

(1988) 05 AHC CK 0043

In the Allahabad High Court

Case No : Writ Petition No. 5370 of 1986 (With Connected Writ Petitions)

Saharanpur Cold Storage

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-05-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 31(C)
Uttar Pradesh Regulation of Money Lending Act, 1976 — Section 29, 44A

Citation : (1988) 05 AHC CK 0043

Hon'ble Judges : U.C.Srivastava, J and V.Kumar, J

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—In this bunch of writ petitions the petitioners have challenged the Notification issued by the State Government every year beginning from the year 1982 to 1986 fixing hiring charges for storing potatoes in the Cold Storages in the State of Uttar Pradesh. The petitioners have prayed that the provisions of the Uttar Pradesh Regulation of Cold Storages Act (hereinafter referred to as the "Act") be declared ultra vires and the State Government may be restrained from acting upon the provisions of the Act and also prayed that mandamus be issued restraining the State Government from interfering with the petitioner's right to realise hiring charges of storing potatoes at the rate given by them.

2. The writ petitions pertaining to the year 1982 have already been dismissed by a Division Bench of this Court at Allahabad, reference to which will be made later on in this judgment. Special leave petitions against the said judgment too were dismissed. For the year 1982, Notification was published on 26882 fixing Rs. 17 per quintal as hiring charges. The Advisory Board for the said year has recommended the rate of Rs. 17.50 per quintal as hiring charges. Prior to the publication of notification the arrears were charged at the rate of Rs. 18.50 p per quintal as hiring charges for the years 1984 and 1985 although the Advisory Board had recommended Rs. 21 per quintal as storage charges, but the Government issued notification fixing the rate to be Rs. 19 per quintal. These

notifications too were issued several months after the start of the season.

3. The writ petitions have been opposed by the State Government which has filed counteraffidavit and with reference to the previous decisions of this Court have prayed for dismissal of the writ petition.

4. A Division Bench of this Court in Writ Petition No. 395 of 1979, in which one of us (Justice U.C. Srivastava) was a member, decided on 16579, held the provisions of U.P. Act No. 11 of 1976 are not hit by Article 19(1) (g) of the Constitution of India and the storage charges fixed by the State Government in consultation with the Advisory Board are not open to challenge.

5. A Division Bench of this Court in Ice and General Mills and others V. State of Uttar Pradesh (1987 ALJ 689) pertaining to the notification dated May 26, 1986 issued by the State Government in exercise of its power under section 29 of U.P. Regulations of Cold Storages, Act, 1976 fixing maximum hire charges which a licensee may charge of potatoes at Rs. 19.80 per quintal for the period from 15th February, 1986 to 30th November, 1986 held that the notification of the State Government fixing surcharges on facts and evidence was arbitrary. The Bench further held that the challenge of the notification on the ground of violation of Articles 14 and 19 of the Constitution was not barred under Article 31C of the Constitution of India.

6. In respect of the Notification issued on February 19, 1987 fixing Rs. 23 per quintal as hire charges from February 1987 to November 30, 1987 challenge was made before this Court and a Division Bench at Allahabad in the case of Sheetgrah Sangh, U.P. Kanpur and another v. State of Uttar Pradesh and another. (1988 ALJ, 14) which held that the power to fix charges is not arbitrary and unguided. It was further held that the notification issued under section 44A of the Act granting exemption to specified Cold Storages was reasonable classification, consequently Article 14 was not infringed. It was further held that the Notification issued by the State Government cannot claim to enjoy immunity under Article 31C not being the law made by the State Legislature in the exercise of its plenary legislative power and the submission based on Article 31C cannot prevail even if the State succeeds in establishing that the Act enjoys immunity under Article 31C. The Court disagreed with the case reported in 1987 ALJ 689, referred to above but at the same time observed that had it not been for the fact that the plea based on Article 31C has to fail on the ground mentioned by the Division Bench, the Bench could have referred this matter to the larger Bench. The Bench further held that "the impugned Act is indubitably a law which is designed to secure that a material resource which includes agricultural produce and, therefore, potatoes constituting an essential item of food belonging to the community are made available to the consumers throughout the " year. Because of its perishability, the cultivators become vulnerable, liable to be exploited by the cold storages in the absence of any control by the State. Proper Control of the means of preservation at reasonable rents, or charges is hence necessary so as to ensure their (potatoes in the present case) continued availability

throughout the year. Distress sales are what is intended to be curbed. That being so, can there be any doubt, that the impugned legislation is a law calculated to secure the purpose enshrined in clause (b) of Article 39. With respect, the answer must be in the negative...? The writ petitions were dismissed and the Court maintained Rs. 23 as hire charges for the year in question.

