

(1986) 01 CAL CK 0013
In the Calcutta High Court
Case No : A.F.O.O. No's. 427-434 of 1982

Lakhindar Samaddar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-01-1986

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 245
Essential Commodities Act, 1955 — Section 3, 5

Citation : AIR 1987 Cal 237 : 90 CWN 670

Hon'ble Judges : Shamsuddin Ahmed, J; Chittatosh Mookerjee, J

Bench : Division Bench

Advocate : Soumen Chandra Bose, Kashi Kanta Maitra, Sakti Nath Mukherjee, Satyajit Banerjee, Subhas Kumar Banerjee, Shyamal Kumar Mukherjee, Alok Ghosh and Adya Nath Ghosh, for the Appellant; A.P. Chatterjee, Standing Counsel, Subodh Chandra Ukil, B.A. Bhattacharyya, Kamallesh Bhattacharjee and Sourendra Nath Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Mookerjee, J.—Some of the appellants were holders of licences issued under the West Bengal Rice and Paddy (Licensing and Control) Order, 1967. The remaining appellants except one held licences under the provisions of the West Bengal Wheat and Wheat Products (Licensing, Control and Prohibition of Certain Classes of Commercial Transactions) Order, 1973. They have preferred these appeals against the order and judgment dated 3rd April, 1979 passed by Amiya Kumar Mookerji, J. discharging the Rules obtained by the appellants, inter alia, challenging the order of the Governor of West Bengal passed in exercise of his powers under sub-paragraph (3) of paragraph 1 of the West Bengal Rationing Order, 1964, directing that the said Rationing Order shall come into force on 4th September, 1978 in the areas specified in the Schedule below the said Notification. The areas specified included two Anchals within Regent Park Police Station, one Anchal under Jadavpore Police Station, some Gram Panchayats within Metiabruz Police Station etc. The petitioners had challenged the Order

issued by the Sub-divisional Controller, Food & Supplies, Alipore and Barasat informing the wholesalers of rice and paddy and wheat and wheat products that with effect from 4th September, 1978 private trading in rice and paddy and wheat and wheat products would be banned within the statutory rationing areas and the wholesalers were directed to dispose of their stocks by 3rd September, 1978.

2. Two principal points arise in these appeals. Firstly, whether the aforesaid Notification under paragraph 1(3) of the West Bengal Rationing Order, 1964 introducing statutory rationing in the areas specified in the Notification was valid. Secondly, whether the respondents could prohibit the petitioners from carrying on in the said specified areas business in rice and paddy and wheat and wheat products.

3. By their orders impugned in these cases, the Sub-divisional Controllers concerned had intimated the dealers within their respective jurisdiction the impending consequences of bringing into force of the West Bengal Rationing Order, 1964 in the said specified areas. The said officers themselves did not pass any prohibitory orders upon the dealers from carrying on their businesses. The Sub-divisional Controllers did not also terminate the licences held by the appellants. Paragraph 4 of the West Bengal Rationing Order, 1964 itself prohibited supply of rationed articles by persons other than an appointed wholesaler or any appointed retailer or appointed establishment proprietor. The two Licensing Orders extended to the whole of West Bengal except to the areas in which the West Bengal Rationing Order, 1964 was for the time being in force.

4. After the West Bengal Rationing Order, 1964 would be brought in force in the said notified areas private trade in the rationed commodities would become illegal. Therefore, the Sub-divisional Controllers had advised the appellants who were wholesalers of rice and paddy and wheat and wheat products to dispose of their stocks before the commencement of the statutory rationing. The Sub-divisional Controller, however, did not thereby requisition the stocks of these commodities held by holders of licences under the said two Licensing Orders. Before the West Bengal Rationing Order would be brought in force the appellants were at liberty to effect private sales in accordance with the terms of their licences or to remove their balance stock to areas outside the notified areas subject to the terms of their licences. The respondents did not terminate the licences held by the appellants. But as a result of inclusion of the areas specified in the notification under paragraph 1(3) of the West Bengal Rationing Order, 1964, their licences would be no longer valid and effective in the said areas brought under full statutory rationing." Both the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 and the West Bengal Wheat and Wheat Products (Licensing, Control, etc.) Order, 1973 provided that a licence would mention the area of business of a dealer to whom the licence would be granted. In course of hearing, we were told that in some of the licences entire West Bengal had been mentioned as the area. In those cases their (sic) licences were

