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(1990) 05 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12265 of 1989

Ranjit Ice and General Mills and Others — APPELLANT

Vs

State of Punjab and Another — RESPONDENT

Date of Decision : 21-05-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 227
Punjab Ice Price Control Act, 1968 — Section 3

Citation : (1990) 98 PLR 346

Hon'ble Judges : K.P. Bhandari, J

Bench : Single Bench

Advocate : Sanjay Majithia and Sanjeev Manrai, for the Appellant; H.S. Bedi, A.G., for the Respondent

Final Decision : Allowed

Judgement

K.P. Bhandari, J.—The petitioner by way of the present writ petition has challenged the constitutional validity of the Punjab Ice Price Control Act, 1968 (Punjab Act No. 13 of 1968) (hereinafter referred to as the Act) on the ground that the power to fix price of the ice has been conferred on the District Magistrate without giving any guide lines. It is also stated in the petition that the provisions of this Act are illegal, unreasonable and ultra vires of Articles 14 and 19(1)(g) of the Constitution of India. The petitioner has also challenged the validity of the order, Annexure P. 1, dated 15-5-1984 whereby the District Magistrate, Ludhiana, has fixed the price of the ice. These orders have been challenged on the ground that the price has been fixed by the District Magistrate in an arbitrary manner. There was no material before the District Magistrate to fix the whole sale price and the retail price of the ice and therefore, the order of the District Magistrate is completely outside the scope of Section 3 of the Act. It is also the stand of the petitioner that the order fixing the whole sale price of ice and retail price of ice imposes unreasonable restrictions on the petitioner''s fundamental right to carry on business guaranteed by Articles 14 and 19(1)(g) of the Constitution. In support of his submission, the petitioner in this petition has relied upon the order of the District Magistrate, Jalandhar, Annexure P. 6, whereby he has fixed the whole sale price of ice at the rate of Rs. 55/-per quintal and retail price at 70 Ps per Kg It is argued that there is no substantial difference between the cost manufacture ice at Ludhiana and Jalandhar. The petitioner through his representation Annexure P. 2 brought to the notice of District Magistrate, Ludhiana, the cost of electricity, compressor oil, salt, ammonia gas and the salaries of staff etc. and the'' increases made therein from the year 1984 onwards. The relevant facts and figures of the increase are as follows :--

"FACTS AND FIGURES OF THE INCREASE

1. Electrity rates in 1984 -- Rs. 0.42/- Unit

Electricity rates in 1986 -- Rs. 0 69/- unit

Electricity rates in 1988 -- Rs. 0.75/- unit This item is the main raw material and constitute the main expenditure of the factory. Unfortunately, this item has increased immensely.

2.Compressor Oil Drun kind 1984 Rs. 2,400/- --do-- 1986 Rs. 3,100/- --do-- 1988 Rs. 4,000/- 3. Salt per Quintal in 1984 Rs. 22/- --do- 1986 Rs 33/- --do- 1988 Rs 35/- 4. Ammonia Gas in 1984 Rs. 6.50/Kg. --do-- 1986 Rs. 10.00/-Kg. --do-- 1988 Rs. 11/Kg. 5. Salaries of skilled, unskilled, technical and clerical staff has increased by sixty per cent (average).

6. Galvanised iron sheet in 1984 Rs. 8,000/ - per tonne --do-- 1986 Rs. 16,000/- per tonne --do-- 1988 Rs. 18,000/- per tonne

2. The petitioner also submitted representation doted 5-9-1988. Annexure P. 3, to the District Magistrate, Ludhiana, for fixation of the price of the ice. The petitioner also submitted an application dated 24 4-1986, Annexure P. 4 to the District Magistrate Ludhiana for fixation of the price of the ice. He again submitted representation dated 4-5-1989 to the District Magistrate for fixation of price of ice He also brought to his notice, how the cost of material which is being utilised for manufacturing of ice has increased. Ha also placed on record the notifications issued by the District Magistrate, Patiala and Amritsar fixing the whole sale price and the retail price of the ice.

