
(2011) 12 AHC CK 0016
In the Allahabad High Court
Case No : Writ Petition No. 108 (M/S) of 2005

M/s. Chotey Lal Cold Storage and Allied Ind.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Regulation of Cold Storages Act, 1976 — Section 15, 17, 17(1), 24, 32

Citation : (2012) 1 ADJ 528

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—The writ petition is directed against the order dated 1.9.2003 passed by Licensing Officer/District Magistrate (Cold Storage) Bahraich (hereinafter referred to as "LOC") making determination of compensation to the tune of Rs. 1,82,287/- in purported exercise of power u/s 24 of U.P. Regulation of Cold Storages Act, 1976 (hereinafter referred to as "Act 1976"), order dated 9.12.2004 passed by U.P. Cold Storage Tribunal, Lucknow rejecting petitioner's appeal and order dated 1.1.2005 passed by District Horticulture Officer, Bahraich requiring petitioner to deposit Rs. 1,82,287/- pursuant to the aforesaid two orders dated 1.9.2003 and 9.12.2004.

2. The facts in brief giving rise to the present dispute are that the petitioner Cold Storage is situated at Asam Road, Bahraich. It is a partnership firm. The petitioner has been granted licence to run cold storage under the Act 1976. Between 23.3.2000 to 26.3.2000, petitioner received 397, 522, 225 and 41 bags of potatoes, which were stored in the cold storage in the name of Sri Abdul Gaffar Khan, Kasim, Hasim and Arif respectively (hereinafter referred to as "potato farmers"). At the time of storage of goods in petitioner's cold storage, potato farmers obtained certain amount by executing a Pronote, which according

to the petitioner was the amount of loan advanced to them and was liable to be refunded to petitioner alongwith interest @ 24% p.a. Besides, a receipt was also Signed by potato farmers acknowledging Pronote. It further says that the amount taken under the aforesaid Pronote shall be refunded by 30th October, 2000 whereafter the petitioner may recover the said amount by selling potatoes, and, the potato farmers shall have no claim thereupon. Copies of aforesaid Pronotes and receipts have been filed as Annexures 4 to 7 to the writ petition. The potato farmers did not return the money whereafter petitioner sold potatoes of these farmers sometime on and after December, 2000. One of the potato farmers namely Abdul Gaffar Khan sent a legal notice dated 1.5.2001 to the petitioner demanding delivery of potato bags. The notice was replied by petitioner stating that potatoes were sold pursuant to receipt executed by notice. Thereafter it appears that a complaint was made by potato farmers before Licencing Authority claiming compensation u/s 24 of Act 1976 and the matter was enquired into by District Horticulture Officer. Ultimately, LOC passed order dated 1.9.2003 determining compensation in regard to non-delivery of goods stored in the cold storage whereagainst the appeal has also been rejected.

3. Learned counsel for the petitioner submitted that farmers have obtained loan from the petitioner which was liable to be repaid alongwith interest which they failed. In view thereof and in terms of the contents of receipt, petitioner became owner of stored goods and the same was accordingly sold towards recovery of loan amount advanced to potato farmers; hence, Section 24 of Act 1976 has no application in the matter in the light of Section 17 of the Act 1976.

4. He contended that in view of Section 17(1) of Act 1976, licensee was entitled to sell stored goods and therefore the impugned orders are wholly illegal and contrary to law. He further submitted that in any case since petitioner has proceeded in accordance with the terms of agreement and therefore no liability could have been fastened upon him, hence impugned order is illegal. Lastly it is contended that determination of compensation made by LOC is faulty, inasmuch as, price of potatoes taken into consideration is excessive and is not commensurating to the price prevalent at the relevant time.

