

(1961) 02 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 321 of 1959

Krishan Khanna

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 22-02-1961

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Essential Commodities Act, 1955 — Section 3, 5
Motor Vehicles Act, 1939 — Section 133(3)

Citation : AIR 1962 P&H 32 : (1961) 2 ILR (P&H) 595

Hon'ble Judges : Mehar Singh, J; A.N. Grover, J

Bench : Division Bench

Judgement

A.N. Grover, J.

(1) This is a petition under Article 226 of the Constitution of India in which it is necessary to state certain facts before the question that have been canvassed before us can be disposed of.

(2) It appears that a coal depot had been allotted to a firm of the name of Messrs Sant Singh Mohan Singh at Jullundur. According to the petitioner, in 1949 Sant Singh, who was one of the partners of the firm, surrendered his share in favour of the petitioner, and the depot was transferred to a firm called Messrs Mohan Singh Maharaj Krishan. In 1952 Mohan Singh also surrendered his share in favour of the petitioner and applied to the Civil Supplies Department for the refund of the security deposited by him. The petitioner was directed by the authorities to deposit the necessary security of Rs. 500 as that he could be allowed to continue as a coal depot-holder (vide Annexure "A" to the petition). The petitioner then deposited a security of Rs. 500 and informed the office by means of a letter dated the 15th July, 1952 (Annexure "B"). On report of the office, marked Annexure "C", the District Magistrate passed an order, which is set out in Annexure "D", releasing the security of Mohan Singh.

The petitioner proceeded to assert that from July 1952 onwards he was

recognised as the sole proprietor of the coal depot which was being run under the name of "Maharaj Krishan Khanna." On the 14th May, 1954 the petitioner applied for the change of the name and style of the depot to Messrs Maharaj Krishan Khanna and Sons by means of Annexure "E", to which a reply was sent by the District Organiser, Civil Supplies and Rationing, Jullundur, according the requisite permission (Annexure "F"). It may be mentioned that up to this stage the facts are generally admitted except that in the return it is stated that Sant Singh never surrendered his share and only Mohan Singh had withdrawn from the partnership in the coal depot and that the relevant record has been looked up but Annexure "E" was not forthcoming. Its receipt was denied. Similarly it is stated that Annexure "F" was not forth-coming. It is common ground, however, that the petitioner was informed on the 12th November, 1956 by the District Food and Supplies Officer (Annexure "G") that the Government had recognised Sant Singh as partner of the coal depot styled as Messrs Maharaj Krishan and Sons. It would be useful to set out in its entirety the material part of this communication:

"It has been decided by Government to recognise Shri Sant Singh as partner of Coal Depot styled as Messrs Maharaj Krishan and Sons and as such has included his name in the style of the depot. You are hereby informed of this change and requested that you and Shri Sant Singh should deposit the security of Rs. 500 in the name of Messrs Sant Singh Maharaj Krishan in the Post Office duly pledged to the undersigned within a week of the receipt of this letter. The coal depot henceforth will function in the name and style of Messrs Sant Singh Maharaj Krishan."

The petitioner wrote a letter on the 14th November, 1956 (Annexure "H") protesting against the Department compelling him to accept Sant Singh as a partner and asserting that since 1952 he was the sole owner of the coal depot. He also made a representation to the Food Minister, Punjab, in this respect (Annexure "I") in which all the necessary facts were set out. By means of a letter dated the 21st November, 1956 (Annexure "J"), the District Food and Supplies Officer wrote to the petitioner saying:

"The inclusion of the name of Shri Sant Singh in the depot named as Maharaj Krishan and Sons was made by the Head Office. So you are informed that this office is not in a position to keep the order of the Head Office in abeyance."

By means of an order dated the 23rd/27th November, 1956 (Annexure "K") the District Magistrate suspended the coal business of the petitioner on account of an alleged contravention of instructions issued to him by the District Food and Supplies Officer, Jullundur, and this was done under Clause 10(1)(a) read with Clause 2(c) of the Punjab Coal Control Order, 1955 (hereinafter to be referred to as the Order), and the suspension was to continue till the depot functioned in the new name and style of Messrs Sant Singh Maharaj Krishan.

