(1986) 10 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 1319/86

Oswal Agro Mills Ltd. and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-10-1986

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (1988) 16 ECC 198 : (1988) 33 ELT 70

Hon'ble Judges : Yogeshwar Dayal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : D.D. Thakur and Rajiv Dutta, for the Appellant; Rattan Lal, for Respondents 1 to 5 and R.K. Joshi, for the Respondent 6, for the Respondent

Judgement

Malik Shareif-Ud-Din, J.—Rule D.B.

2. This petition Along with CM. 1765 of 1986 came up for preliminary hearing before us on 26th September, 1986 at show cause stage. But, after hearing the learned counsel for the parties at length, we have with the consent of the counsel for the parties decided to finally dispose it off.

3. In this petition the petitioners are challenging the supply of raw-material i.e. split palm stearin fatty acid and crude palm stearin to the petitioners by the STC, respondent No. 6, for the quarters July September, 1984, October - December, 1984 and for all the four quarters of the year 1985 at the present prevailing market price and not at the price which was fixed for that raw-material during the quarters when it was supplied to every other actual user. The case of the petitioner is that the foresaid raw-material was illegally and arbitrarily withheld by the respondents at the relevant time and when the supply of raw material was eventually made by STC, respondent No. 6 (pursuant to the orders of this Court) they demanded from the petitioners prices which were prevailing on the date of actual supply. The petitioners have, Therefore, submitted that their quota of aforesaid raw-material for the quarters July - September 1984 and October - December 1984 as also for the four quarters of the year 1985 be supplied to

them at the price which was fixed for that quarter on the basis of which raw-materials were supplied to other actual users and not at the higher prices, as demanded by respondent No. 6, STC. The petitioners have further made a grievance that when after a great deal of pursuation the respondents were ready to supply the raw-material to the petitioners, they began to demand illegally the carrying and other charges from the petitioners.

4. The petitioners, inter alia, carry on the trade and business of manufacturing soap and the basic raw-materials for manufacture of soap are supplied by respondent No. 6 because the same are imported by it as the canalising agency appointed by the Government of India for importing these raw materials. These raw materials are supplied to actual users for manufacture of soap of various kinds of fatty acids. In this way, the petitioners for carrying on their business activity are wholly dependent upon STC for receiving the basic raw materials.

5. To begin with, respondent No. 3 on 9-11-1983 issued an order under Clause 8(b) of the Import Control Order, 1955 placing petitioners in abeyance for a period of six months which in other words meant that the petitioners licenses as well as their entitlements to allotment of the imported raw-materials were kept pending during this period. This order of abeyance continued up to 8-5-1984 but on 9-5-1984 respondent No. 3, The Deputy Chief Controller of Imports and Exports, Ministry of Commerce, extended the earlier order of abeyance for a further period of six months i.e. up to 8-11-1984. In the meanwhile, respondent No. 3 also issued a show cause notice under Clause (8) of the Import Control Order 1955 with the allegations of contraventions of the Imports and Exports (Control) Act, 1947 by the petitioners, Pursuant to the show cause notice, hearing by respondent No. 3 was completed sometime in September, 1984. The case of the petitioners is that no final orders pursuant to this show cause notice were ever passed by respondent No. 3.

6. On 5-11-1984 the petitioners applied to respondent No. 5(DGTD) for releasing their quota of raw materials for the periods July - September and October - December 1984 but respondent No. 5 failed to deliver the quota to the petitioners. This was done in spite of the fact that the order of abeyance conveyed to the petitioners had expired in the month of November, 1984.

7. Having made repeated representations for supply of the raw materials and having ailed to persuade the respondents to discharge their legal obligations the petitioners under the stress of circumstances filed a writ petition No. 2687/84 challenging the non-allocation of raw materials in favor of the petitioners for the quarters July - September 1984 and October - December 1984. This was followed by an order of this Court dated 12-7-1985 in pursuance of a miscellaneous petition filed by the petitioners directing the respondents to allocate, release, process and supply the quota of split palm stearin fatty acid and palm fatty acid normally allotable to the petitioner from July 1984 onwards and continue to supply further quota periodically without any hitch or demur. By another writ petition No. 489/85 the petitioners in this Court had challenged the

debarment order dated 8-8-1984 and on 19-4-1985 this petition was admitted after notice to the respondents and the order of debarment was stayed qua the petitioners. Against this order of debarment the Union of India, respondent No. 1 preferred a SLP under Article 136 of the Constitution of India against the petitioners before the Supreme Court and the Supreme Court on 2-4-1986 was pleased to dismiss the SLP filed by the respondents.

8. Further facts are that despite an order of this Court dated 17th December, 1984 followed by another order dated 12th July, 1985 and despite repeated and long drawn correspondence between the petitioners and the respondents, the respondents failed to make the necessary allocation of raw material in favor of the petitioners as a result of which the petitioners were compelled to file a Civil Contempt of Court Petition in this Court. In that contempt petition notice was issued to the Chief Controller of Imports and Exports, respondent No. 2, to appear before the Court in person. The case of the petitioners is that it as only then that before the date fixed for personal appearance of respondent No. 2 in the Court that a letter was issued by him on 12-2-1986 to the petitioners informing them that they have instructed the STC and DGTD, respondents to implement the orders of this Court to release the canalised material as per their entitlement. Having received this letter the petitioners withdraw the contempt petition.

