

(1993) 08 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10406 of 1982

Indexport Ltd. and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (1994) CriLJ 838

Hon'ble Judges : V.K. Khanna, J;G.P. Mathur, J

Bench : Division Bench

Advocate : R.K. Niyogi and Sudhir Chandra, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mathur, J.—The prayer made in this petition is that the F.L.R. lodged against the petitioners and all consequent proceedings may be quashed and the U.P. Oil-Seeds and Oil-Seed Products Control Order, 1966 (hereinafter referred to as the Control Order) may be declared as unconstitutional.

2. Mahavir Singh, Marketing Inspector, Ghaziabad (respondent No. 3) lodged a FIR u/s 3/7 of the Essential Commodities Act against Indexport Ltd. (petitioner No. 1) on 25-8-1982 at police Station Kotwali, Ghaziabad, and on the basis thereof a case was registered as Crime No. 483 of 1982. The main allegation in the F.I.R. is that an application for oil-seeds licence had been given by Indexport. Ltd. and in connection there of the first informant along with certain other personnel of the Food and Civil Supplies Department reached the premises of the M/s. Hindustan Lever Ltd. and on inspection it was revealed that the former had started trading in edible oils on 20-7-1982 even without obtaining a licence under the Control Order. M/s. Indexport Ltd. got prepared and gave under the signature of P. K. Noyogi (petitioner No. 2) particulars of the trading done by them during the period 20-7-1982 to 23-8-1982. The petitioner No. 1 had transferred the oil received by them to M/s. Hindustan Lever Ltd., Ghaziabad for processing and storage. M/s. Hindustan Lever Ltd. informed that they had in

their possession 108.054 Tonnes of ground-nut oil belonging to M/s. Indexport Ltd. which they had stored along with their own oil in tankers. The aforesaid 108.054 tonnes of ground-nut oil, valued at approximately Rs. 15 lacs, was entrusted to M/s. Hindustan Lever Ltd. and they were directed to keep it in safe custody. A recovery memo was also prepared.

3. Clauses 2 (g),(h) and 4 of the U.P. Oil-Seeds and Oil-Seed products Control Order, 1966 which are relevant for the present case read as follows.

2(g) "Dealer" means a person engaged in the business of purchase or sale or storage for sale of oil seeds or oil seed products, but does not include the Food Corporation of India, the U.P. Food and Essential commodities Corporation or a dealer who stocks less than 5 quintals of oil or less than 10 quintals of oilseeds or less than 25 quintals of oil-cakes."

2(h) "Commission agent" means a person who is not himself a dealer but carries on the business of purchase sale or storage for sale on behalf of a dealer or any other person for commission."

4. No dealer or a commission agent shall occupy or set up any premises for purchase or sale of oil-seeds or oil-seed products, except under and in accordance with the terms of a licence granted by the Regional Food Controller under this Order.

What Clause 4 of the Control Order requires is that no dealer or commission agent shall occupy or set up any premises for purchase or sale of oil-seeds etc. Except under and in accordance with the terms of a licence. This provision shows that merely carrying on business as a dealer in oil-seeds or oil-seed products is not prohibited. It is only when a dealer or commission agent occupies or sets up any premises for purchase or sale of oilseeds etc, he cannot do so except in accordance with the terms of the licence.

4. The language used by the legislature in this Control Order is in contradistinction with the language used in some other Control Orders issued under the provisions of Essential Commodities Act. Clause 3 of U.P. Fooders Dealers" (Licensing and Restriction on Hoarding) Order, 1976 provides that no person shall carry on business as a dealer or commission agent except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority, Clause 3 of U.P. Cement Control Order, 1973 lays down that no person shall sell or offer for sale or store for sale or carry on business in retail or loose sale of cement except under and in accordance, with the terms and conditions of a licence. Clause 3 of U. P. Kerosene Control Order, 1962 lays down that no person shall sell, offer for sale or store for sale kerosene except under a licence granted by the licensing authority. There are numerous other Control Orders which have similar provisions namely, a licence is required for carrying on business in the commodity concerned. However, with respect to oil-seeds and oil-seed products simply carrying on business does not require a licence. It is only when a dealer or a commission agent occupies or sets up any

premises for purchase or sale of oil-seeds or oil-seed products, that a licence would be required.

5. It is well settled principle that the Courts always presume that the legislature inserted every part of a Statute for a purpose and the legislative intention is that every part of the Statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. (See *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, and *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, . In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, it was laid down that it is not a sound principle of construction to brush aside words in a Statute as being in apposite surplusage if they can have appropriate application in circumstances conceivably within the contemplation of the Statute. Therefore, the words "shall occupy or set up any premises" have to be given full meaning. The irresistible conclusion is that merely carrying on business without a licence would not amount to infringement of the provisions of the Control Order unless the dealer or commission agent occupies or sets up any premises for purchase or sale of oil-seeds or oil-seed products.

6. A perusal of the FIR would show that there is no allegation therein that the petitioners have occupied or set up any premises for purchase or sale of oil-seeds or oil-seed products. The only allegation is that M/s. Indexport Ltd. had started trading in edible oils on 20-7-1982. Even if the allegations made in the FIR are accepted at their face value, they do not show that there was any infringement or violation of U.P. Oil-Seeds and Oil-Seed Products Control Order, 1966 and as such no offence u/s 7 of Essential Commodities Act is made out against petitioners.

7. There is another aspect of the case which also deserves notice and has relevance for decision of the writ petition. The allegations made in the FIR themselves show that the first informant Mahavir Singh, Marketing Inspector, went to the premises of the M/s. Hindustan Lever Ltd. in order to conduct an enquiry regarding the application given by M/s. Indexprt Ltd. (petitioner No. 1) on 10-8-1982 for grant of a licence to them. It is during the course of this enquiry that the first informant came to know that, the petitioner No. 1 had started trading in oilseeds and edible oils on 20-7-1982. It, therefore, shows that the petitioner No. 1 had moved an application for grant of a licence to them a fortnight before the inspection which took place on 25-8-1982. The fact that the petitioner No. 1 had itself applied for a licence under the Control Order shows its bona fides. In para 14 of the supplementary counter-affidavit filed by Mahabir Singh Chauhan first informant (sworn on 26-4-1983) it is admitted that a licence was actually granted in favour of the petitioners. Learned counsel for the petitioner has made a statement at the Bar that the licence was actually granted on 7-10-1982 and thereafter the petitioner No. 1 started carrying on business in oil-seeds and edible oils. Sri Rakesh Dwivedi, learned Addl. Advocate General has

also made a fair statement that in view of the fact that the petitioner No. 1 had moved an application for grant of a licence prior to the inspection and lodging of the FIR and also the fact that the licence was actually granted in October, 1982, it would not be proper to commence proceedings for prosecution of the petitioners nearly eleven years after the commission of the offence. Having given our careful consideration to the whole matter, we are of the opinion that in the background of the facts stated above, it would not be in the interest of justice to commence prosecution of the petitioners after lapse of such a long period.

8. For the reasons discussed above, the Writ petition succeeds and is allowed. All further proceedings commenced against the petitioners on the basis of case crime No. 461 of 1982 u/s 3/7 of the Essential Commodities Act of police Station Kotwali District Ghaziabad which was registered on the basis of the FIR lodged by Mahavir Singh (respondent No. 3) on 25-8-1982 are quashed. Under the interim order passed by this Court on 20-11-1982 ground-nut oil seized on 25-8-1982 was released in favour of the petitioners. In terms of the said order the A.D.M. (Food and Civil Supplies) Ghaziabad is directed to release the cash deposits as well as bank-guarantee furnished by the petitioners.