
(1994) 08 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3472 of 1994

Radhey Shyam Ramswaroop

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Essential Commodities Act, 1955 — Section 3

Citation : (1994) 2 RLW 466 : (1995) 1 WLC 498 : (1994) 2 WLN 623

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Judgement

V.K. Singhal, J.—This order will dispose of all the writ petitions mentioned in Schedule "A" as all of them raise identical questions for determination by this court.

2. The Government of Rajasthan has issued a notification on May 16, 1994 by which restriction was imposed on the whole-sale dealers of "Gur" to maintain the maximum quantity of stock of 250 quintals with further direction that the said stock has to be disposed of within 20 days from the date of its receipt. The approval of the Central Government was also obtained. The petitioners are licence-holders under the Rajasthan Trade Articles (Licensing and Control) Order 1980 (hereinafter called as the Order of 1980) and are dealers within the definition of clause(c) of Order of 1980. The statement with regard to opening stock, purchases, sales and closing stocks is being sent to the District Supply Officer. It is submitted that the commodity "Gur" is not produced in the State of Rajasthan and is mainly produced in the States of Uttar Pradesh and Bihar from November to ferbruary every year. The various qualities of Gur i.e. Pansara, Chorsha, Khurpa, Paddi, Laddu, Balti, Musti, Chaku and Gindora are sold in various mandis in the State of Rajasthan and used for human consumption. Similarly, Gur of Raskat, Balti, and Pansara is mainly used for animal consumption. The traders are having normal capacity of 100 quintals. By notification dated May 16, 1994 which has become effective after 15 days of its

publication in the official gazette, restrictions have been placed with regards to stock limit and the period during which it has to be disposed of. The grievance of the petitioner is with regard to not providing any opportunity before the issue of the said notification. It is also stated that previously, a notification dated November 7, 1989 was issued, but it was withdrawn on January 24, 1990. A stay was granted for the operation of the said notification but on account of withdrawal of the said notifications the writ petitions which were filed challenging the same became infructuous. It is submitted that if the stock is not sold within a period of 20 days as contemplated in the notification it is not stipulated as to how the goods are to be sold or disposed of. The notification is alleged to be violative of Article 19(1)(g) of the Constitution of India. It is submitted that there was no proper application of mind and the Central Government has given its concurrence in a mechanical manner. It has also been submitted by the learned Counsel for the petitioners that a discrimination has been caused between the retailers and whole-sale dealers inasmuch as there is no such restrictions in so far as the retailers are concerned. In respect of those dealers who fall in the category of Commission Agent no proper guidelines have been formulated.

3. On behalf of the respondents, it is submitted that the State is bound to regulate the supply of essential commodities and the restrictions which have been imposed are reasonable restrictions. The "whole-seller" as per clause 2(w) of the Order of 1980 means a dealer who sells any one or more of the trade articles mentioned in Schedule I to other dealer or bulk consumers. If the sale is made by one dealer to another of more than 50 quintals of "gur" and "khandsari" then he is considered to be the whole-sale dealer. A notification was issued by the Central Government on May 30, 1994. The concurrence for issue of the notification by the State Government was obtained on March 17, 1994 and the notification was issued bringing down the prices of the commodities since unnecessary stock was held by whole seller and they were not releasing the same on public demand. The notification cannot be said to be unreasonable or in violation of Article 19(1)(g). No opportunity of hearing is required to be given before the issue of notification and the only requirement was the prior concurrence of the Central Government which had already been obtained. The Gur Control Order, 1994 has prescribed the following restrictions

- (1) No person other than a licensed dealer shall carry on the business of purchase and sale of gur;
- (2) No dealer shall hold stock of Gur for a period of exceeding seven days from the date of receipt by him of such stock of Gur;
- (3) No dealer shall hold any stock of gur in excess of two hundred and fifty quintals at any time.

The notification dated May-16, 1994 was issued Under Clause 18(II) of the Order of 1980 and the directions were issued Under Clause 25 of the same.

4. I have considered over the matter. u/s 3 of the Essential Commodities Act,

1955 (hereinafter called as the EC Act) the Central Government has power to control production, supply, distribution of essential commodities and for equitable distribution and availability of the commodity at fair price it may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. It is undisputed that Gur is an essential commodity.

