
(2012) 01 GAU CK 0096

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 9557 of 2004

Premier Roller Flour Mill (M/S) & Ors.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2013) 2 GLR 927 : (2012) 4 GLT 335

Hon'ble Judges : I.A.Ansari, J and P.K.Musahary, J

Bench : Division Bench

Advocate : Advocates appeared for the Petitioners: Mr. O.P. Bhati, Mr. A. Biswas, Mr. R. Kalita , Mr. S. Khan.??Advocate appeared for the Respondents: Mr. S. Sharma, GA, Advocates appearing for Parties

Judgement

I. A. Ansari, J.—Whether a person, functioning as a dealer of edible oils, pulses, gur, wheat products (namely, maida, rava, suji, atta, resultant atta and bran) and hydrogenated vegetable oil or vanaspati, shall require licence in terms of the provisions of Assam Trade Articles (Licensing and Control) Order, 1982, is the moot question, which has arisen for determination in this writ petition?

2. We have heard Mr. O. P. Bhati, learned counsel, for the petitioners, and Ms. S. Sarma, learned Govt. Advocate, for the respondents. None has appeared on behalf of the Union of India.

3. Before answering the question posed above, it is imperative to take note of some material facts, which have given rise to the present writ petition.

(i) Section 3 of the Essential Commodities Act, 1955, (in short, "the EC Act") empowers the Central Government to provide for regulating or prohibiting production, supply or distribution of essential commodities and trade and commerce therein if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the

efficient conduct of military operations. Section 5 of the EC Act empowers the Central Government to delegate powers conferred on it by Section 3 to, amongst others, any State Government by publishing a notification, in this regard, subject, of course, to such conditions as may be imposed by the Central Government. Section 7 of the EC Act provides for penalties if there is any contravention by any person of any order made, under Section 3, by the Central Government or by any State Government as delegatee of the Central Government.

(ii) By a notification, dated 09.06.1978, the Central Government, in exercise of its powers under Section 5 of the EC Act, delegated some of its powers to the State Governments. In terms of the authority so derived from the order, dated 09.06.1978, Assam Trade Articles (Licensing and Control) Order, 1982, (in short, the 1982 Order) has been brought into force by the State Government.

(iii) However, by a subsequent gazette notification, dated 15.02.2002, the Central Government, in exercise of its powers under Section 3 of the EC Act, published an order called Removal of (Licensing requirements Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002, (in short, "the 2002 Order"). Part 3 of the 2002 Order reads as under:

"3. With the coming into effect of this Order, any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarse grains, sugar, edible oilseeds and edible oils and shall not require a permit or license therefor under any order issued under the Essential Commodities Act, 1955."

4. In terms of Part 3 of the 2002 Order, it becomes clear that a dealer may, with the coming into force of the 2002 Order, freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarse grains, sugar, edible oilseeds and edible oils and shall not require a permit or license therefor under any order issued under the EC Act.

5. Coupled with the above, it may also be noted that Part 4 of the 2002 Order gives overriding effect on any order, which may have been made by any State Government meaning thereby that it is the 2002 Order, which would prevail over any Order, such as, the 1982 Order, which may have been made by a State Government as a delegatee by virtue of the notification, dated 09.06.1978, aforementioned. This apart, Part 5 of the 2002 Order makes it clear that issue of any order by any State Government regulating licenses, permit or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any of the commodities, specified in clause 3, shall require the prior concurrence of the Central Government. Consequently, without prior concurrence of the Central Government, no State Government, even by any order, direct obtaining of any licence, permit, etc., as a condition precedent, for dealing with those consumable commodities, which have been made free for the purpose of sell, transport, distribute, dispose, acquire, use or consume by virtue of Part 3 of the 2002 Order.

6. It may also be noted that by a later notification, dated 16.06.2003, issued by the Central Government, in exercise of its powers under Section 3 of the EC Act, clause (3) of the earlier 2002 Order has been further amended by substituting, in place of the expression "edible oils", pulses, gur, wheat products (namely, maida) rava, suji, atta, resultant atta and bran) and hydrogenated vegetable oil or vanaspati.

7. From the narration of facts, what becomes abundantly clear is that a person can freely deal with and buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy /rice, coarse grains, sugar, edible oilseeds, edible oils, gur, wheat products (namely, maida, rava, suji, atta, resultant atta and bran) and hydrogenated vegetable oil or vanaspati, and that no State Government can, now, put any restriction thereon by making any order except by way of prior concurrence of the Central Government

8. Contending to the effect, inter alia, that the Govt. of Assam does not have any prior concurrence in terms of the provisions of the Part 3 of the 2002 Order in respect of the commodities, which have been made by the Central Government free for purchase, stock, sell, transport, distribute, dispose, acquire, use or consume, obtaining of any licence, under the 1982 Order, cannot be insisted upon by the State respondents if a person happens to deal with or buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarse grains, sugar, edible oilseeds and edible oils, the present petitioners, as dealers of wheat, paddy/rice, coarse grains, sugar, edible oilseeds, edible oils, gur, wheat products (namely, maida, rava, suji, atta, resultant atta and bran) and hydrogenated vegetable oil or vanaspati have made this writ petition, under Article 226 of the Constitution of India, seeking appropriate reliefs.

9. What may, now, be noted is that being prima facie satisfied that the petitioners have been able to make out a case calling for interference by this Court, in exercise of its extraordinary jurisdiction under Article 226, an interim order was made, in this writ petition, as far back as on 15.05.2002, holding that the 1982 Order shall not apply so far as the said Order relates to the food items, which have been mentioned hereinbefore and stocking, selling, transportation, distribution whereof has been made free by the Central Government. The State respondents, despite the interim order, dated 15.05.2002, have not filed any counter till date.

10. As a matter of fact, in the order, dated 12.12.2011, passed, in this writ petition, it was made clear by the Court that since the writ petition is of 2004 and the State respondents have not filed any counter so far, the case shall be taken up for hearing on 05.01.2012 and, in the meanwhile, the State respondents shall file their counter, if so advised. The State respondents have not, however, filed any counter. To a pointed query made by this Court, Ms. Sarma, learned Govt. Advocate, submits that she has been telephonically conveyed by the concerned Department of the State Government that they have

no papers or documents showing concurrence of the Central Government allowing the State Government to put the condition of obtaining of licence as a condition precedent for a person, who deals with those items, which are covered by notification, dated 15.02.2002, read with the notification, dated 16.06.2003.

11. What emerges from the above discussion is that the Central Government, having made edible oils, pulses, gur, wheat products (namely, maida, rava, suji, atta, resultant atta and bran) and hydrogenated vegetable oil or vanaspati, free from any regulation and control, the State Government cannot insist on applying of the provisions of the 1982 Order to the commodities aforementioned. Insistence, therefore, by the State Government that a person, dealing with the commodities aforementioned, shall obtain licence, in terms of the provisions of the 1982 Order, cannot but be regarded as wholly without jurisdiction.

12. In the result and for the reasons discussed above, this writ petition succeeds and it is hereby declared that the Assam Trade Articles (Licensing and Control) Order, 1982, is ultra vires the Removal of (Licensing requirements Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002, read with order, dated 16.06.2003. aforementioned, so far as the same relates to the commodities covered by the 2002 Order read with 2003 Order.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No order as to costs.