

(1978) 05 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases No's. 178 and 182 of 1978 (R)

G.S. Sharma and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 19-05-1978

Acts Referred:

Essential Commodities Act, 1955 — Section 16, 3, 5

Citation : (1978) 26 BLJR 609

Hon'ble Judges : Nagendra Prasad Singh, J; Manoranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nagendra Prasad. Singh, J.—These two writ applications have been filed on behalf of the petitioners for a writ of mandamus on the respondents, directing them not to interfere with the transit and transport of coal or coke by the petitioners from the State of Bihar to different destinations in other States of India. It has been alleged that the petitioners procure coal and coke from different collieries situated in the State of Bihar and then they despatch them in gunny bags to different destinations, through railway. It is further their case that on 3.4.1978 and 7.4.1978 coal and coke packed in gunny bags, lying near Bhaga and Jharia Railway Stations in the district of Dhanbad for being transported to outside the State of Bihar, were seized at the instance of the District Supply Officer, Dhanbad, because, according to him, the petitioners, while despatching the coal and coke, were contravening the provisions of the Bihar Coal Control Order, 1956 (hereinafter referred to as the "Bihar Order"). According to the petitioners the provisions of the said order are not applicable, as such the action of the respondents amounts to an arbitrary interference with the right of the petitioners to carry on trade and business. The questions involved in the two writ applications are the same, as such they were heard together with the consent of both the parties and are" being disposed of by a common judgment.

2. First, I propose to take up C.W.J.C. No. 178 of 1978 (R), which was heard as

the main case. According to the petitioners the disposal of the stocks of coal raised in different States in India used to be regulated by Colliery Control Order, 1945 (hereinafter referred to as the "Central Order*"), which had been framed under the then Defence of India Rules and had remained in force by virtue of Section 16 of the Essential Commodities Act, 1955 (hereinafter referred to as the said Act). According to them this Central Order made provisions for regulating the storage, transport, distribution of coal throughout India. Later, the Central Government exempted some varieties of coal from the applicability of restrictions made in the aforesaid Central Order. The petitioners were dealing in only those varieties of coal which had been exempted from all restrictions and as such on the relevant date there was no justification on the part of the respondents as to seize the different quantities of coal. In order to appreciate the arguments advanced on behalf of the petitioners some relevant provisions of the Central Order as well as the Bihar Order have to be referred to.

3. Under the Central Order, by Clause 4 the Central Government was authorised to fix the price of coal for different grades of coal which may be sold by the colliery owners. Under Clause 8 the Central Government could issue direction to any colliery owner regulating the disposal of his stocks of coal or of expected output of coal during any period and such colliery owner to whom a direction was given had to dispose of coal in accordance therewith. Under Clause 12A, the competent authorities were to be notified who could allot quotas of coal to any person or class of persons. Clause 12B provides that a person who has been allotted coal shall not use it otherwise than in accordance with the condition contained in the order of allotment. Clause 12D requires the person to whom coal is allotted to maintain records showing the quantity of coal allotted the quantity of coal consumed, etc. Clause 12E, which regulates the purchase and sale of coal is as follows:

No person shall acquire or purchase or agree to acquire or purchase any coal from a colliery and no colliery owner or his agent shall despatch or agree to despatch or transport any coal from the colliery except under the authority and in accordance with the conditions contained in a general or special authority of the Central Government.

Clause 12F says that for the purpose of securing compliance with the provisions of the aforesaid Clause 12E, the Central Government may specify from time to time the officers to whom application for permission to transport coal may be made. Thus by the aforesaid provisions of the Central Order, the sale and purchase of coal from a colliery and transport thereof was regulated. However, by a notification dated 24th July, 1967 the Central Government authorised a person (a) to acquire or purchase ; (b) to despatch or transport and (c) to divert or transfer "without any order or allotment or written authority, non-coking coals of all grades produced in all coal fields coking coals not required for metallurgical consumers and coal produced in Assam provided that coal shall be consumed within India." A copy of the said notification is annexure-1 to the writ application.

Again by a notification dated 12th September, 1975, the Central Government introduced a new Clause 12G, which provides that notwithstanding anything contained in Clauses 12A, 12B and 12E on or from 15th day of September, 1975, any person without any order of allotment or authority (a) acquire or purchase (b) despatch or transport (c) divert or transfer "hard coke produced by beehive ovens, country ovens and by product ovens, provided that such hard coke is consumed in India. Provided further that nothing in this clause shall apply to hard coke in respect of which direction is issued by the Central Government under Clause 8 of this order."

