

(2001) 10 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16185 of 1989 and 4137 and 2478 of 1990

Gururaj Mini Roller Flour Mills and Another

APPELLANT

Vs

Govt. of India and Others

RESPONDENT

Date of Decision : 10-10-2001

Acts Referred:

Constitution of India, 1950 — Article 12

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Food Corporations Act, 1964 — Section 13, 13(1), 13(2), 3, 6

Citation : (2001) 6 ALD 436 : (2001) 6 ALT 67

Hon'ble Judges : S.B. Sinha, C.J.;N.V. Ramana, J;Motilal B. Naik, J

Bench : Full Bench

Advocate : G.V.R.S. Vara Prasad and D.V. Nagarjuna Babu, for the Appellant; M. Ratna Reddy, Addl. SC for C.G., P.V.S.S.S. Rama Rao, SC for FCI and Government Pleader for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Noticing two conflicting views on interpretation of Section 13(1) of the Food Corporations India Act, 1964, (37 of 1964) ("the said Act" for the sake of brevity) these matters have been referred to a Full Bench by a learned Judge of this Court.

2. The Parliament enacted the said Act to provide for the establishment of Food Corporations for the purpose of trading in food grains and other foodstuffs and for matters connected therewith and incidental thereto. Paragraph 3 of the "Statement of Objects and Reasons" of the said Act reads:

Statement of Objects and Reasons :--

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(3) The Corporation will engage itself primarily in the purchase, storage, movement, distribution and sale of food grains. Provision has also been made in the Bill enabling the Corporation to deal in other foodstuffs if considered

necessary by the Government. The Corporation may also discharge certain incidental functions as provided for in the Bill in consultation with the Central Government.

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3. Section 3 of the said Act provides for establishment of Food Corporation of India, which is a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue and be sued.

4. Section 6 of the said Act deals with "Management". Section 7 speaks about the constitution of the Board of Directors. Section 13 provides for the "functions of Corporation", which reads;

"13. Functions of Corporation :--

(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to undertake the purchase, storage, movement, transport, distribution and sale of foodgrains and other food stuffs.

(2) Subject as aforesaid, the Corporation may also, with the previous approval of the Central Government,--

(a) promote by such means as it thinks fit the production of foodgrains and other foodstuffs;

(b) set up, or assist in the setting up of, rice mills, flour mills and other undertakings for the processing of foodgrains and other foodstuffs; and

(c) discharge such other functions as may be prescribed or as are supplemental, incidental or consequential to any of the functions conferred on it under this Act".

5. The petitioners herein are owners of wheat roller flour mills, established under the licence granted by the Government, as SSI units. The mills are engaged in the manufacture of wheat products like media, rawa and atta etc. Allegedly, they are dependant upon the respondents for obtaining supply of wheat for carrying on their business. In the year 1986, a liberalised policy has been taken by the Central Government and the surplus stocks of wheat were distributed freely. The said policy changed from time to time. Since August, 1988 a policy was evolved whereby tenders were to be invited from the wheat roller flour mills for purchase of wheat lying in the FCI Depots/Centres.

6. Pursuant to an advertisement inviting tenders for purchase of 500 metric tones of wheat, the petitioners submitted their tenders. They paid earnest money specified therefor, but allegedly without any reason the tenders were cancelled on 1/-6-1989. Writ petitions vide WP No. 8757 and 8658 of 1989 were filed by the petitioners questioning the said cancellation of tenders and by a common judgment, Mr. Justice Sardar Ali Khan directed the petitioners to approach the Central Government for supply of wheat regularly at uniform rates under the

provisions of the said Act. The respondents were also directed to dispose of the applications within three weeks from the date of filing of applications by the petitioners. The respondents were further directed to keep in view the overall duty cast upon them in terms of Section 13 of the said Act.

7. It is alleged that though the petitioners have approached the Central Government and made a representation on 12-10-1989, no order thereupon has been passed.

8. The respondents have issued another tender on 25-10-1989 calling for applications for release of wheat from the godowns specified therein. The petitioners again filed their applications for 500 metric tones of wheat. It is stated that the Government of India has been permitted to allot certain quantities of wheat for public distribution system for custom milling for the flour mills for supply of wheat products and the States of Tamil Nadu, Kerala and Karnataka have been availing the said offer for setting apart certain quantity of wheat to the flour mills for the supply of wheat products, but no step has yet been taken by the State of Andhra Pradesh. The petitioners contend that a huge stock of wheat, although, is available with the respondents, they are allowing them to be damaged without any purpose.

