

(1951) 10 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Application No. 3 of 1951

Nathmal and Another

APPELLANT

Vs

Commissioner, Civil Supplies, Rajasthan and Others

RESPONDENT

Date of Decision : 19-10-1951

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1), 19(6), 226

Citation : AIR 1952 Raj 74 : (1951) RLW 467

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : Hasti Mal, for the Appellant; B.B. Desai, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Nathmal and Mithalal under Art. 226 of the Constitution of India for a direction, order, or writ in the nature of "mandamus", prohibition, "quo warranto" and "certiorari", or any of them, to be issued against the State of Rajasthan and certain officers of the State, who have been made parties to the application.

2. The facts, which have led to this application, are these. The petitioners are merchants at Rani-wara, and deal in foodgrains for which they hold licences. On the 7th of October, 1960, the petitioners were informed by the Sub-Divisional Offi-cer, Bhinmal, that their stocks of "bajra" were frozen by him under orders of the Deputy Commissioner, Civil Supplies, Jodhpur. Later, they were informed by the Tehsildar of Jaswantpura that their stocks of "bajra" were requisitioned by the Government, and they were ordered to sell it at the rate of Rs. 9/- per "maund". The petitioners made various representations to the Deputy Commissioner and Commissioner, Civil Supplies, and the Hon"ble Minister for Supplies but with no effect. Their contention is that "bajra" is being allowed to be freely purchased and sold in the market, and no ceiling prices have been fixed by the Government. The stock of "bajra" with the petitioners was purchased by them at prevailing market rates, namely, about Rs. 17/- to Rs. 18/-per "maund",

and was held by them in the usual course of business. No reasons had been assigned why the stocks of the petitioners had been frozen and requisitioned at procurement rate, and no principles had been laid down in the Rajasthan Foodgrains Control Order, 1949, for freezing and requisitioning of the stock of foodgrains with any dealer. Further, it was said that stock of certain other grain merchants had also been frozen, but an that stock had been released. The Civil Supplies authorities had no authority to freeze and requisition the stock of "bajra" with the petitioners arbitrarily without assigning any reason, and, in any case, if they had any such discretion, it had been highly abused so as to discriminate between one person and another. The action taken under the Foodgrains Control Order was void, in view of Articles 14, 19(1)(f), 19(1)(g), and 31 of the Constitution, read with Article 13.

3. The application was opposed by the State of Rajasthan. It was urged that separate orders were passed against Nathmal and Mithalal, and as such, a single petition was not maintainable. It was also urged that the application had not been filed on behalf of the respective firms, and that the affidavit had been verified by one of the applicants, viz., Nathmal, and not by the other, Mitha Lal. Further, the order freezing and requisitioning the stock of "bajra" was justified under Clause 25 of the Rajasthan Foodgrains Control Order, 1949, and the payment of Rs. 9/- per "maund" was justified under Clause 4 of the Rajasthan Foodgrains (Kharif) Procurement Order, 1949. This circumstances in which the "bajra" was freezed were that the applicants had applied for permits to export this "bajra" outside the district of Jalore. The matter was referred to the Commissioner, Civil Supplies, for instructions, as a large quantity of "bajra" was intended to be sent out of the district. Thereupon the Government of Rajasthan ordered that the stock of "bajra" of all merchants who applied for export permits should be freezed. The power was exercised under Clause 25 of the Rajasthan Foodgrains Control Order in order to prevent the creation of an unwarranted scarcity in Jalore. Compensation had been paid for the "bajra" that had been requisitioned and, therefore, the applicants had no case.

4. The main attack of the applicants is on Clause 25 of the Foodgrains Control Order. That clause reads as follows:

"Notwithstanding anything contained in this Order, the Commissioner, the Director, the Deputy Commissioner, the Nazim, the Assistant Commissioner, the Sub-divisional Officer, the Senior Officer of a Jurisdictional Thikana, the Enforcement Officer or such other officer as may be authorised by the Commissioner in this behalf, may freeze any stocks of foodgrains held by any person, whether in "his own behalf or not and such person shall not dispose of any foodgrains out of the stock so freezed except with the permission of the said authority. Such stocks shall also be liable to be requisitioned or disposed of under orders of the said authority at the rate fixed for purposes of Government procurement."