9. In the meanwhile, on 6-2-1986 a letter was also addressed by the Development Officer Shri N.K. Aggarwal of the Oil, Soap and Cosmetic Division to Shri S.S. Sachdeva, Marketing Manager STC (Fatty Acid Division) to make the necessary allotment of raw-materials to the petitioners in line with the decision taken by them in the case of M/s. Vegetable Vitamin Foods Co. Pvt. Ltd., Bombay.

10. At this stage we find it necessary to notice that in the case of M/s. Vegetable Vitamin Foods Co., Bombay, a writ petition No. 776/85 was preferred before the Bombay High Court. This writ petition was by and large based on similar facts as the case of the petitioners in which the High Court of Bombay directed the respondents to supply palm stearin fatty acid and palm fatty acid for the quarter July - September 1984, October - December, 1984, January - March, 1985, April - June, 1985 and July - September, 1985 at the prices prevalent in the relevant quarters. Interestingly, in the case of the said M/s. Vegetable Vitamin Food Co. which came up before the Bombay High Court when the allocation of raw-materials was made to the said company pursuant to the orders of the Bombay Court, the prevailing rate of price of raw material at that time was less than the rate which was prevalent at the time when the entitlement had actually accrued to the said company. The respondents in that case took the stand that they will charge higher rate from the said company because according to their policy they charge only those rates which were prevalent for the quarters when the entitlement accrued and not the rate that was prevalent when the supply was actually made.

11. In short, the question that arises for consideration before us is whether the

respondents are liable to supply the aforesaid raw material to the petitioners at the rates prevalent in the quarters July - September, 1984, October - December, 1984 and during the four quarters of 1985, and whether in the light of the peculiar facts and circumstances of this case, the respondents are entitled to claim carrying charges for these supplied despite the fact that it were the respondents who had deliberately withheld the supplies on one or the other pretext despite the orders of this Court dated 17th December, 1984 followed by the order dated 12-7-1985 directing the respondents to release the allocated raw materials periodically without any hitch or demur. The case of the petitioners is that the supplies were withheld illegally and despite orders of the Court and it was only on 12-2-1986 that they were informed by the Chief Controller of imports and Exports that he has instructed STC and DGTD to implement the orders of this Court.

12. We are really surprised that it took such a long time for the respondents to implement the orders of this Court and this they did despite the fact that they were parties to the petition.

13. From the detailed facts mentioned in the writ petition it is clear that the respondents took a very long time to order release of quota in favor of the petitioners despite orders of this Court and when ultimately the quota was supplied it was supplied at the prevalent market price which was objected to, by the petitioners. This resulted in another long drawn course of correspondence between the petitioners and the concerned respondents in which the petitioners had made it very clear that they were entitled to receive the quota of raw-material at the price at which it was made available during the relevant quarters to the other actual users. The result was that the offers made for release of quota were sometimes cancelled. At times also bulk supply was offered to the petitioner, thereby making it impossible for the petitioners to lift the quotas on short notice for want of huge funds. It was in this way that an attempt seems to have been made to further complicate the issue and to make it impossible for the petitioner to lift the quotas regarding which entitlement had accrued to them.

14. At this stage after having noticed the case of the petitioners in detail we may at once point out that on August 13, 1986, Mr. Rattan Lal, learned counsel for respondents 1 to 5 put in his appearance and submitted that he is instructed to say that they have not to file any reply to the show cause notice. Only respondent No. 6 had filed his return to the show cause. The case of respondent No. 6 in short is that under the law they had a right to put the company in abeyance. It is admitted that this Court by its order dated 17th December, 1984 and further order dated 12th July. 1985 had directed release of quotas in favor of the petitioners for the quarters 3uly - September, 1984, October - December, 1984 and for the four quarters of 1985. It is, however, added that the orders of allocation were only passed by DGTD respondent No. 5 on 6-2-1985 for the quarters 3uly - September and further allocations were made by DGTD vide its letter dated 13-2-1986. It is stated that in pursuance of these letters an offer

was made to the petitioners at the prevalent prices. According to respondent No. 6, the petitioners'' claim that they are entitled to quota at the price that was charged during the quarters when entitlement arose in their favor is not tenable. Further stand of respondent No. 6 is that it is charging the price prevalent at the time of issuance of the allocation order irrespective of the period for which it pertains. It is further stated by respondent No. 6 that in the case of M/s. Vegetable Vitamin Food Company prices relevant to particular quarters were charged only in compliance with the orders of the Bombay High Court and not in normal course. Respondent No. 6 denied that it is adopting two sets of criteria for supply of raw materials to two similiarly situated parties. It is further stated by respondent No. 6 that in certain cases, as per condition of the said allocation order, the respondent is entitled to charge the carrying charges and that this is so only when. a party wants accommodation for lifting the raw material and not as a penalty or otherwise. In its affidavit dated 18th 3uly, 1986 it is further submitted that the petitioners are not importing split palm stearin fatty acid as per present policy of the Government.

