inter alia, been provided that the quorum for a meeting of the Board shall be at least one half of the members. Thus, out of the validity of the Act, we have permitted the petitions to be argued on the basis that the validity of the Act is also in question.

The validity of the Act and of the notification has been challenged on a number of grounds which have been rebutted in the counteraffidavits filed on behalf of the State.

We may first deal with the vires of the act. Two points have been urged by learned counsel for the petitioners in this connection. It has been said that the Act was inconsistent with the Warehousing Corporations Act, 1962 (Central Act 59 of 1962) and, as such, the President's assent was necessary. This point has no substance, inasmuch as the Central Act, as its long title shows, was merely an Act to provide for the incorporation and regulation of Corporations for the purpose of warehousing of agricultural produce and certain other commodities and for matters connected therewith. The Act did not even purport to control or regulate cold storage business. The act thus fell within entry 43 of List I (Union List) of the Seventh Schedule to the Constitution, which deals with the incorporation, regulation and winding up of trading corporations, but not including cooperative societies. The U.P. Cold Storages Ordinance, 1972, on the other hand, falls within entry no. 24 of the State List, which reads "Industries subject to the provisions of entries 7 and 52 of List F". As Warehousing Cold Storage is not an industry mentioned in the Industries (Development and Regulation) Act, 1951 (Act No. 65 of 1951), entry 52 of List I is out of way. Entry 7 of List I obviously does not apply. Accordingly, the State Legislature was competent to enact this law. When one Law falls in the State List and the other in the Union List, Article 254 is not attracted and the President's assent is not necessary.

The second ground on which the Act is alleged to be ultra vires is that it deals with "insurance" which is the subject of entry no. 47 of List 1. Section 23 of the Act provides that every licensee shall insure the agricultural produce stored in his cold storage against loss or damage by fire, break down (whether mechanical or otherwise) or such other like cause. This section appears in Chapter IV which lays down the rights and duties of a licensee in relation to the goods stored in his Cold Storage. Chapter III provides for licensing of Cold Storages. Chapter V provides for fixing of services charges. Chapter VI provides for cold storage receipts. Chapter VII provides for the constitution of a Tribunal with power to hear appeals against orders of the Licensing Officer. Chapter VIII deals with penalties and procedure. The long title of the Act states that the Act is meant to provide for the licensing, supervision and control of Cold Storages in Uttar Pradesh and for matters connected therewith. The provisions of section 23 have to be read in the context of all these provisions. It would thus appear that the requirement of compulsory insurance of goods stored in a cold storage was only meant to protect both the hirer and the licensee. The law, in pith and substance,

clearly falls within the entry no. 24 of List II, and the encroachment, if it can be so called, on entry no. 47, of List I is merely incidental and cannot affect the competence of the State Legislature.

Thus, the only two grounds, on which the validity of the Act was assailed, fail.

As regards the validity of the notification, it appears from the counteraffidavit that an Advisory Board was duly constituted by the State Government under Section 3 of the Act. Section 4 (2) of the Act lays down that the business of the board shall be conducted in such manner as may be prescribed. Our attention has been invited to the Rules made by the State Government laying down the manner in which the Business of the Board shall be conducted. It has, *inter alia*, been provided that the quorum for a meeting of the Board shall be at least one half of the members. Thus, out of the six members, three would constitute a quorum. In the instant case the recommendation was made by the Board at a meeting attended by three out of the six members. It is unfortunate that all the three were officers only of the Agricultural Department of the State Government, and the representative of the Government of India could not attend. The absence of the Registrar, Cooperative Societies, is also unfortunate inasmuch as the Registrar would be expected to have direct knowledge of economics of the various cooperative cold storages in the State. The absence of the Director of Industries is all the more unfortunate inasmuch as he has apparently included in the Advisory Board for looking after the interests of the Cold Storage industry. It would be desirable that the Board's composition should be such as may give the impression of being an independent body. This is particularly necessary in view of the fact that, as held in *Prag Ice & Oil Mills v. Union of India* (A.I.R. 1978 S.C. 1296), Articles 14 and 19(1) (f) and (g) of the Constitution should be deemed to "written into" the provisions of the Act (*vide* paragraphs 12 and 45 of the report), and the reasonableness of the charges that may be fixed is justiciable.