(3) At this stage another matter entered into the picture, and that was the

alleged production of Annexure "C", an office note, which supported the case of the petitioner about Sant Minister when the petitioner was granted an interview. The Director Food and Supplies addressed a letter dated the 15th February, 1957 (Annexure "L") in which paragraph 2 was in the following terms:

"You are obviously suppressing the truth. You are again asked to intimate how and through whom you obtained copy of the official note, otherwise the fact that you produced a copy of the confidential orders from the file, will be sufficient reason to cancel your depot. The requisite information must be supplied by return of post." As regards the said office note, it is admitted in the return that the petitioner had handed over its copy, as also the copies of other documents, to the Food Minister, and in paragraph 12 it is stated that the petitioner was asked to sent the original copies of the said documents, as the originals were found missing from the District office file. The petitioner replied that the original documents had been mislaid somewhere. In paragraph 13 it is said that the petitioner produced before the Minister a copy of the note from the office of the District Organiser, Civil Supplies and rationing, Jullundur. He was asked to intimate how and through whom he had obtained the copy and was told that if he did not do so, the fact that he had produced a copy of the confidential orders from the file would be sufficient reason to cancel his depot.

(4) It may now also be mentioned that the petitioner was the President of the District Coal Retailers (Depot Holders) Association, and had been elected as such in 1954. This Association was entrusted with the task of importing coal into the State against the permits issued by the authorities and its disbursement to the depot-holders and other allottees. In paragraph 14 of the petition it is stated that the procedure for the disbursement to depot-holders of coal wagons received against such permits, prevalent and approved by the Civil Supplies Department, was that the depot-holders would apply to the District Food and Supplies Officer for allotment of wagons received, and after the Department had approved their applications, the railway receipts could be taken from the Association. In the, return the first part of paragraph 14 was admitted, but the procedure adopted in respect of the disposal of incoming coal/coke wagons was not admitted to be correct.

The petitioner had received three permits numbered 39, 40 and 41, dated the 14th March, 1956 for the import of coal in his capacity as President of the Association, and the version of the petitioner is that he along with other depot-holders applied to the District Food and Supplies Officer, Jullundur, for the allotment of the wagons received against permit No. 41, and after his application had been approved by the said officer the petitioner took the delivery of four wagons and sole them in accordance with the instructions and orders of the Department. By means of a memorandum dated the 15th May, 1957 (Annexure "M"), however, the petitioner was informed that the four wagons had been taken away by him to his own depot without obtaining any permission from the District Industrial Officer and disposed of in contravention of the Punjab Coal Control

Order, 1955. He was, therefore, being afforded an opportunity to explain his conduct and forward his explanation. Finally, by means of Annexure "N", dated the 6th August 1957 the District Food and Supplies Officer made the following order:

"You have failed to give satisfactory explanation with regard to:

1. Misappropriation of four wagons of soft coke;
2. Your failure to disclose the source from which you obtained copies of office notices;
3. Your non-acceptance of Shri Sant Singh as your partner.

Government have thus decided to cancel your coal depot under the above grounds. The authorization issued to you is hereby cancelled. You should immediately hand over the record relating to the above depot to my Inspector, for final checking of the accounts."

The petitioner preferred an appeal under para 10 Clause (1)(b) of the Order to the Director of Food and Supplies, but the same was rejected (Annexure "O").

(5) The petitioner then filed the present petition which was first placed before Dulat, J., who recorded an order on 16-8-1960 referring the petition to a larger Bench for decision.

(6) It will be better to, first, dispose of the questions of law that have been raised and on which the order made, cancelling the authorisation issued to the petitioner's depot has been challenged. The order of the Governor of the Punjab was promulgated u/s 3 of the Essential Commodities Act, 1955. Section 5 of that Act provides that the Central Government can, by notified order, 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 also exercisable by

"(a) * * * * *

(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction."

Sub-section (6) of Section 3 is to the following effect:

"Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made."

Now the order, which was promulgated here, was made in exercise of the powers delegated u/s 5, and the initial question is whether sub-section (6) of Se. 3 would be applicable to such an order. It is apparent and can hardly admit of much dispute that the provisions of sub-section (6) would apply to every notification issued u/s 3, and the mere fact that the delegate is exercising those powers would not alter the situation at all. An order promulgated by the delegate

can be in no better position than an order which is to be issued by the principal authority, namely, the Central Government, which alone is authorised to issue an order u/s 3. But for Section 5 the order would have clearly even sub-section (6) of Section 3 would have clearly applied, but since the Central Government has delegated its powers, which are conferred on it by Section 3, to the State Government u/s 5, the State Government exercise the same powers as the Central Government, but then any condition that is imposed on the exercise of those powers by the Central Government would also govern the exercise of similar powers by its delegate, namely, the State Government.

