

(1993) 10 CAL CK 0021

In the Calcutta High Court

Case No : Appeal No. 582 of 1991, Matter 1595 of 1991

M/s. Arun Kumar Samanta and others APPELLANT

Vs

M/s. Shree Ram Trading and Supply Company and others RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Railways Act, 1890 — Section 23

Citation : AIR 1994 Cal 156 : 98 CWN 934

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Asoke Kumar Chakravarty, J

Bench : Division Bench

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the order dt. 4th June, 1991 passed in matter No. 1595 of 1991 passed by the learned trial Judge by which the learned trial Judge passed an interim order to the following extent:

"In the meantime, the petitioner will be entitled to apply for allotment of 5 B. G. Rakes from special quota per month before the respondents in terms of recommendation made by the Director of consumer affairs, West Bengal being Annexures-D and E to the writ petition. If any prayer is made for allotment the respondent authorities will allot from the special quota of 5 B.G. Rakes month by month to the writ petitioner starting from the month of June, 1991. Such allotment should be made within a period of fortnight from the date of communication of this order. This interim order will be continued till the disposal of this application with liberty to the respondents to apply for variation and/or vacating of the interim order upon notice to the petitioner".

Some other orders were passed in some other proceedings for allotment of B. G. Rakes for import of iodized Salt in this stage. All the matters have been taken up for hearing together. In order to prevent goitre disease caused by deficiency of iodine, Government of India has launched a massive All India programme for control of goitre which is commonly referred to as "National Goitre Control Programme". The Govt. of West Bengal has declared all the districts in the State

of West Bengal as "Goitre Endemic Areas".

2. In exercise of power conferred by S. 23 of the Indian Railway Act, 1890 the Central Government published an order being General Order No. 74 whereby "preferential tariff Schedule" for transportation of goods was published and the Central Government thereby directed the Railway Administration and gave special facilities and/or preference to the transportation of goods/class of goods specified in (a) schedule to the said order. The said schedule provides priorities "(a) to (e)". The movement of the iodise salt in accordance with the sponsored scheme under the "National Goitre Control Programme" gets preference under priority (b) in "Preferential Tariff Schedule". Under the said scheme quarterly quota of B. G. Rakes is fixed for different "Zonal Quota" and such iodise salt is distributed through recognised salt importers as government nominees. At present the "Zonal quota" for the State of West Bengal given by Railway in respect of B. G. Rakes the State of West Bengal is about 290 Rakes. The requirement of the State of West Bengal and the corresponding supply by the railway for some years are set out below:

Year Population of the State Requirement of the State Actual supply by

(in crore) (in lakh MT) (Lakh M. T.)

1989 6.50 4.68 4.87

1990 6.65 4.79 5.25

1991 6.80 4.90 5.71

1992 6.95 5.00 5.11

1993 7.10 5.21 5.21

5.21 lakh M. T is the expected supply by railway during 1993. It is evident from the above table that during the last 4 years railways have been supplying salt more than the requirement of the State calculated on the above basis. Hence, the present requirement of the State is 305 B. G. rakes or 5.21 lakh M. T. However, the railways have directed the State Government not to sponsor more than 290 rakes because of railway's limitation. There are empanelled importers who are there in the field for 28 years or more with wide experience and intending importers, the total number of such empanelled importers are 466. SC.219 rakes had to be distributed amongst 460 empanelled importers. It has to be remembered that all the empanelled importers are not similarly situated. One of the parties case before us is that it has built a strong capacity of nearly 2 lakh bags of salt at a time which is equivalent to 9 B. G. rakes at Chitpur. It has been paying rent Rupees 2,48,000/- per month to Eastern Railway keeping the same completely waterproof for storage of iodize salt. It is stated that this party is engaged in importation of iodize salt for more than 20 years and claimed that this party has been allotted 5 rakes per month. Considering its go down capacity and the infrastructure and the past

