
(1991) 09 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11428 of 1991

M/s. Paramjit Khad Store, Kapurthala and others	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 32
Essential Commodities Act, 1955 — Section 3(1)

Citation : AIR 1992 P&H 68

Hon'ble Judges : Harjit Singh Bedi, J;A.L. Bahri, J

Bench : Division Bench

Advocate : G.C. Dhuriwala, for the Appellant; Harinder Singh Giani, Senior Standing Counsel and G.S. Viridi, for the Respondent

Judgement

1. By this judgment, we propose to dispose of C.W.P. Nos. 11358, 11360, 11391, 11427 to 11430, 11438, 11498, 11933, 11966, 11975, 11983, 11984, 12043 to 12045, 12664 and 13258 of 1991. The facts of the case have been taken from C.W.P. No. 11428 of 1991 (M/s. Paramjit Khad Store v. Union of India).

2. The facts giving rise to the filing of this petition are given hereunder : --

Admittedly, the manufacture, sale and purchase of fertilizer and the other ancillary matters are governed by the provisions of the Fertilizer Control Order, 1985 (hereinafter called the "Order"), which has been promulgated by the Central Government in pursuance of the powers conferred by S. 3(1) of the Essential Commodities Act, 1955 (hereinafter called the "Act"). Fertilizer, being admittedly an essential commodity, is a controlled item in terms of the Act and the Order. The Central Government has, from time to time, issued instructions in the form of notifications with regard to the maximum price at which fertilizer is to be sold. The price of fertilizer had earlier been fixed by Government Notifications issued in January, 1986 and February, 1991. Vide Annexure P1, dated 25th July, 1991, the Government revised the price for sale of fertilizer and fixed the maximum rate at which the various kinds of fertilizer could be sold. The

earlier Notifications of 1986 and 1991 were superseded vide the Notification Annexure P1. The price was revised upwards because the subsidy that was being paid by the Central Government to the fertilizer manufacturers in order to supply fertilizer to the farmers at subsidised rates was reduced with the result that the sale price of fertilizers was substantially increased. The Government, thereafter, once again refixed the maximum price and vide Notification dated.14th August, 1991, Annexure P6 (which is being impugned in the present writ petition) with a further stipulation that the stocks of fertilizer which were in hands of wholesale and retail dealers on the date of the Notification whether in Government, Private or Public Sector, would be sold at the old rates, that is, the rate fixed under the Notifications of January, 1986 and February, 1991. The petitioners, who are wholesale or retail dealers in fertilizer in the private sector, have been aggrieved by this condition of the Notification, Annexure P6, and have argued that the stocks of fertilizer which were already in their hands on the date of the Notification, Annexure P6, should also be permitted to be sold by them at the rates given in the said Notification.

3. In reply to the writ petition, a short affidavit has been filed broadly admitting the basic facts in the writ petition, but controverting the grievances made by the petitioners.

4. This case has been argued at the motion stage and we have heard a number of counsel at length. At the very outset it needs to be mentioned that no grievance has been made by the petitioners that as a result of a revised price structure, their profit margins have been reduced. As a matter of fact, we are of the view that most of the points made by the petitioners would not be open to them and could perhaps be raised either by the manufacturers or consumers of fertilizer. The grievance raised by the various counsel can now be summarised as follows:

i) That the order is violative of the provisions of the Act inasmuch as that the requisite opinion was not formed by the Government with regard to the advisability of promulgating the order as required under S. 3(1) of the Act:

ii) That two different prices cannot be fixed under the Order or the Act i.e. one for the stocks already in hand on the date of the Notification Annexure P6 and another rate for the stocks supplied thereafter. In this connection, it was further argued that as vide Annexure P1 the Notifications of 1986 and 1991 had been specifically superseded, a fresh reference to the aforesaid Notifications in Annexure P6 would not have the effect of resuscitating them and, as such, the Government could not on that basis fix the new price;

iii) That the dealers being owners of the fertilizer, which was already in their hands, were entitled to sell those stocks at the higher price;

iv) That the dealers had been made to suffer a substantial loss on an earlier occasion and were not compensated when the price had been reduced and, as such, were now entitled to get the benefit of the increased price with respect to

the sale of the stocks already in their hands on the date of Notification Annexure P6;

v) Clause 25 of the Order creates a specific benefit for the manufacturers while depriving the dealers of such benefits; and

vi) That the last paragraph of Annexure P6 violates Art. 14 of the Constitution inasmuch as that the Government agencies have been allowed to sell the old stocks at the revised rates, whereas the whole-sale and retail dealers in the private trade have been directed to sell the old stocks at the old rates.