(7) The next question, however, would appear to be a more complex one, namely, whether, in view of the admitted fact that the order was never laid before both Houses of Parliament after it was made in accordance with the provisions of sub-section (6) of Section 3, it remained ineffective and unenforceable, as has been contended by the learned counsel for the petitioner. It is urged that the order involves a curtailment of the Fundamental right to carry on one's business under Article 19(1)(g) of the Constitution, and therefore every effort should be made to uphold the safeguards provided in the enactment itself with regard to the promulgation of such orders. It is suggested that the Legislature in its wisdom provided a very salutary safeguard which is embodied in sub-section (6) of Section 3 making it obligatory for the officer or authority promulgating any order u/s 3 to lay the same before both Houses of Parliament, the idea being that the Parliament may be in a position to scrutinise the provisions of the order and express disapproval of the same, if considered necessary.

The only two decisions, which directly relate to the effect of non-compliance with the provisions of the aforesaid sub-section, are of the Judicial Commissioner of Manipur in *Chunilall v. Manipur State*, (S) AIR 1956 Man 25 and *Prithi Singh v. Union of India* AIR 1959 Man 43. It is unnecessary to refer to them at any length because in the first case the provision in question was held to be mandatory, its non-compliance rendering the order promulgated void and in-effective, and in the second case a contrary view was taken after the decision of the Andhra High Court in *Krishnan v. Secretary, Regional Transport Authority, Chittoor*, (S) AIR 1956 AP 129. There being very little discussion in the aforesaid two Manipur cases, neither of them is of much help. With respect, the more important and considered decision is the one of the Andhra High Court, in which a volume of authorities in the nature of judicial pronouncements as also opinions of text book writers came up for consideration before a Bench consisting of Subba Rao, C. J. (as he then was) and Krishna Rao J., when they had to examine the validity of non-compliance, with section 133(3) of the Motor Vehicles Act, 1939. According to that provision--

"133(3) All rules made under this Act by the Central Government or by any State Government shall be laid for not less than fourteen days before Parliament or the State Legislature, as the case may be, as soon as possible after they are made,

and shall be subject to such modifications as Parliament or such Legislature, may make during the session in which they are so laid."

The learned Judges observed at page 137 that they were inclined to adopt the view that in the case of a statute directing rules to be laid before the Parliament or the Legislature without any condition attached, the rule did not make it mandatory that they should be so laid, and the provision was merely of a directory nature. The learned Judges were themselves rather reluctant to come to that conclusion, but in view of the discussion in that judgment, it must be said that it was probably not possible to come to any other conclusion. The material consideration that has prevailed in such cases is that the Legislature itself has made no provision as to what the effect would be of non-compliance with such a provision. Nor can it be said that the statute itself made the laying of the Order in the present case a condition precedent before it would become effective. There is no such provision that it would cease to be effective once it had come into force because of non-compliance with a condition subsequent.

It is significant that the Order in the present case was valid and effective from the date when it was duly promulgated, and the only requirement contained in sub-section (6) of section 3 was that it should be laid before both Houses of Parliament as soon as may be after it is made. Even the limit or period, within which it must be placed before the Houses of Parliament, has not been specified. Although it was a dereliction of duty on the part of Government or the officer or the department concerned not to lay the order before the Houses of Parliament, it is not possible to hold that sub-section (6) of section 3 is of a mandatory nature and not directory. While considering a provision of this kind, it will hardly make any difference whether the legislation, to which it relates, may ultimately have some effect on the fundamental rights of a citizen. If the Legislature considered that in order to provide an adequate safeguard it was necessary to make the said provision mandatory, there was no difficulty in doing so in express words. Following largely, therefore, with respect, the view of the Andhra High Court, it must be held that sub-section (6) of section 3 is merely of a directory nature, and its non-compliance did not render the Order invalid or void.

(8) The main contention on behalf of the petitioner on the merits which requires consideration is whether the orders suspending and cancelling the authorisation issued to the petitioner were legal and valid under the provisions of the Order. Although Annexure "K" dated 23rd/27th November 1956 by means of which the petitioner's authorisation for the coal depot was initially suspended referred to Clauses 10(1)(a) and 2(c) of the Order, there was no mention in the subsequent order of cancellation of the provisions under which that order had been made. From the return it appears that reliance was being placed on the provisions of Clauses 10, 3(b) and 4 of the Order. Now one of the main grounds which has been emphasised in the return also was the non-acceptance by the petitioner of Sant Singh as his partner. The position of the petitioner throughout has been that initially in 1949 Sant Singh, who was a partner of the firm Sant Singh Mohan

Singh, has surrendered his share in favour of the petitioner and the depot had been transferred to the firm styled s M/s. Mohan Singh Maharaj Krishan.