4. On basis of these two notifications, it has been urged that after 15th September, 1975, there was no restrictions over purchase, despatch or transport of non-coking coals of all grades and hard coke produced in beehive ovens and country ovens. If the purchase, sale and transport of coal, by these petitioners were to be governed only by the Central Order, there was no difficulty in accepting the contention raised on their behalf. But the stand of the respondents is that the transactions and the business, which was being carried on by these petitioners, were governed by the provisions of the Bihar Order on the relevant date and they are alleged to have contravened those provisions.

5. The Bihar Order was framed under the authority which was delegated by the Central Government u/s 5 of the Act. The notification of delegation dated 10th June, 1956 is annexure-9 to the reply to the counter affidavit on behalf of petitioners. That notification was latter amended by another notification dated 27th October, 1956. A copy whereof is annexure-9A. In the notification dated 10.6.1956 (Annexure 9), it was stated that "in supersession of all previous orders of the Government of India on the subject, the Central Government hereby directs that subject to any general or special order which may from time be made by it, the power to make order in relation to matters referred to in different clauses of Sub-section (2) of Section 3 of the said Act (the Essential Commodities Act, 1955), being matters specified in column (3) of the schedule annexed hereto, shall be exercisable also by the authorities mentioned in the corresponding entries of column (2) of the said schedule, for the purpose specified in the corresponding entries of column (4) of the said schedule, subject to condition that no order made by any of the said authorities in exercise of the said power shall have effect in so far as it is repugnant to any order made under the said Section by the Central Government." After that there is a schedule in which there are four columns Against column No. 1 is mentioned the name of the States. Against column No. 2 is mentioned the authorities who have been vested with the power making the order. Column No. 3 gives the different clauses of Sub-section (2) of Section 3 of the Act in respect of which such orders can be made. Column No. 4 gives the purpose for which such order is to be made by the State Government. It is an admitted position that by virtue of this delegation the Bihar Order was framed in the year 1956. Under column 3 apart from other clauses of Sub-section (2) of Section 3 of the Act, Clause (d) is also mentioned. Clause (d) or Sub-section (2) of Section 3 of the Act is as follows:

For regulating by licences permits or otherwise the storage, transport, distribution, disposal acquisition, use or consumption, of any essential commodity.

The purpose which was mentioned in the notification aforesaid in respect of the State of Bihar for making such order was "in respect of distribution of coal received within their respective States from time to time (against the quotas fixed by the Central Government) for detailed allocation by the State Government concerned." However, within a few months aforesaid notification dated 27th October, 1956 (Annexure 9A) was issued by the Central Government making some amendments in the earlier notification (Annexure-9). By this notification the words "against the quota fixed by the Central Government-mentioned in the earlier notification were substituted with the words "otherwise than against the Central Government quota." In view of the aforesaid two notifications, the Government of Bihar could frame an order for regulating by licences, permits or otherwise the storage, transport, distribution, disposal and use of coal received within its State from time to time otherwise than against the Central Government quotas.

6. According to learned counsel appearing for the petitioners on proper reading of the provisions of the Central Order along with the aforesaid two notifications delegating the power to the State Government, the Bihar Order was to be applicable only in respect of coals which have been received within the State of Bihar after allotment by the Central Government and they are not applicable in respect of the coal, which has been produced in the State of Bihar. As the petitioners were despatching coal which had been produced from the colliery situated within the State of Bihar, there is no question of applicability of the provisions of the Bihar Order. In my opinion, it is difficult to accept this contention. The words "received within their respective States" does not mean only coals which have been brought from outside the State for distribution within the State of Bihar. If the provisions of Bihar Order were to apply only in respect of coals received from outside the State then instead of the words received within respective States it should have been "received from outside the respective States." It appears that under the Central Order, the Central Government had power to fix quotas in different States, the allocation whereof was to be made in accordance with the provisions of the Central Order, whereas in respect of coal, which was available in different States otherwise than against the Central Government's quotas, different States were authorised to frame their own orders for distribution thereof. As such the provisions of Bihar Order regulated the storage, transport and distribution of coal available in the State of Bihar otherwise than Central quota This will include coal raised in the State of Bihar. In such a situation, there is also no question of conflict between the provisions of the Bihar Order and the Central Order so as to make the provisions of the Bihar Order ineffective being repugnant to any provision of the Central Order. The provisions of the two orders were operating in their separate field and there was no question of encroachment over each other.

7 Now the question is as to whether provisions of the Bihar Order were applicable to the transactions and business carried on by the petitioners on the relevant date. Clause 2(d) of the Bihar Order defines coal to mean "coal received in the State of Bihar otherwise than against the Central Government quotas and include coke." Clause 2(c) defines dealer to mean a person dealing in purchase, sale or distribution of coal." Clause 3 which is relevant for the present case is as follows:

No person shall, after the date of the publication of this Order in the Bihar Gazette, carry on any business or do any transaction which involves the purchase, sale or storage for sale of coal except under and in accordance with the terms and conditions of a licence granted in accordance with this Order by the licensing authority.

