
(1974) 01 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 61 and 1916 of 1973

Maha Laxmi and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 31-01-1974

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 5

Citation : (1974) WLN 194

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Joshi, J.—In all these sixty two writ petitions the petitioners who are traders challenge the order of the Collectors of the various Districts banning export of gram, gramdal, barley and barley ghat purporting to have been made in the exercise of powers under Clause 12(d) and (e) of the Rajasthan Food Grains Dealers Licensing Order 1964, hereinafter referred to as Licensing Order.

2. The Collector of various Districts in exercise of their power under Clause 12 (d) and (e) of the Licensing Order prohibited the export of the food grains and further restricted their movement inside the State by the impugned orders. The short controversy involved in all these petitions is whether the Collector of the District is competent to put a ban on the movement and export of the food-grains under the Licensing Order.

3. It is contended on behalf of the petitioners that the Central Government may by the order prohibit the export of any food-grain. This power can as well be delegated u/s 5 of the Act. By G.S.R. 906 dated 9th Januarv, 1966, the Central Government had delegated this power to the State Government on certain conditions. One of the conditions relates to the regulation of transport of any food stuff under clause (d) or relating to the matter specified in Clause 3 (b) in relation to food grains The condition is that the State Government shall have to

obtain a prior concurrence of the Central Government before dealing with the matter of transport of any food grains by any control order. But such a concurrence was never given by the Central Government before the passing of the impugned orders & therefore they are illegal and without jurisdiction.

4. On the other side, learned Deputy Government Advocate Mr. M.D. Purohit endeavoured to justify the impugned orders. The learned Deputy Government Advocate's contention is that the impugned orders have been passed under Clause 12 (d) of the Licensing Order. It is said that the Licensing Order has been made by the State Government with the prior concurrence of the Central Government and subclauses (d) and (e) of Clause 12 of the Licensing Order are comprehensive enough to confer power on the Collectors who are sub-delegates of the State to put a ban on the export of food grains outside the State of Rajasthan. In this connection the learned Deputy Government Advocate has invited my attention to Government Notification dated 24th February, 1964 and clauses (d) and (e) of the Licensing Order. It would be proper to extract the Government Notification and the relevant clauses of the Licensing Order relied upon by the learned Deputy Government Advocate. The Notification reads as under:

FOOD SUPPLIES DEPARTMENT

NOTIFICATION

Jaipur, Feb.24, 1964

No FI (3) Food/Suppl. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955), read with notification of the Government of India in the Ministry of Food and Agriculture (Department of Food), published under G.S.R. 886. dated the 29th June, 1961 in the Gazette of India; Part II Section 3 Sub-section (1) dated 8th July, 1961 and with the prior concurrence of the Central Government, the State Government hereby makes the following Order, namely:

Rajasthan Food Grains Dealers Licensing Order, 1964 Subclauses (d) & (e) of Clause 12 of the Licensing Order, read as under:

(d) the disposal of all food grains or any of them purchased by him, and:

(e) the disposal of all food grains or any of the stored by him.

The learned Deputy Government Advocate's stress is on the word "disposal" in clauses (d) and (e) and thereby he wants to suggest that the word "disposal" is of wider amplitude and embraces in its fold the matter relating to the movement of the grains outside Rajasthan.

5. I have carefully considered arguments addressed on each side. It is true that the Central Government can order prohibiting the export of the food grains and this power can as well be delegated u/s 5 of the Act, By G.S.R. 1906 dated 9th June, 1966, Central Government delegated the powers subject to certain

conditions and as regards the regulation of the food grains is concerned. the delegated power could only be exercised after the prior concurrence of the Central Government. No such prior concurrence has been shown to have been received before the passing of the impugned orders. The argument of the learned Deputy Government Advocate that the Licensing Order which was passed after the prior concurrence of the State Government empowers the Collectors to pass the impugned orders. Having examined the arguments I see no merit in it. The Licensing Order relates only to the disposal of the food grains. The two sub-clauses (d) and (e) of Clause 12 do not relate to regulation of transport and therefore do not confer power to placing restriction on the export or movement of food grains. The fact that the Licensing Order has been passed after the previous concurrence of the State Government is, therefore, not of any consequence. The learned Deputy Government Advocate has failed to show any such concurrence. The similar point countenancing me also came before Jain. J. in Civil Writ Petition No. 976 of 1973 Ramgopal v. State of Raj. and Anr. decided on 27th August, 1973. Jain, J after elaborate discussion of the relevant provisions has come to the conclusion that the Collector is not competent to put any ban on the export or movement of the food grains without prior concurrence of the Central Government. I am in agreement with the view taken by Jain J. The impugned orders" therefore, are illegal and without jurisdiction and cannot be sustained in law.

6. In the result, all the writ petitions succeed and are, therefore, accepted. The impugned orders in all the writ petitions are hereby quashed so far as they relate to the respective petitioners. There shall be no order as to costs.