7. In the case of *M/S O.P. Ice and Cold Storage, Agra and others v. State of U.P.*, (1988 ALJ 36) it was held that the powers of the State Government exercising powers after commencement of storage operation by issuing notification having retrospective operation was not hit by Article 19(1)(g) of the Constitution of India. It was further held that the maximum charges were so fixed after taking into consideration the recommendation of the Advisory Board and the same was not arbitrary. The Division Bench further held that the scheme of the Act clearly contemplates that maximum charges can be fixed by the Government even after the commencement of the season covering the entire season i.e., both prior to the issue of the notification as well as after it upto the end of potato season. The Notification dated August 26, 1982 fixing storage charges after the commencement of season, for the entire season was, hence plainly authorised by the Act, even if it be assumed that it has some retrospective operation, though, under the scheme of the Act, there is no element of retrospectivity involved in the notification under challenge. The prohibition is against taking or receiving as storage charges any amount in excess of that fixed under Section 29 and, on the material on record, licencees had not realised storage charges from the hirers in excess of the notified rate prior to the issue of the notification. The position, therefore, would be that so far as the licencees were concerned, there was no question of impugned notification operating against them. They had still to realise hiring charges and consequently they could be legitimately restrained from the impugned notification.

8. Learned counsel for the petitioners raised certain pleas so far as vires of the Act is concerned. The vires of the Act had already been decided in the reported and unreported decisions referred to above and there being no new ground to disagree with the same. Being in agreement with the above mentioned decision, the unsubstantiated challenge to the vires of the Act must fail.

9. Learned counsel next contended that there being difference of opinion between the two Benches, regarding Article 31C of the Constitution of India, the matter may be referred to the larger Bench. This plea was raised before the Division Bench in the case *Sheetgrah Sangh U.P. Kanpur* and another (*supra*) in which the Division Bench after following the observations made by the Division Bench in the case *Ice and General Mills and others* (*supra*) that there is no control in the Act on the sale of potato or on the fixation of the prices of potato to be sold in the market. So clause (b) of Article 39 of the Constitution cannot be attracted. The Court held that they were unable to agree for the fact that the plea based on Article 31C has to fail on the ground mentioned by them that they would have referred this question to a Larger Bench. The Court held that the

impugned notification issued by the State Government cannot claim to enjoy immunity under Article 31C, not being a law made by the State Legislature in the exercise of its plenary legislative power. The main thrust of the petitioner being directed against the notification by which maximum charges have been fixed the submission of the learned Advocate General based on Article 31C cannot prevail even if he succeeds in establishing that the Act enjoys immunity under Article 31C.?

10. We agree with the said reasoning and as such the plea that the matter may be referred to the larger Bench will not affect the merit of the case, consequently this plea is rejected.

11. Learned counsel then contended that section 44A of the Act which was introduced in 1983 was discriminatory and hit by Article 14 of the Constitution of India. It reads as under

§44A. Power to exempt The State Government may by notification direct that the provisions of section 26 and section 29 shall not apply during such period and in respect of such category of cold storages, constructed before or after the commencement of Uttar Pradesh Regulation of Cold Storages (Amendment) Act, 1983, as may be considered necessary in public interest.?

Section 44A thus empowers the State Government not to apply the provisions of Sections 26 and 29 of the Act during such period and in respect of such category of cold storages constructed before or after the commencement of Uttar Pradesh Regulation of Cold Storages (Amendment) Act, 1983, as may be considered necessary in public interest, and in exercise of its power had exempted certain Cold Storages constructed under the World Bank Project in collaboration with the National Cooperative Development Corporation, from the provisions of sections 26 and 29 of the Act, even though the working condition and operation may be the same, Those Cold Storages have been constructed under a particular scheme, as such, exemption available to them cannot be claimed by the private Cold Storages and the same cannot be said to be discriminatory and we agree with the observations made by the Court in the case of Sheetgrah Sangh U.P., Kanpur and another (supra) that section 44A of the Act is not discriminatory and not hit by Article 14 of the Constitution of India.

12. It was contended that so far as the year 1986 is concerned, retrospective effect cannot be given to the hire charges and the hirecharges could be charged from the date they are levelled. Some retrospectivity can be given to the hire charges provided the notification is covered by sections 26 and 29 of the Act and the Notification in question is precisely covered by the same and as such this is to fail as held by the Division Bench in the case of Sheetgrah Sangh U.P., Kanpur and another (supra)

13. The Notification for the years 1984 and 1985 has been challenged on the ground that no reasons have been assigned by the State Government for accepting the proposed storages charges fixed by the Advisory Board.

