(2001) 02 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 3773 of 1991

Navjivan Roller Flour and Pulse Mills Ltd. APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 3, 6A

Citation : (2001) 21 GLH 341 : (2001) 2 GLR 1467 : (2001) 3 RCR(Criminal) 708

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : D.F. Amin, for the Appellant; Manisha Lavkumar, A.G.P., for the Respondent

Judgement

M.S. Shah, J.—In this petition under Arts. 226 and 227 of the Constitution, petitioner-M/s Navjivan Roller Flour & Pulse Mills Ltd. has challenged the order dated 22-10-1990 passed by the State Government in the Food & Civil Supplies Department u/s 6A of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") for confiscating 50% of the seized foodgrains i.e., 50% of Rs.1,21,837/-.

2. The petitioner is running a flour mill and possesses licences as a producer and wholesale dealer in respect of various foodgrains. The controversy in the present petition is only about certain quantities of wheat. The petitioner was served with a show-cause notice calling upon the petitioner to show cause why action should nor be taken against the petitioner and the seized stocks should not be confiscated on account of the following irregularities :-

(i) Although the petitioner was holding licence as a wholesale dealer (No. 213 of 1981), the petitioner did not maintain any stock register.

(ii) The petitioner had purchased from the Food Corporation of India between January, 1988 and March, 1988 wheat to the extent of about 10,83,271 Kgs., out of which 7,04,921 Kgs. of wheat was mentioned in the stock register, but the balance quantity was sold away at Ahmedabad between 11th and 17th March, 1988 without bringing the same into the godown or without entering the same in the stock register. The said quantity sold was not reflected in the stock register.

(iii) The transactions of purchase and sale of wheat are not intimated to the Civil Supply Officer.

(iv) The invoices do not contain the licence number of the purchasers.

(v) The price displayed on the board was Rs. 315/-, but there were six invoices mentioning higher price than that displayed on the board.

(vi) The quantity of grams stored in the godown was in excess of the permissible quantity. (vii) As against the purchase of grams to the tune of 593 Kgs. certain quantity was shown less in the stock register, and accordingly, the stock register was not maintained properly.

The petitioner submitted his reply and contended that -

(i) the petitioner was possessing licence as a wholesaler as well as a producer and the petitioner maintained the stock register as a wholesaler and the register is also duly stamped and signed by the Licensing Authority, but since the petitioner''s dealings are under the producer''s licence, nothing is written in the stock register maintained as a wholesaler.

(ii) wheat has been deleted from the Licensing Order of 1981 vide order dated 27-10-1986 from Schedule I, Part i of the Gujarat Essential Articles (Licensing Control & Stock Declaration) Order, 1981. Even otherwise, 3,00,000 Kgs. of wheat was not received at the petitioner''s premises because the same was purchased from the Food Corporation of India and was required to be directly delivered at the purchaser''s premises without bringing the same to Dahod. Since the purpose of maintaining stock register is to record the quantity received at the godown and delivered from the godown and since the wheat in question was not received at the godown, the wheat received and sold directly at Ahmedabad was not required to be mentioned in the stock register. In any case, the stock in question was reflected in the purchase register and sale register, and therefore, there was no intention to conceal the transactions.

(iii) As regards irregularity No. (iii), since the authorities themselves have found that the same was not proved, it is not necessary to refer to the petitioner''s defence.

(iv) As far as irregularity No. (iv) is concerned, the petitioner''s defence was that where the quantity sold was less than 10 Qtls., the petitioner had not mentioned the licence numbers as they were purchasers who were not eligible to be licence holders. When the quantity was more, the licence numbers of the purchasers were mentioned.

(v) As far as irregularity No. (v) is concerned, it was submitted that the board displayed the price at Rs. 315/- on the basis of the previous contracts, but when the price received under the new contract was sold, the price was reflected at the higher rate as per the new contract.

(vi) As regards irregularity No. (vi), it was contended that since the flour mill was closed on the relevant date which was a Monday, the stock at the godown marginally exceeded the ceiling limit to the extent of only 1.138% of the sanctioned ceiling limit.

(vii) As regards irregularity No. (vii), it was submitted that the mistake was a slip of pen, but the same was also negligible.

After considering the reply, the Collector passed the order dated 4-2-1989 (Annexure "D") holding that the irregularities alleged against the petitioner were proved, and therefore, out of the seized quantity worth Rs. 12,18,372/-, an amount of Rs. 1,21,837/- was confiscated.

The petitioner carried the matter in appeal before the State Government. The appellate authority did not accept the petitioner''s arguments except in respect of irregularity No. (iii), but held that the other irregularities were proved. However, looking to the nature of the irregularities, the appellate authority reduced the amount to be confiscated to 50% of Rs. 1,21,837/- as per the order dated 3-11-1990. Hence, the present petition.

3. Mr. D. F. Amin, learned Counsel for the petitioner has submitted as under :-

(i) Wheat was deleted from Schedule I, Part I to the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as "the Licensing Order of 1981). Hence, the respondents did not have any jurisdiction or power to take any action against the petitioner and the orders of the authorities are required to be quashed and set aside arid declared null and void.

