**(1991) 03 AHC CK 0108**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 12922 of 1989

M/s. Shree Gopal Trading Co. and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

**Date of Decision :** 12-03-1991

**Acts Referred:**
Constitution of India, 1950 — Article 14, 19, 19(1), 19(6)

**Citation :** (1991) 1 AWC 603

**Hon'ble Judges :** B.P. Jeevan Reddy, C.J;R.A. Sharma, J

**Bench :** Division Bench

**Advocate :** Sunil Ambwani, for the Appellant;

**Final Decision :** Dismissed

## Judgement

R.A. Sharma, J.—Petitioners are dealers, engaged in the business of purchase, sale or storage for sale of food grains. Sale, purchase and storage are regulated by Control Order known as U.P. Foodgrains (Procurement and Regulation of Trade) Order, 1982 (hereinafter referred to as Control Order), issued by Government of U.P. under the Essential Commodities Act. Clause 4 of the Control Order which specify limits of stock which dealer can keep was amended by its ninth amendment of 1989 known as U.P. Foodgrains (Procurement and Regulation of Trade (Ninth Amendment) Order 1989. By this amendment the limit of stock was reduced to 150 quintals. Amended Clause 4 is reproduced below:

4. (1) No retail, wholesaler, commission agent or manufacturer shall at a time have in his stock foodgrains in excess of the limits specified below:

(One) Wheat--

(a) Retail 50 quintals (b) Wholesaler 150 quintals (c) Commission agent 150 quintals (d) Manufacturer A quantity corresponding to the 7 days manufacturing capacity. (Two) Other foodgrains as specified in Clause 11 of the Uttar Pradesh Foodgrains Dealers (Licensing and Registration on Hoarding) Order, 1976 from time to time.

(2) No retailer, wholesaler, commission agent shall purchase, sell or store for sale wheat each day in quantities exceeding the limits specified in Sub-clause (1) for each of them.

(3) No wholesaler, commission agent and manufacturer, shall despatch his wheat or from any place other than the place of his business except in special circumstances and with the prior permission of the controller.

(4) Above stock limit shall not be applicable for such stock of wheat which is purchased by the commission agent under the price support scheme for any purchasing agency appointed as such by the State Government.

Explanation:--Quantities of wheat meant for despatch to outside the place of his business by wholesaler, commission agent kept at the premises, of a transport/ forwarding agency or at a railway station shall be deemed to be included in his stock limit for so long as that quantity of wheat is not loaded for the place of destination in a truck or any other mode of transport or railway wagon.

Petitioners have, by means of this writ petition challenged the validity of the aforesaid Clause 4.

2. The Government has filed a counter-affidavit and Petitioners have filed rejoinder-affidavit in reply thereto. We have heard learned Counsel for the Petitioners and learned Standing counsel. The writ petition is being disposed in accordance with Rules of the Court.

3. Learned Counsel for the Petitioners has challenged the newly added Clause 4 of the Control Order on the ground that it is volatile of Articles 19(1)(g) and 14 of the Constitution of India.

4. Control Order has been issued under the Essential Commodities Act and is an anti hoarding measure so as to prevent speculative business and black marketing in foodgrains. Stock limit of foodgrains, which a dealer can have, is fixed for checking the hoarding so as to ensure availability of food-grains for equitable distribution at a fair price, and such a measure is essential in public interest and cannot be said to be arbitrary or unreasonable restriction on fundamental right to carry on business. In Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others, the Supreme Court upheld the provision of identical Control Order issued by the Government of Rajasthan, fixing limit of stock at 200 quintals and plea of Article 19 was rejected. Relevant passage from this judgment is quoted below:

The notification providing for the maximum quantity of wheat which may be possessed by any dealer at any one time is clearly designed to prevent hoarding of foodgrains and is certainly a reasonable restriction within the meaning of Article 19(6) of the Constitution.

