

(1964) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 355 of 1964

Lal Chand Jagan Nath

APPELLANT

Vs

The District Food and Supplies Controller and Others

RESPONDENT

Date of Decision : 28-08-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1965 P&H 410

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

(1) This petition under Art. 226 of the Constitution of India is by one Lal Chand, who has described himself as the President, Retail Karyana Association, Khalra, Tehsil Patti, district Amritsar.

(2) The petitioner at the relevant time was engaged in the business of shop keeping wherein among other commodities he was also selling sugar. On the 16th February 1963 the Punjab Sugar Dealers Licensing Order, 1963 was promulgated by the State Government under the Essential Commodities Act, 1955. Under this order dealers in sugar had to obtain licences. In pursuance of this order a scheme was introduced by the Punjab Government for regulating the distribution of sugar in urban as well as rural areas. The Director, Food & Civil Supplies Department, directed the retail dealers in villages to form themselves into syndicates. Accordingly the retail dealers of village Khalra formed themselves into what is known as Retail Karyana Association, Khaira. It may be mentioned that on the 17th April, 1964, the Central Government had promulgated the Sugar Control Order known as the Sugar (Control) Order 1963.

(3) From the Retail Karyana Association, Khaira--hereinafter known as the Association--the Punjab Government obtained Rs. 1,000 as security and on the 13th June, 1963 a permit was granted to this association for 20 quintals on the wholesale sugar syndicate. It may be mentioned, at this stage, that so far as the wholesale trade is concerned similar syndicates of wholesalers were formed for

the purpose of purchasing sugar from the mills. On the 23rd July, 1963 the District Food & Civil Supplies Officer, issued an order that a fresh scheme has been enforced obey the Punjab States and henceforth the distribution of sugar was to be through other co-operative societies alone. Khaira is one of the villages in which the distribution was to be through a co-operative society. In paras. 9 and 10 of the return filed by the Director, Food & Civil Supplies it is stated that "the retail distribution of sugar was entrusted to the Khaira Co-operative Agricultural Service Society in respect of two villages of Khaira and Bhikhiwind. The petitioners were also allotted a depot for supply of sugar to establishments and for other special permits issued for religious and other occasions"". In view of the formation of co-operative societies, the association was given permit only for sugar with regard to the supply of sugar to the establishments and for religious and other occasions, whereas the distribution of sugar to individual consumers was totally done by the co-operative societies.

(4) It may also be mentioned here that a federation of co-operative societies was formed by the Punjab State to replace the wholesale syndicate of dealers in sugar. The wholesale business was taken out of the hands of the wholesale dealers syndicate formed; all-over Punjab and was entrusted to the federation of Co-operative societies. One of such whole sale syndicates filed a civil writ petition in this Court (No. 1427 of 1963(Punjab)) Amrit Lal V. District Food & Supplies Officer which came up for hearing before Grover J on the 18th December, 1963. This petition was allowed by Grover J. on the ground that--

"the creation of monopoly in favour of the federation the membership of which is confined only to co-operative societies and the individual licencees have been debarred from becoming its members, is liable to be struck down on the ground of discrimination"". The learned Judge relied on the decision of the Supreme Court in Mannalal Jain Vs. The State of Assam and Others, in support of his conclusion.

(5) The present petition has been filed by one of the retail dealers in the sugar trade. The contention of Mr. Bhagirath Das, learned counsel for the petitioner is that the same reasoning will apply to the case of a retail dealer as was applied to the case of wholesale dealer. In both the cases, the replacement was by the co-operative societies. On principle I see no difference in either of the two cases and for the reasoning adopted by Grover J. In Amrit Lal's case Civil Writ Petn, No. 1427 of 1963(Punjab), there is no option but to allow this petition.

(6). Mr. Nehru, who appears for respondent 3, has raised two contentions, namely,--

(1) That the petition is belated inasmuch as the impugned order was passed on the 23rd July, 1963, and the present petition was filed on the 25th February, 1964 and therefore, it is contended that this should be dismissed on the ground of laches; and

(2) that the petition has been filed by Lal Chand on behalf of syndicate and as

the syndicate is not a registered body the other members of the syndicate should have been impleaded.

So far as the first contention is concerned, as the petitioner's fundamental rights have been violated mere delay in approaching this Court under Art. 226 of the Constitution would be no ground to refuse him the relief. The first contention therefore, is repelled.

(7) As regards the second contention, this was precisely the position in the case decided by Grover J. It is no doubt true that such an objection was not taken before Grover J and in my view such an objection would not be fatal while granting relief to Lal Chand as an individual. All the retail dealers have directed for the sake of convenience to form themselves into a syndicate, the object being that instead of dealing with each individual dealer the government would deal with a body. The right to trade in sugar of an individual was thus not taken away. There is therefore, no merit in the second contention either.

(8) Mr. Wasu, who appears for respondents I and 2 raised the plea that there was reasonable classification in as much as the distribution of sugar has been divided between the co-operative societies and the syndicate, and, therefore, there can be no question of discrimination. The contention is that the syndicate of which the petitioner is also a member is given sugar or distribution, and therefore the mere fact that the co-operative society is also given sugar for distribution would be no ground to strike down the impugned order on the basis of discrimination. This argument is of no consequence because instead of one monopoly the State has created two monopolies which offend the provisions of the Constitution. That being so, there is no force in this contention.

(9) For the reasons given above, this petition is allowed and the impugned order is quashed without any order as to costs.

(10) Petition allowed.