
(1960) 01 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1379 of 1959

Harish Chandra Gupta and Others

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 01-01-1960

Acts Referred:

Essential Commodities Act, 1955 — Section 5

Citation : AIR 1960 All 650

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Tandon, J.—The three petitioners are separately employed in the business, as cottage-industry, of manufacture of Khandsari sugar in the district of Bijnor. They have, as part of that industry, installed power-crushers also for extracting juice from sugar-cane. The crushing capacity exceeds in each case the figure of 250 maunds per day. They are in this business for the last many years. It does not appear that they themselves are growers also of sugar-cane but they purchase it from sugar-cane growers of the surrounding area.

2. The Central Government has by virtue of its power u/s 3 of the Essential Commodities Act 1955, Act X of 1955, promulgated the Sugar (Control) Order, 1955. In this order, which hereinafter will be referred to as "the Central Order", sugar is defined thus:

"Sugar means:--

(i) any form of sugar containing more than 90 per cent of sucrose including Khandsari sugar, sugarcandy and Bura sugar;

(ii) any sugar of crystalline structure; and

(iii) sugar in process in vaccum pan sugar factory or raw sugar produced

therein." By Clause 3 of the Order the Central Government assumed powers to regulate production and movement of sugar. The relevant portion of the clause reads that:

"The Central Government may by order published in the Official Gazette -

(a) direct that no sugar shall be manufactured from sugar-cane except under and in accordance with the conditions specified in a licence issued in this behalf;

(b)

Another Clause 10 of the same Order authorised the Central Government by notification in the Official Gazette to direct that all or any powers conferred upon it by the Order shall subject to such restrictions, exceptions, and conditions, if any, as may be specified in the direction, be exercisable also by a State Government or any officer or authority of a State Government. By reason of the power vested in the Central Government by Clause 10 above that Government published the following notification in the Official Gazette on 22-1-1959:

"G.S.R.132--ESS--Com/Sugar-- In exercise of the powers conferred by Clause 10 of the Sugar (Control) Order, 1955, the Central Government hereby directs that the powers conferred upon it by sub-clause (a) of Clause 3 of the said Order shall be exercisable also by the Government of Uttar Pradesh and the Sugar Commissioner, Uttar Pradesh, in respect of manufacture of sugar may the open pan process (including Bels) within the State of Uttar Pradesh."

3. After a very short interval, the State Government, in view of the above delegation effected in its favour promulgated the U. P. Khandsari Sugar Manufacturers Licensing Order, 1959, hereinafter in this judgment referred to as "the State Order". This was made applicable to the districts of Uttar Pradesh described in Schedule I thereof. Bijnor, where the petitioners are engaged in this business, is included in the list given in Schedule I. Sub-clause (a) of Clause 2 of this Order defines sugar in these terms:

" "Sugar" means every form of sugar containing more than 90 per cent sucrose content including Khandsari sugar made from rab or gur prepared by the open pan process."

The expression "Khandsari sugar" also is separately defined in it as meaning sugar made from rab or gur prepared by the open pan process. The Order also defines the expression "power crusher" as meaning a cane-crusher operated by power and the expression "Bel" as meaning rab manufacturing unit capable of handling juice from 250 mds. of cane per day or to which seven or more bullock-driven crushers supply juice. By Clause 3 of the Order a prohibition is enacted to the effect that no person shall, without obtaining a proper licence:

(a) install a power-crusher or a bel,

(b) use a power-crusher or a bel in the process of manufacturing rab or khandsari. By the proviso, part of this clause, an exception is made in the case of

units employed in the manufacture of Khandsari sugar prior to the enforcement of the Order who were permitted to obtain the licence within a fortnight of its issue. Clause 4 imposed a licence fee at the rates given in Schedule II. These rates are in the case of:

Power-crushers with a crushing capacity of 250 mds. per day Rs. 300/-
Power-crushers with a crushing capacity of 250 to 500 mds. per day Rs. 450/-
Power-crushers with a crushing capacity of 501 mds. and above per day Rs. 600/-

4. The form of licence is also laid down in the Order. The relevant portion is thus:

".....is hereby permitted to set up...power-crusher.. Bels ... for crushing cane for the manufacture of Khandsari or crystal sugar in open pan factory.subject to the following conditions." Thereafter the conditions are stated and One of them is that the licensee shall use the crusher of Bels only for the purposes for which the licence has been issued.