To the same effect is the decision of Supreme Court in another case from

 

Rajasthan of Suraj Mal Kailash Chand and Others Vs. Union of India (UOI) and Another, . These decisions were followed by Supreme Court in the case of Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, . In the case of Bishambhar Dayal Chandra Mohan, (supra), which is from State of U.P., while upholding the stock limit of 250 quintals and dealing with the pica of violation of Article 19(1)(g) of the Constitution, the Supreme Court observed as follows:

It cannot be asserted that the restriction imposed by the State Government on wholesale dealers of wheat is either arbitrary or is of an excessive nature. The fixation of the stock limit of wheat to be possessed by wholesale dealers, at any time, at 250 quintals is an important step taken by the State Government to obviate hoarding and black-marketing in wheat which is in short supply. Is is hardly necessary to emphasise the extent and urgency of the evil sought to be remedied thereby. Perhaps fixation of the maximum limit of wheat permitted to be possessed by a wholesale dealer at 250 quintals, at a time, is too low, but the restriction so imposed cannot be treated to be arbitrary or of an excessive nature, beyond what is required in the national interest. It is a matter of common knowledge that wholesale dealers of foodgrains mainly operate in large cities and towns and have the means and capacity to manipulate the market by withholding stocks of a commodity. There was need to check such speculative tendencies in the trade. It was therefore, felt expedient to re-fix the stock limit of wheat for wholesale dealers at 250 quintals at a time, as in the case of a commission agent. The underlying idea is that the wholesale dealers should be allowed to continue their trading activities within reasonable limits.

After having observed, as above, the Supreme Court relying on its earlier two decisions of Rajasthan, M/s. Krishna Lal Praveen Kumar and Surajmal Kailash Chandra, (supra) rejected the plea of violation of fundamental right conferred by Article 19(1)(g) of the Constitution. While negativing the pica of violation of Article 14 the Supreme Court observed as follows:

The State Government has adopted various measures in the interest of the general public for the control of production, supply and destitution of and trade and commence in, essential commodities, To obviate hoarding and black marketing in foodstuffs, it has promulgated the Order. It introduces a system of checks and balances to achieve the object of the legislation i.e. to ensure equitable distribution and availability of essential commodities at fair prices. It cannot be said that looking to the prevailing conditions, the imposition of such restrictions does not satisfy the test of reasonableness. Nor can it be said that the fixation of such stock limit is arbitrary or irrational having no nexus to the object sought to be achieved and is, therefore, volatile of Article 14. On the contrary, the limitation imposed fixing a stock limit for a wholesale dealer at 250 quintals is a reasonable restriction within the meaning of Article 19(6) of the Constitution.

5. In view of the aforesaid decisions of the Supreme Court it cannot be said that

 

the Control Order fixing maximum limit of stock of foodgtams which a dealer can have is violative of Articles 14 and 19(1)(g) of the Constitution.

6. In this connection learned Counsel for the Petitioners has further submitted that in view of the Sub-clause (2) of Clause 4 of the Control Order it is not possible to purchase, sell or store for sale in a day more than 150 quanta?s of wheat as specified by Sub-clause (1), with the result that a dealer with average working of about 22 days in a month after excluding holidays etc. can hardly have an income of about three to four thousand per month which would not be even sufficient to meet the cost incurred by a dealer for running a shop i.e. maintenance, salary of the employees etc. On this basis learned Counsel submits that impugned Clause 4 of the Control Order has the effect of crippling the business of the Petitioners and is violative of fundamental right to carry on trade and business conferred by Article 19(1)(g) of the Constitution of India.

7. If Sub-clause (2) of Clause 4 of the Control Order is read alone the apprehension of the Petitioners may be said to be justified, but if read alongwith Sub-clause (1) the position becomes different. Sub-clause (1) of Clause 4 lays down that no wholesaler or commission agent shall at a time have in his stock foodgrains in excess of specified limit. For wheat 150 quintals is the limit specified for whole-saler and commission agent. In the case of Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others, identical provisions of Rajasthan Control Order were interpreted by the Supreme Court as fallows:

The notification merely fixes maximum limit of 200 quintals of wheat to be possessed by a dealer at any one time. ''At any one time'' can only mean at only given point of time. It does not mean that if a dealer was in possession of 200 quintals at 10 a.m. and sold 120 quintals between 10 a.m. and 12 noon he is barred from purchasing 120 quintals after 12 noon so as to make up the 200 quintals. All that is necessary is that he should not have in his possession at any one time more than 200 quintals.