performance. On the contrary there are importers who have no experience at all and who may not have any godown capacity and/or any infrastructure but they are interested in getting supply of rakes? We are told in open court if a rake is allotted to a party that party in view of the present will earn a profit of Rs. 40,000/- per rake. There is also possibilities of selling the salt allotment for a valuable consideration for earning easy profit. We have to bear in mind the purpose of such allotment is for importation of iodized salt and equitable distribution of those iodized salt to the consumer at large at a reasonable price. Salt is an essential requirement for every human-being and iodized salt is necessary to prevent goitre. Iodized salt is imported mainly from Western and Northern India through rail route. It is not in dispute that large quantity of iodized salt are available in Western and Northern India but there is acute shortage of railway wagons and rakes for carriage of salt. Such allotments were made by salt Commissioner who was recommending the Railway Authorities for the purpose of allotment of rakes to parties as the competition between the parties to get allotment of rakes were increasing and some of the parties moved this court and obtained an order for allotment of rakes. In such cases when individual parties are moving the court, this court passes interim order or final order considering the need and the capacity of the particular party. The Salt Commissioner was also making recommendation but with the increase of demand for rakes situation became difficult. It is not necessary to go into details of the history of the case and/or litigation in view of the fact that once this came up before the Division Bench presided over by the then Hon'ble Chief Justice N. P. Singh (as his Lordship then was) and Their Lordships by an order D/- 16th September, 1991, inter alia, passed the following order:

"Accordingly, after hearing the counsels appearing for the parties and taking all facts and circumstances into consideration we constitute a committee consisting of (i) Secretary, Department of Food and Supplies, Government of West Bengal, (ii) Director of Consumer Affairs, Govt. of West Bengal and (iii) Asstt. Salt Commissioner, Calcutta. The said committee shall consider the application filed on behalf of the different nominated importers/dealers for sponsorship of Railway, rakes, after taking all facts and circumstances into consideration including past performance of such nominated importer/dealers, necessity of such iodized salt in any particular part of the State and other relevant factors which shall be in the interest of the public in general.

The operation of the directions given in the writ applications regarding sponsorship to be made by the State Government for the allotment of Railway rakes shall remain stayed during the pendency of the appeal in view of the order passed above.

The aforesaid order regarding constitution of the committee should be implemented so far as the 4th Quarter commencing from October, 1991 is concerned.

We however, make it clear that if the sponsorship in respect of the railway rakes

for the 3rd quarter ending with 30th September, 1991 has not been made or any final decision has not been taken in respect of some of the railway rakes, then the sponsorship in respect of remaining railway rakes even for that quarters shall be made by aforesaid committee and the orders passed in respect of such remaining railway rakes in different writ application in question shall be deemed to have been stayed.

It is expected that the aforesaid committee shall prepare a scheme which may be reasonable from all aspects for sponsorship of the railway rakes for the quarter commencing from January, 1992.

In the meantime, it will be open to the said committee to hear the nominated importers/ dealers or their association while framing the scheme for proper sponsorship in respect of allotment of railway rakes to different nominated importers/dealers for quarter commencing from January, 1992.

The application for stay and/or interim relief is disposed of as above without any order as to costs."

After this order was passed by the Division Bench a large number of writ petitions were filed being aggrieved by and dissatisfied with the decision taken by the authorities implementing the order passed by the Division Bench and whereupon in another writ application filed by M/s. Banwarilal Agarwal and others, an order was passed appointing a Special Officer in order to check up the records and files and report as to whether similarly placed other persons in the list of empanelled importer there were discriminations and/or the persons who are having quotas in different districts and asking further any other district and on 9-12-92 passed an interim order relating to the allotment of the month of December, 1992 wherein it was provided that the State respondents should take steps effectively in arranging as regards the priorities of allotment of "B" priority rakes by giving priorities to such importers, appearing in the panel who have not obtained any quota in any district whatsoever. Secondly, it was provided that they would not be given any preference for the month of December, 1992 to those quota-holders who had obtained previous rakes but could not perform due to lack of potentials. All the matters were heard together and upon hearing all the parties and considering the facts and circumstances following order was passed by the Division Bench constituted by myself and Justice A. K. Bhattacharjee on 14th May 1993. Considering the facts and circumstances of the cases, we direct, a committee should be constituted as directed by the earlier Division Bench consisting of the Secretary, Department of Foods and Supplies, Government of West Bengal, Director of Consumer Affairs, Government of West Bengal and Assistant Salt Commissioner, Calcutta and over and above the Committee shall also include one representative of the Railway Board inasmuch as under the preferential tariff schedule framed by the Railway Board Zonal Scheme has to be approved by the Railway Board and accordingly, the Railway Board shall send a representative and that such representative should be included in the Committee that would be set up for the purpose of framing the

scheme.