5. It has been urged, in the first place, that the clause is "ultra vires", because it

offends against Article 14 of the Constitution of India. We are, however, of opinion that the clause, as it stands, is equally applicable to all who are covered by the Rajasthan Foodgrains Control Order, and it cannot be said that there is any discrimination in the law; itself. It is conceded on behalf of the applicants that there is no discrimination in the clause itself; but it is urged that the manner in which the clause has been applied amounts to an abuse of the law, and is, therefore, hit by Article 14. Reliance in this connection has been placed on the case of "YICK WO v. HOPKINS", (1886) 118 US 356. That was a case relating to an ordinance passed by the City of San Francisco, which required all persons desiring to establish laundries in frame houses to obtain the consent of certain municipal officials. It, was found that in giving consent the municipal officials had acted unfairly and that the policy of the administration was directed exclusively against a particular class of persons, viz., the Chinese. On those facts the Supreme Court of the United States held that:

"though a law be fair on its face, and impartial in appearance, yet, if it is administered by public authority with an evil eye and unequal hand, so as practically to make illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

In that case all the Chinese, who had applied for permission, were refused such permission, while all Americans, except one, were given permission. There was a wholesale abuse of the law in that case, and in those circumstances, the law was held to be invalid. In the present case, there is no proof of any such wholesale abuse of the provisions of Clause 25 of the Foodgrains Control Order by the State of Rajasthan, and, therefore, "YICK WO'S CASE", has no application.

6. We may, in this connection, refer to the case of Dhanraj Mills Ltd. Vs. B.K. Kocher and Another, In that case, the learned Judges while dealing with the question whether a particular law was hit by Article 14 said that there could be three possibilities. Firstly, the law itself might permit discrimination, in which case even though the law may appear to be fair and indiscriminatory, the Court may interfere, Secondly, the law may vest discretion in certain authorities, and in exercising that discretion the State may, as a policy of administration, require its officers to exercise the discretion unfairly and unequally. Even in such a case the Court may interfere and say that although administrative orders are being challenged, the administrative orders suggest behind them a policy of the state "of discrimination. Thirdly, the challenge may only be against a specific act of an individual officer as being in contravention of Article 14, In such a case, if the officer exercises his discretion dishonestly, arbitrarily or capriciously, he is really going contrary to law. The Court may not be powerless to give the subject protection against a dishonest officer, but that protection cannot be sought under Article 14 or under Article 226 of the Constitution. We respectfully agree with this analysis, and are of the opinion that at the best the present case comes under the third category. Clause 25, therefore, of the Rajasthan Foodgrains Control

Order is not hit by Article 14 of the Constitution, and cannot be declared void on that ground.

7. Then we come to the contention that Clause 25 is void in view of Article 19(1)(f), which provides that all citizens shall have the right to acquire, hold and dispose of property. We are of opinion that this Article has no application in a case where Article 31 is also being invoked, as is being done before us. The real question in this case is whether the compensation that has been given is such as is covered, by Article 31. Learned Counsel for the applicants also concedes that in view of what he was going to urge under Article 31, Article 19(1)(f), would have no application in the present case.

8. Learned Counsel for the applicants, however, urges strongly that Clause 25 is void in view of Article 19(1)(g), which provides that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business. This is subject to Article 19(6), which provides that:

"nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said Sub-clause."

The argument is that the restrictions provided by Clause 25 are not reasonable restrictions within the meaning of Article 19(6), and, therefore, this clause is void as not being in conformity with Part III of the Constitution. It is said that this clause gives an arbitrary power to the Commissioner and various other officers to freeze any stocks of grains held by any person without assigning any reason therefor, and thereafter such person cannot dispose of the stocks freezed except with the permission of the authority passing the freezing order. This, it is urged, cannot be called a reasonable restriction on the right of a citizen to carry on trade or business. As to the reasons given on behalf of the State for passing the freezing order, it is said that the State might have passed the order for the reasons disclosed in the affidavit filed on their behalf; but the clause, as it stands, does not provide that any reason has to be given for freezing the stocks of dealers and interfering with their business, and as such, is an example of naked and arbitrary power, which cannot be justified as a reasonable restriction.