(ii) In any view of the matter, the authorities did not apply their mind in considering the petitioner''s defences and the findings given by the authorities were not borne out by record.

(iii) In any view of the matter, even the final order of the State Government confiscating the material worth more than Rs. 60,000/- (50% of Rs. 1,21,837/-) is too harsh and arbitrary. In support of this submission, reliance has also been placed on the Circular dated 11-11-1987 (Annexure "G") issued by the State Government in the Food and Civil Supplies Department instructing the subordinate officers not to take action in case of technical irregularities.

4. On the other hand, Ms. Manisha Lavkumar, learned Assistant Government Pleader appearing for the respondents has made the following submissions :-

(i) Although wheat was deleted from the schedule to the Licensing Order of 1981, it continued to be governed by the Gujarat Essential Articles Dealers (Regulation) Order, 1977 (hereinafter referred to as "the Regulation Order of

1977"). Clause 2(4) of the said Order gives a definition of dealer which would cover the petitioner as the petitioner carried on the business of purchase, sale, storage or manufacture of wheat which is one of the essential articles included in Schedule I Part A.

(ii) The authorities have given concurrent findings of fact that the petitioner had committed the irregularities alleged against the petitioner except irregularity No. (iii). The petitioner was required to enter in the stock register all the quantities of stock purchased and sold irrespective of the fact whether the stock was actually received at the godown at Dahod. The quantity of wheat sold at Ahmedabad without reflecting the same in the stock register was substantial. The other irregularities alleged against the petitioner were also proved and the same cannot be overlooked merely on the ground that the same were minor.

(iii) It is further submitted that looking to the nature of the irregularities and particularly irregularity No. (ii), the order passed by the State Government was just and proper. The seized material was of value of more than Rs. 12,00,000/-. The Collector had confiscated only the material worth Rs. 1,21,837/- and the State Government went further and reduced the confiscation amount to only 50% of Rs.1,21,837/-.

5. Having heard the learned Counsel for the parties, the Court would first deal with the preliminary contention raised by Mr Amin for the petitioner that the irregularities committed by the petitioner could not be subjected to any action under any of the statutory orders issued under the Essential Commodities Act. It is true that by order dated 27-10-1986 wheat had been deleted from Schedule I Part I to the Licensing Order of 1981, and therefore, no action could be taken against the petitioner for violation of any of the clauses of the said Licensing Order of 1981 or for the breach of any of the terms and conditions of the licence issued thereunder. This legal position has been acknowledged even by the Collector in his order dated 27-12-1988 at Annexure "B", but the Collector has noticed that wheat still continues to be one of the essential articles governed by the Regulation Order of 1977.

6. Mr. Amin for the petitioner would, however, submit that the petitioner is not covered by the definition of dealer in the said Regulation Order of 1977. Clauses 2(4) and (5) insofar as the same are relevant read as under :-

"2(4). ''dealer'' means a person who whether for commission, remuneration or otherwise and whether or not in conjunction with any other business, carries on the business of purchase, sale, storage for sale or manufacture, or any essential articles and includes his representative or agent, but does not include -

(a) for the purpose of all Clauses except Clauses 3 and 4 of this order a person in relation to any essential commodity in respect of which he holds or is required to hold a license, or as the case may be, an authorization under any order for the time being in force, issued by the State Government u/s 3 of the Essential Commodities Act, 1955;

(5) ''essential article'' means any of the articles specified in Schedule I."

There is no dispute about the fact that wheat is an essential article specified in Schedule I to the Regulation Order of 1977.

The contention of Mr. Amin is that in view of the above definition a person holding a licence under any order for the time-being in force issued by the State Government u/s 3 of the Essential Commodities Act, 1955 is not a dealer except for the purposes of Clauses 3 and 4. It is stated that the petitioner still holds a licence under the Licensing Order of 1981 since last about 20 years, and therefore, any person holding such a license goes out of the definition of dealer under the Regulation Order of 1977.

7. The argument is misconceived in view of the admitted position that wheat is not one of the items covered by the Licensing Order of 1981 on account of its deletion in the year 1986. In that view of the matter, as far as wheat is concerned, the Licensing Order of 1981 cannot be said to be an Order for the time-being in force as contemplated by the definition of dealer under consideration. The intention of the rule making authority appears to be quite obvious if a dealer is already subjected to various restrictions under the Licensing Order of 1981, he need not be subjected to the same or similar restrictions under the Regulation Order of 1977. But as far as wheat is concerned, when the petitioner is admittedly not subjected to the Licensing Order of 1981, it cannot be the intention of the State Government which has issued the aforesaid statutory order that the petitioner should go out of the operation of the Regulation Order of 1977 also even though wheat is one of the essential articles specified in Schedule I to the Regulation Order of 1977. Both the statutory orders under the Essential Commodities Act, 1955 are accordingly required to be read harmoniously and in light of the object of the Essential Commodities Act, 1955 as reflected in the preamble to the Act, which reads as under :-

"An Act to provide, in the interests of general public, for the control of production, supply and distribution of, and trade and commerce in, certain commodities."