The said committee shall frame a scheme as an interim measure to meet with the situation out of which these appeals arose. The said Committee shall first find out the need Districtwise so that the object of giving preference in the matter of allotment of rakes are fulfilled. The consumers' interest is a paramount consideration even though the consumers are not before us. The Salt has to be brought for the consumers and that as all the districts in the State of West Bengal are in Goitre Endemic Area, the dried districts and the requirements of the districts has to be found out first and on the basis of the need of the district the rakes which are allotted by the Railway Board should be distributed districtwise first. This is necessary so that according to the need of a particular district the iodised salt may reach in that district for the consuming public.

For the time being the allotment should be made to the persons who are in the panel which is already there and which was prepared in terms of the order passed by the earlier Division Bench and that the said committee shall consider a fixed percentage of about 50% of the rakes available to importers having long past experience and a minimum 50% should be earmarked for the purpose of allotment of the new entrants, whose names have been empanelled so that all persons and/ or traders have been empanelled get allotment of rakes pro rata basis or on rotation basis as may be determined by such committee.

The said committee shall consider that the life of the panel should be fixed for 2/3 years and that once a panel is prepared the same should be allowed to continue for that fixed term without any addition or alteration and that periodically a fresh panel had to be made on the basis of guidelines on which the earlier panel was prepared. On the basis of the scheme and on principle framed by the said committee the sponsorship in respect of which no such sponsorship has yet been made. While sponsoring the ranks in respect of the traders who were already in the trade for long years and have past experience their cases for sponsorship should be considered on the basis of their length of such past experience and while taking into consideration the past experience number of rakes allotted in previous year should be taken into consideration and that their performance had to be looked into. If it is found that in spite of making allotment of rakes that party had consistently defaulted in fulfilling the commitment, in that event, the authority concerned shall take the same also into consideration. The question of giving priority to any importer having long and outstanding performance could arise, when such traders were found to have sufficient numbers of Railway Godowns and have sufficient infrastructure. If a trader is found to have long and outstanding performance and in the past their cases had been duly recommended by the authorities in that event they would deserve priority, that would ensure smooth movement of salt. Number of traders have empanelled themselves on the basis of guidelines fixed by the authorities concerned and that when they are in the..... and all are eligible in that event endeavour should be made so that all the traders who were already in the panel

may get it and that there may not be any dissentment or discrimination amongst the new entrants. While preparing panel it should also be considered that a trader who is empanelled for a particular district should not be empanelled in other districts as far as possible. This is necessary for the purpose of eliminating any monopoly and/or to enjoy maximum benefit when the number of rakes is very less than the number of the empanelled traders/importers had been increased and that sponsoring of allotment of rakes should be made in respect of a particular district from the panel maintained for that district so that the iodized salt may reach straight to that district and not through some other districts, in order to avoid any increase in the price of iodised salt in any particular district which may be situated in any part of remote part of State of West Bengal. If any recommendation have already been made by the authorities concerned for the purpose the same should not be effected by this order.

Stay already granted will continue. On the date of hearing the State of West Bengal is directed to submit a report with regard to the framing of the scheme and allotments made on that basis."

On the basis of the principles laid down by the Division Bench in its order dt. 14th May, 1993 allotments of rakes were made. The said allotment was confined to particular quarters concerned. The reports were submitted by the State Government showing how the allotments were made.

On the basis of the principles laid down by the Division Bench D/-14th May, 1993, allotments of rakes were made and that the learned counsel appearing for various parties were asked to make their submissions confined only to the principles to be formulated by this Court for the purpose of allotment of rakes.