It appears from the counteraffidavit itself that the Government of India's representative was nominated only on 24th September, while the meeting of the Advisory Board took place on 27th September. At that meeting the note of one of its official members present, namely, the Director of Horticulture, in regard to maximum charges was approved without any change. It seems that adequate time was not given to the members, and the matter was almost rushed through, without caring to obtain the presence of even other official members of the wholly official Board.

It would also be desirable to lay down a certain procedure in regard to some opportunity to the affected interests namely, the private cold storages, cooperative cold storages and even Government companies such as the U.P. State Agro Industrial Corporation, and also the potato growers to place their views before the Board so that the Board could consider the same before tendering its opinion to the Government. Experts in law and in accounts could also be usefully associated as members of the Board.

However, on the provisions of the Act and the Rules, as they stand, it is not obligatory either on the Government or on the Board to give an opportunity to the Cold Storage owners to represent their case. In the instant cases, the writ petitioners have not laid sufficient basis for assailing the fairness of the rates fixed. Bald statements have been made in paragraph 13 of Writ Petitioners Nos. 2356 and 2377 saying that the capital investment for a cold storage of twenty thousand quintals capacity will be about rupees eight lakhs on which the owners have to pay about Rs. one lakhs forty four thousand per annum as interest and the allowable depreciation comes to rupees ninety six thousand. This is followed by the contention that the actual storage expenses per quintal come to Rs. 20.65 P. This is patently absurd inasmuch as the writ petitioners have only Rs. 15/ to Rs. 16/ per quintal as against the statutory maximum of Rs. 12.50 P. per quintal. The details given by the writ petitioners have been denied in the counteraffidavits, and no rejoinder has been, filed. No balance sheets or profits and loss accounts of the petitioners have been produced or annexed to the writ petitions. On the other hand, the report of the Director of Horticulture accepted by the Advisory Board purports to be based on the profit and loss account of a cooperative cold storage at Faizabad. There is no rebuttal to the report of the Director relied on in the counteraffidavits. Thus, although we have earlier pointed out "that the procedure followed by the Board left much to be desired and we hope the Government would take note of it, we would uphold the rates fixed by the notification on the ground that the petitioners had failed to show the same to be "so patently unreasonable as to be in excess of the power to fix the (charges)", vide paragraph 60 of *Prag Ice & Oil Mills* (supra).

Learned counsel for the petitioners contended that the Government had no power to fix the rates with retrospective effect. The petitioners "apprehension was that the rates fixed by the notification dated 6th October, 1975, were retrospective. It appears that the proviso to section 29 lays down that the maximum charges that may be fixed under this section for the first time after the commencement of this Act may cover any period before the date of such commencement in respect of any agricultural produce that continues to be stored in the cold storage on the said date. This is an enabling provision. We, however, find, as indeed the learned Chief Standing Counsel has fairly conceded, that the notification does not even purport to cover the period before the date of issue thereof, it is on the face of it prospective. It, therefore, operates only in respect of "agricultural produce stored by hirers with the cold storages on or after 6th October, 1975. This statement by learned Chief Standing Counsel should allay the apprehensions of the petitioners on this score.

As no other ground was urged or pressed before us on behalf of the Act and of the notification petitioners, the challenge to the validity of the fails.

The writ petitions are, accordingly, dismissed with "costs. Under interim stay orders, the petitioners were permitted to realise the contractual charges from the hirers on condition that they would pay the difference to them in cases of

dismissal of the writ petitions. They shall now pay the same to the hirers accordingly.