5. After hearing various learned counsel for the parties, we find no substance in the writ petitions. We now proceed to deal with each of the points raised and mentioned above seriatim.

Re : (i) The argument half-heartedly pressed was that as in the preamble to the order, there was no reference that it was being promulgated in pursuance of the opinion of the Central Government having been formed in terms of S. 3(1) of the Act, the order itself was ultra vires the Act. We have examined this argument and find that it has no substance. In the judgment reported as *Chinta Lingam and Others Vs. Government of India and Others*, , it has been held as under:--

"We are unable to see the necessity or reciting the requisite opinion within S. 3(1) of the Act in the Control Orders. It is implicit in the recital in the Control Orders that they were being made under S. 3 of the Act that the Central Government had formed the requisite opinion within sub-sec. (1) of that section."

In view of what has been held above, the omission in the preamble with regard to the requisite opinion having been formed by the Central Government would not invalidate the order.

Re: (ii) We have examined this argument as well, and find that this too is of no consequence. It is fallacious to say that by the impugned order, Annexure P6, the Central Government has sought to fix two different prices for fertilizer. It needs to be emphasised that only one uniform rate for sale of fertilizer has been fixed with the stipulation that the old stock would be sold at the old rate. The reliance of the petitioners on two judgments reported as *Joe Pereira and Others Vs. Union of India and Others*, and *M/s. Bhagwan Singh Balbir Singh v. State of Punjab* 1975 Cri LJ 558 is wholly misplaced. In these cases the point for decision was as to the factors that were to be taken into account while determining the controlled price of an essential commodity. The point before us was never agitated nor contested in the aforesaid cases. Moreover, the reference in Annexure P6 to the notifications of 1986 and 1991, is only with reference to ensuring that the old stocks of fertilizer are sold at old rates. The question of resuscitating a dead notification, therefore, does not arise.

Re: (iii) This point has been specifically emphasised by the counsel for the petitioners. In this connection; it has been highlighted that once the stock of fertilizer were in hands of the wholesale/retail dealers, they being full owners

thereof, were entitled to charge the higher rates. The petitioners have placed reliance on *A. Venkata Subba Rao Vs. State of Andhra Pradesh*, which has been followed in *Bokaro Roller Flour Mills Pvt. Ltd. and Others Vs. The Union of India(UOI) and Others*, and somewhat reluctantly in *Delhi Flour Mills Co. Ltd. and Another Vs. Commissioner of Food and Supplies and Others*, . The argument raised by the petitioners as also the reliance placed on the aforesaid judgments is misplaced. In *Venkata Subbarao's case (supra)* admittedly there are certain observations which do benefit to the petitioners, but we find that on the facts of the case and on a deeper analysis the aforesaid decision is wholly inapplicable. The facts of that case were that at a time of scarcity of rice in the State of Andhra Pradesh, certain prices had been fixed for the purchase of rice by dealers who were called procuring agents, which could then be disposed of under the orders of the Government also at a fixed price. The procurement price was in each case lower than the selling price and the dealers were entitled to the difference between the two prices. Thereafter, the selling price was increased with the result that the profit margin available to the dealers was substantially enhanced. The Government thereafter issued certain orders asking the dealers to deposit with it some portion of the increased profit margin. These orders were challenged before the High Court and on the writ petitions having been dismissed, the matter was taken before the Hon"ble Supreme Court. That Court allowed the appeals holding that there was no legal justification or basis whereby the Government was entitled to ask the dealers to deposit some part of the increased profit that had accrued to them. It was specifically held that the licences issued under the impugned control orders or the procurement scheme framed by the Government did not contemplate the issuance of such a direction at the instance of the Government. The case before us is on a completely different set of facts. It is the undisputed position that the Government is competent to fix the price for the sale of fertilizer and the only question is as to whether the dealers who were already holding stocks on the day when Notification Annexure P6 was issued, were entitled to secure a windfall and sell the old stocks at the revised rates. This matter has now been concluded by the Supreme Court in a judgment reported as *Ram Chandra Mawa Lal, Varanasi and Others Vs. State of Uttar Pradesh and Others*, , wherein on identical set of facts, the Hon"ble Supreme Court while castigating the efforts of the dealers to secure extraordinary profits, dismissed the appeal filed by the dealers against the judgment of the High Court. The observations of the Supreme Court are reproduced hereunder (Para 36):

