

(1996) 01 GUJ CK 0028
In the Gujarat High Court
Case No : Spl. Civil Application No. 1185 of 1982

Pricon Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : AIR 1997 Guj 58 : (1997) 1 GLR 745

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

Bench : Single Bench

Advocate : H.B. Shah, for the Appellant; R.N. Dave, for Purnanand and Co. and J.D. Ajmera, for the Respondent

Judgement

M.S. Shah, J.—The petitioner is a Private Limited Company engaged in the business of Manufacturing Cement Pipes at Ankleshwar. Cement is therefore, one of the raw material required by the petitioner company. The petition was filed in 1982 challenging the inaction on the part of respondent No. 3 in not supplying cement to the petitioner under instructions of respondent No. 2.

2. The distribution and sale, levy cement and the price for its sale were governed by Cement Control Order 1967 (hereinafter referred, to as the Control Order) and the directions issued by the authorities under the said Control Order. As per the procedure then followed, respondent No. 2 Regional Cement Controller for the State of Gujarat, had issued order dated 20-2-1982 in favour of the petitioner company requiring respondent No. 3 M/ s. Associated Cement Companies Limited manufacturing Cement to supply 114 tonnes of cement to the petitioner at the specified rate of Rs. 630 per tonne. On the basis of the said order dated 20-2-1982 (Annexure A) respondent No. 3 company issued release order dated 20-2-1982 in favour of the petitioner requiring the petitioner to make payment for the aforesaid quantity of the cement at the aforesaid specified rate. Accordingly the petitioner made part payment by Demand Draft of Rs. 43,000/- in favour of respondent No. 3 company and forwarded the same on

1-3-1982. However, thereafter respondent No. 3 sent letter dated 16-3-1982 to the petitioner informing that on account of the partial decontrol of cement it received instructions not to arrange despatches to the petitioner and that respondent No. 3 was awaiting final instructions from respondent No. 2 in that behalf. Copy of the said letter is produced at Annexure E to the petition.

3. The present petition was filed in March, 1982, praying for directions to respondents Nos.2 and 3 to supply to the petitioner cement as per the aforesaid authorisation dated 20-2-1982 and release order dated 25-2-1982 at Annexures A and B respectively. The petitioner had also prayed for mandatory interim relief in the same terms but no such interim relief was granted when Rule was issued on 10-8-1982.

4. The petition has been resisted by affidavit-in-reply dated 15-4-1982 filed by Mr. N. Datta, Deputy Cement Controller, Ministry of Industry, New Delhi. In further Affidavit-in-reply dated 17-5-1982 filed by the same officer, a preliminary contention is raised that even if the petitioner succeeds in proving that the stoppage of supply of levy cement to the petitioner was illegal and that the petitioner had suffered any actual damage, the petitioner's remedy was to file a suit in an appropriate Court for claiming damages from the authority responsible for the damage.

5. On the merits of the petition it is contended that up to 28-2-1982 Cement Control Order, 1967 was operative in respect of the entire production of cement. However, the said policy was revised so as to partially decontrol cement and accordingly Cement Control Order, 1967 was amended by Cement Control, (3rd amendment) Order 1982 vide Order dated 28-2-1982. The effect of the said amendment is explained in the affidavit-in-reply in the following words."

"Controlling provisions of the Cement Control Order, 1967, have been restricted to levy cement meaning the part of production of cement with reference to the installed capacity of a cement plant as may be determined by the Central Government, from time to time, not being more than 66.6% of the installed capacity of the plant. Thus, the maximum cement which can be brought under the Control Order is 66.6% with effect from 28.2.1982. The rest of the cement is not subjected to any control in respect of price or distribution."