3. The State has filed written statement through Shri S. S. Brar, I. A. S. District Magistrate, Ludhiana. the District Magistrate has supported the validity of the Act as well as the notification fixing the price of the ice. The petitioner filed rejoinder with the permission of this Court in which the stand taken by the District Magistrate has been rebutted.

4. Mr. Sanjay Majithia, learned counsel for the petitioner has drawn my attention to the provisions of the Act He has submitted that this Act does not contain any guide lines for fixing of the price of the ice by the District Magistrate. He has also pointed out that there is no preamble to the Act from which any guide lines could be gathered by the District Magistrate while fixing the price. He pointed out tint

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the matter had been left to the asbolute discretion of the District Magistrate. He also submitted that the ice is only a seasonal industry. The price could be fixed only on the yearly basis in during summer season when there is shortage of ice. He has placed strong reliance on the decision of the Supreme Court in Avinder Singh and Others Vs. State of Punjab and Others, , P.N. Kaushal and Others Vs. Union of India (UOI) and Others, and The State of West Bengal Vs. Anwar Ali Sarkar, .

5. On the other hand, Shri H. S. Bedi, learned Advocate General, Punjab, has drawn my attention to the statements of objects and reasons of the Act which are appended to the bill, which was introduced by the legislature on 17th May, 1968. The statement of objects and reasons reads as follows :--

"Some unscrupulous elements exploit the consumers by selling ice at exhorbitant prices during summer season. With a view to end this exploitation, it has been decided to introduce the Bill enabling the fixation of price of ice.

6. He submitted that the statement of objects and reasons provide guidance to the District Magistrate for exercise of his powers u/s 3 of the Act for fixing price. He further submitted that according to Section 3 of the Act, the District Magistrate is required to fix the price which means the price must be fair. While fixing the price of the ice, the District Magistrate, according to the scheme of the Act, is supposed to determine the manufacturing cost of ice and allow a reasonable margin of profit to the dealers he further submitted that so interpreted, the provisions of Section 3 of the Act afford sufficient guidance to the District Magistrate in the exercise of power u/s 3 of the Act.

7. There is no doubt that the Act does not contain any preamble, nor gives any guide lines to the District Magistrate to fix the price of the ice. There is no provision in the Act conferring power on the Government to make rules. I find considerable force in the contention of Mr. Sanjay Majithia that the powers conferred on the District Magistrate are highly discretionary and may be misued. However, taking into consideration the statement of objects and reasons of the Act and the language of Section 3 together with the scheme of the Act, I am of the opinion, that the District Magistrate is bound to determine the price of the ice while taking into consideration manufacturing cost and by allowing reasonable profit of margin to the whole seller and the retailer. Mr. Sanjay Majithia placed reliance on the decision of the Delhi Court in New India Industrial Corporation Ltd. Vs. Union of India and Others, . The relevant observations are as under :--

"16. It cannot be said that there are no guidelines given in these provisions to the Controller while fixing the price. While fixing the price the Controller shall have due regard to the cost of material, namely, water, salts, chemicals etc. The Controller shall take into consideration the cost of electricity and labour towards the processing charges Expenses of establishment and othe incidental charges are also to be taken into consideration while fixing the fair price. After calculating all these components, the Controller has to decide what is the reasonable margin

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of profit. The petitioners complain that the factor of loss and waste is not taken care of by Clause (7), The counsel for the respondent counters this submission by stating that the loss due to failure of electricity and in the process of handling would be considered by the Controller, while applying his mind to the cost of electricity and other incidental charges.

17. Even if the factor of cost of electricity or the other factor of losses, incidental charges would not cover the Controller is bound to consider the inevitable losses while determining what is the reasonable margin of profit. In order to be reasonable, the profit must be a tangible reasonable return on the manufacturer''s investment and labour. Profit should not be allowed to be melted away while fixing the margin of profit. The Controller shall have due regard to the factor of losses to ice manufacturer and trade. There are other guidlines also provided that order for fixing the reasonable margin of profit. Cl. 6 provides that the wholesaler will have 25% as a margin of profit over his purchase price and the retailer will have profit of 40% on the purchase price from the wholesaler or from the manufacturer, if ice is purchased firm the manufacturer directly. With these percentages for the retailer and for the wholesaler expressly specified by the Order, it should not be difficult for the Controller to fix the reasonable margin of profit for the manufacturer. These guidelines are clear and effective enough to exclude any chance of capricious or arbitrary fixation of price for the manufacturers "