Clause 5 provides the manner in which an application for licence made to the licensing authority has to be disposed of and under what circumstances a licence is to be given to a person who intends to carry on business in coal. Clause 8 provides that no person other than a dealer shall keep or store in any premises a quantity of coal exceeding 10 Mds. unless he has obtained a written permit from the licensing authority. Clause 9 vests power in the licensing authority to regulate the distribution, disposal, sale, use of consumption of coal within his jurisdiction subject to any general or special order issued from time to time by the State Government. Clause 10 provides that no dealer shall sell or dispose of coal at a price which is higher than the price fixed by the Central Government. Clause 11 says that no person shall carry or remove by rail, river, road or otherwise any quantity of coal or coke from any place within a District to any other place outside the District except in accordance with terms and conditions of a permit to be granted by the Coal Controller, Bihar. Clause 12 prohibits import of coal by railway, road, or river into the State from any place outside the State except in accordance with the terms and conditions of permit. Thus the salient features to this Bihar Order is that, firstly, it enjoins every person carrying on any business or any transaction which involves purchase, sale or storage for sale of coal to take licence. Secondly, by the aforesaid Clauses 8 to 12 it places restrictions over the sale, distribution and transport of coal and prices thereof. It appears that by a notification dated 8th January, 1966, issued by the Government of Bihar, provisions of Clauses 8, 9, 11 and 12 were exempted in respect of "soft coke and grade II and III non-coking coals." A copy whereof is Annexure 7 to a supplementary affidavit filed on behalf of the petitioners. By another notification dated 15th January, 1968, issued by the Government of Bihar, the provisions of Clause 10 was also exempted. A copy whereof is Annexure 7-A to the aforesaid supplementary affidavit. It is an admitted position that restrictions placed by Clauses 8 to 12 have been exempted specially for persons who are dealing in soft coke and grade II and HI of coking coals. It has been stated that the petitioners are dealing only in these varieties of coals, and on this basis it has been urged that now there is no restrictions in respect of sale, purchase or transport of coal by the petitioners even under the provisions

of Bihar Order. In my view the submission is misconceived. Clauses 8 to 12 had made provisions for permit for storage of coal by persons other than a dealer ; about the grant of permit for disposal of the coal ; for fixation of the price ; for movement of coal, and for import thereof from outside State. In view of the aforesaid exemption, now there is no necessity of taking permits for the transport of coal, but Clause 3 and Clause 5 of the Bihar Order, referred to above, are very much in force. They are applicable to persons "who carry on any business or do any transaction, which involves the purchase, sale or storage for sale of coal." In other words, if it is held that these petitioners are carrying on any business or any transaction, which involves purchase, sale or storage for sale of coal then they are required to take licence from the licensing authority and they will be deemed to be dealer within the meaning of the said Order.

8. Admittedly none of the petitioners hold licence in accordance with the provisions of the said Order. In the writ applications and the supplementary affidavit filed on behalf of the petitioners, they have admitted that they purchase coal from different collieries in Bihar, and then they store it at different sites for being sold and transported to places outside the State of Bihar. According to them as they do not sale within the territory of Bihar, they are not required to take licence. In my opinion, it is difficult to accept this contention. Firstly, the assertion that they are not carrying on business or any transaction involving purchase and sale of coal within the territory of Bihar has been controverted by the respondent-State in the counter affidavit filed on their behalf as well in "the reply of the respondent to the supplementary affidavit filed by the petitioners dated 8-5-1978," where it has been asserted that these petitioners are purchasing coal in Bihar and selling them in Bihar Itself. In support of these assertions our attention was drawn to the challans issued by M/s. Bharat Coking Coal Ltd. to the different petitioners, which have been annexed and marked as annexures 12 series, 13 series and 16 series. In these challans against the column meant for the place coal is to take it is mentioned "local*. According to the respondents, if the coal purchased were to be sent outside the State then there was no sense in mentioning local rather the number of the road permit should have been mentioned. Apart from that, Clause 3 of the Bihar Order requires a person to take licence, even if he might be selling coal to purchasers outside the State, The said clause says in clear and unambiguous words that no person can carry any business or do any transaction which involves the purchase, sale or storage for sale or coal. It does not restricts such business or transaction only in respect of the State of Bihar. If the petitioners purchase coal from different collieries and then they store it at different places and then on the basis of order received from outside the State, they despatch the coal, then certainly they are selling or storing coal for sale. It is immaterial whether it is being sold to a person who is resident in the State of Bihar or outside thereof. In my opinion, in either case the Clause 3 of Bihar Order will be applicable.