In 1952 Mohan Singh also surrendered his share and he alone became the depot holder. On behalf of the State it is asserted that Sant Singh never ceased to be a partner and the petitioner was directed to recognise him as his partner. Although where facts are disputed, the Court would be reluctant in these proceedings to give any decision with regard to them but where it is possible to arrive at a conclusion on documents and other material, the genuineness and authenticity of which cannot be doubted, there can be no bar to determining a question of fact for the purpose of granting relief under Article 226. It is quite clear from Annexure "A". which is a letter sent by the District Organiser, that at that stage only Maharaj Krishan was asked to give the security of Rs. 500/-. The letter is addressed to the petitioner alone and the language used therein shows that Sant Singh was nowhere in the picture.

The receipt of the letter written by the petitioner on 14th May 1954 (Annexure "E") saying that he was running a coal depot in his individual name but he wanted to add the names of his sons and which is said to have been replied to by means of Annexure "F" was not admitted by the respondents on the ground that it was not forth-coming on the relevant record, but it is significant that it was not until after the lapse of nearly 4 years from the date when the petitioner had been asked to given security that the letter dated 12th November 1956 (Annexure "G") was sent to the petitioner. It was addressed to him and he was described as the coal depot holder. Against the word "subject" it is mentioned "Correction in the name of M/s. Maharaj Krishan and Sons Coal Depot Holder, Jullunder". The text of the letter also shows that the name of the coal depot at that time was "Messr. Maharaj Krishan and Sons". It is noteworthy that the petitioner and Sant Singh were both required to deposit the security of Rs. 500/- in the name of Messrs. Sant Singh Maharaj Krishan. This letter lends support to the assertion of the petitioner that his depot had been allowed to run under the name and style of Messrs Maharaj Krishan Khanna and Sons.

During all these years there is no indication whatsoever that Sant Sngh ever raised any objection as to why the depot was being run under the name of the petitioner at first and subsequently in the name of the petitioner and his sons nor is there any material to show that Sant Singh ever asserted or claimed during this period that he was a partner in the aforesaid depot. The very fact that for the first time the authorities demanded that the security of Rs. 500/- should be deposited in the mane of Messrs. Sant Singh Maharaj Krishan by both the petitioner and Sant Singh clearly supports the allegation of the petitioner that it was then that the authorities wanted him to take Sant Singh as a partner. The next letter is of 14th November 1956 (Annexure "H") which was written by the petitioner to the District Food and Supplies Officer in which he made a defined and unequivocal under which provision of law or rule he was being compelled to accept Sant Singh as a partner.

In the representation which he addressed to the Minister for Food and Supplies (Annexure "I") of the same date he gave the entire history in which the allegations were the same as have been made in the petition and in the reply which he got on 21st November 1956 from the District Food and Supplies Officer there is no mention whatsoever of the position which has now been taken up in the return that Sant Singh had never surrendered his share as was being alleged by the petitioner and that he continued to be a partner. The reply itself is tell-tale and all that is said is that the inclusion of the name of Sant Singh in the depot named as Maharaj Krishan and Sons "was made by the Head Office" which obviously means that it were the higher authorities who had given this direction. If there was any dispute between the petitioner and Sant Singh with regard to the constitution of the partnership, it would certainly have been raised at a much earlier stage and Sant Singh would not have waited for several years before raking up this matter. At any rate, such a dispute could be raised by him in the Civil Courts and it is not possible to understand under which provision of the Order the authorities could direct the petitioner to accept him as a partner.

(9) The allegation contained in paragraph 10 of the petitioner was that Sant Singh is the cousin of Kartar Singh Qaumi, who is Congress Leader of Jullundur. The petitioner opposed Kartar Singh Qaumi in the Jullundur Municipal Election of 1955 and Kartar Singh lost the election and it was for that reason that since then he had been trying to harm the petitioner in several ways. It is asserted that it was under his political influence that the impugned orders were made. These facts are denied in the return and it is not possible for us to express any opinion about the truthfulness or otherwise of this allegation but there can be no doubt that the position taken up in the return with regard to Sant Singh episode is highly unconvincing and unsatisfactory and we have no hesitation in saying that the authorities for one reason or the other wanted the petitioner to take Sant Singh as a partner in 1956 which the petitioner was not willing to do. According to the return, the petitioner, apart from the other matters, did not comply with the Government orders that he should recognise Sant Singh as his partner and include his name in the style of the depot and thus his depot could be cancelled under Clause 10 of the Order.

