
(1972) 11 CAL CK 0006
In the Calcutta High Court

Jhabarmal Agarwalla and Another

APPELLANT

Vs

N.B. Das Gupta and Others

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(1)(g), 304(b)
Essential Commodities Act, 1955 — Section 3

Citation : (1972) 11 CAL CK 0006

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Noni Coomar Chakraborty, Samarendra Kuma Datta and Tarak Nath Bandopadhyay, for the Appellant; S.C. Das Gupta, C.D. Roy Chowdhury and Maloy Kumar Bose, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Salil Kumar Datta

1. The two petitioners in this rule are partners of a registered partnership firm named Nirmal Cold Storage (hereinafter referred to as the firm). Their case is as follows: The firm wrote a letter to the Licensing Officer and Additional Director of Agriculture of the Government of West Bengal (respondent Nos. 2 and 1) on November 3, 1970 informing them that they intended to build a cold storage at Chandrakona Town and they wanted to know formalities in connection with the licence to be obtained. The firm was asked by a letter dated November 18/19, 1970 by the respondent No. 1 to inform the office about the completion of the construction of the cold storage and to ask for application for license under the West Bengal Cold Storage (Licensing and Regulation) Act, 1956 (West Bengal Act VI of 1966) (hereinafter referred to as the Act). At the relevant time almost all the cold storages of West Bengal were insulated by saw-dust and paddy husk and the respondent No. 1 did not give any intimation as to the materials with which the insulation was to be completed by the petitioners. The petitioners completed the construction of the cold storage investing about Rs. 12 lacs including Rs. 5

lacs taken as loan from the West Bengal Industrial Development Corporation. After completing the construction of the cold storage with saw dust and paddy husk insulation the petitioners filed an application for licence u/s 4(1) of the Act in the requisite form with the necessary treasury receipt for Rs. 200 as licence fee. The petitioners were informed by an officer of the department that the licence would not be granted to the petitioners as the cold storage had been insulated with paddy husk and saw-dust though this was the usual practice in West Bengal. The petitioners made a written representation on March 22, 1971 to the said respondent stating that they were completely unaware that paddy husk or saw dust insulation was not permissible under the rules and they have made the insulation following the usual practice with all cold storages. The petitioners further stated that they had taken loan of Rs. 5 lacs from the said Corporation which granted the loan only after the Government had approved scheme. The petitioners further stated that they had to store a quantity of potato booked by them inside the storage as they were pressed by the cultivators to avoid dire consequences. This was done on March 18, 1971 as it was anticipated that the Inspector would visit the cold storage on 16th or 17th instant. The petitioners stated that they would suffer heavy financial loss if the licence was not granted and the cultivators would also suffer serious loss and the stock of potatoes would be a waste. They stated that they were ready to make tentative addition and alteration if possible. It was further stated that as soon as the current season would be over they would suitably change the insulations as required under the rules. In respect of the said representation the petitioners were informed by the respondents by a letter dated March 25, 1971 that the Government was unable to issue license unless the insulating materials were changed with the approval of the Licensing Officer. On the same day by another memo, the petitioners was informed that they had contravened the provisions of the Act by engaging in cold storage business without licence and they were liable to be prosecuted. On April 24, 1972 an enquiry was made by the respondent No. 1 as to whether the insulation had been changed as required for issue of licence. On June 4, 1971 the District Enforcement Office (respondent No. 3) started prosecution u/s 21 of the Act against the petitioners and others and seized the stock register and other documents and again on June 22, 1971 the stock of potatoes was seized in connection with Chandrakona, P.S. Case No. 5 of June 4, 1971. On June 22, 1971 the respondent No. 1 issued a show-cause notice on the petitioners informing that as no report about the change of insulation was received from the petitioners as required as required under the West Bengal Cold Storage (Licensing and Regulation) Rules, 1967, it was presumed that the insulation of the cold storage had not been changed. The petitioners were asked to show cause why the application for license under Rule 3(1) should not be refused.