9. Learned Government Pleader appearing for the respondents pointed out that in order to escape the requirement of Clause 3 of the order, these petitioners

were despatching coals in gunny bags, which is not the usual practice. Learned Government Pleader further pointed out that the said device was adopted not because the quantity of the coal was small. He referred to the different seizure lists annexure 2 series to show that on 3-4-78 and 7-4-78, 10,670 bags in one place, 1,577 bags in another place, 480 bags at yet another place weighing more than several thousands quintals of coal in gunny bags were seized and there could be apparent no justification for storing these coals in gunny bags except to avoid detection that these petitioners were carrying on the business and transaction involving purchase and sale of coal without licence. In my opinion, on the materials on record, it has to be held that the petitioners were required to take licence in accordance with the Clause 3 and Clause 5 of the Bihar Order. Having not done so, they had contravened the provisions of the Bihar Order and the authorities concerned in view of Clause 14 of that order, could have searched the premises, godowns or other places where the coal had been kept and could have seized the stock of such coal held by these petitioners in contravention of the provisions of the Bihar Order.

10. On behalf of petitioners, it was also submitted that after the aforesaid exemption granted by the Central Government in respect of provisions of the Central Order by the two notifications, referred to above, (Annexures 1 and 1A to the writ application) by which every person was authorised to acquire or purchase or despatch or transport without any order or allotment or written authority of non-coking coals of all grades and coking coals of certain varieties, the restrictions, if any, made by the Bihar Order will also be deemed to have been repealed and of no effect since that date. In other words, according to the petitioners since that date the provisions of Bihar Order became repugnant to the provisions of the Central Order. In my opinion, it is difficult to accept these contentions. By notifications of aforesaid (Annexures 1 and 1A) the Central Government exempted the restrictions under the Central Order. These restrictions were applicable only to the coal in respect of which a direction under Clause 8 of the Central Order might have been issued and which was under the Central Government quotas. So far other coal, which was outside the Central Government quotas, the power had already been delegated in the year 1956 to the State Government on the basis of which the Bihar Order was framed. To such coal I have already pointed out that the Central Order was not applicable. As such any exemption under the Central Order will not automatically made the provisions of the Bihar Order repugnant unless they are dealing with the same subject-matter and operating in the same field. Learned counsel has referred to a judgment of a learned single Judge of Allahabad High Court in the case of Mathura Distt. Bricks Manufacturing Association and ors. v. Collector, Mathura and ors. 1971 A W R 829). In that case it was held that once the Central Government removed all control over the distribution, supply and consumption of different grades of coal with effect from 1-7-1964, the provisions of U. P. Coal Control Order became repugnant and as such of no effect. I respectfully differ with the view expressed by the learned Judge in the said judgment. There is no

question of Bihar Order becoming repugnant to the provisions of Central Order, no sooner the exemptions were granted. There was no restriction like Clause 3 of the Bihar Order in the Central Order. Clauses 12A, 12B, 12E of the Central Order which were exempted were similar to Clauses 8 to 12 of the Bihar Order, which have been exempted even by the State of Bihar by the aforesaid notification of the year 1966 (Annexure 7 series). There being no provision like Clause 3 in the Central Order by making exemption in respect of Clauses 12A, 12B, 12E of the Central Order, there is no question of Clause 3 of Bihar Order becoming repugnant. In my opinion on the relevant date Bihar Order was in force except the provisions which were already exempted,

11. So far the other writ application C.W.J.C. No. 182 of 1978 (R) is concerned, the learned Counsel appearing in this writ application virtually urged the same points, which had been urged in the earlier writ application. He also submitted that Bihar Order was not applicable to the transactions entered into by the petitioners, who were purchasing coals from different collieries and sending them to destinations outside the State of Bihar, and, while doing that they are neither selling nor storing for sale such coals. I have already held that once it is admitted or proved that the petitioners purchase coal and sell them or store them for sale either within the territory of Bihar or outside, Clause 3 of the Bihar Order is attracted. Learned counsel in this writ application also urged that the provisions of Bihar Order will apply only in respect of allocations of coal made by the coal control under the Central Order. This argument I have already rejected. Learned counsel also made reference to different circulars of the railways regarding the despatch of goods through wagons and pointed out that the petitioners were compelled to despatch coals in gunny bags. In my opinion this question is not at all relevant for the purpose of the case. The only question which was to be answered as to whether the petitioners are carrying on any business or doing any transaction which involves the purchase, sale or storage for sale of coal. I have already held, on the materials on record, that the petitioners are doing business of purchasing and selling, as well as storing for sale coal without licence. As such there has been contravention of Clause 3 of the Bihar Order.

12. Accordingly, I hold that the petitioners in these two writ applications have not made out a case for issuance of writ of mandamus on respondents. Both the writ applications are dismissed, but in the circumstances of the case, there will be no order as to costs.

Manoranjan Prasad, J.

13. I Agree.