8. The meaning of the word ''price'' as defined in Black''s Law Dictionary, Fifth Edition is as follows -

"Price. Something which one ordinarily accepts voluntarily in exchange for something else. The consideration given for the purchase of a thing Amount which a prospective seller indicates as the sum for which he is willing to sell; market value. The term may be synonymous with cost, and with value, as well as with consideration, though price is not always identical either with consideration "

9. In Words and Phrases, Permanent Edition 33, meaning of the words ''price'' is given as under :--

"Price is defined as something which one ordinarily accepts voluntarily in exchange for something e sc; yet it is also denned as a recompense, which is a synonym for "compensation". The word "worth" is defined as furnishing an equivalent for change on measure of damages for personal injuries, pain, and suffering held not misleading nor objectionable as placing "price" on pain and suffering Harb v. Hallowell, 154-A, 582, 584, 304 pa. 128."

10. In my opinion, the object of the Act was to make provision for fixing fair price so that unscrupulous dealers may not indulge in profiteering as indicated in the Statements of Objects and Reasons. The fixation of fair price u/s 3 means fixing the price after taking into consideration all relevant ''"acts relating to price of the ice as well as by allowing reasonable profit to the whole seller and retailer. In the light of the construction put by me on the provision of the Act, it cannot

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be said that he provisions of the Act violate Articles 14 and 19(1)(g) of the Constitution.

11. Now, I examine the validity of the notification of the District Magistrate, Ludhiana, 6xing the price of the ice. The learned Advocate General stated that the question regarding fixing of price for the years 1988, 1989 and 1990 was not examined by the District Magistrate. Notification Annexure P. 1, dated 15-5-1984 was allowed to continue. He very fairly admitted that the price of electricity and other material has considerably gone high from the year 1984 onwards. The ice is a seasonal industry. The price of the ice goes high in the Summer season. Advocate General submitted that this Court should direct the District Magistrate to fix the price of ice taking into consideration the manufacturing cost and for making (sic)pro iston for reasonable profit for the whole seller and the retailer It is thus clear that the fixation of price in the year 1984 vide Annexure P-1 has no relevance for the price of the ice for the year I990 The continuance of the notification Annexure P-I fixing the price is wholly arbitrary and unreasonable. It violates the petitioner''s fundamental right to carry on business guaranteed by Article 19(1)(g) of the Constitution. The order is also violative of Article 14 of the Constitution. In this view of the matter, the, notification Annexure P. 1 cannot be sustained and I, therefore, declare the said notification to be illegal, ultra vires and null and void. Before parting with the judgment, it must be observed that the price should be fixed by the District Magistrate u/s 3 of the Act while taking into consideration the manufacturing cost i.e. cost of electricity, labour, processing charges, incidental charges. To the is, the District Magistrate must add reasonable profit of the whole seller and retailer. In the case before Delhi High Court in New Indian industrial Corporation''s case (supra) where the question regarding fixing of price of ice was under consideration, the margin of profit allowed to the whole seller was 25% over the purchase price and of the retailer 40% of the purchase price. The District Magistrate may take into consideration this aspect while fixing the price.

12. For the reasons aforesaid, this writ petition is allowed and the order of District Magistrate, Ludhiana, Annexure P.1, issued u/s 3 of the Act is declared illegal, ultra vires and null and void the respondents are restrained from enforcing the same. However, in the interest of justice, operation of his judgment is stayed for two weeks from the receipt of the copy of the order of his Court, so as to enable the District Magistrate to fix the price according to the principles laid down in this judgment. The District Magistrate need not wait for two weeks. He should expeditiously decide this matter after taking into consideration the representation of the ice manufacturers. In case of difficulty, the District Magistrate may provisionally adopt the whole sale price and retail sale price fixed by the District Magistrate, Jalandhar, till he himself determines the price after applying his mind t) all the relevant facts. A copy of this order be given Dasti to the parties today.

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