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(1985) 07 KAR CK 0015

In the Karnataka High Court

Case No : W.Ps. No''s. 4360 and 4361 of 1985

S. Ganeshmal Jain — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 08-07-1985

Acts Referred:
Constitution of India, 1950 — Article 14, 19 (1) (g), 226

Citation : (1987) ILR (Kar) 804

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : Mohandas N. Hegde and N. Basavaraj, Central Government Standing Counsel for R-l, for the Appellant; S. Udayashankar, HCGP for R-2, for the Respondent

Judgement

K.A. Swami, J.—In these petitions under Article 226 of the Constitution, the petitioners have sought for striking down the order dated 22nd May, 1984 bearing No. GSR/391(E)/ESS. Com/Sugar, issued by the Central Government, produced as Annexure-A.

2. It is contended on behalf of the petitioners that the impugned order - Annexure ''A'', is violative of Articles 14 and 19(1)(g) of the Constitution in as much as it is arbitrary and imposes an unreasonable restriction on the fundamental right to carry on the trade. It is also further contended that it is not possible to exhaust the stock within ten days from the date of receipt of the stock ; therefore the condition that the stock of vaccum pan sugar of kandasari shall not be held for a period exceeding ten days from the date of receipt of the stock imposes an unreasonable restriction. It is also further contended that the authorities incharge of enforcement of the impugned order ate insisting that the stock of vaccum pan sugar of kandasari held by the petitioners should not continue for over a period of ten days even if the stock is less then 250 quintals.

3. Having regard to the aforesaid contentions, the following points arise for consideration :

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(i)Whether the impugned order-Annexure ''A'' is violative of Articles 14 and 19(1)(g) of the Constitution?

ii) What is the scope and ambit of the impugned order-Annexure ''A'' ?

4. POINT No. (i) : The impugned order - Annexure ''A'' is as follows :

"THE GAZETTE OF INDIA : EXTRAORDINARY MINISTRY OF FOOD AND CIVIL SUPPLIES :

(Department of Food)

ORDER

New Delhi, the 22nd May, 1984.

G.S.R. 391(E)/Ess Com/Sugar - In exercise of the powers conferred by Clause 5 of the Sugar (Control) Order, 1966 and in supersession of the order of the Government of India in the Ministry of Agriculture (Department of Food) No. GSR. 362(E)/ Ess.Com/Sugar, dated the 29th April 1982, the Central Government hereby direct that no recognised dealer shall keep in stock at any time :

(1) the vaccum pan sugar in the places mentioned below in excess of the quantities mentioned against each :

(i) in Calcutta and extended area :

(a) recognised dealers who import sugar from outside West Bengal - 3,500 quintals.

(b) other recognised dealers - 250 quintals.

(ii) in other places :

(a) in cities and towns with a population of one lakh or more -250 quintals.

(b) in other towns with a population of less than one lakh -100 quintals.

(2) Khandasari (open pan sugar) in excess of 250 quintals.

Provided that no recognised dealer shall hold any stock of vaccum pan sugar of Khandasari (open pan sugar) for a period of exceeding ten days from the date of receipt by him of such stock of sugar or Khandasari ;

Provided further that nothing in this order shall apply to the holding of stocks of sugar :

(i) on Government account ; or

(ii) by the recognised dealers nominated by a State Government or an officer authorised by to hold such stock for distribution through fair price shops or

(iii) by the Food Corporation of India."

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Similar order was issued on 14th July, 1980 by the Central Government under Order No. GSR 410(E)/Ess. Com/Sugar. It was challenged as violative of Articles 14 and 19(1)(g) of the Constitution, before the Supreme Court in P.P. Enterprises and Others Vs. Union of India (UOI) and Others, . The Supreme Court has held as follows :

"8. A person has a right to carry on any occupation, trade or business and the only restriction on this unfettered right is the authority of the State to make a law imposing reasonable restrictions under Clause (6) The expression ''reasonable restriction'' signifies that the limitation imposed on a person in enjoyment of that right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public No cut and dry test can be applied to each individual statute impugned, nor an abstract standard or general pattern of reasonableness can be laid down as applicable in all cases. The Court in each case has to strike a proper balance between the freedom guaranteed by Article 19(1)(g) and the social control permitted by Clause (6) of Article 19. By the impugned order the Central Government has only put an embargo on the dealers on keeping sugar in excess of the quantity specified. It was passed only with a view to prevent hoarding and black marketing and to ensure equitable distribution and availability of sugar at fair prices in the open market.

