(1998) 09 CAL CK 0029

In the Calcutta High Court

Case No : Writ Petition No. C.R. No. 12117 (W) of 1989

Krishna Salt Industries APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Central Excise Rules, 1944 — Rule 102, 106
Central Excises and Salt Act, 1944 — Section 31, 32

Citation : (1998) 104 ELT 614

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee, Shila Sarkar and Dipak Kumar Mukherjee, for the Appellant;R.N. Das, Sukhendu Banerjee, Satya Narayan Jash and Sima Sengupta, for the Respondent

Judgement

Satyabrata Sinha, J.—The petitioner in this writ application has, inter alia, prayed for the following reliefs :

"(a) Issue a Writ of or in the nature of Mandamus commanding the respondents to cancel and/or quash the orders contained in Annexure ''K'' being Memo dated 12th September, 1989 and 2nd November, 1989 issued by the respondent No. 7 and 4 respectively and further commanding the respondents their respective men, agent and subordinates from giving any effect or further effect to the impugned Memo dated 12th September and 2nd November, 1989 issued by the respondent Nos. 7 and 4 respectively being Annexure ''K'' to this petition and further commanding the respondents to allot iodized salt in piecemeal loading in favour of the petitioners as sponsored by the State Authorities.

(b) Issue a direction upon the Respondent No. 7 to consider and dispose of the application sanctioning permission to set up an iodized plant at Purulia.

(c) Issue a writ of or in the nature of Certiorari commanding the respondents to certify and transmit the records of your petitioners'' case to the learned Registrar, Appellate Side of this Hon''ble Court so that conscionable justice may be done by quashing Memo dated 12th September, 1989 and 2nd November, 1989 issued by the respondent Nos. 7 and 4 respectively being Annexure''K''to this petition."

2. The fact of the matter lies in a very narrow compass.

3. The petitioner intended to set up Iodization Plant at Purulia. For the aforementioned purpose, he filed an application for obtaining permission of the Salt Commissioner. The petitioner had already obtained loan from the West Bengal Financial Corporation but the Salt Commissioner in terms of letter dated 13-8-1986 stated:

"Since the existing plants already set up so far have the necessary capacity to cater to the needs of endemic areas in and around your districts, it has been decided your districts, it has been decided not to grant permit to set up any more plants in the area mentioned for the present. You will be informed if it is decided subsequently to permit setting up any more plants in the area."

4. The West Bengal Financial Corporation also in terms of its letter dated 6th December, 1986 requested the Salt Commissioner to reconsider the proposal on the ground that it is a registered S.S.I. unit set up in a centrally notified backward district with financial assistance from Government institutions and also that the people of the area deserves supply of iodized salt for consumption purposes. In reply to the letter dated 23-6-1989 issued by the Branch Manager, Purulia, West Bengal Financial Corporation, the District Magistrate, Purulia, informed the petitioner:

"We have received a letter from the Branch Manager, West Bengal Financial Corporation, Purulia Branch, Huchukpara P.O. & Dist. Purulia vide their No. BRN/PRL/KSI/420 dated 23-6-1989 regarding some of the inconveniences faced by your unit. However, you may submit application to our end specifically mentioning the particular item of inconvenient in respect of which redressal needed, if any."

5. The Government of West Bengal also took up the matter with the Director, Consumer Affairs. The Director of Consumer Affairs in terms of his letter dated 23-8-1989 informed the Salt Commissioner, Government of India that it was the considered opinion of the Government that the petitioner being an S.S.I. Unit with financial assistance from West Bengal Financial Corporation needs special consideration. It was therefore requested :

"In the circumstances, we would request you that since B.G. rake movement is not'' financially possible for the unit at this stage, 15 (fifteen) wagons of Iodised Salt per month for small packing of Iodised Salt may be allotted to the unit 4th quarter, 1989 as per requisition contained in the petition as special case to save the Unit from turning sick."

6. It appears that ultimately the petitioner''s application was rejected by the Salt Commissioner in terms of his order dated 5-1-1987, inter alia, on the ground

that such unit is not economically viable proposition stating :

"The Government of India as a matter of policy have decided not to grant permission to set up any more iodisation units at places other than salt manufacturing centres. We have also informed your client that they should get firm nominated by the Director of Non-Cereal Essential Commodities, Government of West Bengal, Calcutta for getting allotment of wagons for transport of salt under priority ''C. We are fully convinced that it is not an economically viable proposition to iodise salt at an place other than salt manufacturing centers and none of the plants set up so far in Bihar, West Bengal, Assam, Uttar Pradesh or Himachal Pradesh were running successfully for various economic factors.

