
(2010) 01 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4953 of 2003

Larsen and Toubro Ltd.

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6, 7

Citation : (2010) ILR (MP) 1707 : (2010) 2 MPHT 189 : (2010) 3 MPJR 26

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Judgement

Arun Mishra, J.

Petitioner M/s Larsen and Toubro Limited has filed instant writ petition challenging Form B, prescribed under Clause 2(g) of M.P. Scheduled Commodities Dealers (Licensing and restriction on Hoarding) Order 1991 (hereinafter referred to as Order, 1991), styled as licence for a Wholesaler/Producer/Commission Agent/Retailer. It is submitted that Clause 3 of Order, 1991 prescribes licensing of dealers only and does not include in its ambit grant of licence for Processor, therefore, Form B annexed to the Order is ultra vires of Clause 3 and deserves to be struck down as far as Processor is concerned. There is no requirement for a Processor to take out a licence under the Order. The order passed by the Additional Collector, Ratlam on 25.8.2000 in Case No. 9/98 under the Essential Commodities Act, 1955 and notice of demand issued by Collector (Food), Ratlam dated 20.5.2003 have also been assailed.

It is averred in the petition that Petitioner is a public limited company and is India's largest Engineering and Construction conglomerate with additional interest in Cement, Electrical and Electronics, Information Technology, Mechanical Equipment etc. It manufactures products like Switch gear, Medical equipments, Control and Automation Equipment, Mechanical Equipments like Reactors, Crushers and Equipments for various Industries like Heat Exchangers, Reactors etc. It is a pioneer in manufacture of medical equipments as well as

surgical equipments. The company also undertakes construction of roads, bridges, dams and buildings besides building of various chemical plants and power plants. The company is engaged in different activities in the country and abroad and earning huge foreign exchange. The Petitioner company engaged itself in purchase of edible oilseeds namely, Soyabean at Ratlam and was getting it processed from Maheshwari Proteins Ltd. The Petitioner company does not carry on any business of sale and purchase of oilseeds for edible oil at Ratlam. The Petitioner company only purchases oilseeds and gets the same processed from Maheshwari Proteins Limited for its stock transfer to its Head Office at Mumbai. Though the company was not a processor, but got its oilseeds processed from Maheshwari Proteins Limited, it enquired whether it was required to take any licence for the purpose. On getting, information, the Petitioner obtained licence (P-1) as Processor (Utpadak). Reliance has been placed on the definition of dealer as defined in Clause 2(e), definition of Processor as defined in Clause 2(m) and on Clause 3, of the Order, 1991.

The Collector, Ratlam issued a show cause notice on 1.12.1994 that on inspection made by the Food Inspector on 23.11.1994, following irregularities were found:

- (i) Company does not have a separate processing Unit;
- (ii) Under the Processor license, the company purchased Soyabean seed, but does not process itself, but gets processed through Maheshwari Proteins Ltd. at Ratlam on job work basis;
- (iii) Petitioner company has not kept the necessary processing register;
- (iv) The stock register was not found in order;
- (v) A soyabean Solvent Oil was stored in Tanks No. 1,2,3 and 7 of Maheshwari Proteins Ltd. which these Tanks have been registered in your license.

The Food Inspector seized 2789.62 quintals of Soyabean Solvent Oil and being in contravention of conditions of licence No. 2,4 and 7, the offences fall u/s 3/7 of the Essential Commodities Act. A show cause notice (P-4) was issued u/s 6 of the Essential Commodities Act, 1955. Reply to the said notice was submitted on 29.12.1994, which has not been placed on record by the Petitioner, however, brief submissions which were submitted on 31.1.1995, have been placed on record. It was submitted by the Petitioner in the reply that Petitioner had obtained licence with abundant caution and to avoid technical omission though he was not required to obtain licence as Petitioner is not a dealer. The Form B deserves to be declared ultra vires. Petitioner company is only a Processor as defined in Clause 2(m). There is no provision in the Order, 1991 for Utpadak (Processor) to obtain licence, thus, the action taken is without jurisdiction.

In the return filed by the Respondents, it is contended that Petitioner has the alternative remedy of filing the appeal/revision as such this petition is not maintainable. It is submitted on merits that Petitioner was granted licence of dealer (Producer). The Petitioner was dealing in the business of producing the

Soya oil. Licence was granted to the-Petitioner on its own application. The Petitioner was bound to follow the terms and conditions of the licence as well as of the Order, 1991. Petitioner was doing business of producing Soya oil. In Form B, there is no mention of the word "Processor". The order passed by the Collector is proper. Petitioner has failed to comply with the conditions of the licence. The action is justified.

Shri A.M. Mathur, learned Sr. Counsel with Shri Sanjay Agrawal, appearing for the Petitioner has submitted that within ambit of the definition of the dealer in Clause 2(e) of Order, 1991, a person who is engaged in purchase, sale or storage of any of the food grains is included. Petitioner is not involved in purchase, sale or storage of Soya oil. Petitioner is only a Processor. Processor is not required to obtain licence as per Clause 3 of the Order, 1991, only dealer is required to obtain it. Petitioner does not fall within the definition of the dealer as such action taken is unauthorised. Learned Sr. Counsel has also referred to the licence on which seal of Utpadak has been affixed. He has submitted that meaning of Utpadak is Processor. Thus Form B is ultra vires of the provision of Order, 1991. The order passed by the Collector, deserves to be quashed.

Shri Purushendra Kaurav, Dy. A.G. for State has submitted that definition of dealer is comprehensive definition and it takes into account even the miller and producer beside that the Petitioner company is engaged in the activity of purchasing the Soya seeds is admitted in the writ petition itself. Soya oil is transmitted onwards for business activity. Thus Petitioner is a dealer as defined in Clause 2(e) of the Order, 1991. In the Form B, the word Processor is nowhere mentioned. The meaning of Utpadak is Producer. Only affixation of the seal cannot invalidate the Form. In the Form, it is nowhere mentioned that Processor is a dealer.