9. .....But in the cases in hand the direction enjoined a recognised dealer not to keep sugar in stock at any time in excess of the quantity specified therein. It only seeks to regulate the limit of storage of sugar and does not prohibit its storage. The case of H. Sanjeevaiah, therefore, is not of much help to the petitioners herein,"

After adverting to the observations made in Laxmi Khandsari and Others Vs. State of U.P. and Others, about reasonable restrictions on the right conferred by Article 19(1)(g) of the Constitution it has been further held by the Supreme Court as follows :

"10. .....Judged in that light and on an over all consideration of the various aspects of the matter, restrictions put by the impugned order can by no means be said to be unreasonable. It is only regulatory and not prohibitory."

With reference to the contention based on Article 14 of the Constitution, following the decisions in Suraj Mal Kailash Chand and Others Vs. Union of India (UOI) and Another, and Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, it has been held that the order is not violative of Article 14 of the Constitution. In those decisions it is held that fixation of stock limit is reasonable and has nexus with the object to obviate hoarding and black-marketing in food-stuffs, and to ensure equitable distribution and availability of essential commodities at fair prices. Therefore, fixation of stock limit is neither arbitrary nor irrational having no nexus and as such, is not violative of Article 14 of the Constitution, Thus, the first point is completely covered by the aforesaid decisions of the Supreme Court Accordingly, it is answered in the negative and

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held that the impugned order is not violative of Articles 14 and 19(1)(g) of the Constitution.

5. POINT NO. (ii) : While dealing with Point No. (i), it has already been pointed out that the impugned order only seeks to regulate the limit of storage of sugar and it does not prohibit its storage. The first portion of the order i.e.,

"The Central Government hereby direct that no recognised dealer shall keep in stock at any lime- (1) the vaccum pan sugar in the places mentioned below in excess of the quantities mentioned against each :

.....

(2) Khandasari (open pan sugar) in excess of 250 quintals. "

It only means that a recognised dealer should not have in stock more than 250 quintals of Khandasari (open pan sugar) at a time. But, there is nothing to prevent him from entering into a series of transactions during the course of the day. Consequently, it follows that a recognised dealer may even have series of transactions in a day which in totality may exceed 250 quintals ; provided his stock of Khandasari (open pan sugar) does not exceed 250 quintals at a time. For instance, on the opening of a particular day, a recognised dealer may have 250 quintals, but by the after-noon, he may sell the entire 250 quintals and receive further stock of 250 quintals of Khandasari (open pan sugar) and sell the same by evening ; though the total transactions of the day are in the order of 500 quintals, but he has not exceeded at a time 250 quintals.

Proviso to para-2 of the impugned order deals with the stock held by a recognised dealer on the date when the impugned order came into force. Since the impugned order fixed the upper limit of the storage of vaccum pan sugar and since it was possible and probable that a recognised dealer might be holding the stock of vaccum pan sugar in excess of 250 quintals on the date the impugned order came into force, it was necessary to grant him time to sell the stock held in excess of 250 quintals. Therefore proviso to Clause 2 of the impugned order provided that no recognised dealer should hold any stock of vaccum pan sugar of Khandasari (open pan sugar) for a period exceeding ten days from the date of receipt by him of such stock of sugar or Khandasari. The words "such stock" occurring in the proviso to Clause 2 of the impugned order are referable to the stock held in excess of 250 quintals on the date the impugned order came into force. Thus, it is open to a recognised dealer to continue to hold the stock of 250 quintals of sugar or Khandasari, but any stock held by him in excess of 250 quintals on the date the impugned order came into force, was required to be disposed within ten days. Point No. (ii) is answered accordingly.

6. In view of what is stated about the scope and ambit of the impugned order, the enforcement authority is not right in insisting upon a recognised dealer that even 250 quintals of sugar or Khandasari should not be held in stock for more than ten days as it is open to him to maintain the stock of 250 quintals at a time.

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7. For the reasons stated above, these Writ Petitions are disposed of in the following terms :

(i) The impugned order (Annexure-A) is valid and is not violative of Articles 14 and 19(1)(g) of the Constitution.

(ii) The enforcement authorities are directed to enforce the order consistent with, and in accordance with the interpretation placed by this decision as to the scope and ambit of the impugned order.

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