only in respect of the areas now brought under the West Bengal Rationing Order, 1964, it would be open to the holders to apply before the Licensing Authority for amendment of their licences by inclusion of areas where West Bengal Rationing Order was not in force. We have no doubt that upon fulfilment of the conditions laid down by the two Licensing Orders such amendments if applied for would be granted in accordance with law. In fact, Mr. Saktinath Mukherjee, who has appeared for one set of appellants, submitted before us that even if we uphold the validity of the Notification under paragraph 1(3) of the West Bengal Rationing Order, 1964, we may clarify that the same did not in any way affect holders of the licences to carry on their trades in areas not mentioned in the said Notification. The State respondents did not also dispute that by reason of such Notification under paragraph 1(3) of the West Bengal Rationing Order, the two Licensing Orders would no longer extend to the said notified areas, but holders of these licences might carry on in accordance with law and in particular in accordance with the said Licensing Orders their businesses outside the notified areas.

5. As holders of licences under the said two Licensing Orders, the appellants could not carry on business as dealers except under and in accordance with the terms of their licences. The licences issued under both the Licensing Orders were subject to the provisions of the said Orders. In other words, the said provisions formed parts of the terms of their licences. We have already mentioned the two Licensing Orders were in force in the whole of West Bengal except the areas in which the West Bengal Rationing Order, 1964 was for the time being in force. In other words, as licensees the appellants were not entitled to carry on businesses as dealers in the areas in which the West Bengal Rationing Order, 1964 would be in force. When the appellants themselves had obtained licences under the two Orders subject to the above limitations upon the areas within which they could carry on business, we fail to see how they could successfully challenge the State Government's Notification bringing into force the West Bengal Rationing Order in the said areas specified in the impugned Notification. We have already observed that the respondents did not pass any executive order prohibiting the appellants from carrying on their businesses in the notified areas but the West Bengal Rationing Order, 1964 itself prohibited private trade in the areas brought under the said order.

6. The appellants did also not challenge the vires either of the West Bengal Rationing Order, 1964 or of the two Licensing Orders in respect of rice and paddy and wheat and wheat products. The appellants themselves therefore did not dispute that they were not entitled to carry on business in the aforesaid commodities except in accordance with the provisions of the two licensing Orders under both of which as holders of licences they were not entitled to do business in the areas in which the said two Orders were not in force. On coming into force in the specified areas of the West Bengal Rationing Order, 1964, the two Licensing Orders would cease to remain in force to the said specified areas. The Governor of West Bengal had made both the Rationing Order, 1964 and the two

Licensing Orders in exercise of the powers conferred, inter alia, by Section 3 read with Orders of the Government of India u/s 5 of the Essential Commodities Act, 1955. The appellants did not contend that the West Bengal Rationing Order and the two Licensing Orders were beyond the said delegated powers. The Essential Commodities Act, 1955 itself has been included in the Ninth Schedule of the Constitution. The fact that the West Bengal Rationing Order 1964 and the two Licensing Orders themselves have not been included in the Ninth Schedule would hardly make any difference inasmuch as the appellants do not challenge the existence of the Governor's power to make these Orders and by basing their claim upon licences obtained under the aforesaid two Licensing Orders had filed their writ petitions challenging enforcement of the West Bengal Rationing Order in the areas specified in the Notification under Para 1(3) of the West Bengal Rationing Order. But, as already stated their licences must be deemed to be subject to the condition that they were not effective in the areas in which the two Licensing Orders were not in force.

7. Mr. Soumendra Chandra Bose, learned advocate appearing on behalf of the one set of appellants, submitted before us that the West Bengal Rationing Order, 1964 was made by the Governor of West Bengal in exercise of the powers delegated by the Government of India. Therefore, the said piece of subordinate legislation could not have further delegated power to issue notifications to bring into force the said Order in such areas and on such dates it might direct. According to Mr. Bose, the ratio of the decision in *Rex v. Burah* (1877) 5 IA 197 is confined in its application to cases of delegation to the executive by statutes enacted by the Legislature, but not to a case of subordinate legislation making such delegation. According to Mr. Bose, when in exercise of delegated powers the authority makes any Rule or Order, it could not lawfully further delegate the power to bring into force or extend the area of operation of such subordinate legislation. Delegation of delegated authority is not permissible.

