

(1998) 03 AP CK 0089

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 21136 of 1997 and Batch

Eswara Laminates (P) Ltd., Pedda Autpally and Others

APPELLANT

Vs

Singareni Collieries Company Ltd., Hyderabad

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 3 ALD 731 : (1998) 3 ALT 785

Hon'ble Judges : P. Venkataramma Reddi, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : Mr. Vasireddy Prabhwaath, Mr. V. Gowrishankara Rao, Mr. P. Narsingh, Mr. T.V. Rajeevan, Mr. C. Kodandaram, Mrs. G. Jyothi Eswar, Mr. V.R. Avula, Smt. C. Jayashree Sarathy, Mr. G. Mallikarjuna, Mr. Ch. Dhananjaya, Mr. K.V. Bhanuprasad and Mr. Manne Haribabu, for the Appellant; Mr. K. Srinivasamurthy, for the Respondent

Judgement

P. Venkatarama Reddi, J.—Clause 10 of the price Notification No.3/96-97 dated 14-3-1997 issued by the respondent-Company has been challenged in this batch of writ petitions. Most of the petitioners are running industries manufacturing Ceramics, Chemicals, Tiles & Bricks, Lime etc., who claim to be drawing coal from Singareni Collieries & Co. Ltd. (hereinafter referred to as SCL) for utilising the same in their industries. Para 10 of the Notification which is assailed in these batch of writ petitions is as follows:

"Any linked customers who are drawing B, C and D grades of coal arc required to pay 20% additional price over and above the notified prices."

2. In the earlier part of the notification, the prices of various grades and varieties of coal arc specified. The petitioners seek a direction that the SCL should be restrained from charging 20% additional price under Clause 10 of the Notification dated 14-3-1997. The said Clause is challenged as violative of Article 14 of the Constitution. As per the impugned price Notification, a distinction is drawn between linked customers and unlinked customers and the unlinked customers

are made to bear higher price. Thus, a dual price policy has been evolved by the SCL in the year 1997 in the aftermath of decontrol of the coal price. The question is whether such dual pricing and the charge of higher price from the petitioners who do not have the benefit of linkage is hit by Article 14 of the Constitution.

3. The SCL is a Company registered under the Companies Act in which 49% of shares are held by the Central Government and 51% by the State Government. It appears that the said Company has accumulated heavy losses and reeling under financial problems. The Government of India by its notification dated 22-3-1996 issued under Clause 3(2) of the Colliery Control Order, deregulated the price and distribution of non-coking coal of grades A, B and C. By a further notification dated 12-3-1997, decontrol was extended to some other grades of coal. By a communication dated 13-3-1997 addressed by the Government of India (Ministry of Coal), it was clarified that the Board of SCL "will henceforth determine the economic price to be charged for the coal produced from time to time." Soon thereafter, the present Notification has been issued by SCL.

4. Before we deal with the crucial contention, we would like to dwell briefly on the concept of linkage and linked industries. Seven industries or consumers are identified as core sector consumers. They are: - 1) Exports, 2) Power Utilities, 3) Defence, 4) Railways (Loco), 5) Fertilizers, 6) Steel including Sponge Iron and Pig Iron and other metallurgical industries who use Coal/Coke for their own end use. The consumers are extended inter se priorities in the supply of coal by granting appropriate linkages. No linkage is required for Defence, Railways and for Exports. The coal linkages as far as these industries concerned are monitored periodically by the Standing Linkage Committee. Guidelines for giving linkages are issued under the provisions of clause 8 of Colliery Control Order by the Central Government. The priorities given to the linked customers in the matter of supply of coal were upheld by the Division Bench of this Court (Jeevan Reddy & Rama Rao, JJ) in Writ Appeal Nos. 351 to 369 of 1984.

