(1983) 06 CAL CK 0023

In the Calcutta High Court

In Re: Bharat Sugar Mills Ltd. and Another

Date of Decision : 09-06-1983

Acts Referred:
Constitution of India, 1950 — Article 226(2)
Essential Commodities Act, 1955 — Section 3(3C)

Citation : AIR 1984 Cal 102 : (1984) 18 ELT 725

Hon'ble Judges : B.C. Ray, J

Bench : Single Bench

Advocate : R.N. Bajoria and B.M. Bagaria and A.K. Dey, for the Appellant; R.N. Das, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Ray, J.—This application is at the instance of the petitioners, petitioner 1 of which is a Sugar Mill, namely, Bharal Sugar Mills Limited, a Company having its Registered Office at No. 9/1, R N. Mukherjee Road, Calcutta, assailing the validity and/or propriety of the order, annexed as Annexure ''B'' to the writ application, whereby the Central Government by an order dated 27-1-1983 fixed the prices of levy sugar in respect of Sugar Mills of various States including Sugar Mills situated within the territory of the State of Bihar under the provisions of Section 3(3C). Essential Commodities Act, Act X of 1955, on the ground that the aforesaid fixation has been made without complying the four norms laid down in Clauses (a), (b), (c) and (d) of Sub-section (3C). Section 3. Essential Commodities Act and as such the price fixation that has been made is wholly arbitrary and in utter violation of the provisions of the Essential Commodities Act.

2. It has been submitted by Mr. Bajoria, learned Advocate for the petitioner that, this order was published in the Gazette of India which also appeared in the State of West Bengal and the office of this Sugar Mill is situated at R, N. Mukherjee Road within the territorial jurisdiction of this Court and the petitioner has got a licence to sell sugar under the Sugar Licencing and Control Order. It has also been submitted that this Mill has a godown within the State of West Bengal wherefrom the Mill sells sugar to the various retailers. It has been further

submitted that some of the shareholders of this Mill are residents within the State and if sugar is allowed to be sold at the price as determined by the impugned order, it will cause a substantial financial loss not only to the Sugar Mills but also to the shareholders as the price of the shares will be greatly affected. On these allegations it has been submitted by Mr. Bajoria that part of the cause of action arises within the territorial limits of this Court and as such this Court has got jurisdiction to issue appropriate Writs, Orders or Directions in accordance with the provisions of Article 226 Sub-article (2) of the Constitution. It has also been, submitted by Mr. Bajoria in this connection that already some Rules have been issued by this Court in respect of similar orders issued and hence interim order passed in these Rules are pending for decision before this Court. Some decisions were cited at the Bar to show that this Court has got jurisdiction to issue appropriate Writs or Orders or Directions and this application, is, maintainable in this forum

3. Mr. Das, learned advocate appearing on behalf of the respondents has joined issues and submitted that as no part of the cause of action does arise within the territorial limits of the jurisdiction of this Court, this application is not maintainable. The order impugned was made by the Central Government from New Delhi The Bill in question is situated in the State of Bihar, outside the territorial limits of the jurisdiction, of this Court and the levy sugar that taws to be sold to the Food Corporation of India or other agencies to whom such sale will be directed to be made by the Central Government are to be made at the entrance of the Mill premises of the petitioner, i.e., within the territory of the State of Bihar. It has further been submitted that this application is not maintainable in this jurisdiction. Mr. Das has also submitted on the merits of the impugned order fixing the price of levy sugar by the Central Government.

4. For the present, I do not consider to deal with the merits as to whether the impugned order has been made in accordance with the norms laid down in Sub-section (3C), Section 3. Essential Commodities Act, 1955. or not inasmuch as the first question that requires to be decided is as to the maintainability of the writ application in this jurisdiction. Before proceeding to consider this question it is pertinent to refer to the provisions of Article 226 of the Constitution. Article 226(1) provides : "That every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases, any Government within this territory. Directions, Orders. Writs etc." Sub-Article (2) which is very relevant for our purpose is in these terms : "The power conferred by Clause (1) to issue Directions, Orders or Writs to any Government or Authority or person may also be exorcised by any High Court exercising jurisdiction ic relation to the territory within which the cause of action wholly or in part arises for the exercise of such power." On a plain reading of the provisions of Article 226 of the Constitution it is quite clear and apparent from the expression used in the said Article that there are two standards laid down which, if satisfied, would enable this Court to issue appropriate Writs. Article 226(1) clearly provides that Writs can be issued by this