This decision was followed by Supreme Court in another Rajasthan case of Surajmal Kailash Chandra (supra) and in the case of M/s. Bishambar Dayal (supra) where the Supreme Court while interpreting the U.P. Control Order kid down that ''at any time'' means ''at any given time,'' which means that the whole-sale dealer cannot have, in his stock, more than specified quintals at a time, but that does not prevent him from entering into a series of transactions during the course of a day.

8. It is true that Sub-clause (1) uses the words ''at a time'' while in Sub-clause (2) ''each day'' has been used. Sub-clause (2) is not happily worded and if read by itself it is likely to produce the result which has been complained of by learned Counsel for the Petitioners. But this Sub-clause (2) cannot be read in isolation and is to be read with Sub-clause (1) which has specified the limit of stock. Reading these Sub-clauses together it is apparent that while purchasing, selling

 

or storing for sale a dealer cannot at any one time in a day exceed the limit specified by Sub-clause (1). But that does not prevent him from entering into a series of transactions during the course of the day resulting in sale and purchase of more than 150 quintals of foodgrains provided each transaction relates to and involves a quantity not exceeding 150 quintals. The only limitation in is that he should not at any one time in a day have more than 150 quintals in his possession. If these Sub-clauses are read otherwise they will convey conflicting meaning and will produce contrary result incapable of being reconciled with each other. Fundamental right. To carry on trade and business conferred by Article 19(1)(g) of the Constitution is subject to reasonable restriction which may be imposed by the State under Clause 6 of the same Article. But these restrictions should not be arbitrary or of excessive nature. The State although having the right to regulate the trade and business cannot adopt regulatory measure which would cripple the Fundamental right to trade or business and freedom of trade. Supreme Court in the case of Bishambar Dayal (supra) while upholding the stock limit of 250 quintals at a time has observed it "too low," even though dealer was not prevented from entering into series of transactions during the course of the day resulting in sale and purchase of more than 250 quintals in a day. Unless both Sub-clauses (1) and (2) of Clause 4 are read together in the manner suggested hereinbefore Sub-clause (2) is likely to have the effect of crippling the business of the Petitioners and this will go beyond the object of the Control Order. Control Order is only regulatory in nature and not prohibitory and it cannot be read in a manner so as to unreasonably restrict the fundamental right guaranteed by Articles 14 and 19(1)(g) of the Constitution of India. Both these Sub-clauses (1) and (2) as such have to be read together. This means that a dealer can enter into a series of transactions resulting in sale and purchase of more than 150 quintals in a day subject to the condition that each transaction relates to and involves a quantity not exceeding 150 quintals. But at any given time in a day he cannot have more than 150 quintals of foodgrains in his stock. Although fixing stock limit at 150 quintals is low but cannot be said to be arbitrary and unreasonable as, in view of reading Sub-clauses (1) and (2) together, as observed hereinabove, the Petitioners can carry on their business within reasonable limit.

9. Learned Counsel for the Petitioners also attacked the explanation appended to Clause 4 of the Control Order whereby quantities of wheat meant for despatch to outside the place of his business by wholesaler/commission agent kept at the premises of a transport/forwarding agency or at a railway station have been declared to be included in his stock limit for so long as that quantity of wheat is not loaded for the place of destination in a truck or any other mode of transport or railway wagon. Learned Counsel for the Petitioners has submitted that this explanation has unnecessarily placed unwarranted restriction on Petitioners'' right to carry on trade or business, as after the wheat is given to the transport company/forwarding agency or railway station for transportation to the purchaser it ceases to be part of his stock. It is not possible for us to agree with the learned

Counsel for Petitioners, Dealers have means and capacity to manipulate the market and create artificial scarcity by withholding stock of foodgrains. Explanation has been enacted in the Order to check evasion/violation of stock limit specified by Control Order. As mentioned hereinbefore the Control Order is an anti-hoarding measure, so as to prevent black marketing and speculation in business of foodgrains. Explanation prevents foodgrains dealers from hoarding foodgrains in other godowns, established or opened in the name of some transport or forwarding agency. Intention is that no dealer should keep at any time in his stock foodgrains in excess of limit specified by Sub-clause (I) either directly or indirectly. Explanation as such cannot be said to be ultra vires the power of State Government.

10. Writ petition lacks merit and is dismissed, subject to the observations mentioned hereinbefore. In view of facts and circumstances of the case there shall be no order as to costs.

 