3. Mr. Ashok Kumar Sen, learned counsel for the respondents, M/s. Shree Ram Trading and Supply Co. and others, submitted that the principles formulated by this Court for the purpose of allotment of rakes were fair, proper and reasonable and submitted that no revision of the principles laid down is necessary. Mr. Sen further submitted that the respondents have not followed the principles and/ or formulas laid down by this court while making the allotment. Consequently, M/s. Shree Ram Trading and Supply Co. and others had suffered. It was further submitted that in consideration of the performance of that party and considering all other relevant factors recommendations were made in the past in favour of that party for sponsorship of rakes by Memo No. 1534/1(2) CA dt. 15-10-88 issued by the Director of Consumer Affairs, Food and Supply Department, Government of West Bengal which was required to be implemented or giving effect to. But in spite of such recommendation no step was taken by the authority concerned.

4. Mr. Kapoor, learned counsel appearing for some of the parties submitted that in the absence of any cut off date indicating the order for the purpose of ascertaining who are to be considered as new entrants in the business. It has created a difficulty and consequently, it resulted in anomalous position. Some

other learned advocates also supported this contention.

Mr. Saktinath Mukherjee, learned counsel appearing on behalf of some of the parties suggested that the revision of the principles and the guidelines given in the interim order requires to be changed.

Mr. S. Pal, learned counsel appearing on behalf of the South Bengal Salt Importers Association submitted that the order of the learned trial Judge in Appeal No. 562 of 1991 D/- 4th June, 1991 should be set aside as it apparently creates discrimination and refers to some special quota and submitted that this court should direct the authorities to sponsor and allot rakes in future without any undue discrimination.

Mr. Bidyut Banerjee, learned counsel appearing on behalf of the parties submitted that as his client was a new entrant, his client has not been favoured with the allotment and pointed out that new entrants should be allotted rakes as for the guidelines put unless allotment are made, they could not be considered as experienced one. He further submitted that if allotments were not made for the long time, not for the fault of the importers, the importers should not be treated as having no experience in the matter.

Mr. P.K. Samanta, learned counsel, submitted that after the allotments of rakes were made, some of the allottees have sold the allotment letters for valuable consideration and in some cases the allotments of rakes were virtually sold out by inviting tenders for valuable considerations ignoring the fact that such allotment of rakes are not intended for outright sale for the purpose of making unjust enrichment contrary to public interest. It was also pointed out by some of the learned advocates that restrictions imposed by the order of the Division Bench D/- 14th May, 1993 regarding empanelment in more than one district creates hardship to some of the importers who are maintaining their place of business in more than one district and having their infrastructure spread over in some other districts. For the purpose of movement of iodised salt the railways have given priority "B" and as the rule of the railways provides that such scheme framed at the State level should be forwarded to the Railway Board for its approval. In order to avoid delay and further complications in the matter, a representative of the Railways Board was directed to be in the committee constituted by earlier Division Bench order D/- 14th May, 93.

We have heard the learned Advocates appearing for the various parties. Considered their respective submissions. We have also examined the effect of allotment made pursuant to the guidelines and/ or directives given by this Division Bench in its Order on 14th May, 1993. Having regard with the object of giving preferential treatment in the matter of allotment of rakes for iodised salt and having regard to the very object for declaring entire State of West Bengal as "Goitre endemic area". It is necessary to lay down a principle for allotment of rakes for importation of iodised salt in a manner which is fair and which ensures importation of iodised salt in this State by bona fide traders who have necessary

means and the capacity to make such importation and at the same time to discourage the sale of allotment letters in market. Inasmuch as allotment of rakes are given on priority basis for the importation of iodised salt and it is not meant for the purpose allowing a party to make some unjust profit contrary to the public interest which would have the effect of increasing price of salt. The whole object is for equitable distribution of iodised salt in different districts in a fair and proper manner eliminating unfair trade practice and to stop allotment of rakes to persons and/ or organisation who had indulged or will be indulging in selling allotment of rakes in market. We are also to keep in mind that while laying down the principles and guidelines the traders who are in the field and/or who will be coming in the field can carry on the trade. The favouritism and unreasonable action had to be eliminated in such a matter which has grave public importance. Consumers are not before the Court but it is for the interest of consumers iodised salt has to reach in different districts according to the need of districts. That is the paramount consideration and that if unfair practice in the matter of allotment and/or sale of allotment are not eliminated the consumers will suffer.