Clause 10 is to the effect that if a depot holder contravenes any of the provisions of the Order and any other instructions of the Director or the District Magistrate, then his coal depot can be cancelled. The depot holder is defined by Clause 2(I) as meaning any person appointed by the District Magistrate to hold a coal depot for the purpose of acquiring, holding, stocking and distributing coal. A depot holder is bound under Clause 9 inter alia to dispose of or sell coal in accordance with the instructions of the District Magistrate. It is not possible to see how the direction that Sant Singh should be accepted as a partner can be regarded to be an "instruction" by the District Magistrate in the matter of disposing of or selling coal. The word "instructions" as employed in Clause 9(c) surely has reference to such instructions as can be issued under the Order and not to any other kind of direction, however whimsical or arbitrary it may be which the District Magistrate

may choose to issue. There is nothing in the Order which authorities or justifies the issuing of an instruction that a particular person should be accepted as partner by a depot holder who has already been appointed by the District Magistrate within the meaning of Clause 2(I). Thus it must be held that the cancellation of the petitioner's coal depot for his not obeying the directions relating to Sant Singh was wholly ultra vires and beyond the scope of Clause 10 of the Order.

(10) One of the other grounds on which the order of cancellation had been made was the failure of the petitioner to disclose the source from which he obtained copies of office notes. The learned counsel for the State has not been able to show how this was covered by any provision contained in the Order. The same argument would apply to this aspect of the case as has been considered before relating to Clause 9(c) which enjoins a depot holder to dispose of or sell coal in accordance with the instructions of the District Magistrate. It is not the case of the State that the failure of the petitioner to disclose the source from which he obtained copies of office notes was covered by any instructions which had been issued by the District Magistrate.

(11) As regards the third ground, namely, misappropriation of 4 wagons of soft coke, the petitioner has sought to give an explanation in the petition which, according to the learned counsel for the State, is self-condemnatory. It may be that there was some technical disobedience of the directions with regard to the wagons of soft coke although the position taken up on behalf of the petitioner is that if he committed any dereliction of duty as a President of the District Coal Retailers (Depot Holders) Association, his coal depot which was his individual concern could not have been cancelled for that reason. Even if we were to hold that the position taken up on behalf of the State with regard to the 4 wagons of soft coke was not without justification, it is not possible to ignore the fact that the cancellation on the other two grounds was altogether outside the ambit and scope of the Order.

According to the petitioner, where an order of this nature is made in which various grounds are given for cancellation of the depot and only one of them is sustainable and the others are ultra vires and outside the provisions of the Order, the order becomes void in its entirety. It is suggested that in such circumstances it cannot be said which ground or reason affected the would have been inflicted if the other grounds or reasons had not existed. The submission is that in the present case the episode relating to Sant Singh as also the copies of office notes should be regarded as extraneous matters which were taken into account while making the order of cancellation. The contentions that have been raised on behalf of the petitioner have a good deal of force in them and the learned counsel for the respondents had not been able to satisfy us on principle or authority why an order so made should not be quashed for the aforesaid reasons.

(12) The learned counsel on the conduct of the a good deal of emphasis on the conduct of the petitioner relating to the office notes and the 4 wagons of soft

coke and has urged that for that reason the petitioner should not be granted any relief in exercise of the extraordinary powers conferred by Article 226. After giving anxious consideration to the entire circumstances we are of the opinion that this is a fit case in which a writ should issue. The impugned orders which are illegal and ultra vires affect the fundamental right of the petitioner to carry on his trade or business under Article 19(1)(g) of the Constitution. The return which has been filed on behalf of the State, as observed before, is unsatisfactory and the impression that has been created on our minds is that the entire facts and material were not placed before the Court by the State.

(13) A petition was filed by Sant Singh for being impleaded as a respondent. A notice was ordered to be issued on that petition on 2nd August 1960. When the matter came up before Dulat J. on 16th August 1960 although Mr. Sarin appeared for Sant Singh, he does not appear to have pressed at that time that an order should be made impleading his client and that he should be given an opportunity to file an affidavit in reply to the petition nor has any affidavit or Sant Singh been placed on the record up till today. In these circumstances it is not possible to direct Sant Singh to be impleaded as a respondent at this stage nor indeed can it be said that the present petition cannot be disposed of without impleading him as on the merits the only and substantial question is whether the suspension and cancellation of the depot by the authorities were legal and valid under the Order.

(14) In the result, the petition is allowed and an appropriate writ shall issue directing the respondents to treat the suspension and cancellation of the coal depot of the petitioner by means of the impugned orders as wholly illegal, void and ineffective. In view of the entire circumstances, the parties are left to bear their own costs.

Mehar Singh, J.

(15) I agree.

(16) Petition allowed.