9. Reliance in this connection is placed on the case of *Anumathi Sadhukhan Vs. A.K. Chatterjee*, That was a case relating to the West Bengal Rice Mills Control Order, 1949. The petitioner in that case was the licence-holder of three husking mills, and had been carrying on the business of husking paddy at the said mills for the last 20 years. He had obtained the licence in 1945, and thereafter the quantity of paddy permitted to be husked in his mills was reduced from time to time. On the 7th of December 1950, a general notice was issued to the effect that the husking mill owners were, authorised to husk half of their previous permitted quantities up to 14-12-1950, and thereafter no husking mill should be run without obtaining further orders. This order, and the law on which it was

based, was challenged as void under Article 19(1)(g). The order was based on Clauses 9 and 13 of the West Bengal Rice Mills Control Order, 1949, which were as follows:

"9. Notwithstanding anything contained in this order, the Commissioner may, without assigning any reason, direct any application for the issue of a licence, or for the renewal of a licence be refused."

"13 (1) No licensee shall contravene any of the conditions of his licence. If any licensee contravenes any of the said condition, then without prejudice to any other action that may be taken against him, his licence shall be liable to be cancelled, or suspended by the Commissioner.

(2) Notwithstanding anything contained in Sub-para. (1) the Provincial Government may, in special circumstances, without giving any previous notice, or without assigning any reason, cancel or suspend a licence issued under this Order."

The case of the petitioner there was that the order of the 7th of December 1950, in effect suspended or cancelled his licence, and his business had come to a standstill, and the mills had to be closed down. The learned Judge observed at page 92 as follows in connection with Clauses 9 and 13: "Clauses 9 & 13 of the Rice Mills Control Order no doubt empower cancellation or refusal of a licence already issued & refusal to issue a new licence without assigning any reasons. But there can be no doubt that these provisions overstep the limits of reasonableness & must be held to be invalid in the face of the written Constitution of India. These provisions do not give any opportunity to the licence-holder to make any representation against the action taken by the authorities concerned, or to protect their interest against any wrongful action of the authorities & they further provide scope for the exercise of the power conferred on the authorities in an arbitrary and capricious manner, if they so choose to do it. It is clear law that an arbitrary or capricious exercise of the power is no exercise at all. If no reasons are assigned, it is not possible to know or judge whether the order is a valid or a mala fide or arbitrary order." It was, therefore, held that the order dated 7-12-1950 was in excess of the powers of the opposite party. Reference was made in this case to *Chintaman Rao Vs. The State of Madhya Pradesh*, where it was held that the Act in imposing total prohibition of carrying on the business of manufacture of "bidis" during the agricultural season arbitrarily interfered with private business and could not be said to be a reasonable restriction on the fundamental rights conferred by Article 19(1)(g), and, therefore, was not saved by Article 19(6). That being so, it was not in conformity with Part III of the Constitution, and was void.

10. We think that the principle of these two cases applies to the present case. Clause 25 of the Foodgrains Control Order gives power to various officers, including the Commissioner, the Director, the Deputy Commissioner, the Nazim, the Assistant Commissioner, the Sub-divisional Officer, the Senior Officer of a

Jurisdictional Thikana, the Enforcement Officer, or such other officer as may be authorized by the Commissioner in this behalf, to freeze any stocks of foodgrains held by any person. The clause does not say that no reasons need be assigned; but it gives this power without the necessity of assigning any reasons for such action. It is thus possible for any of the officers named in the clause to freeze the stock of any dealer without assigning any reason, and thus completely paralyse his trade or business. It seems to us that such power is an arbitrary power, and cannot be said to be a reasonable restriction on the fundamental right conferred by Article 19(1)(g) of the Constitution. The fact that in this particular case the applicants applied for export of the stock, which was eventually frozen, and that was the reason why the Government ordered freezing of the stock, would not, in our opinion, save the law, as it stands, from being arbitrary. It would have been a different matter if, for example, the law provided that the Commissioner or any of the officers mentioned therein may freeze any stocks of foodgrains held by any person in any district in order to conserve stocks in that area and prevent prices from rising. We are, therefore, of opinion that Clause 25 is not saved by Article 19(6), and, therefore, it being not in conformity with Part III of the Constitution is void.

