(1974) 09 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No''s. 832-835, 837-840, 842, 846-858, 861-870, 873, 874, 879-881, 883-892, 895, 898-902, 905-908, 911-917, 922-924, 935, 970, 972-974, 975, 978, 983 and 994 of 1974

Madan Lal APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 09-09-1974

Acts Referred:

Citation : (1974) PLJR 514

Hon'ble Judges : N.L. Untwalia, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : G.C. Bharuka, Basudeva Prasad, T.P. Sinha, D.P. Sinha, K. Srivastava, K. Mohan, R. Prasad II, A.K. Sinha, C.L.N. Singh, A.K. Sinha, G.C. Narayan, S.C. Sinha, R.A.P. Sinha, B.P. Gupta and K.K. Ghose, for the Appellant; Birendra Prasad Sinha, Shambhunath Jha, Junior Counsel to Govt. Pleader I and Abhoy Kumar Singh, Junior Counsel to Govt. Pleader I, for the Respondent

Judgement

N.L. Untwalia, C.J. and S.K. Jha, J.—In all these cases, the petitioners are dealers in fertilizers. They challenge the direction of State Government contained in their telegram dated the 7th June, 1974. A copy of this telegram is Annexure 3 in C.W.J.C. 833 of 1974. It reads as follows:--"455/Selling price of different kinds of fertilisers as in stock on 31st May, 1974, will be the same as prevailed before the 1st June, 1974. Increase in price applicable only to stock received from 1st June, onward. Please report immediately closing stock of Urea Ammonium Sulphate and Calcium Ammonium Nitrate on 31st May, 1974 and 1st June, 1974, from all dealers. Please also send information regarding sales from 1st June 1974 and onward and prices of sale for transmission to Government of India."

The attack is that this telegram is against the notification of the Central Government dated the 1st June, 1974, a copy of which is Annexure 1 in that case. In pursuance of the telegram directions were issued by the officers to the dealers, some of which are Annexures in some cases; the date of the telegram is mentioned in Annexure 4 to C.W.J.C. 833, which is one such Annexure. Annexure

1 reads as follows:--

G.S.R. 254(E) In pursuance of clause 3 of the Fertiliser (Control) Order, 1957, and in supersession of the notification of the Government of India in the Ministry of Agriculture (Department of Agriculture) No. G.S.R. No. 473(E) dated the 11th October, 1973, the Central Government hereby fixes, with immediate effect, the price specified in column (2) of the Schedule annexed hereto as the maximum price per tonne, at which the fertiliser specified in the corresponding entry in column (1) of the said Schedule shall be sold to the tea, coffee or rubber plantations or to the cultivators."

Explanation: The maximum price specified above shall be exclusive of the Central Sales Tax, local sales tax or other local taxes wherever levied, whether at the retail sales point or at any intermediate stage.

Note: When sales of any fertiliser are made in quantities not exceeding 5 kilograms at a time, the dealer may charge one paise per kilogram in addition to the proportionate maximum price specified above.

The price has been fixed by the Central Government in exercise of their power under clause 3 of the Fertilizer (Control) Order, 1957, which reads as follows:--

(1) The Central Government may, with a view to regulating equitable distribution of fertilizers and making fertilizers available at fair prices, by notification in the official gazette, fix the maximum prices or rates at which any fertilizer may be sold by manufacturer or a dealer.

(2) The Central Government may, having regard to the local conditions of any area and other, relevant circumstances, fix different prices of rates in respect of different areas and for different classes of consumers.

(3) No manufacturer or dealer shall sell or offer to sell any fertilizers at a price or rate exceeding the maximum price or rate fixed under this clause.

Even assuming that in exercise of such power the Central Government could fix different maximum rates for different kinds of stock-that is to say, old controlled rate for old stock and new controlled rate for new stock, they did not choose to do so. On the contrary, the earlier notification which had fixed a lower rate, in express language, was superseded and it was mentioned in Annexure 1 that the price specified in column 2 of the Schedule annexed thereto is fixed as the maximum price at which the fertilizer specified in the corresponding entry in column 1 of the said Schedule shall be sold to the tea, coffee or rubber plantations or to the cultivators. It is, therefore, plain that, on the basis of Annexure 1, the only relevant date was the date of sale irrespective of the date of receipt of the stock of fertilizers by a particular dealer. The State Government, as against the notification of the Central Government contained in Annexure 1, had no power to issue a direction of the kind they did by the telegram (Annexure 3) and the instruction issued by their officers to the dealers contained in Annexure 4. It was ultra vires the State Government to do so. Learned

Government Pleader 1 found it difficult to support the direction of the State Government and rightly so. In our opinion, it suffers from an infirmity on its face as being beyond the powers of the State Government.

2. For the reasons stated above, we allow all these applications and set aside the directions of the State Government contained in their telegram dated the 7th June, 1974 and/or the special instructions issued by their officers to the dealers on the basis of such telegram. There will be no order as to cost in any of these cases.