Court to any person or authority and also in appropriate cases to Government which are within the territorial jurisdiction of this Court, Writs in the nature of Mandamus, Certiorari or Prohibition or appropriate Writs for enforcement of either fundamental, rights or statutory rights. Article 226(2). on the other hand, provides that even if the person or authority against whom the Writ is asked far does not reside within. the territorial jurisdiction of this Court still then this Court can issue Writs or Directions provided the cause of action either wholly or partly arises within the territorial jurisdiction of this Court. In this particular case, what is the cause of action. It appears from the averments made in the writ application that the cause of action is the propriety of the impugned order made by the Central Government on 27-1-1983 fixing the price of levy sugar under Sub-section (3C) of Section 3, Essential Commodities Act, Cause of action, it is well settled, refers to the bundle of facts which requires to be proved in order to succeed in the claim that has been made in the instant writ application. Looked at from this point of view it is necessary to consider whether any part of the cause of action arises within the territorial limits of the jurisdiction of this Court, namely, within the State of West Bengal. It has been pleaded in the writ petition that the Head Office of the petitioner Sugar Mill is situated at R.N. Mukherjee Road in the town of Calcutta. The petitioner Sugar Mill has a godown in the town of Calcutta and it holds a licence under the Sugar Licensing and Control Order for the sale of sugar and the godown too is in Calcutta from where levy free sugar is used to be sold by this Sugar Mill. It has also been pleaded that some of the shareholders of the Sugar Mill reside in the State of West Bengal and the purported fixation of price by the impugned order will seriously prejudice them inasmuch as the price of their shares will be greatly affected. The further pleading was that the Mill will also sustain, which has its Head Office (in Calcutta) much less financially if it is to sell sugar at the price fixed by the impugned order. It has, therefore, been pleaded that part of the cause of action arises within this State and so this application is maintainable. As I have said already that the main question which calls for decision in this writ application is the propriety or the legality of the order fixing the price of levy sugar by the Central Government. The order has been made by the Central Government at New Delhi, the Sugar Mill is situated in the State of Bihar and the levy sugar at the price determined by the impugned order has to be sold and delivered to the agencies or the Food Corporation of India as per direction given by the Central Government by the petitioner Sugar Mill at the gate of the Mill premises in the State of Bihar. It is not disputed nor doubted that so far as the levy sugar is concerned the Sugar Mill has got no power to sell it to any agency other than those agencies which are directed by the Central Government to be sold. The Mill can only dispose of sugar which is levy free and for which undoubtedly there is no price fixation. Therefore sale of such sugar in the open market is not in the least affected by the impugned order fixing the price of levy sugar. The submission that the Company will sustain loss or the shareholders will sustain loss is in no way comprised of the part of the cause of action which needs to be proved in order to succeed in this application that the impugned order is bad, arbitrary, unreasonable and illegal being not in accordance with the norms laid down in Sub-section (3C), Section 3, Essential Commodities Act. Therefore, considering all these aspects I am unable to hold that any part of the cause of action arises within the territorial limits of the jurisdiction of this Court. I am also supported by a Single Bench decision of this Court rendered by our learned brother Chittatosh Mukherjee, J., in C. R. No. 1398 (W) of 1975. The decision of the Division Bench, which has been cited before this Court, in my opinion does not help the petitioners in any way whatsoever, because in that case it was held clearly by the Appeal Bench of this Court as follows:

"In our opinion no part of the cause of action can be said to have arisen in Calcutta or any other parts within West Bengal simply because the Sale Office of the writ petitioners are situated in Calcutta or that the allotment letters are received by them in Calcutta ..... Prima facie, therefore, we are satisfied that the Court has got no jurisdiction to entertain this application."

5. Another decision has been cited by Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, . In paragraph 24 at page 194 (of Cal HN) : (at p. 314 of AIR) of the said report it has been held as follows:

"It is now well settled that cause of action means every fact which the plaintiff should prove if traversed in order to succeed this Court."

I have already held that the pleadings that have been made in paragraph 32 of the writ application do not, in my opinion form any part of the cause of action and as such this Court cannot entertain this instant writ application.

6. For the reasons aforesaid this application is dismissed being held to be not maintainable in this jurisdiction. There will be no order as to costs. This order, however, will not prejudice the petitioners to seek appropriate relief in appropriate forum.