2. The petitioners state and contend that Rule 11(5) of the Rules is bad in law on account of excessive delegation of legislative function to the Licensing Officer as the legislature has provided no criteria or standard or any principle on which any

particular material should be approved by the Licensing Officer for the purpose of insulation of cold storages. The powers conferred by Rule 11(5) on the Licensing Officer to add to the materials already mentioned in the rules without any guidelines are uncanalised and uncontrolled. No qualification has been prescribed for appointment of a Licensing Officer. It was further contended that the provisions in the said Act and its rules are in contravention of Article 304(b) of the Constitution imposing unreasonable restrictions on the freedom of trade and section 2(2) of the Act and Rule 11(5) of the Rules are hit by Articles 19(1)(f) and (g) of the Constitution and not protected by sub-section (6) thereof as the restrictions are unreasonable. Further the provisions for seizure are also without jurisdiction as there are no provisions therefore in the Act or rules and the seizures are in contravention of section 165 of the Criminal Procedure code as no reason has been recorded as required for such seizure. Further the petitioners referred to the Cold Storage Order issued by the Central Government in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 which did not provide for any insulating materials necessary for the purpose, leaving a choice to the owners for selection of the materials for insulation. The said order, it was stated, has been enforced in the rest of India except West Bengal since May, 1969. It was contended that in view of the cold storage order issued under the Essential Commodities Act, the West Bengal Legislature had no competence to make law for the cold storage relating to any essential commodity. Further paddy husk and saw-dust have been permitted to be used by the other cold storages as insulating materials and they are also accepted as recognized materials for the purpose of insulation and accordingly proceedings against the petitioners are violative of Article 14 of the Constitution. On these allegations the petitioners moved this Court in Constitutional Writ Jurisdiction praying inter alia for declaration that the Rule 11(5) of the Rules is bad due excessive delegation of legislative functions and the said Act and Rules are ultra vires the Articles 14, 19(1)(f) & (g) and 304(b) of the Constitution. The petitioners also prayed for writ commanding the respondents to recall the show-cause notice for rejecting the application for licence and from proceeding with the Case No. 5 of Chandrakona Police Station and also for Writ in the Nature of Certiorari quashing of the said proceeding.

3. On this application this Court issued a rule in terms of the prayer mentioned above but no interim order was granted at that time giving liberty to the petitioners to pray for interim order on notice to the respondents. It appears that thereafter an application was filed on August 23, 1971 for restraining the respondent from proceeding with Rule 5 of the Rules as also with the Case No. 5 of Chandrakona P.S. u/s 21 of the Act. On the hearing of this application no appearance was made on behalf of the respondents in spite of service and accordingly the Court allowed the application and granted the interim order prayed for. Thereafter, an application was filed on behalf of the said respondent No. 4 on January 12, 1972 for vacating the interim order. The said application was directed to be heard along with the main rule.

4. The respondents have filed an affidavit-in-opposition opposing the said rule. It was stated therein that the petitioners were informed on their enquiry about the formalities for running a cold storage and that they should apply on completion of the construction and while it was under consideration, it came to light that the petitioners had started storing potatoes without obtaining any licence thereby violating the provisions of the Act and the rules made thereunder. The petitioners were informed on March 25, 1971 about the irregularities and illegalities committed by them and were also intimated that the licence asked for could not be granted unless insulating materials were changed as required under the law. They were further informed that for having engaged in cold storage business without licence, they were liable to be prosecuted. The authorities decided to take legal action for deliberate violation of the provisions of law and necessary information was lodged to police for appropriate action. After waiting for three months, the show-cause notice was issued to the petitioners as to why the application for licence should not be refused. The respondents stated that by virtue of the interim order the petitioners were carrying on business without licence and thereby offence was being committed continuously. The respondents further stated that the cold storages constructed with paddy husk or saw-dust as insulating materials bring out several hazards as (a) they are susceptible to vermins and in presence of moisture, a micro biological effect takes place leading to fungus and decay (b) they are highly combustible (c) they absorb moisture and when wet, rot sets in leading to the most unhygienic condition affecting the potatoes and (d) such insulation is banned in all countries of the world. Accordingly it was decided by the authority that insulation with saw-dust and paddy husk should not be permitted in any circumstances. Since 1969, no licence has been granted to cold storages which are not constructed with the approved insulating materials as provided in Rule 11 (5) of the Rules. It was further stated that in view of extent rules and hazards the Licensing Officer was not prepared to use his discretion in favour of the petitioners and accordingly the license could not be granted to the petitioners and ignorance of law as pleaded could not be of any assistance to the petitioners. About the allegations regarding the approval of the scheme by the Government, it was stated that respondents gave comments about the viability of the scheme but no permission was or could be given regarding use of unapproved insulating materials. It or could be given regarding use of unapproved insulating materials. It was further stated that there was no provision for licence for temporary period. The respondents also disputed all the contentions about the constitutional or legal validity of the Act and its rules and contended that the respondent No. 3 had ample jurisdiction for search and seizure. For these reasons it was submitted that the rule should be discharged.