5. The petitioners have challenged the vires of this Order on a number of grounds, as also the right of the State Government to levy the licence fee provided therein. It may not be necessary to state the various grounds on which they have relied except two, the one by which they urge that the State Order is beyond the powers delegated to the State Government in view of Clause 3 of the Central Order and the other by which the levy of the fee has been challenged. As regards the latter the contentions put forward are that the power to levy fee cannot confer the right to levy a tax as, according to them, has been done in the instant case.

In support they have alleged that the State Government does not render any service so far as the manufacture of Khandsari is concerned so that the fee charged by them for the grant of licence bears no relation to the service rendered by them. With regard to the first ground the contention is two-fold: by one the argument is that Clause 10 of the Central Order under which the delegation was effected is ultra vires and by the other it is that Clause 3 of the State Order is beyond the power exercisable under Clause 3 of the Central Order.

6. The Central Order was promulgated u/s 3 of the Essential Commodities Act 1955 which conferred power on the Central Government, should it be of the opinion that it was necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing its equitable distribution etc., to regulate by licence or otherwise the production or manufacture of the commodity. Sugar is undoubtedly an essential commodity.

Section 5 of the Essential Commodities Act also authorised the Central Government by notified Order to direct that the power to make Orders u/s 3 shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable by the State Government. The Central Government is thus competent to delegate to the State Government the powers

belonging to it u/s 3 of the Act. The petitioners, who do not contest this proposition, are attacking the particular delegation in question made by the Central Government on the ground that the Central Government did not act under this section, on the contrary, it acted under Clause 10 of the Central Order. Clause 10 of the Central Order is in substance a reproduction of Section 5 of the Act with this change that it is limited to the powers belonging to the Central Government under the Order. Clause 3 of the Order, by which power was delegated to the State Government, authorised the Central Government to regulate the production and movement of sugar by issue of licence.

This power is, however, one of the powers exercisable by the Central Government u/s 3 itself of the Act. What Clause 10 has thus provided is the delegation of a certain power accruing to the Central Government under S, 3 of the Act. Section 5 of the Act already entitles the Central Government to delegate this power to the State Government. As in either case delegation can be made by a notified Order, indeed it was so done in the instant case, the instant delegation cannot be said to be invalid. At the worst, Clause 10 is a reiteration of the power which otherwise too belongs to the Central Government u/s 5. It is, therefore, not correct to argue that the delegation made in favour of the State Government on 22-1-1959 is bad or otherwise ineffective.

7. To come now to the other objection, the prohibition laid down in Clause 3 of the Central Order is to the effect that no sugar shall be manufactured from sugar-cane except under, and in accordance with the conditions specified in the licence issued in that behalf. It is directed against the manufacture of sugar from sugar-cane. As the expression "sugar" itself has also been defined in it (its definition has already been noticed) the prohibition is against the manufacture of the stuff thus defined in it. One condition laid down in this definition is that the stuff, in order that it may be sugar, should contain more than 90 per cent of sucrose. It will include Khandsari sugar, sugarcandy and Bura Sugar.

In the delegation effected in favour of the State Government the power given to the latter is limited to the cases of manufacture of sugar by the open pan process (including Bel). Next if we look at the definition of sugar in the State Order, once again it means every form of sugar containing more than 90 per cent sucrose contents including a Khandsari sugar made from rab or gur prepared by the open pan process. And Khandsari sugar is sugar made from rab or gur prepared by the open pan process.