5. The question with regard to fixation of maximum limit of wheat of 200 quintals was considered by the Apex Court in the case of *Suraj Mal Kailash Chand and Ors. v. Union of India and Anr.* 1981 Cri.L.R. 523 . In the context of Article 14 and 19(1)(g) of the Constitution it was observed by the Apex Court that the fixation of maximum limit of 200 quintals wheat at any time cannot be held to be arbitrary. The persons who were holding the stock more than the permissible limit were said to be not without remedy. Under Clause 25 of the Order of 1980 they are at liberty to move the State Government to issue necessary directions for the disposal of the excess quantity of wheat in their possession. The observations were made that the State Government would allow a reasonable time within which the petitioners in that case were to be permitted to dispose of the excess quantity of wheat, if any. The State Government was also left free to take over the excess stock Under Clause 19 of the Order at the procurement price. This Court in the case of *New Bharat Rice and General Mills Vs. State of Rajasthan and Others*, has held that fixing of the stock limit for storage is to prevent hoarding of the rice and the therefore it is a reasonable restriction within Article 19(6) on the right conferred by Article 19(1)(g). Even completely prohibiting manufacture and sale of a particular drug combination was held to be reasonable and not violative of Article 19(1)(g) by the Apex Court in the case of *Systopic Laboratories (Pvt.) Ltd. Vs. Dr. Prem Gupta and others*, The notification banning on fishing by mechanised nets was held to be not violative of Article 19(1)(g) and the restriction was considered to be reasonable within the meaning of Article 19(6) in the case of *State of Kerala Vs. Joseph Antony*, . In the case of *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, the order fixing price under Drug (Price Control) Order was held not to be a quasi-judicial activity requiring observance of principles of natural justice and was held to be a legislative activity. Ceiling on 30% of the chit amount and placing other restrictions was held to be reasonable and in the interest of subscriber by the Apex Court in the Case of *M/s. Shriram Chits and Investment (P.) Ltd. Vs. Union of India and others*, In *Krishan Lal Praveen Kumar and Others Vs. State of Rajasthan and Others*, , it was observed by the Apex Court that the notification fixing a maximum limit of 200 quintals of wheat to be possessed by a dealer at any one time could only mean at only given point of time. It does not mean that if a dealer was in possession of 200 quintals at 10 a.m. and sold 120 quintals between 10 a.m. to 12 noon, he is barred from purchasing 120 quintals after 12 noon, so as to make up the 200. quintals. All that is necessary is that he should not have in his possession at any one time more than 200 quintals. In *Laxmi Khandsari and Others Vs. State of U.P. and Others*, restrictions imposed on the production of sugar for a limited period was held to be reasonable and not

violative of Article 19(1)(g). It was observed that.

It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest Under Clause 2 to 6 of Article 19. 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 and 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 and 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 frame-work of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restriction 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.

Further, restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Sometimes even a complete prohibition of the fundamental right to trade may be upheld if the commodity in which the trade is carried on is essential to the life of the community and the said restriction has been imposed for a limited period in order to achieve the desired goal.

Another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and danger or evil sought to be avoided. Thus, freeing of stock of food-grains in order to secure equitable distribution and availability on fair prices have been held to be a reasonable restriction in the cases of *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, *Diwan Sugar and General Mills (Private) Ltd. and Others Vs. The Union of India*, , and the *The State of Rajasthan Vs. Nath Mal and Mitha Mal*, .

6. Prohibition on the manufacture of Chhena and Paneer for a short period was held to be reasonable by a Division Bench of this Court in the case of *Mahesh Chand v. State of Rajasthan and Anrs.* D.B. Civil Writ Petition No. 3213/1992, decided on May 8, 1992.

7. In accordance with the powers conferred on the central Government control on production supply and distribution of the essential commodity is contemplated. The regulation or prohibition there fore could fall within the

purview of the Essential Commodities Act. The exercise of such power should not be violative of fundamental right guaranteed by the constitution, more particular Article 19(1)(g) of the Constitution of India. Article 19(6) permits reasonable restrictions and there fore, the action of the respondents has to be examined in the light of the facts as to whether the fixation of stock limit or time limit is within the reasonable restriction or not? Various decisions of this Court as well as of the Apex Court referred to above have upheld the action of the respondents in fixing the maximum stock limit. This action is normally taken in public interest in order to check the stock of essential commodity. The very purpose of the Act or various notifications/orders issued thereunder will be frustrated if the Government fails to check the rise in prices which is the duty of the Government. It is possible only when the whole-sale dealers are forced to bring their stock in the market. The notification dated May 16, 1984 is saved Under Article 19(6) and is not violative of Article 19(1)(g) of the Constitution. The contention of the learned Counsel for the petitioners that there is discrimination between whole-sale dealers and retailers inasmuch as there is no maximum limit prescribed in so far as the retailers are concerned, has no substance as both type of the dealers constitute a different class by themselves. One cannot be compared with the other. A retailer, even otherwise, is not having so much of the stock as the whole-seller has and therefore the notification issued in respect of whole-sale dealer does not suffer from the vice of discrimination.