14. In the counteraffidavit the allegations made by the petitioners were refuted and it was stated that in the year 1984 the recommendation of the Advisory Board before fixing storage charges for the said year and every aspect was considered. Similar plea has been taken in the year 1985. It has been denied that the Director of Horticulture has confirmed anything and has also pleaded that the recommendation of the Advisory Board is not binding upon the Government. It is true that the recommendation of the Advisory Board is not binding but even then it has got to be considered. In the counteraffidavit details have been given regarding fixation of storage charges fixed at a particular rate which is not arbitrary.

15. The Division Bench in the case of Ice and General Mills and others (supra) examined this question and allowed the writ petition and directed the State Government to redetermine the maximum hiring charges and the same rate of Rs. 19 per quintal was fixed for the year 1984/85 also. The reasoning which was given by the Division Bench in that case regarding notification of the year 1986 entirely applies to the case so far as rate fixed for 1984/85 is concerned. The writ petitions of 1982 have been dismissed at Allahabad, as stated earlier. The writ petitions of 1984/85 also deserve to be allowed and the writ petitions pertaining to the year 1986 are also allowed.

16. As such, writ petitions Nos. 2999 of 1982, 4164 of 1982, 4280 of 1982, 4324 of 1982, 4362 of 1982, 4491 of 1982, 4513 of 1982, 4610 of 1982, 4662 of 1982, 4663 of 1982 and 4779 of 1982, 2588/82, 3425/82, 2558/82 are dismissed. W. P. nos. 2629 of 1984, 2722 of 1984, 2732 of 1984, 2734 of 1984, 2739 of 1984, 2760 of 1984, 2761 of 1984, 2762 of 1984, 2765 of 1984, 2766 of 1984, 2767 of 1984, 2788 of 1984, 2789 of 1984, 2790 of 1984, 2791 of 1984, 2792 of 1984, 2793 of 1984, 2858 of 1984, 2890 of 1984, 3007/84, 3008 of 1984, 3009 of 1984, 3109 of 1984, 3110 of 1984, 3154 of 1984, 3155 of 1984, 3156 of 1984, 3157 of 1984, 3158 of 1984, 3159 of 1984, 3162 of 1984, 3231 of 1984, 3428 of 1984, 3429 of 1984, 3692 of 1984, 3430 of 1984; 3431 of 1984, 3432 of 1984, 3433 of 1984, 4120 of 1984, 3712 of 1984, 3809 of 1984, 3827 of 1984, 3903 of 1984, 3933 of 1984, 3976 of 1984, 3991 of 1984, 4024 of 1984, 4029 of 1984, 4099 of 1984, 4121 of 1984, 4122 of 1984, 4272 of 1984, 4331 of 1984, 4339 of 1984, 4411 of 1984, 4441 of 1984, 4501 of 1984, 4554 of 1984, 4607 of 1984, 4610 of 1984, 4657 of 1984, 4662 of 1984, 3370 of 1984, 4677 of 1984, 462 of 1984, 4722 of 1984, 4726 of 1984, 4727 of 1984, 4825 of 1984, 4910 of 1984, 4892 of 1984, 4932 of 1984, 5147 of 1984, 1781 of 1984, 2557 of 1985, 2558 of 1985, 2649 of 1985, 2692 of 1985, 2610 of 1985, 2041 of 1985, 2650 of 1985, 2727 of 1985, 2728 of 1985, 2735 of 1985, 2857 of 1985, 2882 of 1985, 2995 of 1985, 4033 of 1985, 4168 of 1985, 4661 of 1985, 4562 of 1985, 4748 of 1985, 3387 of 1985, 3471 of 1985, 3498 of 1985, 3582 of 1985, 3709 of 1985, 3865 of 1985, 2536 of 1985, 4772 of 1985, 5176 of 1985, 5224 of 1985, 5263 of 1985, 3710 of 1985, 3122 of 1985, 3134 of 1985, 2285 of 1985, and 4534 of 1985 are allowed and the Notifications dated 28/2/1984 and 25/3/1985 issued by the State Government in respect of the aforesaid periods are quashed,

and the State Government is directed to redetermine the maximum hiring charges for the periods in question in accordance with law as early as possible, say, if possible within a period of three months.

17, So far as Writ Petitions of 1986 are concerned i.e., Writ Petition Nos. 4269 of 1986, 4548 of 1986, 4596 of 1986, 4730 of 1986, 4747 of 1986, 4756 of 1986, 4766 of 1986, 4868 of 1986, 5359 of 1986, 5410 of 1986, 5684 of 1986, 5947 of 1986, 5820 of 1986, 6007 of 1986, 6010 of 1986, 6204 of 1986, 6585 of 1986, 6662 of 1986, 6697 of 1986, 6853 of 1986, 7026 of 1986, 7563 of 1986, 8267 of 1986 and 1616 of 1986 are allowed and the notification for the said year referred to above is quashed. The hire charges for the said year too would be determined upto date of the year 1984 and 1985. There will be no order as to costs.

(ordered accordingly)