5. The contention of the petitioners in essence is that the classification of linked and non-linked industries for the purpose of pricing is irrational and gives rise to hostile discrimination. They plead that there is no reasonable basis for such classification which has been introduced for the first time and the petitioners cannot be subjected to bear the brunt of much higher price. It is submitted that the State-controlled company having monopoly business cannot discriminate between customers as it likes and apply double standards in charging the price for coal. It is also submitted that such price fixation is arbitrary and unreasonable and an instrumentality of State, even though running a business activity, cannot take the stand that it has unfettered freedom in charging any price it deems fit from any customer. The action of the Government Undertaking subjected to statutory regulations and restrictions has to pass the test of reasonableness even in relation to contractual matters. Reliance has been placed by the learned Counsel on some familiar decisions of the Supreme Court to make good their submissions on this score. For instance, the observations in *Dwarkadas Marfatia*

and Sons Vs. Board of Trustees of the Port of Bombay, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , to the effect that the State actions in contractual matters can be tested on the anvil of Article 14 and if a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it could be unconstitutional and not relied upon. The following observations of the Constitution Bench in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, are sought to be pressed into service:

"The Government cannot fix any arbitrary price, it cannot fix prices on extraneous considerations."

The observations at paragraph 15 in Rohtas Industries Ltd. and Others Vs. Chairman, Bihar State Electricity Board and Others, are also relied upon. The provisions of the Coal Mines Nationalisation Act, 1973 and Colliery Control Order are referred to by some of the learned Counsel to say that though the respondent is a Company doing coal business, its activities have a statutory flavour and that is all the reason why unfettered freedom of contract in its dealings with public cannot be conceded to it.

6. These arguments are met by the learned Counsel for the Respondent-SCL Mr. K. Sreenivasa Murthy by contending that fixation of price is within the discretion of the Company and coal being not a control commodity now, the Company cannot be precluded from fixing appropriate price for its product including dual price and no consumer has any say in the matter. It is submitted that a Mandamus cannot be issued to charge lesser price from the petitioners or to charge uniform price from all the customers. A host of factors such as its own financial problems, operational costs, importance of certain categories of industries in larger national interest can be legitimately taken into account. As regards the arbitrariness or unreasonableness in the price structure, it is pointed out that price fixation as such is not found fault with by the petitioners, their limited complaint being against the alleged discriminatory treatment meted out between linked or core sector industries and other industries. It is then submitted that there is enough justification for adopting dual pricing. It is stressed that having regard to the financial position of the Company and the additional cost of production peculiar to SCL, there is nothing wrong in charging a price from non-core sector customers which leaves a comfortable margin of profit to the Company. According to the learned Counsel, Article 14 is out of place and dual pricing is not violative of said Article 14. Observations of the Supreme Court in Shri Sitaram Sugar Co. case (supra) at paragraph 56 to 58 and in Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., , have been relied upon to make good his contention that in matters of price fixation, the scope of judicial review is limited. The decision of the Supreme Court in Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others, , M.P. Oil Extraction and Another Vs. State of M.P. and Others, and a Division Bench of this Court in Nava Bharat Ferro Alloys Limited Vs. Andhra Pradesh State Electricity Board, Hyderabad, have been relied

upon to substantiate that different prices can be charged from different customers. It is also submitted that as far as SCL is concerned, nearly 50% of the coal is being obtained from underground mining and moreover the cost of production in open cast mines is higher Singareni Collieries due to higher overburden. No comparison can therefore be made with coal India Limited where 77% of the production comes from mechanised open cast mines.

7. Without endorsing the extreme contentions advanced by the learned Counsel for respondents that the respondent-Company, just as any other business-house has absolute freedom in the matter of fixation of price and no consumer has a legal or constitutional right to object to dual pricing at all we do not find any vice or infirmity in the impugned clause of the notification having the potential of finding Article 14 of the Constitution.