a) insofar as the consideration of the committee concerned it appears that such constitution of such a committee had been accepted by all the parties appearing in this proceedings including the State authorities and/or Railways authorities. Accordingly, we direct that (i) a Committee should be constituted consisting of the Secretary, Department of Food and Supply, Govt. of West Bengal, (ii) Director of Consumer Affairs, Government of West Bengal, (iii) Assistant Salt Commissioner, Calcutta, and (iv) one representative of the Railway Board. The said Committee shall first consider the requirement of Salt districtwise on the basis of information or otherwise and accordingly, the rakes should be determined districtwise. Such determination will be made only on the basis of the need of a particular district so that the iodised salt may reach in that district for the consumers in question.

(b) A panel that was there in terms of the order D/- 14th May, 1993 should be there without any addition or alteration but the names of the company and/or authorities or persons in the panel should be cancelled in case it is found that any of the allottees have sold out the allotment of rakes and who have not imported the iodised salt by themselves in view of the fact that allotments of rakes are made for the purpose of importing the iodised salt to various parts of West Bengal which is notified as "Coitre endemic areas" and that allotment should be made to actual importers and not importers whose business is to get allotments and sell it to the open market for the purpose of making some unlawful gains or to make unjust enrichment. We make it clear if any person or authority is found to have sold or parted with the allotment to other person, such kind of act of that importer should be treated as a disqualification for having further allotment of rakes. It is to be remembered that the Railway Board have given priorities for the purpose of consuming public and it is not intended for the purpose of making unlawful gains by importers without actually importing the

same. This is also necessary for the purpose of ensuring the importation of salt in future also. At one point of time, there may be huge demand of salt and consequently, it will be profitable for the importers to import iodised salt but at a different point of time, there may be less profit for the importers and at that point of time, the importers may not import. In case, any importer fails to import and allows the allotment to be lapsed, in that event, the said authority or person should not be allotted any rake for the next three quarters. The said committee must be satisfied that the importers in whose favour allotment are made, shall import the salt by themselves and that such importers have intention and infrastructure for the purpose of importation of iodised salt.

c) 50% of the rakes per quarter should be earmarked for old and experienced importers and 50% for the new entrants. Persons who are in the business and/or trade prior to 1985 should be treated as old and experienced one and importers who have come into business after 1985 should be treated as new entrants. Such a cut-off date is necessary for the purpose of identifying the two groups. Such a cut-off date has been determined solely for the purpose of ensuring the smooth movement of iodised salt in the State. The traders who are there prior to 1985 have long and past experience and have infrastructure and must have godowns for the purpose of storage of salt. The principles and/or guidelines are laid down for the benefit of the consuming public inasmuch as the object is to ensure smooth and regular movement of iodised salt to different parts of the State of West Bengal. The cut-off date determined by us will ensure the smooth movement of iodised salt without any difficulty.

d) 50% of the rakes shall be kept earmarked for traders who had entered into the business after 1985 and they should be treated as new entrants. The allotment should be made to them on pro rata or on rotation basis as may be determined by such committee so that all of them gets allotment of rakes.

If it is not possible to allot any rake on a particular quarter in that event the allotment to them should be made in the next quarter so that in this way all the persons in that category gets equal treatment and/or gets equal benefits.

e) The existing panel should remain and in case of vacancy caused by deleting the name from the existing panel on the ground that any person has sold out the allotment letters, in that vacant place another person's name as a new entrant may be empanelled. In case of any person's name goes out of the panel and if he fails to import iodised salt without any just cause, his name may be deleted and in that place any new entrant may be included. While considering the name of a person to be empanelled the authorities concerned must be satisfied on the basis of the material placed before such authority that such person really intended to participate in the business for the purpose of importing by themselves and not for the purpose of getting allotment and selling in the market for valuable consideration. Normally, a person who has been allotted rakes in any particular district should not be allotted rakes in other districts. But if it is found that such persons who have infrastructure and in the past they imported iodised