In order to appreciate the submissions raised by the learned Counsel for the parties, it is necessary to go through the definition of dealer. Dealer has been defined Clause 2(e) of the Order, 1991 to mean a person who is engaged in the business of purchase, sale or storage of any food grain specified in schedule I in the quantity which has been prescribed whether on one's own account or in partnership or in association with any other person or as a commission agent or Adhathiya or miller and whether or not in conjunction with any other business but excludes a person who stores any scheduled commodities produced by him by personal cultivation and who is not involved in the business of purchase or sale of food grains. Thus, in our opinion a person who is engaged in purchase of the food grains in the quantity which has been specified in schedule-I would be covered under the definition of dealer, even if milling activity is undertaken in partnership or on one's own account or in association with any other person or as a commission agent or Adhathiya, such a person is dealer. Clause 2(e), Clause 2(m) and Clause 3 of Order, 1991 are quoted below:

2(e): "Dealer" means a person who is engaged or intends to engage in the business of purchase, sale or storage for sale of any one foodgrains specified in

Schedule-I in quantity of 10 quintals or more at any one time and in respect of all foodgrains taken together in quantity of 50 quintals or more at any one time, and in addition to the Sugar 10 quintals, all kinds of pulses 10 quintals, edible oils including hydrogenated vegetable oil i.e. vanaspati 5 quintals edible oilseeds 30 quintals. At any one time, whether on one's own account or in partnership or in association with any other person or as a commission agent or Adhathiya (not including Kachha Adhathiya) or miller and whether or not in conjunction with any other business, but does not include a person who

(i) Stores any scheduled commodities produced by him by personal cultivation; and

(ii) does not engage in the business of purchase or sale of foodgrains.

2(m): "Processor" means a person carrying on the business of milling or processing of scheduled commodities.

3: Licensing of Dealers.-

(i) No dealer shall carry on business as a dealer without obtaining a licence under this order.

(ii) The existing licence or licences shall be valid during the period of 90 days from the commencement of this order or the period of validity of such licence or licences whichever expires earlier.

(iii) There shall be no retail licence in respect of items 1 and 2 of Schedule-I.

(iv) A separate licence shall be obtained by each dealer as the case may be for each place of business.

(v) No person shall hold more than one licence at any one place of business except in the case of a wholesaler and commission agent.

Petitioner in the memo of writ petition Para 5(a) in last three lines has averred that "The Petitioner Company engaged itself in purchase of edible oilseeds namely, Soyabean at Ratlam and was getting it processed from Maheshwari Proteins Ltd." Petitioner purchases Soyabean, is clearly an admission made not only in Para 5(a) but in Para 5(b) also there is a categorical admission that it purchases oil seeds. Purchase of oil seeds in excess of quantity is mentioned in the schedule, is not in dispute, thus being a purchaser of the oil seeds, it was necessary for the Petitioner to obtain dealer's licence. Petitioner is clearly a dealer as defined in Clause 2(e) of the Order, 1991. The word Utpadak has been mentioned in the Form. Meaning of Utpadak is Producer. The Processor has been defined in Clause 2(m) of Order, 1991 to mean that a person carrying on the business of milling or processing of scheduled commodities. Activity of "milling" is also covered in the word Processor. Even assuming for a moment that Petitioner is involved in the processing activity, Petitioner is admittedly as per the aforesaid definition, is involved in the milling and the purchaser who is involved in the milling activity is also covered within the definition of dealer, thus

Petitioner cannot escape the rigour of the definition of Clause 2(e) of Order, 1991. Clause 3 of Order, 1991 provides that no dealer shall carry on business as a dealer without obtaining a licence under this Order. No doubt it was necessary for Petitioner being the dealer to obtain the licence. In our opinion Petitioner clearly falls within the definition of dealer as defined in Clause 2(e).

We are unable to accept the submission raised by Shri A.M. Mathur, learned Sr. Counsel that there should be simultaneously purchase as well as the sale of the product. Even if there is purchase, sale or storage, provision of Clause 2(e) of Order, 1991 is applicable. Even otherwise it is apparent that Petitioner is involved in purchase as admitted in the petition and it is also stated in the petition that Petitioner company transmits oil onwards obviously for its business activity to its head office. Thus the submission raised is baseless and cannot be accepted. In our opinion, as producer and processor who is miller are also included in the definition of dealer in Clause 2(e) of Order, 1991, the Form B cannot be said to be ultra vires.

Condition 2 of the licence (P-3) provides that the licensee shall carry on the business on the prescribed place. The prescribed place in the licence of the Petitioner is 269, Dhamasuta Road, Ratlam. The place where the goods can be stored, has also been specified in condition 2(b) of licence (P-3). Condition No. 4 provides that the licensee shall complete his accounts for each day on the day to which they relate, unless prevented by reasonable cause, the burden of proving which, shall be upon him. Condition No. 7 of the licence provides that the licensee shall not contravene the provisions of Order, 1991 or any other order relating to scheduled commodities issued under the Essential Commodities Act, 1955 or the rules framed thereunder or any other law relating to scheduled commodities for the time being in force. The violation of aforesaid condition has been found on facts by the Collector. Facts have not been controverted.

In view of the aforesaid discussion, the submission raised by the Petitioner that Form B is ultra vires of Clause 2(e) and Clause (3), cannot be accepted.

In view of the aforesaid, we do not find any ground to make interference in this petition. Writ petition being devoid of merit, is hereby dismissed. No costs.