8. It is clear from the above details that the particular power which the Central Government delegated to the State Government was in respect of manufacture of sugar by the open pan process including Bels. The State Government thus became vested with the power to regulate the manufacture of Khandsari sugar by the open pan process (including Bels). To emphasise the point further, the State Government acquired the power to regulate the manufacture of Khandsari sugar, which is wholly different from crushing of sugar-cane or the preparation of rab or gur. But by Clause 2 of the State Order the State Government has

prohibited -- (i) the installation of power-crushers or Bels and (ii) the use of a power-crusher or Bel in the process of manufacture of rab or Khandsari.

9. The petitioners point out that power-crushers are units devoted to extracting juice from sugar-cane and Bels as the definition also, is, over rab manufacturing units. Cane juice which is thus extracted is and can be used for various purposes, including the manufacture of rab, manufacture of gur and other Khandsari products while none of these, except Khandsari sugar is sugar. Khandsari is a general name given to several units of sweet products of which Khandsari sugar is one. In this manner they point out that Clause 3 has attempted to regulate the production and manufacture of stuffs other than Khandsari sugar which power, however, had never been delegated to the State Government.

The learned Advocate-General, who took a short adjournment at one of the hearings to ascertain the position whether the power-crushers and Bels are employed in the manufacture of Khandsari sugar alone, admitted on the last date that there are indeed power-crushers and Bels in the area to which the State Order extends which crush sugar-cane extract juice for use in the manufacture of gur or rab, i.e., there are these units which are not engaged in the production of Khandsari sugar.

10. The question which at once arises is. is the State Government authorised to impose licensing for the installation of power-crushers or Bels or the use of power-crushers or Bels in the manufacture of rab? The manufacture of rab is undoubtedly not manufacture of Khandsari sugar. Likewise installation of a power-crusher or a Bel is not so, By requiring persons to desist from installing power-crushers and Bels without previously obtaining a licence the State Government has undoubtedly travelled beyond the power delegated to it by the Central Government. The provision in Clause 3 of the State Order requiring a licence for these purposes being in excess of the powers of the State Government is illegal.

11. Referring to the provision in Sub-clause (b) of Clause 3 to the effect that no persons shall, without obtaining a proper licence, use a power-crusher or a Bel in the process of manufacturing rab or Khandsari, the learned Advocate General contended that since this portion is separable from the rest, the provision is valid to that extent at least. The provision relating to the manufacture, of Khandsari is doubtless separable from the remaining provision of this clause. But the difficulty does not seem to end there. Unlike the other clauses of the Order, Clause 3 has used the expression "Khandsari" and not "Khandsari sugar". Khandsari has nowhere been defined, but "Khandsari sugar" been done so. No effort has been made by means of any affidavit or the like furnished by the State Government to show that Khandsari and Khandsari sugar are identical expressions, or Khandsari sugar is the only produce which is known by the name of Khandsari.

The result is that by using "Khandsari" in the Sub-clause (b) above a vagueness in a very material particular has been introduced in Clause 3. For all that one knows "Khandsari" may cover products which though sweet cannot be called

"Khandsari sugar" under either Order. Thus by providing licensing of power-crushers and Bels in the manufacture of Khandsari the State Government has not regulated the manufacture of Khandsari sugar but not unlikely of other commodities also which would satisfy the description of Khandsari. There is no criterion in the State Order to separate the provision so far it will relate to Khandsari sugar from the rest of it.

12. It is also important to bear in mind that the provision in Clause 3 is penal in nature. Its contravention is attended with punishment including imprisonment. A penal statute, as this Order must be held to be, should not suffer from vagueness. It should clearly indicate the provision enacted by it, so that the persons affected are in a position to know the true intention. This requirement is completely wanting in this case. It becomes all the more prominent when it is realised that Clause 3 has at other places also travelled beyond the powers of the State Government. Since, therefore, it is not reasonably possible in the instant case to separate what is legal from that which is illegal, the entire clause must be held invalid.

13. In view of the above finding it is unnecessary for disposing of this petition to decide the other question raised by the petitioner, i.e., about the levy of licence fee.

14. In the end, therefore, the petition succeeds and the State Government is directed to forbear from enforcing the Order dated 24-1-1959 requiring licences to be taken under Clause 3 thereof. No order is made as to costs.