

(1954) 05 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 460 of 1954

Kesar Sugar Works Ltd.

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-05-1954

Acts Referred:

Constitution of India, 1950 — Article 132, 226

Citation : AIR 1954 All 726

Hon'ble Judges : Malik, C.J.;V. Bhargava, J

Bench : Division Bench

Advocate : Brij Lal Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Malik, C.J.—This is a petition filed by Messrs Sugar Works, Limited, Baheri, Bareilly, who have claimed the following reliefs under Article 226 of the Constitution:

(1) An order, direction or writ may kindly be issued quashing the notifications, dated 9-3-1954 and 29-3-1954;

or

an order, direction or writ in the nature of a writ of "mandamus" be issued commanding the opposite parties not to enforce the said notifications.

(2) An interim order, direction or writ in the nature of writ of "mandamus" be issued, restraining the opposite-parties from taking action against the petitioner or its officers for non-compliance with the provisions of the said notifications or the allotment orders issued thereunder.

(3) Such, other order, direction or writ as may be necessary in the ends of justice and in the circumstances of the case may kindly be issued.

(4) The costs of the above writ petition be allowed to the petitioner.

The opposite-parties to this petition are (1) the Union of India through the Secretary, Ministry of Food and Agriculture, New Delhi and (2) the Hon"ble the Minister for Food and Agriculture, Government of India, New Delhi.

2. It appears from the affidavit filed in support of the petition that the Minister for Food and Agriculture issued certain notifications under the Sugar and Gur Control Order, 1950. By the notification, dated 9-3-1954, the price of sugar was fixed at Rs. 27/2/- per maund as ex-factory price for Indian sugar produced in 1953-54 season by vacuum pan sugar factories in the areas of East Uttar Pradesh, North Bihar and West Bengal.

By the notification, dated 29-3-1954, the ex-factory price of sugar was fixed in the areas of West Uttar Pradesh, South Bihar, Punjab, Pepsu, Orissa, Rajasthan, Madhya Bharat, Bhopal, Bombay, Madras, Andhra, Hyderabad, Mysore and Travancore-Cochin.

By the order issued by Government of India, Ministry of Food and Agriculture, New Delhi, under the Sugar and Gur Control Order, 1950 contained in Annexure "D" to the affidavit, directions were given to the mill owners as regards the despatch of sugar, the price to be charged for the same and the mode of realisation.

On 21-4-1954, a telegram was issued to the various factories that serious action will be taken if any factory delays despatches of controlled sugar on any untenable plea.

3. Shri Pathak has appeared on behalf of the petitioner and he has urged that the two notifications and the order mentioned above are "ultra vires" and that his client is not bound to obey any of them, He has, therefore, prayed that the said notifications be quashed and a writ of "mandamus" be issued, restraining the Union of India and the Minister for Food and Agriculture from taking action against the petitioner or its officers for non-compliance of the provisions of the said notifications. The other reliefs asked for by the petitioner cannot, however, be granted unless the first relief is granted and the notifications are declared to be invalid and are quashed.

In -- K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , their Lordships of the Supreme Court pointed out that though the powers conferred on the High Courts under Article 226 are very wide yet there are two limitations placed upon the exercise of those powers. One limitation is that the power is to be exercised throughout the territories in relation to which a High Court exercises jurisdiction and the other limitation is that the person or authority to whom the writ is issued must be amenable to its jurisdiction either by location or residence within those territories.

The facts of that case were that the Central Government had referred certain, cases to the Income Tax Investigation Commission for enquiry and report u/s 5 of Act 30 of 1947. Petitions were filed in the High Court of Punjab that a writ of

prohibition might be issued to the Commission and the authorized official directing them not to proceed with the investigation of cases referred to the Commission u/s 5 of Act 30 of 1947 and for a writ in the nature of certiorari for quashing the proceedings already commenced and for other reliefs.

4. In -- Election Commission, India Vs. Saka Venkata Subba Rao and, , it was held that the High Court of Madras could not issue any writ under Article 226 to Election Commission having its offices permanently located at New Delhi.

5. The question for consideration in the case before us is whether this Court can quash the two notifications that were issued by the Ministry of Food and Agriculture, Government of India, New Delhi. The decision will depend on the answer to the question whether the Ministry of Food and Agriculture can be said to have its location within the territories of U. P. subject to the jurisdiction of this Court. From the mere fact that the notifications are to be enforced in all parts of India and the Ministry of Food and Agriculture, Government of India, can issue orders and directions which can be enforced in any part it cannot be said that it is located within this State. In view of the two decisions of the Supreme Court cited above, we find it difficult to hold that this writ petition is entertainable by this Court.

6. Learned counsel for the petitioner has relied on a Full Bench decision in -- Maqbulunissa and Others Vs. Union of India (UOI) and Another, .

In that case an application was filed for a writ in the nature of "mandamus" or alternatively for directions or orders directing the opposite-parties to forbear from giving effect to the order asking the petitioners to leave India or get their order executed by their subordinate officers.

It may be possible to hold, though we do not express any final opinion on the point, that a writ in the nature of a writ of mandamus can be issued to an authority within the jurisdiction of this Court, but a writ for quashing a notification issued by a Ministry of the Union Government which is situate at New Delhi can be filed only in a Court having territorial jurisdiction there. If the notifications cannot be cancelled by this Court, the rest of the relief claimed by the petitioner cannot be granted.

7. In this connection a further practical difficulty may be pointed out. The notifications issued by the Central Government apply to a large number of States in India. There may be difference of opinion between the various High Courts, some quashing the notifications and others not, which will lead to a great deal of confusion.

8. There is one other difficulty. This petition has been put up for orders on the last date at a time when the Court is about to rise for the vacation. Notice of the petition has not been given to the other side.

Learned counsel for the petitioner has prayed for an interim stay and has pointed out that if stay is not granted, the petition will become infructuous and the

petitioner will suffer irreparable loss. If, however, the operation of the notifications is stayed pending consideration whether this Court has jurisdiction after notice to the other side, it would virtually amount to allowing the petition.

9. In all the circumstances of this case, we feel that it is not possible to admit this writ petition and we, therefore, dismiss it.

10. Sri Pathak has prayed for a certificate under Article 132 of the Constitution. Apart from any other question that may be raised on the merits, the question whether this petition is entertainable by this Court is a question of some importance and raises questions relating to the interpretation of the Constitution. We, therefore, grant the necessary certificate.