9. No wheat having been allotted in favour of the petitioners, they have filed the writ petition for the following reliefs:

"1. direct the respondents to deliver 500 and 400 metric tones of wheat to the petitioners 1 and 2 respectively which is the subject-matter of the tender for April 1989, and

2. direct the respondents 3 and 4 to allocate sizeable quantity of wheat for custom milling from the general pool for the purpose of public distribution as per the policy of the 1st respondent".

10. The learned Counsel for the petitioners would submit that in terms of Section 6 of the said Act the policy decision of the Central Government is binding on Food Corporation of India. According to the learned Counsel, Section 13 imposes primary duty on the Corporation and the word "may" incorporated in Section 13(2), having regard to the fact that a duty has been cast on the respondents, should be read as imperative. Reliance in this connection has been placed on the decisions of the Apex Court in *State of Uttar Pradesh Vs. Jogendra Singh*, , *Punjab Sikh Regular Motor Service, Moudhapara Vs. The Regional Transport Authority, Raipur and Another*, and *State (Delhi Admn.) Vs. I.K. Nangia and Another*, .

11. The learned Counsel appearing on behalf of the respondents-Corporation, on the other hand, has drawn the attention of the Court to paragraph 3 of the Statements of Objects and Reasons (extracted supra) and submitted that it is not possible to interpret the word "may" as "shall". According to the learned Counsel, the writ petition is not maintainable keeping in view the fact that it arises out of

a contract, qua contract. Strong reliance in this connection has been placed on the decision of the Apex Court in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, .

12. Mr. Ratna Reddy, learned Counsel appearing on behalf of the Central Government submitted that the instructions of the Central Government are primarily in relation to the distribution of foodgrains through public distribution system which are being followed by the Food Corporation of India. It was submitted that the policy decision of the Central Government changes from time to time. According to the learned Counsel, only the excess wheat, which is available with the FCI, is required to be distributed amongst the States. The learned Counsel would contend that wheat is also available in the open market and as such FCI does not have any monopoly in the matter of dealing in wheat.

13. It is not in dispute that there does not exist any restriction on sale or purchase of wheat. It is also not in dispute that FCI does not have any monopoly in the business in wheat. It inter alia deals in wheat like any other dealer.

14. The preamble of the Act clearly shows that the Food Corporation is a trading corporation. It may be that in the matter of its activity it is bound by the directions issued by the Central Government as envisaged under Sub-section (2) of Section 6 of the Act, but subject thereto, the Board of Directors, upon whom the management vests, while discharging the functions are required to act on business principles having regard to the interests of the producer and consumer. By reason of Section 6, general superintendence, direction and management of the affairs of the Corporation and business of the Corporation vest in Board of Directors which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation under the Act. The Corporation is not a department of the Union Government. It may be only an authority, which comes within the purview of the expression "other authority" contained in Article 12 of the Constitution of India. It, having regard to the provisions contained in Section 3, has a distinct personality.

15. The heading of Section 13 of the Act is "Functions of Corporation". Subsection (1) of Section 13(1), speaks of the primary duty of the Corporation. Sub-section (2) specifies the functions, which are enabling in nature.

16. Sub-section (1) of Section 13 uses the expression ""shall" whereas Sub-section (2) used the word "may". It therefore cannot be said that the provisions of Sub-section (2) are imperative in nature. Sub-section (2) of Section 13 does not cast any duty upon the respondents-Corporation. In fact, if a policy decision is taken by the Food Corporation to set up or assist in the setting up of rice mills, flour mills or other undertakings for the processing of food grains and other foodstuffs, it has to obtain the previous approval of the Central Government. It is not the case of the petitioners herein that such a policy decision has been taken by the respondents-Corporation and approval therefore had been given by the Central Government.

17. The petitioners herein took part in the tender process. The respondents-Corporation invited such tender in connection with its trading activity. While carrying on such activity, it does not perform any sovereign function.

18. Having regard to the Statement of Objects and Reasons of the Act, we are of the opinion that the respondent-Corporation is not bound to supply wheat to the wheat roller flour mills by way of statutory obligation nor the petitioners have any legal right in relation thereto.