11. The last portion of the clause which provides for such stocks being requisitioned or disposed of at the rate fixed for purposes of Government procurement is also void for more than one reason. It is void, firstly, because the earlier part relating to the freezing of the stock is void. The second ground of invalidity becomes clear by a reference to Clauses 23, 24 and 25 of the Control Order. Broadly stated, Clause 23 empowers the Commissioner and certain other officers to fix ceiling prices at which foodgrains shall be sold in the area to which the Rajasthan Foodgrains Control Order, 1949, was applicable. Purchase and sale or trade or business at ceiling prices was thus permitted. Clause 24 authorizes the Commissioner and certain other officers to direct any person in possession to sell the foodgrains or part thereof to any person at such price as may be fixed under Clause 23. This clause does not entail any unreasonable restriction as the seller gets the ceiling rate for his stock, and when he purchased it, he knew that he would not lawfully get more than the ceiling price. Clause 25 may be divided in two portions. The first portion authorizes the Commissioner and certain other officers to freeze the stock of foodgrains held by any person. The last portion empowers the said officers to requisition the stock of frozen foodgrains or to direct its disposal at Government procurement rate. In the first place, there is a contradiction between Clause 24 and Clause 25. If the officers choose to issue an order under Clause 24 directing sale of food-grains held by any person, the price paid would be the ceiling price; but if they prefer to pass the same order under Clause 25, which they are authorized to do after freezing the stocks, the same person will not get the ceiling price but the Government procurement rate which would obviously be less than the ceiling price. Secondly, when the ceiling price is fixed, it means that people are free to buy and sell or carry on trade or business at such price. The provision of requisitioning food-grains or directing their

disposal under Clause 25 at Government procurement rate, which is bound to be much lower than the ceiling price, would prevent people from carrying on trade or business which could be lawfully done at ceiling price. It would be absurd to suppose that any trade could be carried on by buying at ceiling price and selling at Government procurement rate. In this case it has been admitted that the Government procurement rate was Rs. 9/- a maund, the Government's selling rate was Rs. 13/5/4 per "maund", and the free market rate was Rs. 17/- or 18/- per "maund." The last portion of Clause 25 is thus a restriction on carrying on trade or business which is a fundamental right under Article 19(1)(g) of the Constitution of India, and the said restriction is not at all reasonable, and is not saved by Clause (6) of that Article. The provision in the last sentence of Clause 25 is, therefore, void.

12. We now come to the argument with respect to Article 31. This argument is particularly directed against the later part of Clause 25, which is as follows:

"Such stocks shall also be liable to be requisitioned or disposed of under orders of the said authority at the rate fixed for purposes of Government procurement."

Learned Counsel urges that under Article 31(2), no property, whether movable or immovable, can be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given. It is urged that under this provision it is the duty of the State to provide for fair and just compensation, and reliance is placed on the following observations in *Raja Suryapalsingh and Others Vs. The U.P. Govt.*,

"The absence of the qualifying adjective "just", "fair", "adequate" is, to our minds, not of consequence; nor can we see any ground on principle or authority for attributing to the word "compensation" the meaning suggested by the State, namely such amount as the Legislature itself considers reasonable. If it had been the intention to make so radical a change in the meaning of the word compensation -- a change which wholly destroys the basis upon which it was previously understood that compensation would be determined. -- It is reasonable to expect that fact to have been clearly stated in the Constitution. If the amount of compensation was left entirely to the discretion of the Legislature, and was not to be justiciable, Art. 31(2), which is a restraint on legislative power, would cease to be of use to protect the fundamental rights to property. Nor does the conferment of power to determine the principles on which compensation, shall be given enable the Legislature to depart from the basic rule. That provision is intended to enable the Legislature to lay down rules for the assessment of compensation in cases where its determination may be difficult or where different persons may take divergent views as to what is the equivalent in value of the property acquired."