8. We find no substance in this submission inasmuch as Paragraph 1(3) of the West Bengal Rationing Order, 1964 does not really provide for any delegation of the power to bring into force the said Order of 1964. By the orders mentioned in the preamble of the West Bengal Rationing Order, 1964 the Government of India had directed that power to make orders or issue notifications u/s 3 shall in relation to matters specified be exercisable also by the State Government. In the exercise of the said power conferred upon him, the Governor made the West Bengal , Rationing Order also subsequently issued the notification to bring into force the said Rationing Order in the specified areas. Thus, the same Authority who made the West Bengal Rationing Order also brought the said Order in force in the areas specified with Notification under Paragraph 1 (3) of the said Order. The power of delegation u/s 3 read with Section 5 of the Essential Commodities Act in his favour was not exhausted by making of the West Bengal Rationing Order and the Governor of West Bengal had issued also the notification under paragraph 1(3) of the said Rationing Order in exercise of the same power of delegation made by the Government of India. The learned trial Judge has set out

in extenso a large number of reported decisions regarding the extent of the delegated power to bring into force statutes. We are in agreement with the learned trial judge's view regarding the correct legal position. Therefore, it is unnecessary to again set out the said reported decisions vide *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, .

9. We also concur with the learned trial Judge's interpretation of the expression "for the time, being in force in paragraph 1(2) of the said two Licensing Orders in respect of rice and paddy and wheat and wheat products. In the context the said expression "for the time being in force" obviously means "several periods of time". Paragraph 1(3) of the West Bengal Rationing Order authorised the Governor to issue Notifications for bringing into force said order in any area. The two Licensing Orders were made applicable to entire West Bengal excluding the areas where the West Bengal Rationing Order would be in force. Therefore, upon a reading of the provisions of the West Bengal Rationing Order and the two Licensing Orders, it is clear that as soon as Rationing Order, 1964 would be brought into force in any particular area, the two Licensing Orders would be no further applicable in the said area brought under the Rationing Order, 1964.

10. The respondents have disclosed that for the purpose of supply of rationed commodities like rice and wheat products, West Bengal has been divided into two areas (1) areas under full statutory rationing, i.e., areas where the West Bengal Rationing Order, 1964 has been brought into force, and (2) areas under Modified Rationing. In statutory Rationing areas appointed dealers are appointed by the Government of distribution of rationed and non-rationed commodities to holders of ration document, i.e. ration cards. The appointed retailers obtain rice and wheat products either directly from the Food Corporation of India or from appointed wholesalers. In statutory rationing areas private trade in rationed commodities is prohibited. Therefore, obviously there could be no question of dealers carrying on either wholesale or retail trade in rice and wheat products within the areas in which the West Bengal Rationing Order is in force.

11. Modified Rationing Scheme is governed by certain administrative directions. In the modified rationing areas the State appoints wholesalers and also modified ration dealers for distribution of foodgrains to cardholders. But the State has no statutory obligation to make such supplies. In the modified rationing areas private trade of rice and wheat and wheat products is permissible but the dealers are required to obtain licences under the said two Licensing Orders. In the above view, with the extension of the West Bengal Rationing Order to any particular area, the two Licensing Orders would no longer be applicable in the said areas brought under statutory rationing.

12. The Essential Commodities Act, 1955 contains sufficient guidelines for making orders for bringing into force the West Bengal Rationing Order in an area. During the hearing of the appeal, the respondents relied upon the affidavit affirmed by Sunil Kanta Chatterjee, on their behalf in the trial court and also the respondents produced official records to establish that before bringing into force

in the areas specified in the impugned Notification, the State Government had applied its mind to all relevant facts. The said specified areas where previously modified rationing was in force were adjoining to areas under statutory rationing. The said areas were called fringe areas. The respondents have claimed that in view of density of population, shrinkage of agricultural lands, development of industry, establishment of new townships and also to stop outflow of food cereals from village areas and to maintain stability of price, equitable distribution of essential commodities at fair price, the Government decided to bring the said specified areas within statutory rationing. In our view, the State Government has satisfactorily established that in public interest it had issued the impugned notification under Paragraph 1(3) of the West Bengal Rationing Order, 1964 in order to extend statutory rationing to the said fringe areas. Exercising writ jurisdiction we cannot adjudicate whether the State Government was justified in issuing the impugned notification under paragraph 1(3) of the West Bengal Rationing Order, 1964. After deliberation upon relevant materials the Executive had made its decision to introduce statutory rationing in those areas.