salt on the basis of the allotment made without any fail, in that event these persons may get allotment in more than one district. Among the persons who are in the trade in 1985 priority may be given to importers having long and outstanding performance and such traders who are found to have sufficient number of railway godowns and have sufficient infrastructure. If a trader is found to have a long and outstanding performance and in the past their cases had been duly recommended by the authorities, in that event, they should deserve a priority as that would ensure smooth movement of salt. So far as No. 2 category, i.e. persons who are in the trade after 1985 as new entrants, they should be allotted 50% of the rakes and where allotment of rakes are made, the authorities shall take into consideration whether the particular importer really intends to import iodised salt or simply interested in getting an allotment for selling in the market for valuable consideration. Allotment of rakes are not intended for sale in the market for the purpose of making some profit. Such a practice has to be deprecated otherwise the price of the salt shall increase and ultimately, it is the consumers who will suffer. The consumers are not before this Court but this court cannot shut its eyes to the difficulties that the consumers might have to face. It is for the consumers priority has been given and the interest of the consumers is a paramount consideration. Selection of importers, distribution of rakes district-wise, everything is intended for the purpose of smooth supply of iodised salt. It is intended for the consumers. Interest of the traders is secondary consideration.

f) The life of the panel should be for 3 years and within the three years persons whose names are deleted they should go out and in that place, new entrants can be taken. After a lapse of 3 years, the authorities concerned shall again prepare a fresh panel and the number of importers in the panel should not exceed three times the number of rakes allotted or to be allotted in the State of West Bengal. When the importer's name is empanelled that importers might have a reasonable expectation that such allotment should be made to them and in anticipation of such allotment he may start an establishment or maintain an establishment. So far as the No. 2 category is concerned, the allotment will be made in such a manner so that each and every one in the panel may get on a rotational basis or at a pro-rata basis. It is made clear if anybody sells allotment in the market or fails to import the rakes without any just, proper and reasonable ground, the committee shall delete the name from the panel on the basis of the principles indicated above.

5. While following this principle for allotment if there was any outstanding recommendation already made in favour of any importer for sponsoring of rakes issued by the Director of Consumer Affairs, Food and Supplies Department, Government of West Bengal who was making such sponsorship prior to intervention of the Court, the same should be giving effect to and honoured.

6. On the basis of the above principles the allotment of rakes should be made by the committee so constituted. It was drawn to our attention that while making allotment on the basis of the principles laid down by the interim order passed by

us earlier on 14th May, 1993 there was some mistakes committed by the said committee. It is expected that the said committee shall take care to see that the principles laid down are followed strictly and that if there is any grievance of any party regarding implementation of the principles the said committee shall consider the representation if any made by any aggrieved party and take appropriate steps as the said committee may think fit and proper for rectifying any mistake or error committed by the said committee. This order shall govern all cases relating to allotment of B. G. rakes for the purpose of importation and distribution of iodised salt. We make it abundantly clear that there are various conflicting orders passed by some of the learned Single Judge. In all those cases appeared that on the basis of the writ application filed by the party the learned Judge passed orders when other parties were not before the Court and that such order was passed without considering the fact that there are large number of importers who are already panelled and that number of rakes available for the State of West Bengal is wholly inadequate to meet with the demand of such importers. Accordingly in order to strike a balance between the claim of the importers and the availability of the rakes and considering the smooth movement and equitable distribution of salt this order is passed by us laying down a principle and guidelines which should be followed irrespective of any order passed in this matter otherwise it will create deadlock and will frustrate the very purpose which is indicated in this judgment. It is also made clear to all concerned that the allotment of rakes under this order is for iodised salt and not for any other kind of salt.

7. Before we part with this matter we place it on record our appreciation to the co-operation and assistance given by the learned Counsel appearing for all the parties in laying down this principle and/or guidelines for the purpose of importation of salt. All the orders passed by the learned Trial Judge are set aside and all the cases will be governed by this order.

8. Appeal is accordingly disposed of.

There is no order as to costs. This judgment will govern other appeal appearing in today's original side and appellate side list on salt matters.

9. Order accordingly.