13. Learned Counsel for the State, on the other hand, urges that, in the first place, Article 31(5) protects this provision, and, in the second place, as the word "compensation" has not been qualified by the word "fair", "just" or "adequate", any compensation fixed by the Legislature is the compensation to which a person is entitled under Article 31(2).

14. So far as the second argument is concerned, it is fully disposed of by the observations of the learned Judges of the Allahabad High Court in the case cited above, with which we respectfully agree. We may add that if it was the intention of the framers of the Constitution that compensation provided under Article 31(2) should not be justiciable, and that whatever was fixed by the Legislature would be the proper compensation, it would have been unnecessary to provide Article 31(4) and Article 31(8). These provide for saving certain Bills pending at the commencement of the Constitution or passed by a State within 18 months before the coming into force of the Constitution. If the compensation fixed by virtue of Article 31(2) were not justiciable, it would not have been necessary to provide specifically for certain Bills and Acts under Article 31(4) and Article 31(6). The presence, therefore, of these two provisions in our opinion, enforces the argument of the learned Judges of the Allahabad High Court quoted by us above. We are, therefore, of opinion that the compensation to be provided by law, when property is taken away, should be fair compensation, which means equivalent in value of the property taken or acquired, subject only to this qualification that such equivalent need not be paid in money.

15. Before we turn to the question whether the compensation paid in this case is fair or not we should like to dispose of the first argument, namely, that Article 31(5) protects this provision of Clause 25. That Article protects the provisions of any existing law which had come into force 18 months before the coming into force of the Constitution. In other words, if a law was in existence before the 26th of July, 1948, its provisions would not be hit by Article 31(2). We have, therefore, to see whether this law, viz., the Rajasthan Food-grains Control Order, 1949, was in existence before the 26th of July 1948. Obviously an order passed in 1949 could not be in existence before the 26th of July 1948. But learned Counsel for the State argues that the Essential Supplies (Temporary Powers) Act, 1946, was brought into force in Rajasthan by the Essential Supplies (Temporary Powers) Amendment Act, 1950, on the 17th of August 1950. By Section 10 of this Act, any law in force in a Part B State, before the coming into force of this Act, stood repealed; but any order made and in force immediately before that day in the said State was to continue in force and be deemed to be an order made under this Act. Therefore, on the coming into force of this Act, the Rajasthan Essential Supplies (Temporary Powers) Ordinance (No. XIII of 1949), came to an end; but all orders passed under it including the Rajasthan Foodgrains Control Order, 1949, were continued as orders under this Act. Learned Counsel's argument is that as the Essential Supplies (Temporary Powers), Act was originally passed in 1946, it should be understood that the Rajasthan Foodgrains Control Order, 1949, was passed in 1946, i.e., before the

26th of July, 1948. We must say that we have not been able to understand this argument. Even though the Essential Supplies (Temporary Powers) Act might have been passed in 1946, many orders must have been passed under that Act after 1946. Those orders, must be held to have been passed on the day on which they were passed. Even, therefore, when the Essential Supplies (Temporary Powers) Act, 1946, became applicable to Rajasthan from the 17th of August 1950, and the Rajasthan Foodgrains Control Order, 1949, became an order under the Act of 1946, after its application to Rajasthan, the date of the Rajasthan Foodgrains Control Order could not be changed from what it actually is, namely, the 12th of August 1949. Therefore, any provision in the Rajasthan Food-grains Control Order, 1949, as to compensation would not be saved by Article 31(5), as that Order came into force long after the 26th of July 1948.

