(1975) 11 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4156 of 1974

Rama Roller Flour Mills APPELLANT

Vs

The Regional food Controller and Others RESPONDENT

Date of Decision : 17-11-1975

Acts Referred:

Essential Commodities Act, 1955 — Section 2, 3
Sea Customs Act, 1878 — Section 112
Uttar Pradesh General Clauses Act, 1904 — Section 24, 6, 8
Uttar Pradesh Wheat and Wheat Products (Regulation of Trade and Control of Movement) Order, 1974 — Section 10, 5

Citation : (1976) AWC 232

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : B.C. Dey, for the Appellant; P. Car, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—The Petitioner owns and runs a flour mill. It also holds a licence in form B and F under the U.P. Foodgrains Dealers Licensing Order, 1964. Licence in form B is to carry on the business in food-grains in wholesale and licence in form F entitles a person to carry on the business in foodgrains as a commission agent. u/s 3 of the Essential Commodities Act, 1955, the Uttar Pradesh Government issued the Uttar Pradesh Wheat (Levy) Order, 1974. Section 3 of this Order requires that every licensed dealer shall sell to the Food Corporation of India or to the State Government at the scheduled price 50 per cent of wheat in his stock on the date of the commencement of the Order. The Petitioner has been required to sell 50 per cent of the stock in his possession on 17th April, 1974 as levy quota. The Petitioner is aggrieved and has challenged that order.

2. Now, as noticed earlier, the Levy Order is applicable to every licensed dealer. A "Licensed Dealer" has been defined in Section 2(d) to mean a person holding a valid licence under the Uttar Pradesh Foodgrains Dealers Licensing Order, 1964. On the Petitioner''s own showing (as mentioned in paragraph 4 of the writ

petition), he holds a licence in form ''B'' and ''F'' under the U.P. Foodgrains Dealers Licensing Order, 1964. He was thus clearly liable to sell to the Government 50 per cent of his stock as levy.

3. The Petitioner''s contention is that even if he originally held a licence in Form ''B'' and ''F'' under the provisions of the U.P. Foodgrains Dealears Licensing Order, 1964, the licence stood revoked on the promulgation of the U.P. Wheat and Wheat Products (Regulation of Trade and Control of Movement) Order, 1973. Reliance is placed upon Section 5 of the Order, which provides:

5(1)--The provisions of the Uttar Pradesh Foodgrains Dealers Licensing Order, 1964, in so far as they relate to licensing of Wholesalers and Commission Agents in respect of wheat and wheat products are hereby rescinded and accordingly on and from the date of commencement of this Order-

(a) all licences in Form ''B'' and ''F'' of the Uttar Pradesh Foodgrains Dealers Licensing Order, 1964 shall become void in so far as they relate to wheat and/or wheat products....

It is true that as a result of the above mentioned provision, the licences in Form ''B'' and ''F'' held by the Petitioner became inoperative but the Uttar Pradesh Government subsequently issued another Order, called the Uttar Pradesh Wheat and Wheat Products (Regulation of Trade and Control of Movement) Order, 1974, Section 10 whereof provides:

10. The Uttar Pradesh Wheat and Wheat Products (Regulation of Trade and Control of Movement) Order, 1973, is hereby rescinded and the provisions of Sections 6, 8 and 24 of the U.P. General Clauses Act, 1904 shall apply in relation to the repeal of an enactment by an Uttar Pradesh Act.

(2) Notwithstanding the amendment of the Uttar Pradesh Foodgrains Dealers'' Licensing Order, 1964, Clause 5 of the Uttar Pradesh Wheat and Wheat Products (Regulation of Trade and Control of Movement) Order, 1973, all licences in Form (B) or Form (F) granted under the Uttar Pradesh Foodgrains Dealers'' Licensing Order, 1973 shall with effect from the date of commencement of this Order, be deemed to have revived and to become valid in respect of wheat and wheat products also.

So these provisions completely nullify the original provisions of the U.P. Wheat and Wheat Products (Regulation of Trade and Control of Movement) Order, 1973 and the licences held by the Petitioner under the 1964 Order is revived. The Petitioner once again has become a licensed dealer and was so at the time of the promulgation of the Levy Order, 1974.

4. The Petitioner''s next contention is that he'' had purchased wheat for preparation of wheat products and the stock held by him on the relevant date was not for sale and, as such, the provisions of the Levy Order could not apply to him. It is not possible to accept this contention. May be that the Petitioner had purchased the stock of wheat for the purposes of his own consumption in flour

mill and had no intention to sell it but that fact makes no difference inasmuch as the Levy Order becomes applicable when two conditions are satisfied (1) that the person concerned is a licensed dealer in foodgrains and (2) he held stock of wheat on the 17th April, 1974. All stock of wheat possessed by a licensed dealer whether meant for resale or for consumption are subject to levy. The intention of the licensed dealer its wholly immaterial. May be that the Levy Order is likely to result in hardship to certain persons like the Petitioner but that by itself is no ground for holding that the Levy Order is not applicable.

5. Lastly the Petitioner pleaded estoppel. According to him he had purchased the stock of wheat in question with the permission of the authorities concerned on the express understanding that he would utilise the wheat for preparing wheat products and he had purchased wheat at a higher rate than the scheduled price. According to the Petitioner in these circumstances the Government is estopped from requiring it to part with a portion of his stock by way of sale in favour of the Food Corporation or the Government. He places reliance upon a decision of this Court in Khunnoo Lall and Sons Vs. The Union of India (UOI) and Others, . In that case the Government of India had launched a scheme for the import of spare parts of essential machinery and equipments from U.S.A. under the U.S.A. aid Non-Project Loan and consequently the Minister of Commerce had issued a public notice setting out the conditions and procedure for obtaining licences for spare parts of machinery. The Petitioner in that case applied for the import of certain machineries specified in that notice. The Department of Customs issued to the Petitioner a notice u/s 112 of the Sea Customs Act requiring it to show cause why the goods should not be confiscated. In that connection it was held that even assuming that the provisions relating to the issue of trade notices offering inducement to the prospective exporters are in character executive, the Union Government and its officers are not entitled at their mere whims to ignore the promises made by the Government. A public body is not exempt from liability to carry out its obligations arising out of representations made by it relying upon which a citizen has altered his position to his prejudice. That decision is based upon the well known case of the Supreme Court in Union of India v. Anglo Afgan Agencies AIR 1968 SC 718. That was also a case where a person had acted on the representations made in an export promotion scheme. The present case is clearly distinguishable because in the instant case we are not dealing with any scheme or public notice issued by an executive authority but we are dealing with statutory provisions. It is well settled that there is no estoppel against a statute. The Government might have induced the Petitioner to purchase wheat in the open market for utilisation in the preparation of wheat products but when subsequently law enacts that every licensed dealer in foodgrains has to part with 50 per cent of the stock of wheat in favour of the Government, the dealer concerned cannot plead estoppel.

6. For all these reasons the petition fails and is accordingly dismissed. There will be no order as to the costs.