In view of the above, it is clear that persons who deal in articles which fall within Schedule I to the Licensing Order of 1981 are not to be governed by the Regulation Order of 1977 except that Clauses 3 and 4 of the Regulation Order of 1977 will still apply to such dealers covered by the Licensing Order of 1981. But persons who deal in essential articles falling in the Schedule to the Regulation Order of 1977 but not falling in the Schedule to the Licensing Order of 1981 will be governed by all the Clauses of Regulation Order of 1977.

Clause 9 of the Regulation Order of 1977 reads as under :-

"9. Maintenance of Register of Accounts - (1) The dealer shall maintain a register of daily stock showing correctly the opening stock for the day, stock received during the day, the place from where and the source from which received and the stock delivered or otherwise removed and the closing stock of such of the essential articles in which the dealer carries on his business.

(2) The dealer shall complete, as far as possible, his accounts for the day immediately after closing his business for the day and shall in any case complete the same before opening of the premises the next day."

Clause 3 requires the dealer to display at the entrance or at some other conspicuous part of the premises where he carries on his business the availability or non-availability of the essential articles, opening stock, prices etc. The petitioner was, therefore, required to comply with all the requirements of various clauses of the Regulation Order of 1977. In this view of the matter, the preliminary contention of Mr. Amin must be rejected.

8. Coming to the merits of the controversy, one irregularity which merits serious discussion is not entering the quantity of stock to the tune of 3,78,300 kgs. of wheat in the stock register maintained by the petitioner at Dahod. The petitioner''s case is that from January to March, 1988, the petitioner had purchased 10,83,271 kgs. of wheat from the Food Corporation of India and the same was required to be delivered at Ahmedabad without bringing it to Dahod otherwise it would have only meant wasting extra time and freight for taking it to Dahod and bringing it back to Ahmedabad.

The learned A.G.P., however, vehemently submitted that even if the stock was not required to be physically brought at the petitioner''s godown at. Dahod, the same was required to be entered in the stock register and mere entries in the purchase register would not suffice.

9. A perusal of the aforesaid provisions of Clause 9 supports the submission made by learned A.G.P. Ms. Manisha Lavkurnar that clause 9 does not state that only the stock received at the godown and the stock delivered from the godown are required to be mentioned in the stock register. The purpose of maintaining a stock register is to enable the authorities to find out the actual stock handled by the dealer irrespective of the fact whether the stock was received at the godown, and then delivered or whether it was delivered directly without bringing it to the godown. Looking to the fact that the Essential Commodities Act, 1955 has been enacted for empowering the Government to exercise the powers for maintaining supply of essential articles and for securing their equal distribution and availability at fair price, the submission made by the learned A.G.P. is more in consonance with the object of the Regulation Order of 1977. It must, therefore, be held that the petitioner being a dealer was required to enter in the stock register the essential articles purchased by him as well as sold by him irrespective of the fact whether they were received at the godown or not.

10. As far as the irregularity about non-maintenance of the stock register as a wholesaler is concerned, Mr Amin submits that since the petitioner was also a producer and was maintaining a register as a producer and as the petitioner was primarily engaged in the business of running a Hour mill, the petitioner was not

required to have, any transaction as a wholesaler, and therefore, there were no entries in the wholesale register, but all the entries were made in the producer register. As regards irregularity Nos. (iv), (vi) and (vii), it appears that they are minor. It is true that there was a few discrepancies like shortage of 1 Qtl. of grains in the stock registered for 18-7-1988, but looking to the fact that the stock purchased was 593 Qtls. of grains, the discrepancy appears to be comparatively minor and insignificant. The petitioner''s explanation for irregularity No. (v) also was required to be accepted as plausible.

11. Coming to the last contention of Mr. Amin that the order of confiscation even to the extent of 50% of Rs. 1,21,837/- is harsh, the learned A.G.P. submits that the order cannot be said to be harsh when the petitioner had not entered in the stock register the quantity of wheat which was sold at Ahmedabad. This defence, of course, merits consideration, but at the same time, Mr. Amin submits that the phraseology of Clause 9 was capable of being interpreted as reading "only stock being received at the dealer''s premises and delivered from the dealer''s premises" is required to be recorded in the stock register as the stock register is being maintained at the godown, and therefore, the petitioner was of the bona fide belief that only stock being received and delivered from the godown was required to be reflected in the stock register. In any case, the petitioner''s averment that the stock in question was reflected in the purchase register and considering the fact that there was no price control as far as wheat is concerned and considering the following dictum of Their Lordships of the Apex Court in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, and that there is no allegation of adulteration or black marketing, the Court is of the view that the ends of justice would be served if the material to be confiscated is reduced from 50% to 25% of Rs.1,21,837/-.

"Further, the goods seized are liable to the confiscated only if the Collector is satisfied about violation of the Control Order. The language of the Section and its setting indicate that every contravention cannot entail confiscation. That is why the Section uses the word ''may''. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock.".

12. Rule is made absolute to the aforesaid extent with no order as to costs.

13. Order modified.