16. Finally, we come to the question whether the compensation in this case was fair. In this connection certain facts are admitted. The first is that the procurement price fixed by the Government is Rs. 9/- per "maund." The second is that the Government is selling "bajra" in rationed areas" at Rs. 13/5/4 per "maund." The third is that in the open market "bajra" was being sold at Rs. 17/- per "maund", as appears from paragraph 10 of the reply filed on behalf of the Government. The fourth is that no ceiling prices have been fixed by the Government, as provided in Clause 23 of the Rajasthan Foodgrains Control Order.

17. Clause 25 provides compensation to all persons including dealers like the applicants at the procurement price. This price is fixed at Rs. 9/-per "maund" under the Rajasthan Foodgrains (Kharif) Procurement Order, 1949. It should be remembered that this is the price to be paid to the primary producer. It is well-known that the price paid to a primary producer is always less than the price at which dealers sell between themselves or in the open market to the consumer. Obviously, therefore, payment of the procurement price to a dealer could not be fair compensation, for that price is meant for the primary producer and not for a dealer who may have himself purchased the grain through various intermediaries between himself and the primary producer. To our mind, the ceiling price or some price in its neighbourhood, which is provided in Clause 23, would be the fair compensation for the dealer, as that would be equivalent in value of the property taken to him. But no ceiling price for "bajra" has been fixed under Clause 23, and one method, therefore, of knowing the equivalent in value is not open to us. Procurement price, as we have already said, cannot be called fair compensation for a dealer, and that leaves us with only two criteria, viz., (1) the price at which Government is selling in rationed areas, i.e., Rs. 13/5/4 per "maund", and (2) the price which was apparently prevailing in the open market, viz., Rs. 17/- per "maund." The affidavit of the applicants is that they had purchased this grain at about Rs. 17/- to 18/- per "maund." This has not been specifically denied on behalf of the State, and we are, therefore, of opinion that in the absence of a ceiling price, the fair compensation in the present case is Rs. 17/-per "maund", and, in any case, it cannot be less than Rs. 13/5/4 per "maund". Clause 25, therefore, when it provides for requisitioning of stocks at the rate fixed for

purposes of Government procurement, is void, as it offends Article 31(2) of the Constitution, as fair compensation has not been fixed in the law for acquiring this movable property.

18. We may now briefly dispose of the technical objections raised on behalf of the State. The first is that two persons on whom two different orders were passed have joined in one petition. We see no objection to this course when the case of these two persons is exactly the same.

19. The next objection is that the petition has been filed by the applicants in their own names, and not on behalf of their firms, and that Mithalal did not file any affidavit. The applicants have mentioned in the hearing that they are partners of their respective firms. This, in our opinion, is sufficient to show that the applicants are interested in the stocks concerned. It was unnecessary for Mithalal to swear another affidavit when the application was one, and one of the applicants had sworn an affidavit in support of it.

20. The last question is as to what order should be passed in this case. The difficulty has arisen because the grain has been sold, and cannot now be returned in kind. Learned Counsel for the applicants urges that he should be ordered to be paid the equivalent of the grain in money to be fixed by this Court. He says that it would not be possible for him to recover the money in a Civil Court, as the suit would be barred u/s 16 of the Essential Supplies (Temporary Powers) Act, 1946, which is now in force in Rajasthan. Learned Counsel for the State draws our attention to Section 45, proviso (g), of the Specific Relief Act, which prohibits the making of an order under that section to enforce the satisfaction of a claim upon the Crown. The matter is not free from difficulty; but the power under Article 226 is unfettered by the restrictions given in Section 45 of the Specific Relief Act. Further, there appears to be no other remedy open to the applicants, and it is not possible for us now, in view of the fact that the grain has been sold, to order its return to the applicants. As we are holding that Clause 25 of the Rajasthan Foodgrains Control Order is void, as it is against the provisions of Part III of the Constitution, the only possible relief that can now be given to the applicants is to order that fair compensation should be given to them, as the grain cannot be returned. We consider that in the circumstances of this case, Rs. 17/- a "maund" is the fair compensation, and we direct that the State of Rajasthan shall either return the equivalent in grain to the applicants, or, if it cannot do so, pay compensation to them at Rs. 17/- per "maund".

21. The applicants will get their costs of this proceeding from the State.