8. First of all, as rightly pointed by the learned Counsel for the respondents it must be noted that the petitioners have not challenged the price fixation on the ground that it is unconsolably high or in fixing the price at 20% extra, SCL acted according to its whims and fancies without appraisal of relevant factors. The taboo in clause 10 lies according to the petitioners, not so much in high pricing but in dual pricing. Why should the non-linked customers is charged more than what SCL is charging from linked or core sector customers ? This is the only question that is posed by the petitioners. The petitioners submit that by enforcing dual policy after decontrol, the respondent-Company is indulging in hostile discrimination and therefore clause 10 is violative of Article 14 of the Constitution.

9. For resolving the question formulated above, there is no need for us to go into the mechanics and modalities of coal price fixation as adopted by the respondent-Company. But, one aspect must be kept in view. SCL is admittedly facing heavy financial deficit having accumulated loss of more than 1000 crores. The decontrol of coal prices was done with the predominant object of enabling the SCL and other coal Companies which are in red to wriggle out of the financial predicament to some extent and to derive returns so as to prevent or minimise further losses. It should also be remembered that considerations of commercial expediency are not out of place in the formulation of policies and discharge of functions of an industrial Company held by the Government. It should also be remembered that even if absolute and unfettered freedom cannot be granted to a State-owned Company, atleast, a wide latitude and a flexible approach should be conceded to it, especially when the subject of price fixation is outside the realm of statutory control. In this context, the following observations of Chinnappa Reddi, J in Cynamide case (supra) are quite apposite though in that case the Supreme Court was concerned with statutory price fixation:

"We start with the observation, "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 enquiry 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."

10. Returning from a little bit of digression, let us see whether there is rational or reasonable basis for treating the linked or non-linked customers differently in charging the price. In other words, we have to see whether linked customers stand on the same footing as customers of unlinked sector without there being an intelligible differentiate to distinguish the two groups for the purpose of charging the price. Our answer is clearly against the petitioners; we need not labour hard to say that the linked industries or customers who have been placed in core or priority sector from the beginning for the purpose of ensuring regular supplies of coal to them stand on a different footing. The paramount consideration in placing them in core sector and extending them the benefit of linkage is their intrinsic importance and the role they play in national building activities and the propensities of public utility they possess. The same considerations will hold good even for charging lesser price from them. The special importance has been given to those core industries because the requirement of coal are on high side either for captive power generation or for other uses in manufacturing operations. Any substantial increase in the price of coal will have a substantial effect on the cost of finished products of vital importance and the cost of service to public. As regards the reason for including cement industry in the core sector, it is explained by the respondents Counsel in the form of written note that 70% of the cement manufactured in the country is utilised by the Central or State Governments for the construction of projects, Bridges, roads etc. Any increase in the price of coal will result in the increase of cost of cement and the additional expenditure/ cost will have a chain reaction on the budgetary allotments and require additional funds. Moreover, it is to be noted that in the case of cement and steel industries as well as the other priority consumers, the consumption of coal is quite high; whereas in the case of non-linked industries, the coal consumption is minimal and the increase in the price of coal will not result in any appreciable increase in the cost of such products manufactured by non-linked sector. Thus, the nature and importance of the industry or consumer from the national perspective, the extent of consumption of coal either for captive power generation or for use in the manufacture legitimately call for a special treatment as far as these customers are concerned. By charging lesser price to such industries or consumers and by evolving dual

price policy, it cannot be said that equals are treated unequally or that the classification does not rest on rational basis. We fail to understand how the respondent-Company had practised an invidious or hostile discrimination. On the one hand, the objective of dual pricing policy seems to be to ensure that the core sector industries or customers are not unduly burdened with price increase, while at the same time the Company gets adequate return for its products so as to cover the financial deficit. The colliery can take full advantage of the decontrol and generate additional funds to balance its budget and, so to say, to make both ends meet. We are, therefore of the view that charging lesser price from classified core linked industries does not give rise to hostile discrimination. Hence, we find no substance in the contention based on Article 14.

11. The writ Petitions must therefore fail and are dismissed with consolidated costs of Rs.1,000/- in each writ petition.