In view of the above amendment the position regarding availability of the control cement had materially altered and therefore on 1-3-1982 the Government issued communication to the State Government setting out the instructions regarding release of levy cements. The relevant extract of para 2 of the said communication reads as under :

"The quantum of levy cement during the remaining part of the year 1982 will be proportionate to a total levy of around 17 million tonnes for the whole year. This cement will be utilised for meeting the requirement of priority section and weaker sections etc. The States will continue to get bulk quarterly allocations as heretofore and these will be utilised for meeting the requirement of the

undermentioned category of consumers. Allocation of cement for meeting the requirement of Irrigation and Power Projects will be made in addition :

(i) Government Department, Public Sector Undertaking, Corporation and local bodies.

(ii) Small Scale Industries, for construction of factory buildings only;

(iii) Socially oriented schemes like rural housing, housing for slum dwellers, harijans, adivasis, etc.....

(iv) construction of dwelling units having area upto 80 sq. meters.....

(v) Small quantities for repairs of residential houses.

6. The aforesaid policy was revised vide Government of India letter dated 22-4-1982 to the State Governments amplifying the scope of socially oriented schemes.

It has been contended on behalf of respondents Nos. 1 and 2 that the aforesaid new policy as incorporated in the letter dated 1-3-1982 was applicable in respect of all despatches in respect of cements on 28-2-1982 and that it therefore, also applied to the cement which was in stock with the factory on 28-2-1982. It is further submitted that since 114 tonnes of cement in question was not delivered by respondent No. 3 to the petitioner and was lying in the factory of respondent No. 3 on 28-2-1982, the said stock was governed by revised policy contained in amended Cement Control Order 1967 and the policy instructions as contained in the Government of India letter dated 1 -3-1982. It was, therefore, submitted that the orders which were issued by the Cement Controller prior to 28-2-1982 were treated as ineffective because in view of the revised policy of confining the control to cement production not exceeding 66.6% and in view of the necessity to define priorities for the quantity earmarked for levy and distribution, it was necessary to treat all the previous orders issued prior to 28-2-1982 as cancelled unless the particular quantity of cement was already delivered by the concerned cement manufacturer prior to 28-2-1982.

7. It is further pointed out that the authorization order dated 20-2-1982 had already contained the following two conditions being condition Nos. 7 and 8 :

(7) The issuing authority can revoke the authorisation at any time and the holder shall in that case forthwith surrender the same.

(8) Order books against this authorisation may also be cancelled by issuing authority, at any time."

8. In view of the fact that the provisions of Cement Control Order were made applicable to only 66.6% of the Cement manufactured and available with respondent No. 3 on 28-2-1982 onwards, naturally respondents Nos. 1 and 2 were justified in directing that such available quantity of cement on 28-2-1982 and thereafter was required to be regulated under the revised policy under which

certain priorities were set out. The action of respondents Nos. 1 and 2 in directing respondent No. 3 not to act upon or to execute the orders issued prior to 28-2-1982 cannot, therefore, be treated as illegal or arbitrary. The restriction imposed by them prevailing Cement Control Order and the directions issued thereunder were for the purpose of regulating, distribution and sale of the cement in general public interest and therefore, the directions issued by respondents Nos. 1 and 2 on the basis of the policy contained in the Government of India letter dated 1-3-1982 cannot be said to be in violation of the fundamental rights of the petitioner to carry on business. The petitioner's contention that it had a vested right to get the aforesaid quantity of the Cement cannot be accepted because the petitioner's right was only to carry on business in accordance with the provisions of Cement Control Order 1967. as were applicable at the time when the cement was to be delivered to the petitioner. Admittedly, the petitioner had approached respondent No. 3 by letter dated 1-3-1982 by which time the amendment to the Cement Control Order had already come into force.

9. In view of the above, it is clear that the petitioner is not entitled to any relief. It is also pertinent to note, as stated by Mr. H. B. Shah, learned counsellor the petitioner, that by now cement is a free sale commodity and as stated by the learned advocate for the petitioner, the amount which the petitioner had sent to respondent No. 3 was already refunded to the petitioner within reasonable time and therefore, no further directions are required to be issued to respondent Nos.2 and 3.

10. In the result, this petition is rejected. Rule is discharged with no order as to costs.