There is however no ban on importing iodised salt and sell it in retail in smaller packings."

7. In this situation, the petitioner has filed the aforementioned writ application. In the supplementary affidavit, the petitioner has, inter alia, brought to the notice of this court that the said unit, if allowed to be set up, would cater to the needs of goitre endemic area in and around Purulia District. The authorities concerned have approved the programme for movement of iodised salt to West Bengal during the 2nd Quarter 1998 and 3rd Quarter 1998 in favour of M/s. Raj Salt Private Ltd. and M/s. Baba Salt Crushing Mills for iodisation. According to the petitioner, the aforementioned action on the part of the Salt Commissioner and other concerned authorities makes it clear that the Government of India has amended its policy and actually granted permission for installation of iodisation plants.

8. Although no affidavit-in-opposition has been filed by the Salt Commissioner but an affidavit-in-opposition has been filed by the respondent No. 6. An application for vacating stay filed by the respondent No. 6 was treated to be affidavit-in-opposition.

9. It appears that the allotment of wagons for movement of iodized salt has been made by the Railway authorities in view of the interim order passed by this court. It however appears that a circular letter was issued on 7-4-1989 restricting movement of iodized salt. From Paragraph 6 of the said circular it appears that the Zonal scheme 1989 shall be valid till December, 1990 unless extended by Railway Board. However during the currency of Zonal Scheme, 1989, changes could be made by mutual consultation.

10. Nothing has been brought on record to show that the said Scheme has further been extended.

11. The only question which arises for consideration in this writ application is as to whether in the facts and circumstances of this case, the Salt Commissioner should be directed to consider the application of the petitioner afresh or not.

12. Section 32 of the Central Excises and Salt Act, 1944 reads thus :

"Rights in ordinary proprietors of existing salt-works. - Every proprietor of a private salt work, other than a private salt factory to which Section 31 applies, of which, under the provisions of Section 17 of the Bombay Salt Act, 1890, the proprietor was entitled on application to a licence to manufacture or to excavate or collect natural salt at such factory, shall continue to be entitled, on application made in accordance with the rules made under this Act, to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act, his licence has been cancelled by an officer duly empowered by the Central Government in this behalf: Provided that the Collector of Central Excise may at any time withdraw or withhold a licence from the proprietor of any such salt factory, if no salt has been manufactured, excavated or collected in such salt factory for the three years ending on the thirtieth day of June last preceding the date of his order, or, with the previous sanction of the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 if such salt factory has not produced, on an average, during the said three years, at least five thousand maunds of salt per annum."

13. In terms of the provision of the said Act, Rules have been framed known as "Central Excise Rules, 1944". Chapter VI of the said Rule deals with Salt.

14. Rule 102 of the said Rules provides that no salt shall be manufactured and no natural salt and, except under the provision of Rule 106, no salt-earth shall be excavated or collected or removed otherwise than by the authority and subject to the terms and conditions of a licence to be granted by the Collector in this behalf.

15. Keeping in view the impugned order dated 6-1-1987 there cannot be any doubt whatsoever that the said order has been passed without jurisdiction. The Salt Commissioner is a statutory authority. He in terms of the provisions of the Central Excise and Salt Act and the Rules framed thereunder is required to apply his own independent mind so as to enable himself to pass an appropriate order. Such an order should be passed by the Salt Commissioner keeping in view the provision of the Act and Rules. The fact which now appears is that he had granted such permission to other persons who are said to be similarly situated. The question as to whether the Iodisation Plant would be viable or not cannot be relevant consideration for the purpose of exercise of power by the Salt Commissioner in terms of Rule 102 of the Central Excise Rules. It is now a well-known principle of law that a statutory authority must ask himself the correct question so as to acquaint himself the correct state of affairs as otherwise the same would amount to misdirection in law.

16. A bare perusal of the impugned order would show that the same contains an error on the face of the record, inasmuch as, while passing the said order, the Salt Commissioner has failed to take into consideration the relevant facts and passed an order based on irrelevant consideration.

17. In this view of the matter, the impugned order cannot be sustained which is accordingly quashed.

18. The Salt Commissioner is directed to consider the matter afresh and pass an appropriate order in accordance with law and if necessary, after giving an opportunity of hearing to the parties and/or their authorised representatives at an early date and preferably within a period of 8 weeks from the date of communication of this order.

19. So far as the transportation of salt is concerned, it goes without saying that the same would be governed by the extent rule as is applicable from time to time.

20. The writ application is disposed of with the aforementioned observations.

21. Urgent Xerox certified copy of this order, if applied for, be supplied on priority basis.