"The Constitution which promises a socialistic pattern of society in the preamble and traces the contours of the socialistic philosophy which permeates the spirit of the Constitution can neither command nor commend the exercise of the Constitutional Jurisdiction to issue HIGH PREROGATIVE WRITS under Art. 32, 226 or 227, in order not to remove injustice, but to do injustice, in order not to prevent exploitation of the poor by the rich, but to permit such exploitation. And yet the CONSTITUTIONAL JURISDICTION of the Court (as polarized from its

"ERROR JURISDICTION") has been invoked in order to use the hand of the Court for transferring money from the pockets of poor cultivators (who feed the Nation) to the pockets of the dealers in fertilizers (who feed themselves) by challenging a notification on technical grounds. Such jurisdiction is invoked to enable the dealers to reap a rich harvest of unjust enrichment through instrumentality of the Court at the cost and expense of the cultivators. We firmly believe that the Court exercising CONSTITUTIONAL JURISDICTION is not obliged to grant a writ in such circumstances. But we need not elaborate on the theme furthermore as the High Court has rejected the petition on merits and as we are of the same opinion."

It was specifically held that the Government was entitled to issue a direction that the old stocks held on a particular date would be sold at the old rate. The challenge on this ground therefore must also fail.

Re: (iv) This argument also, on the face of it, has no substance. It is the Government alone which has to decide, keeping in view the various economic factors, as to the price at which an essential commodity is to be sold.

6. Mr. Harinder Singh Giani, Sr. Standing Counsel, appearing for the Union of India, has informed us that the increase in the selling price of fertilizer has been made as the subsidy which was being given to the manufacturers of fertilizer has been substantially reduced with the result that the increased price load has to be passed on to the consumers. He has also informed us that during the year 1988-89 the subsidy on manufacture of fertilizer was to tune of Rs. 3,000 crores; in 1989-90 it was Rs. 4,600 crores and in 1990-91 it was Rs. 4,400 crores. The decision to reduce the subsidy was therefore taken by the Government keeping in view the overall economic health of the Nation. He has further argued that the fixation of the price of an essential commodity is a matter which vests exclusively in the Legislature or in its delegates and is not within the province of the Court. He has cited M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, to this effect. In this judgment it has been specifically held that fixation of price is not a matter for judicial review as the judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority. We are in respectful agreement with this dictum with the result that the argument raised by the petitioner is again of no consequence. No justifiable grievance can therefore be made by the petitioners that as they had suffered losses on an earlier occasion, they must be allowed to recoup their losses now.

Re: (v) We have examined Cl. (25) of the Order and find that there is absolutely no question of discrimination between the manufacturers and the dealers as they are both a class apart.

Re : (vi) This argument has been raised on the basis of the last paragraph of Annexure P6 and we find that here again the petitions must fail. We have examined the said paragraph and find that all dealers whether retail or whole-

sale either in the private trade or in Government or semi-Government organisations, have been treated equally and the directions to sell the old stocks at the old rates have been uniformly applied. In this situation, there can be no violation of Art. 14 of the Constitution as held in Ram Chandra Mawa Lal, Varanasi and Others Vs. State of Uttar Pradesh and Others, .

7. In view of what has been held above, we find that there is no merit in the writ petitions and the same are dismissed with costs which are assessed at Rs. 5,000/- in each case, where notice has been issued to the respondents.

8. Petitions dismissed.