

(1962) 01 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 346 of 1961

M/s. Amolakchand Murlidhar

APPELLANT

Vs

Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 04-01-1962

Acts Referred:

Assam Cement Control Act, 1953 — Section 3
Constitution of India, 1950 — Article 226, 9(1)

Citation : AIR 1962 Guw 80

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.K. Ghose and J.P. Bhattacharjee, for the Appellant; M.C. Pathak, Jr. Govt. Advocate, for the Respondent

Judgement

G. Mehrotra, C.J.—The Petitioner who is a registered partnership firm carries on business at Sibsagar. They were appointed as an "Iron and Steel" dealer under the Government of Assam in the year 1942 and continued as such up to the year 1958. They were appointed as a distributing agent for cement for the sub-division of Sibsagar by the Secretary to the Government of Assam in the Supply Department by his letter No. SDB. 90/59/129 dated the 15th May 1959. The Petitioners obtained a licence from the Director of Consumer Goods, Assam to deal with cement at Sibsagar which was renewable every year on payment of the prescribed fee. The Petitioners deposited the prescribed fee and a license dated 12-6-59 was issued to them in the prescribed form A under the Assam cement Control and Distribution Order, 1953 (hereinafter called the 1953 Order"). By a letter dated the 18th March 1961 the Director of Consumer Goods, Assam Shillong who is arrayed as opposite party No. 3 in this petition, cancelled the distributing agency for cement of the Petitioners and also the license dated the 12th June 1959. This Petitioners thereafter filed an appeal to the State Government against the aforesaid order as provided under Clause 15 of the 1953 Order. The appeal was rejected by an order dated the 6th July 1961 issued under the signature of the Secretary to the Government of Assam in the Supply

Department. The two orders have been challenged by the present petition under Article 226 of the Constitution.

2. The contention of the Petitioners is that their license was cancelled without giving them a reasonable opportunity to show cause and as the cancellation of the license affects fundamental right to carry on business the cancellation order is violative of their fundamental right guaranteed under Article 9(1)(g) of the Constitution. It is further contented that as the right of the Petitioners was affected the principles of natural justice demanded that they should have been given a reasonable opportunity before they were actually condemned.

3. Before going into the merits of the case it will be convenient to dispose of the preliminary point raised by the counsel for the state. It is contended by the State counsel that that the Petitioners had no fundamental right to get the license and the Petitioners had no right to be appointed the distributing agents of the cement on behalf of the Government and thus they are not entitled to any direction by this Court quashing the impugned orders under Article 226 of the Constitution

4. The relevant portion of the order dated 18-3-61 issued by the Director of Consumer Goods, Assam reads as follows:

The distributing Agency for Cement of M/s. Amolakchand Muirlidhar, Sibsagar provide Government Letter No. SDB. 90/59/129) dated 15-3-59 and Licence No. 70 dated 12-6-59 issued in favour of the aforesaid party is hereby cancelled with immediate effect for contravening Clauses 4 and 6 of the conditions of the appointment, Clauses 11, 12 and 14(2), (4) and (5) of the Assam Cement Control and Distribution Order 1953 (Amended up to 1959) and Clause 5 of the licence.

This order shows that both the distributing agency and the licence of the Petitioners have been terminated.

5. Section 3 of the Assam Cement Control Act, 1953 (Assam Act VII of 1953) (hereinafter called the 1953 Act") gives power to the State Government in so far as it appears to it to be necessary or expedient for maintaining or increasing the supply of cement or for securing its equitable distribution and availability at fair prices to provide for regulating or prohibiting the supply and distribution thereof and trade and commerce therein within Assam by order in the official Gazette. Any such order issued under this clause will be subject to such instructions as may be issued by the Central Government. Under Clause (2)(b) of Section 3 without prejudice to the generality of the powers conferred by Sub-section. (1) an order made thereunder may provide for regulating by licenses, permits or otherwise the storage transport, movement possession distribution, disposal, acquisition use or consumption of cement. In exercise of the powers conferred u/s 3 of the 1953 Act the 1953 Order was made by the Government of Assam. In this Order a "dealer" has been defined as a person or body of persons who purchase, sell or store cement for sale to Ors. on the authority of a licence issued in this behalf under this Order and in accordance with the conditions specified in

such licence obtained from the Director of Consumer Goods Assam, or any officer authorised by him in Writing in this behalf.

Clause 3 of the Order gives power to the Government for the purpose of ensuring the equitable distribution of any form of cement to appoint as many dealers for cement as they think fit and the Director of Consume Goods, Assam, or any officer authorised by him in writing in this behalf will issue license in form "A" as per Schedule I on realisation of fees and security deposit to be prescribed by the State Government from time to time Clause 14 of the order provides that no person shall, after the commencement of this Order sell or store for sale any cement, unless he holds a licence in this behalf under this Order and except in accordance with the conditions specified in such licence and in accordance with the provisions of this Order. The Petitioners were granted license under Form A. The scheme of the 1953 Act and the order issued thereunder is that no person can deal in cement without a licence or permit. The Government can appoint dealers and such dealers also will have to Obtain licence before they can deal in cement. So far as the stock of the Government is concerned for which the Petitioners may have been appointed a distributing agent on behalf of the Government, the Petitioners can claim no right much less, a fundamental right to sell or store such cement. It is open to the Government to opposite any one whom they choose as their distributing agent in respect of its own stock of cement. The Petitioners are thus not entitled to any relief under Article 226 of the Constitution for cancellation of the order in so far as it cancels the distributing agency of the Petitioners.

