(1983) 07 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Special Appeal No. 52 of 1983

New Bharat Rice and General Mills APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 18-07-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6)
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1984 Raj 170

Hon'ble Judges : S.K. Mal Lodha, J;K. Bhatnagar, J

Bench : Division Bench

Advocate : S.N. Sharma, for the Appellant; H.N. Call, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—Having heard the learned counsel for the appellant and the learned Government Advocate on July 18, 1983. we reached the conclusion that this appeal had no merits and it was accordingly, dismissed. We ordered that the reasons in support of the order will be recorded later on.

2. Now, we proceed to set out the reasons in support of the conclusion, which we had reached.

3. The appellant who was petitioner in the writ petition ander Article 226 of the Constitution, has filed this appeal u/s 18 of the Rajasthan High Court Ordinance, 1949. questioning the correctness of the order dt. Jan. 20, 1983 of the learned single Judge of this Court, by which he dismissed S. B. Civil Writ petition No. 176 of 1983 in limine.

4. The appellant hereinafter will be referred to ms ''the petitioner'' and the respondents State of Rajasthan and Union of India, will be referred to as ''the non-petitioners No. 1 and 2 respectively.

5. The petitioner M/s. Nay Bharat Rice & General Mills. Industrial Area.

Hanumangarh Junction, is a partnership firm. A rice mill was erected by the petitioner for doing the work of rice milling. It has obtained a licence under the Rice-Milling Industry (Regulation) Act (No. XXI of 1958). After comma into force of the Raiasthan Rice Procurement (Levy) Order, 1982. the petitioner is required to give 50% levy to the State Government and after giving the delivery of this levy it is entitled to sell the remaining 50% of the rice in the market,

6. Notification No. F. 17 (III) Kha. VI/Vidhi/80 was published in the Raiasthan Gazette. Extraordinary, on Dec. 24, 1982. Under the said Notification, which was issued in exercise of the powers given under Cl.18 of the Rajasthan Trade Articles (Licencing and Con-troll Order, 1960 (hereinafter referred to as ''the Order''), it is provided that a wholesale seller and rice-miller could not keep in stock at one time more than the quantity specified therein. The limit was shown as 1000 qtis. for Urban (Municipal) area and 500 qtls. for rural (Panchayat) area. This Notification was made effective from Dec. 31, 1982. The District Rice-Millers'' Association, made a representation on Dec. 31, 1982 before the Pood Commissioner. Raiasthan. Jaipur, praying therein that the rice-millers may be exempted from the Notification. which prescribes the stock limits for the rice-millers. No reply was received from the State Government as well as the Food Commissioner. The petitioner filed the writ petition on Jan. 18, 1983. challenging the aforesaid Notification, which has been marked as Ex. 3.

7. The learned single Judge, by his order dt. Jan. 20, 1983. rejected the writ petition summarily. The petitioner, therefore, lodged this special appeal as aforesaid.

9. A show cause notice was ordered to be issued to the non-petitioners. On July 6, 1983. Mr. S. N. Sharma. learned counsel for the petitioner stated that Union of India has been impleaded as pro forma party-respondent for the reason that the Notification Ex. 3 has been issued after the concurrence of the Central Government. He farther submitted that for the final disposal of the appeal. Union of India, is not a necessary party as the Notification (Ex. 3) has been issued by the State Government. This was not disputed by Mr. H. N. Calla. learned Government Advocate. On that day. Mr. S. N, Sharma. learned counsel for the appellant stated that this special appeal may be disposed of finally at the admission stage. As Mr. Calla. learned Govt. Advocate. had no objection, we ordered that the special appeal shall be disposed of finally at the admission stage. Learned Government. Advocate filed re-ply on July 14, 1983 contesting? the writ petition.

9. We heard Mr. S. N. Sharma, learned counsel for the appellant in support of the appeal and Mr. H. N. Calla. learned Government Advocate.

18. Mr. S. N. Sharma contended that the petitioner is ''manufacturer'' of rice and therefore, it does not fall within the definition of ''dealer'' as defined under the Order for the ''manufacturer'' is not a dealer and no restriction could be placed in restaect of the stock, as this will be a restriction on production. It was next

submitted by him that if the petitioner which is doing'' the work of rice-milling, is taken to be a dealer as envisaged by the Order, it is discriminatory for the reason that no such restrictions could be imposed as the manufacturers of sugar. Khandsari and other food stuff have been excluded. Mr. H. N. Galla learned Government Advocate, stoutly opposed both the contentions raised by the learned = counsel for the appellant.

11. The first question, that therefore arises for consideration is whether the petitioner which does the work of rice milling, is a ''dealer'' as defined in Clause 2 (a) of the Order. It may be stated that the Order was made in exercise of the powers conferred by Section 3 of the Essential Commodities Act (Central Act No. X of 1955) read with the orders of the Government of India in the Ministry of Agriculture & Irrigation (Department of Food) published under G. S. B. Nos. 452 (E) dt. Oct. 25, 1972.'' 168 (E) dt. Mar. 13, 1973 and 800 dt. June 9, 1976 and in the Ministry of Industries and Civil Supplies (Department of Civil Supplies and Co-operation) published under S. Os. 681 (E) and 682 (E) dt. Nov. 30, 1974 and with the prior concurrence of the Central Government.