5. An affidavit-in-reply was filed by the petitioners in which the allegations made in the affidavit-in-opposition were denied. It was specifically alleged with reference to authoritative books that paddy or rice husk and saw-dust are approved materials for insulation all over the world. It was further alleged that all cold storages in West Bengal having the above insulations were allowed to have

their licence continued. The petitioners also denied soundness or correctness of the plea of hazard and complained that the decision for change over to the other insulating materials from the usual materials so long used was never communicated or published.

6. The rule was taken up for final hearing and when hearing and when hearing has proceeded for some time, Mr. Das Gupta, Government Pleader, prayed for leave to file a supplementary affidavit on behalf of the respondents. The leave was granted with like liberty to the petitioners to file affidavit-in-reply thereto if so advised.

7. The respondents filed the supplementary affidavit stating that the West Bengal Cold Storage (Licensing and Regulation) act came into force on May 1, 1969. All cold storages, licence of which was granted after 1969, are insulated with approved materials under granted after 1969, are insulated with approved materials under Rule 11(5) of the Rules and a list of such storages was annexed as Annexure "A". The licences which were granted in 1969 being for period of five years were to expire in 1974. It was also stated that the authority of five years were to expire in 1974. It was also stated that the authority was in favour of rigid application of the Rule 11(5) leaving no scope for exercise of discretion. The Cold Storage Association made a representation and at a meeting with the authorities, it was decided that for existing storages some exemption could be made beyond 1970 if their performance was satisfactory but for new applicants rules are to be strictly followed. After 1969 no new cold storage has been granted licence which is not insulated with approved and named materials. A circular dated June 18/21, 1971 was issued to cold storages having rice husk/saw-dust insulation calling upon them to change over to insulation of approved materials of Rule 11(5) before February 15, 1979 and it was further stated that failure to do so would mean contravention of the provisions of the act. A representation was made against the said circular and in the meantime the present rule challenging the vires of the Act and its Rules was issued. In this state of affairs the above order was kept abeyance. As to new applicants strict compliance with the Rule 11(5) has been adhered to and there has been no case of any deviation therefrom. The respondents also referred to "Industrial Thermal Insulation" by A. C. Wilson and state that rice husk or saw-dust do not have the requisite properties essential for insulating efficiency, as such materials being biological organic products contain moisture as one of their constituents and existing moisture increases in cold storage owing to vapor pressure differential, which leads to reducing weight of potatoes besides creating rot to potatoes causing loss both to the grower and trader. Such materials are not used in foreign countries as would appear from books and journals on the subject to be produced at hearing. Further if insulation with the above materials could be done with meticulous perfection, it would be uneconomic and such materials are not used as insulation in western countries.

8. The petitioners filed an affidavit-in-reply disputing the propositions about

insulation made therein. It was stated that prior to May 1, 1969 the Cold Storage Order, 1964 was in force in West Bengal whereby licences were granted and renewed annually. The licences granted under the said order were valid till December, 1969 and not upto 1974 as alleged. On reference to authorities, it was contended that rice husk and saw-dust are suitable insulating materials for preservation of potatoes.

9. The contention about competency of the West Bengal Legislative for enact the piece of legislation we are concerned with need detain us long. The previous sanction of the President as required under Article 304(b), as appears from the preamble of the Act, has been obtained. Again the matter from the preamble of the Act, has been obtained. Again the matter of legislation is within Item 33, clause (b) of the concurrent list of Seventh the Schedule of the Constitution and the assent of the President has also been duly received to the enactment passed by the West Bengal Legislature.