19. It is now a cardinal principle of law that the words in a statute ordinarily have to be assigned literal meaning. In *Gurudev datta VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, , the Apex Court observed:

"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver....."

20. At this juncture, we may consider the conflicting decisions of two Division Benches of this Court in WA No. 1489 of 1987 and WP Nos. 13603 of 1987 and Batch respectively.

21. In WA No. 1489 of 1987 (Coram: P.A. Choudary and Seetharam Reddy, JJ) interpreting Section 13 of the Food Corporation Act, 1964, the Division Bench stated the law thus:

"It is rather difficult to derive from the language of Section 13 of the Act the duty resting on the Food Corporation of India to supply wheat to the flour mills owned by the petitioners and enforceable by this Court. The title of Section 13 merely speaks of the functions. But the word "duties" was mentioned in the text of that section. From this format alone we cannot hold that Section 13 imposes enforceable duties on the Food Corporation of India. In our view, that section merely enumerates the subject to which the activities of the Food Corporation of India should be confined. The purpose of this subject enumeration is to power the Food Corporation of India to undertake these activities. In other words, we read Section 13 to mean to declare carrying on certain activities by Food Corporation of India to be intra vires of that corporate body. It shall be lawful for the Food Corporation of India to carry on those activities. Then, law of ultra vires does not prevent it from purchase, storage, movement, transport, distribution and sale of food grains. The enumerations made in that section are more in the nature of powers conferred on the Food Corporation of India and capacities invested in the Food Corporation. They are not duties at all. At worst Section 13

will be treated as one more instance of an ill drafted statute. In any case, they are not the duties which are owed to the petitioners specifically. If what the petitioners say is correct, anybody in our country can offer their food grains to the Food Corporation of India and compel it through this Court to purchase that quantity. Similarly, any one can compel the Food Corporation to sell food grains to him. Now, one need only imagine to what extreme length this argument will take us, if this argument is given effect to. The Food Corporation of India will then be caught in this endless litigation. It is, therefore, not correct to understand Section 13 of the Act in the plain way suggested by the Counsel. It should be understood merely as an enabling section. It empowers the Food Corporation to undertake those projects mentioned in that section so that any action taken with reference to those heads of powers shall not be liable to be questioned as being ultra vires the powers of the Corporation".

22. On the other hand, another Division Bench in WP No. 13603 of 1987 and Batch (Coram: the Acting Chief Justice and Kodandaramayya, J) although noticed the earlier Division Bench decision in WA No. 1489 of 1987, but observed:

"The observation that the Corporation (FCI) is not bound to supply, in our view, was recorded without full-fledged debate on the question. In the order recorded on November 20th, 1987 Section 6 of the Act was not at all considered".

23. Keeping in view of our findings aforementioned, we are of the opinion that the observations made by the Division Bench in WP No. 13603 of 1987 are not correct and cannot be said to be laying down a good law. The latter Bench, in our opinion, could not have taken a different view from that taken by another Division Bench in WA No. 1489 of 1989 having regard to the law of precedent operating in this behalf.

24. In Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, , the Apex Court observed:

"19. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all Courts subordinate to the High Court would find themselves in a embarrassing position of having to choose between dissentient judgments of their own High Court".

25. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , the Apex Court pointed out:

"28. This Court also laid down in Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others, , that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was re-affirmed in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., which noted that a Division Bench of two Judges of this Court in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

29. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court....."

26. Yet again, in Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others, , a five Judge Bench of the Apex Court held:

"1. The order of reference to a Constitution Bench is dated 13-1-1998. Two learned Judges of this Court have doubted the correctness of the scope attributed to Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 in the Constitution Bench judgment in Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, . This is how the matter comes before us.

2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges.

3. Accordingly, this matter shall now be heard and decided by a Bench of two learned Judges".

27. In this view of the matter, the decisions cited by the learned Counsel for the petitioners have no application in the facts and circumstances of the case.

28. For the reasons aforementioned, we are of the opinion that no writ in the nature of mandamus, as has been prayed for by the petitioners in these writ petitions can be issued as they do not have any legal right nor any legal duty to supply wheat is cast upon the respondents-Corporation in terms of Section 13(2) of the Act.

29. The writ petitions are accordingly dismissed, but with no order as to costs.