8. Gur control Order of 1994 issued by the Central Government on May 13, 1994 is also under challenge according to which a restriction has been placed that no person other than a licensed dealer will carry on business of purchase and sale of gur and further restriction has been placed that no dealer shall hold stock of gur for a period of exceeding seven days from the date of receipt by him of such stock of gur. The maximum quantity which could be retained was 250 quintals. This Control Order has also been challenged. The Notification which has been issued on May 16, 1994 is with the prior concurrence of the Central Government which was given on March 17, 1994 when the Central Government itself has issued another notification, it cannot be said that there is non-application of mind while giving such a permission and therefore the notification dated May 16, 1994 cannot be said to have been issued without application of mind. The restriction with regard to 250 quintals to be maintained as maximum quantity of stock is therefore held to be reasonable.

9. So far as the question of maximum period for which the stock could be maintained is concerned, the words "at any time" have been interpreted by the Apex Court in the case of Kishanlal Pawan Kumar (supra). Complete restriction has been placed with regard to the disposal of the stock. The problem may arise with regard to the stock as on the date of coming into force of the notification. The Apex Court has held that the State Government can issue the appropriate direction for such a stock Under Clause 25. I am of the view that instead of directing the petitioners to move and obtain the directions, the time of 15 days is given from today to bring the stock within the limit prescribed under the

notification dated May 16, 1994. The problem of any excess stock thereafter would not arise since one can purchase the commodity in quantity from the market only after the stock to the extent permissible by the notification is disposed of. If any person has disposed of 50 quintals out of the maximum of 250 quintals, then he is entitled to purchase to the extent of 50 quintals only. The first part of the notification is in accordance with law and the judgments given by the Apex Court.

10. The second part of the notification which says that the goods physically received shall be disposed of within 20 days in a particular case may create problem and the dispute may arise as to which of the stock has been sold and which has been retained. For constituting the offence under the EC Act the burden is on the prosecution, which may be difficult to prove as to which of the stock was received on a particular date. The object for issuing the notification is to reduce the price of the commodity and compel the whole-sellers to reduce their stock, but there is no marking on the gur itself nor there is any system which has been prescribed in the notification so that the marking may be done on the bags. Therefore, the object by which the restriction of 20 days is prescribed cannot be achieved. If the maximum quantity of 250 quintals has been fixed and it is not effective, then the respondents are within their power to reduce it, but to provide the time limit for retaining a stock for which no procedure has been prescribed cannot, be said to be reasonable. The Order of 1980 provides Under Clause 25 that the State Government or the Collector of the Licensing Authority issue directions to any dealer with regard to purchase, sale, disposal, storage or exhibition of the price and stock list of all or any of the trade articles. The directions could be issued by the State Government at any particular point of time to dispose of the stock. The directions which have been given in the present case are with regard to not keeping the goods beyond a period of 20 days. Since the said directions are by itself being not capable to be performed on account of there being no identification with regard to the date of receipt or the procedure prescribed under the Order of 1980 for marking the date of receipt then I am of the view that such a direction cannot be said to be justified. No whole-sale dealer would be interested in retaining the goods of old stock and purchase the fresh goods to complete the total quantity which he can retain. The problem may arise when 250 quintals which is the maximum quantity to be retained in the stock is not disposed of at all. If such a situation is there then the application will have to be made to the appropriate authority before the expiry of time. The second part of the notification is clarified to the extent that in respect of purchases which are made regularly if the goods are sold, then the restriction of 20 days would not be applicable and it will be applicable only in a case where the stock is not sold at all and for that purpose necessary permission has to be obtained by the whole-sale dealer from the appropriate authority. In view of interpretation which has been taken the notification issued by the Central Government dated May 13, 1994 also stands clarified i.e. restrictions not to carry on the business of purchase or sale of goods without licence is reasonable

restriction. The maximum quantity of 250 quintals for a dealer to hold in stock is also reasonable and the time limit of 7 days to hold the stock from the date of its receipt will not be applicable as different time limit is prescribed by the notification dated May 16, 1994 which is applicable to the entire State of Rajasthan while the notification dated May 13, 1994 is applicable to the entire country. The approval of the Central Government has also been obtained for issuing the notification by the Rajasthan Government. The special notification for Rajasthan will therefore be applicable for which the decision has been given above.

11. Consequently, all these writ petitions stand disposed of in accordance with the observations made above.