6. The licence under which business in cement was carried on however, stands on a different footing. Clause 14 of the Order prohibits persons to carry on any business in cement without proper license. This clause is a complete prohibition to carry On business in cement without obtaining a licence. The clause thus is a restriction on the fundamental right of the Petitioners to carry on business and unless the restriction can be held to be a reasonable restriction, it cannot be sustained. The reasonableness of a restriction can be examined both from the substantive point of view as well as the procedural point of view. If Under the rules an arbitrary power is given to cancel the licence, it will be an unreasonable restriction on the right of a citizen to carry on trade. It is, therefore, necessary that before a licence is cancelled the licensee should be given a reasonable opportunity to show cause why the license should not be cancelled.

7. The power to cancel the licence is also given in condition No. 6 of the licence which provides that if the licensee contravenes any of the provision of the Assam Cement Control and Distribution Order 1953, or any orders passed u/s 3 of the Assam Cement Control Act, 1953 (Assam Act VII of 1953), or any of the conditions subject to which he holds the licence, then without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by the authority by which the licence was granted. The power can be exercised after giving reasonable opportunity to the licensee to show that he has

not contravened any of the provision of the Act or order made thereunder. The main question which remains to be decided is whether on the facts of the present case it can be said that the Petitioners have not been given a reasonable opportunity.

8. The admitted facts are that a preliminary departmental inquiry was held by the opposite party No. 6 Sri R. Das, Magistrate, First Class, Sibsagar against the Petitioners. He examined a number of witnesses but that inquiry was conducted in the absence of the Petitioners and no opportunity was given to the Petitioners to cross-examine the witnesses. Thereafter an open in-guilty was held by Sri M. Chowdhury, Magistrate, opposite party No. 5 which remained inconclusive. Mr. Chowdhury gave an opportunity to the Petitioners to cross examine some of the witnesses, but submitted a report that final report can be given only after a thorough and unbiased inquiry is made giving full opportunity to the Petitioners to defend their case. Thereafter notice was given to the Petitioners on the 17th October 1960 asking them to give their explanation by the 26th October 1960. In the letter of the 17th October 1960 certain charges are set out against the Petitioners Opposite Party No. 2 Sri G. Bora, Deputy Director of Consumer Goods, Assam conducted an enquiry and submitted his report to the Director of Consumer Goods, Assam, Shillong. No inquiry was conducted by the Director of Consumer Goods immediately.

9. There points have been urged by the Petitioners in support of their contention that no reasonable opportunity was given. Firstly it is urged that Sri Bora who conducted the inquiry was biased against the Petitioners inasmuch as he was related to Sri Puspadhar Chaliha on whose telegram the inquiry was started against them and further that although an application was made by them to summon certain Railway records, they were not summoned by the inquiring officer or same of the witnesses of the Tea Estate were produced it is further stated that the inquiring officer did not give them full opportunity to cross examine the witnesses already examined by Sri R. Das the Magistrate who held the secret inquiry. It is also urged that a copy of the report of the inquiry submitted by Sri Bora was never supplied to the Petitioners before giving them an opportunity to explain their conduct before the Director.

10. It is admitted by the opposite parties that on copy of the report of Mr. Bora was supplied to the Petitioners. It is also not denied that Sri Bora was related to Sri Puspadhar Chaliha on whose telegram the proceedings were started against the Petitioners. In the counter affidavit however it is said that the inquiry conducted by Sri Bora was fair and honest. Without doubting the bona fides of the inquiring officer the Petitioners, in our opinion, are entitled to say that in view of the relationship between Sri Chaliha and Sri Bora, Sri Bora should not have been entrusted with the conduct of the inquiry and the Petitioners have rightly said that it would constitute bias in the eye of law so as to disqualify Sri Bora to make an inquiry. It is also admitted in the counter-affidavit filed on behalf of the Under-Secretary to the Government of Assam that witnesses were not

summoned. In paragraph 12 of the Counter-affidavit it is stated with respect to the statements made in paragraph 13 of the petition that as it was only a departmental, enquiry the question of summoning the witnesses did not arise.

As to the record of the Railway, in paragraph 18 of the counter-affidavit it is admitted with regard to the statement made in paragraph 21 of the petition that the enquiring officer Shri G. Bora, personally verified the foreign inward delivery book maintained in the Railway Station at Sibsagar and on thorough enquiry it was found that delivery of 220 bags of cement was taken by the Petitioners on 2-2-60 but the corresponding entry in: it stock register was made on 1-2-60. The Station Master and the Godown Babu also did not admit that the delivery was effected on 1-2-60 This averment clearly shows that the inquiry at the Railway Station was made by Sri Bora behind the Petitioners. As to the allegation against the opposite party No. 2 made by the Petitioners, it is stated in paragraph 11 of the counter-affidavit that the allegations were considered and the relevant portion of the Government's order is as follows:

This I am not prepared to believe as I feel sure that the inquiring officer was not prejudiced conducted the enquiry with proper regard to the proprieties and applied his mind judicially to the case. The fact that he may or may not have met Shri Puspadhar Chaliha and even had a meal with him is in my mind quite irrelevant. This also shows that the opposite parties never denied the relationship. As I have already pointed out the legal bias would not necessarily mean male fides or prejudice of the officer against the Petitioner.

11. After considering the whole matter and the averments made in the affidavits we are of opinion that the Petitioners were not given any reasonable opportunity to disprove the charges against them. We accordingly allow this petition and quash the order cancelling the license of the Petitioners, in so far as it is related to the stock of cement other than the one belonging to the Government in respect of which the Petitioners were appointed a distributing agent. The order in so far as it relates to the cancellation of their distributing agency is perfectly valid. In the circumstances of the case the parties will bear their own costs.

S.K. Dutta, J.

12. I agree.