12. Section 3 of the Essential Commodities Act (No. X of 1955) (for short ''the Act'')'', in so far as it is material for the purposes of this case, reads as under :--

"3. Powers to control production. supply, distribution etc. of essential com modities :--

(1) If the Central Government is of opinion that it is necessary or expedient so to do far maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution, and availability at fair prices or for se-curing any essential. Commodity for the defence of India or the efficient conduct of military operations it may, by order provide for regulating or prohibiting the production, supply and distribution, thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1) an order made thereunder may provide-

.....

(d) for regulating by licence, permits or otherwise the storage, transport, distribution, disposal acquisition, use or consumption of any essential commodity."

Clause 2 (a) of the order defines ''deader''''as under:--

" ''Dealer'' means a person, a firm, an association of persons or a Co-operative Society other than a National and State level Co-operative Society, engaged in the business of purchase, sale or storage for sale of any trade article whether or not in conjunction with any other business and includes his representative or agent but does riot include:--

(i) a person who holds or is in possession of agricultural land under any tenure or any capacity and on which he raises or has raised crop of foodgrains. oilseeds or whole, pulses: (ii) a manufacturer of sugar, gur and khandsari:

(iii) a producer of pulses and edible oils."

Cl. 2 (v) defines ''trade article to mean any commodity mentioned in Schedule I or Schedule II. Para ''A'' of Schedule I. deals with Foodgrains, ''Rice'' has been mentioned at item No. 6. Wholesaler'' has been defined in Clause 2 (w) as a dealer who sells any one or more of trade articles mentioned in Schedule I to other dealers or bulk consumers. The petitioner does the work of rice-milling. After that, it sells the same. It may be mentioned that in Schedule I para ''E'' dealing with other articles, sugar. Gur and Khandsari. Kerosene Oil and coal have been states as trade articles. In the definition of ''dealer'' in Cl. 2 (a), the manufacturer of sugar, gur and Khandsari is not ineluded. The Notification (Ex. 3). provides lor ''stock limits in'''' urban (Municipal) area and rural (Panchayat) area.

It is clear - from the Notification that in regard to the quantity of rice-milling; no restriction has been imposed. Stock limit has been fixed for storage of the rice by the wholesalers and rice-millers and that limit has been provided in the Notification Ex. 3, Fixing of the stock limit for the purpose of storage, in our considered opinion, cannot be construed as fixing of limit for the purpose of manufacture or for production. The petitioner does sell the rice after milling and its bus-ness is of sale of rice which is a trade article and therefore, it is a dealer within the meaning of Clause 2 (e) of the Order. For these reasons, we are unable to agree with the learned counsel for the appellant that the petitioner is not a dealer, as defined in Clause 2 (e) of the Order. The Notification Ex. 3 applies to it as it prices the business of rice-milling for the purpose of sale or storage for sale as a dealer. The first contention is therefore, repelled.

13. Before we examine the second contention let us read Clause 18 of the Order, which is as follows:--

"Restriction on possession of trade articles :--No person shall ..... store or have in his possession at any time any trade article mentioned in Schedule I and Schedule II in Quantity exceeding the limits fixed-

(i) under an order issued by the Central Government: or

(ii) by the State Government with prior concurrence of the Central Government by issuing a notification in official Gazette from time ''to time."

14. Coming to the second contention relating to discrimination, we may notice Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others, wherein it was observed:--

"The notification under Clause 18 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 Art, 19(6) of the Constitution."

With respect to the reasonable restrictions on the right conferred by Article 19(1)(g) of the Constitution, it was observed in Laxmi Khandsari and Others Vs. State of U.P. and Others,

"As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down any hard or fast rule of universal application, but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. It is manifest that in adopting the social, control one of the primary, considerations which should weigh with the Court is that as the directive principles contained, in the Constitution aim at the establishment of an egalitarian society so as to bring about a welfare State within the framework of the Constitution, these principles also should be kept in mind in judging the Question as to whether or not the restrictions are reasonable. If the restrictions imposed appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable."

The principles laid down in the aforesaid two decisions of the report are fully applicable to the case on hand. The Notification . Ex. 3. providing for the maximum Quantity of rice which may be possessed by a rice-miller who as held above is a dealer, at any one, time is to prevent hoarding of rice. It is a reasonable restriction. The Notification cannot, thus, be characterised as discriminatory, for it does not include the manufacturer of sugar. Gur and Khand-sari. The second contention is also reject-ed.

15. A contention was raised, by Mr. H. N. Caila. learned Government Advocate that as the petitioner has obtained licence as a dealer under the Order, it is not now open to it when it filed the writ petition to contend that the petitioner is not a dealer as defined in Cl. 2 (e) of the Order. According to him the petitioner is estopped from questioning that the Order does not apply to it.

16. In view of the conclusion, that the petitioner is a ''dealer'', as defined in Clause 2 (e) of the Order, we do not propose to examine this contention any further.

17. No other point was pressed for our consideration.

18. This appeal has no merit and it is accordingly, dismissed.