13. The appellants have urged that by extending the West Bengal Rationing Order, 1964 to the areas specified in the impugned notification, the respondents have violated the right under Article 19(1)(g) of the Constitution of India. We are unable to accept this contention. The Essential Commodities Act, 1955 cannot be challenged as ultra vires Art. 14 or 19 of the Constitution. The appellants have not urged that the delegation u/s 3 read with Section 5 of the Essential Commodities Act in favour of the State Government was bad or that the West Bengal Rationing Order, 1964 was made in excess of the power delegated to the State Government. We have also pointed out that as holders of the aforesaid licences the appellants could not carry on businesses in the areas where West Bengal Rationing Order, 1964 would be in force. The learned advocates appearing on behalf of the appellants themselves have not disputed that the expression "restriction" in Section 3 of the Essential Commodities Act was wide enough to include prohibition provided it was reasonable and in the interest of public (See *Madhya Bharat Cotton Association Ltd. Vs. Union of India (UOI)* and *Another, , Narendra Kumar and Others Vs. The Union of India (UOI) and Others,*). In some of the reported cases the Supreme Court had held as reasonable the restrictions imposed upon sale of essential commodities to ensure their equitable distribution and availability at fair prices (see also *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, Shree Meenakshi Mills Ltd. Vs. Union of India (UOI), , Harishankar Bagla and Another Vs. The State of Madhya Pradesh,*).

14. Therefore, upon enforcement of the West Bengal Rationing Order, 1964 in the said specified areas private trade in rice and wheat and wheat products would be prohibited but the same having been made in public interest cannot be pronounced as unreasonable.

15. The ratio of the decisions of the Supreme Court in cases of *Bagalkot City Municipality Vs. Bagalkot Cement Co., , The Atlas Cycle Industries Ltd. Vs. State*

of Haryana and Another, , Visakhapatnam Municipality Vs. Kandregula Nukaraju and Others, , has no manner of application to the instant case. In the said cases duty and tax respectively under the statutes under consideration could be imposed only after fulfilling certain conditions precedent and not by mere reason of an area being within the limits of a Municipality. Therefore, inclusion of additional areas within the Municipality did not result in automatic imposition of the duties and taxes and the conditions precedent for enforcing of the tax/duty were still required to be fulfilled. In the instant cases the scheme of the West Bengal Rationing Order was entirely different.

Immediately upon making of a notification under Paragraph 1(3) of the West Bengal Rationing Order, the State Government assumed statutory responsibility to distribute rationed commodities and private trade in the rationed commodities were no longer permissible in law. The two Licensing Orders in respect of rice and paddy and wheat and wheat products would no longer apply to an area brought under such statutory rationing. Therefore, holders of licences under the said two Licensing Orders could not lawfully claim any right to carry on business in the said commodities in a statutory rationing area.

16. In testing the reasonableness of the West Bengal Rationing Order, 1964 and also the Orders made under Paragraph 1(3) of the said Order, it may be pointed out that the appellants are not right in submitting that the West Bengal Rationing Order provided for monopoly trade by the State itself. In the statutory rationing area distribution of rationed commodities are to be made by retailers appointed by the State who in their turn receive these commodities from the Food Corporation of India or from wholesale distributors. Free sale of rationed commodities in a statutory rationing area is eliminated and wholesale and retail sales are conducted by wholesalers and retailers appointed by the State. Therefore, the decision in Akadasi Padhan Vs. State of Orissa, , had no manner of application to the present case.

17. The appellants cannot contend that before issuing the impugned Notification for bringing into force the West Bengal Rationing Order, 1964 in the areas mentioned in the notification, the respondents ought to have given the appellants opportunity of hearing. The licences held by the appellants did not entitle them to function as dealers in Statutory Rationing Areas. We have held that the licences held by the appellants were not cancelled or terminated. The respondents have also disclosed that upon consideration -of relevant matters, the Governor had issued the impugned notification. Therefore, in the instant case the principle of natural justice did not at all apply.

18. For the foregoing reasons, we dismiss these appeals without any order as to costs. On the prayer of the learned advocates for the appellants we stay the operation of our order for a period of 8 (eight) weeks. This interim order, however, will not prevent the respondents from taking preliminary steps for commencement of statutory rationing in the areas specified in the notification

under paragraph 1(3) of the West Bengal Rationing Order, 1964.

Shamsuddin Ahmed, J.

19. I agree.