10. Mr. Noni Coomar Chakravarti learned Advocate for the petitioners has contended with great emphasis that sub-rule (5) of Rule 11 gives an unfettered and uncanalised discretion to the selection of the materials for insulation of cold storages as will appear from the following provisions: -

Rule 11.Maintenance of Cold Storage. - Every licensee shall for the purpose of sub-section (1) of section 10, maintain his cold storage in the manner and meet the conditions hereinafter stated...

(5). For the purpose of sub-section (2) of section 2(which defines "cold storage" as meaning as enclosed chamber insulated in the prescribed manner) insulation of floors, roofs, wells, doors and windows or any opening of the cold storage shall be made with (1) Cork Slabs, (2) Glass Wool, (3) Rock Wool, (4) Expanded rigid plastic form or any other materials which may be approved by the Licensing Officer...."

Mr. Chakravarti contended that the above provision gives an unbridled discretion in the Licensing Officer to approve any material for insulation as he may elect. The conferment of such power involves delegation of legislative functions on the Licensing Officer as under the provisions such officer might select any material which need not be similar or like the materials mentioned in the relevant provision, and no criteria or principle has been set down for selection of other insulating materials.

11. It will not however be proper to interpret the provisions of the above rule in manner Mr. Chakravarti intends the Court to do so as such interpretation is not warranted by the accepted principles of interpretation of statutes. As contended by Mr. Das Gupta, the doctrine of ejusdem generic which strives to reconcile the incompatibility between specific and general words, will be applicable here. The doctrine, as also enunciated in the case of (1) Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, , applies when (i) the statute contains enumeration of specific words; (ii) the subjects of enumeration

constitute a class or category; (iii) that class or category is not exhausted by enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent. It appears from the text books referred that the specific enumeration of materials belonging to the category of like insulating materials are not exhaustive and the general term follows the enumeration. It is also obvious that there is no indication of a different legislative intent for inclusion of any material not similar to the materials already enumerated. It must accordingly be held that though apparently a wide discretion is given to the Licensing Officer, his selection of materials is obviously similar to those mentioned earlier in the said sub-rule. Accordingly it must be held that there is neither any unbridled and uncanalised discretion conferred on the officer nor is there excessive or any delegation of legislative function. It is also to be remembered that the Licensing Officer "who exercises such power under clause (b) of section 4 of the Act means a highly responsible officer like the Director of Agriculture, West Bengal and includes any other officer not below the rank of Superintendent of Agricultural Marketing and such provision ensures proper action as contemplated under the Act. The contention of the respondents that the discretionary power conferred on the Licensing Officer has been withdrawn by Government does not merit any consideration, as such action by Government is impermissible without amendment of the rules.

12. Mr. Noni Coomar Chakravarti has contended that saw-dust or rice husk are accepted insulating materials for cold storages and the action of the Government in excluding such materials for purposes of insulation constitute an unreasonable restriction on the fundamental right of the petitioners to carry on their trade as guaranteed by Article 19(1)(g). He referred to several text books on the subject as (1) Ardels "Refrigeration and Air Conditioning Guide" (1970 Edition) which at page 443 gives the table of "K" (Btu/sq. ft/F/hr/in. thickness) - conductivity factors of saw-dust at 0.41 and Rock Wool and Glass Wool at 0.28 and 0.26 respectively. (II) K. D. Dave's "Refrigeration for Cold Storage" at pages 77-78 in which it is stated that for potatoes requiring temperature below 34 F, saw-dust or rice husk is suitable and saw-dust is better if it can be protected against moist. (III) G. R. King's "Basic Refrigeration" at page 228 in which it is stated that saw-dust, rice husk have been used as insulations. (IV) Building Digest (85) which mentions saw dust or rice husk as loose fill insulations and they are permeable hygroscopic class of insulations absorbing moisture for which thicker walls and roof than what is required for fibre glass, cork and expanded Polystyrene are necessary.