5. However, in my view, none of the above submissions are sustainable and deserve to be rejected.

6. The statement of object and reasons of Act 1976 shows that it was enacted to ensure efficient maintenance of cold storages and to remove hardship of agricultural producers, proper control and regulation of cold storage business in public interest. The farmers storing their commodities in the cold storage cannot be said to enjoy bargaining capacity at par with the cold storage owners. The goods which are liable to be stored in a cold storage by its very nature are always perishable. If the goods are not put in cold storage within a reasonable time they are bound to perish. These are certain natural conditions which compel a farmer many a times or most of the times to accept terms and conditions howsoever onerous and unreasonable they are, put by cold storage owners,

otherwise they have no option but to have their goods perished. To protect farmers and to prevent cold storage owners from undue bargaining with farmers, Regulatory provisions have been made in Act 1976 to ensure that a cold storage owner neither may be able to purchase goods of farmers stored therein taking advantage of lack of bargaining capacity of these farmers and whenever farmers seek delivery of goods, it is statutory obligation of cold storage owners to comply the same. To a very restricted manner, provision has been made enabling cold storage owners to sell goods stored in a cold storage.

7. Section 17 of Act 1976 infact contemplates a few of such contingency when the owner of cold storage may sell the goods stored in the cold storage. It reads as under:

17. Goods deterioration in cold storage and their disposal.--(1) Whenever goods stored in a cold storage begin to deteriorate or are likely to deteriorate from a cause beyond the control of the licensee, or where the hirer fails to take delivery of the goods stored in the cold storage within a period of fifteen days from the date specified therefor in the receipt, the licensee shall forthwith give notice thereof to the hirer, requiring him to take delivery of the goods immediately after surrendering the receipt duly discharged and paying all charges due to the licensee, and send a copy of such notice to the Licensing Officer.

(2) Where the hirer fails to comply with the notice referred to in sub-section (1) within a period of seven days from the date of service thereof, the licensee may cause the goods to be removed from the cold storage and sold by public auction at the cost and risk of their hirer :

Provided that the licensee shall give notice of the sale to the Licensing Officer at least forty-eight hours before such sale, and the Licensing Officer shall supervise such sale either himself or through an officer authorized by him in that behalf.

Explanation.--Loss of weight or bulk by driage or shrinking or gain of weight or bulk by absorption of moisture shall be deemed to amount to deterioration within the meaning of this section, if the loss or gain exceeds such limits as the Licensing Officer may, from time to time, having regard to the climatic conditions of different areas, fix by notification published in the Gazette.

(3) If there is any excess in the weight or bulk of an agricultural produce stored in a cold storage by absorption of moisture or other pauses, the licensee shall not be entitled to such excess.

8. Section 17(1) of Act 1976 thus con-templates three contingencies which may enable a cold storage owner to sell the goods stored therein, (i) The goods stored in cold storage begin to deteriorate; (ii) The goods are likely to deteriorate from a cause beyond the control of the licensee; and (iii) The hirer fails to take delivery of the goods stored in the cold storage within a period of fifteen days from the date specified therefor in the receipt. However, there is a procedure prescribed before the licensee i. e. a cold storage owner may proceed to sell the

goods by public auction namely he shall give a notice to hirer requiring him to take delivery of goods immediately after surrendering receipt duly discharged and paying all charges due to the licensee. A copy of such notice shall also be given to the Licensing Officer also. The hirer, if fails to comply the said notice within seven days, thereafter the licensee is enabled to get the goods removed from cold storage and sell by public auction. Even the sale has to be supervised by Licensing Officer or any other officer authorized by him for which the licensee is under an obligation to give a notice at least forty-eight hours before such auction sale to the Licensing Officer.

9. Admittedly, none of the aforesaid contingencies are attracted in the case in hand. It cannot be construed that Section 17 of Act 1976 contemplates contingencies which are illustrative or includes some more conditions or contingencies which can be read therein or deemed to be included therein. There is no provision under Act 1976 which empower a Licensee i.e. cold storage to mention in the receipt itself that if an amount received from Licensee, in any manner, is not refunded, the licensee may sell the stored goods without following the procedure prescribed in the Act 1976. It is well settled, when a law require something to be done in a particular manner, anything done not in accordance with such procedure would be illegal" and without authority. It shall not confer any legality to the act done otherwise. In *Professor Ramesh Chandra v. State of Uttar Pradesh and Others* Civil Misc. Writ Petition No. 51370 of 2005, decided on 11th June, 2007, a Division Bench of this Court has held:

When the Statute provides for a particular procedure, the authorities has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to uncotroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. [(1) *State of Uttar Pradesh Vs. Singhara Singh and Others*, , (2) *A.K. Roy and Another Vs. State of Punjab and Others*, , and (3) *Chandra Kishore Jha v. Mahavir Prasad* (1998) 8 SCC 266]

The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*", meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in *Haresh Dayaram Thakur Vs. State of Maharashtra and Others*, ; *Delhi Administration Vs. Gurdip Singh Uban and Others*, ; *Dhananjaya Reddy v. State of Karnataka etc.etc.* (2001) 4 SCC 9; *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, ; *Prabha Shartkar Dubey v. State of Madhya Pradesh* AIR 2004 SC 486; and *Ram Phal Kundu Vs. Kamal Sharma*, .

10. Moreover, once it is found that Section 17 of Act 1976 has no application in the matter, the mere receipt obtained by petitioner unilaterally from potato

farmers will not authorise him to act in a manner which is not consistent with Act 1976 and on the contrary is clearly contrary thereto. Once the goods are stored in cold storage, the licensee is under statutory obligation to deliver the goods to the hirer on a demand made by him. The only restriction on such delivery is surrender of the receipt and payment of all charges due to the licensee.

11. The term "receipt" has also been defined in Section 2(i) and reads as under:

receipt means a cold storage receipt including a duplicate receipt is sued by a licensee under this Act.

12. The receipt is issued in token of acknowledging storage of goods received in the cold storage as provided in Section 15 and 32 of Act 1976 which reads as under:

15. Preservation of identity of goods,--Every licensee shall keep in his cold storage the agricultural produce of one hirer separate from such produce of other hirer and from other produce of the same hirer for which a separate receipt has been issued, so as to permit at all times the identification and easy delivery thereof :

Provided that where standardised and graded goods are stored in the cold storage, the same variety of goods belonging to the same or different hirer may, subject to any contract to the contrary, be pooled together and each hirer shall be entitled only to his portion of the goods according to weight or quantity as the case may be, as shown in his receipt, less any driage or shrinkage up to the limit fixed under Explanation to Section 17.

32. Duty to issue receipt.--Every licensee shall issue, in the form prescribed, a receipt for the agricultural produce stored in his cold storage.

13. It is not any receipt which can satisfy the requirement of receipt under Act 1976. The receipt referred to in various provisions of Act 1976 is such receipt which is in the prescribed form. Any other document though termed as receipt but not consistent with the manner prescribed in Act 1976 would not qualify to be a receipt under the said Act and shall have no legal consequences as such, which may absolve the licensee i.e. cold storage owner from his statutory liabilities.

14. The statutory obligation lay upon licensee cannot be mitigated whittled or be made inoperative relying on a receipt obtained by the licensee from hirer in a manner different from what it is contemplated in the Act. The receipt has to be issued in the form prescribed and not in a manner it is not prescribed. The form of receipt has to be prescribed under Act 1976 and learned counsel for the petitioner could not show that the receipt which the petitioner obtained from the potato farmers in this case satisfy the prescribed pro-forma of the receipt and therefore can be construed to be a legal document in the context of the provisions of Act 1976. this unilateral receipt also cannot be termed to be an agreement between the parties laying down terms and conditions so as to form a

contract- It is difficult to term the aforesaid receipt as an agreement of contract.

15. Lastly, it also cannot be doubted that parties by a private arrangement cannot act in a manner contrary to what is provided in a statute. In such a case, statutory provisions shall prevail. It is well settled principle that estoppel and waiver are inapplicable against statute.

16. The last submission is that determination of compensation is not correct. This raises a disputed question of fact. The Licensing authority has determined compensation by taking into account current value of potatoes on the date of storage of goods in the cold storage. Nothing has been shown to demonstrate that the above procedure followed by licensing authority is perverse or otherwise illegal. These are all questions of facts on which findings have been recorded by licensing authority, competent to determine such compensation. This would not be interfered in judicial review under Article 226 as if this Court sit in appeal unless it is shown that such findings are perverse, particularly when the aforesaid findings are concurrent having been confirmed in appeal by the Tribunal.

17. In view of the above discussion, I find no merit in the writ petition. Dismissed.

18. Interim order, if any, shall stand vacated.