15. We have earlier referred to our order dated'' 13th August, 1986 in which Mr. Rattan Lal, counsel for respondent Nos. 1 to 5 had stated, that he is under instructions not to file any reply. But despite that we find on record an affidavit by respondent No. 3 which on a close perusal appears to be not very much relevant. The affidavit of respondent No. 3 is vague and evasive. All that is relevant for our purposes is the stand that in compliance with the orders of the Court instructions were issued to respondent Nos. 5 and 6 to release the quota in favor of the petitioner on 5-2-1986.

16. Having given our anxious consideration to the facts and circumstances of the case it appears to us that even though the orders of this Court, dated 17-12-1984 and 12-7-1985 were in existence directing the respondents to release the quotas in favor of the petitioners, the respondents seem to have deliberately delayed issuing instructions to respondents 5 and 6 to release the quotas and the delay in so far as the quarters 3uly - September, 1984 and October - December, 1984 are concerned, was for more than a year and in the case of four quarters of 1985 it was more than six months. We are rather surprised at the manner this delay has occurred. If the Court orders were complied with in time and the raw-material was made available, then the price demanded would be the price that was prevalent during those quarters. Obviously, the petitioners were deprived of the allocations by the respondents wrongfully and illegally and there is no merit in the claim of the respondents that they had not withheld the supply. We are surprised to find that the release order was actually issued after the motion for contempt of Court was moved and the respondent No. 2 was directed to appear personally in the Court. This conduct of the respondents speaks for itself and it is not necessary for us to make any comments. This, however, clearly leads to the conclusion that the petitioners were illegally deprived of the quotas despite the orders of this Court which had entitled them to receive the quotas during the relevant quarters.

17. As we have pointed out earlier, in the case of M/s. Vegetable Vitamin Food Company which came up for hearing before the Bombay High Court and the facts of which case are almost similar to the present case, the Bombay High Court passed an order directing release of the raw-material at the price prevalent in the relevant quarters. This order was not taken in the appeal by the respondents and it was complied with. In this case, when the allocations were made pursuant to the orders of the Bombay High Court the rate of the price for the raw-material at that time was less than the rate which was prevalent at the time of actual quarter and the stand that the respondents had taken therein was that they will charge only those rates which were prevalent during the quarters and not what was the rate which was prevalent on the date of supply.

18. In the present case, however, the stand of the respondents has considerably shifted inasmuch as it is stated by respondent No. 6 that according to the policy they would charge the present rates and not the rates which were prevalent during the quarters when entitlement accrued. The respondents are State and we find it is difficult to agree with the stand taken particularly in view of the fact that the petitioners in the present petition are similarly situated as M/s. Vegetables Vitamin Food Company and the facts of both the case by and large are similer.

19. In view of these facts, we are of the view that the respondents are bound to make supplies of the raw materials for all the aforesaid quarters to the petitioners at the rates prevalent during the quarters when entitlement had accrued in favor of the petitioners. That would be the rate at which it was supplied to the other actual users during those quarters. This would be particularly so due to the fact that quota was denied to the petitioners illegally in utter disregard of the orders of this Court. We are further of the view that the respondents cannot be allowed to ask for payment of carrying charges particularly in the light of peculiar facts and circumstances of this case. We have noticed that in the first instance allotment was denied to the petitioners for a long time despite the orders of this Court and when it was offered in February, 1986, it was offered at the prevalent price which the petitioners were not obliged to pay. The delay, if any, in lifting the allocations has occurred not due to any lapse on the part of the petitioner but it has occurred entirely due to the fault of the respondents. We are also of the view that it is the duty of the respondents to make it possible for the petitioners to lift the quotas and make offers of allotment in such a manner as to enable them to arrange funds for the lifting of the quotas. If the material is offered to be supplied in bulk within a short span of time, it will result in actual denial of the quota to the petitioners.

20. We, Therefore, allow this petition and direct that the respondents shall supply the quotas for the July - September, 1984, October - December 1984 and for all the four quarters in 1985 to the petitioners at the prices at which these were supplied to the actual users during the relevant quarters. The quotas must be offered in reasonable quantity to enable the petitioners to arrange the funds

and lift the same and the offer for lifting the quota must provide a reasonable margin of time. We further direct that the respondents shall not charge any carrying charges from the petitioners.

21. Since respondent No. 6 has taken a clear stand that it is no more importing the split palm stearin fatty acid, Mr. D.D. Thakur, Senior Counsel representing the petitioners has frankly conceded that they are prepared to accept a substitute i.e. palm fatty acid and crude palm stearin in lieu of the quota of split palm stearin fatty acid to which the entitlement of the petitioners had accrued.

22. With these observations, the petition is disposed of.