13. Mr. Das Gupta referred to (1) A. C. Wilson's "Industrial thermal Insulation" which in Chapter 9, page 205 mentions the characteristics and properties of good low-temperature insulating material and emphasizes the need of a vapor barrier (11) "Thermal Insulation" by S. D. Probert and D. R. Hub (1968) which at page 39 sets out the desirable characteristics of insulation material which amongst others are resistance to water absorption, combustion and vermin and also to settlement, as, if such subjected to vibration tends to pack down, a void will

appear permitting rise in heat transfer. (111) "Refrigeration" by Moyer & Fittz (1932) in which at page 361 it lays down five requirements of good insulating material and at page 368 refers saw-dust which absorbs moisture, if damp settles when dries out leaving unprotected space, if wet gives out odour tainting stored goods, attracts vermin furnishing resting place for rats and mice. It is also stated that Straw and Chaff do not belong to better class of insulating as they are likely to absorb moisture and to rot. (IV) Williams' Mechanical Refrigeration (1947) which at page 212 specifies the qualities of good insulation which are that it should be non-hygroscopic, free from odours, vermin, moisture, not liable to decay or settlement. (V) Ashrae's "Guide and Data Book" (1961) which also refers above qualities for good insulation.

14. It would appear from the above authorities that though saw dust and rice husk have been used as insulating materials they have some drawbacks, inter alia, being prone to moisture, vermins, rotting and the like while the materials mentioned in Rule 11(5) possess in higher degree qualities of good insulation. If in this state of affairs the authority takes a decision prohibiting use of above materials for insulation of cold storages for betterment of the Cold Storage Industry and to safeguard interest of the hirers, growers and general public, it is not possible to say that such restrictions are unreasonable as affecting the citizen's fundamental right to carry on trade. It is not also within the competency of the Court to probe into investigation about the propriety or necessity that impelled the authority to frame such rules in absence of any allegation that they are meant for collateral purpose. New entrants to such business after May 1, 1969 when the Act was brought into force cannot be heard to complain about the requirements under the Rules which were notified in the meantime on November 8, 1967. For above reasons it is not possible to hold that the restrictions imposed by Rule 11(5) are illegal or unconstitutional as offending Article 19(1)(g).

15. Mr. Chakravarti next contended that there has been discrimination in respect of grant of licences, as many cold storages having insulation with rice husk or saw dust have been granted licence under the Act while the petitioners have been deprived from the grant of licence without any ostensible reason. It would however appear from the supplementary affidavit and its Annexure "A" that all cold storages licences of which were granted after 1969 are insulated with approved materials. As to existing cold storages it is stated that their licence granted in 1969 would expire in 1974 after expiry of five years. These storages form a separate class from that of the storages constructed after May 1, 1969 and there is no allegation of discrimination between such new storages. As such there is or can be no question of discrimination between the two class of storages. It would further appear since about June 18, 1971 the authority called upon the cold storages with rice husk/saw dust insulation to change the insulation with approved materials as laid down under the rules by February 15, 1972. In view of the present rule challenging the vires of the Act and its rules, the above order has been kept in abeyance.

16. Mr. Chakravarti next contended that the seizures are illegal as no reasons have been recorded for such the seizures as required under the provisions of section 165 of the Code of Criminal Procedure. Though the petitioners have prayed for Writ in the nature of Certiorari, the Court trying the relevant case has not been made a party and there is no record before this Court to examine the contention. In view of the admitted position that the petitioners had engaged themselves in cold storage business at the relevant time with licence the reason for search and seizure is obvious and patent. Further, it appears that the stock of potatoes have already been released to the petitioners officer on bond. For all these reasons it is not possible, as at present advised, to hold the seizures illegal. Further in view of my above findings, the impugned proceeding initiated by the respondent No. 3 against the petitioners is not illegal or without jurisdiction.

17. In the premises as all contentions raised on behalf of the petitioners fail, the rule is discharged, without however any order as to costs. All interim orders are vacated.

18. In view of the above order no separate order is called for on the application dated January 12, 1972 for vacating the interim order which is to be treated as disposed of.

After the judgment has been delivered Mr. Samarendra Kumar Datta, learned Advocate on behalf of the petitioners, prays for a stay of the operation of the above order made today for a period of six weeks from date. No one is present on behalf of the opposite parties this prayer. The prayer is allowed. Let there be a stay of the operation of the order for six weeks from date as prayed for.