**(1986) 12 AHC CK 0030**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 312 of 1985

Shree Laxmi Distributing Agency Pvt. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

**Date of Decision :** 19-12-1986

**Acts Referred:**

Constitution of India, 1950 — Article 226, 265
Customs Act, 1962 — Section 25
Constitution of India, 1950 — Article 226, 265
Customs Act, 1962 — Section 25
Constitution of India, 1950 — Article 226, 265
Customs Act, 1962 — Section 25

**Citation :** (1987) 66 STC 112

**Hon'ble Judges :** R.P. Singh, J;K.C. Agarwal, J

**Bench :** Division Bench

**Advocate :** J.N. Tiwari, for the Appellant;

**Final Decision :** Dismissed

# Judgement

K.C. Agarwal, J.—This writ petition under Article 226 of the Constitution has been filed by M/s. Shree Laxmi Distributing Agency Private Limited, for certiorari quashing of the notification dated 18th July, 1979, partly in so far as it lays down that the exemption from payment of tax on the purchase of wheat for use as raw material in the manufacture of the notified goods provided that such wheat was purchased from the Food Corporation of India.

2. The petitioner is a company registered under the Companies Act and engaged in the production of atta, maida, suji, etc. In the year 1958, the Central Government issued an order known as Wheat (Regulation and Use in Roller Mills) Order, 1958. Under Clause 4 of this Order, the roller mill was prohibited from purchasing any wheat from the open market. It could, under the Order, use the wheat which was allotted by the Government or the Government agency, Food Corporation of India. Since the roller flour mills were prohibited from purchasing the wheat from open market and the Food Corporation of India, according to the

allegations of the roller mill, was not supplying the requisite quantity of wheat to the roller mills, a number of writ petitions were filed in the High Court as well as the Supreme Court. Before the Supreme Court, a statement was made on behalf of the Central Government on the basis of which, vide its order dated 9th August, 1984, that millers were to be given wheat to the extent of 100 per cent gave a direction to that effect. The Government of India on 10th April, 1985, issued an order permitting the purchase of wheat by the roller flour mills from open market. The effect of the Government notification was that the roller flour mills could purchase wheat from open market as well as from the Food Corporation of India. The notification dated 18th July, 1979, exempts from payment of purchase tax on wheat purchased from the Food Corporation of India. The petitioner filed this writ petition challenging the validity of the aforesaid notification on the basis that the benefit of Section 4-B could not be confined to the purchases to be made from the Food Corporation of India. According to the petitioner, there is an unjustified discrimination between two types of purchases-one made from the Food Corporation of India and the other from open market. The purpose of purchase being the same, the petitioner''s contention taken in the writ petition was that the exemption granted arbitrarily discriminates between the purchases from two sources and, as such, the following clause of the aforesaid notification is liable to be declared ultra vires, which has been underlined by us was argued to be ultra vires:

The Governor is further pleased to exempt, with immediate effect, subject to the conditions and restrictions specified in the said section, a roller flour mill holding a recognition certificate, from payment of tax on the purchase of wheat required by it for use as raw material in the manufacture of the said notified goods provided that such wheat is purchased from the Food Corporation of India.

3. Although the petitioner had taken a number of other grounds but the point, abovementioned, was alone pressed before us.

4. Having heard the petitioner''s counsel as well as the counsel appearing for the State of U.P., we are unable to find any substance in the submission made.

5. Section 3-D provides for the levy of purchase or sales tax on certain goods. Section 4-B confers powers on the State Government that notwithstanding anything contained in Section 3-D, it could exempt from payment of tax wholly or partly in respect of a commodity which is specified in that behalf.

6. For what commodity and to what extent the State Government has granted exemption with which conditions have to be found from the notification. The rights of a person to get exemption is to be governed by that notification. In the instant case, the exemption was given only in respect of purchase of wheat required by a roller flour mill holding a recognition certificate for use as raw material in the manufacture of the said notified goods provided that such wheat was purchased from the Food Corporation of India.

7. It may be noted here that by the aforesaid part of the notification issued u/s 4-

 

B, the Governor had declared "atta, maida and suji manufactured by the roller flour mills, to be ''notified goods''" for the purpose of Section 4-B. There is no dispute that the notification as it stands does not confer any right on the petitioner to get exemption from payment of purchase tax on wheat purchased from open market. Counsel had urged, as noted above, that the distinction between the two types of purchases was arbitrary and hostile. In a matter of exemption, the rights of the parties have to be governed by the law or the notification which is issued by the Government. The notification treats everybody alike in the matter of exemption of purchase tax, if he purchases the same from the Food Corporation of India. In that event, everybody would be exempt from payment of tax. It is only those who do not make purchase from the Food Corporation of India that they are not entitled to the benefit of the notification. In that event, he will be liable to pay purchase tax.

8. Counsel''s argument that Section 4-B provides for exemption for the purpose of giving incentive to new industries, it was not material as to from where wheat was purchased by them. True, it is that Section 4-B was enacted for the purpose of conferring benefit on the new industries and payment of purchase tax or sales tax can be exempt partly or wholly or be payable at concessional rate in the case of new units, by means of a notification to be issued under this provision.

9. Granting, modifying or withdrawing an exemption from tax is in the nature of a piece of subordinate legislation. Its validity cannot be tested by the court by applying the standards applicable to an administrative action. Reference may be made to the decision of the Supreme Court in Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others, . In that case it was held :

The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions the legislature may delegate that power to some other authority. But the exercise of that power, whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact. The relief as framed by the appellant in his writ petition does not bring out the real issue calling for determination. In reality he wants this court to direct the Government to delete the entry in question from Schedule A and include the same in Schedule B. Article 265 of the Constitution lays down that no tax can be levied and collected except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive order. Unless the executive is specifically empowered by law to give any exemption, it cannot say that it will not enforce the law as against a particular person. No court can give a direction to a Government to refrain from enforcing a provision of law. Under these circumstances, we must hold that the relief asked for by the appellant cannot be granted.

10. From what was said by the Supreme Court in the aforesaid case, covers the controversy in the case before us in its entirety. The notification sought to be struck off by the petitioner confers exemption only on the purchases made from the Food Corporation of India. We do not have any power to issue a mandate directing the State Government by means of a notification to exempt from purchase tax on wheat purchased from open market.

11. Relying on the decision of the Supreme Court in Indian Express Newpapers (Bombay) Pvt. Ltd. v. Union of India AIR 1986 SC 515 the learned counsel for the petitioner urged that as unjustified distinction has been made between the persons of two types of purchases, the clause confining exemption to purchases only from the Food Corporation of India must be struck down. To do so would amount to legislation, which power the court does not have. The Indian Express Newspapers'' case AIR 1986 SC 515 was concerned with the power to grant exemption conferred on Government by Section 25 of the Customs Act, 1962 and not with the power to amend the Act by means of a notification. The Supreme Court held in that case that:

On the other hand the case of the Government appears to be that such considerations are entirely irrelevant, though the outstanding fact remains that for several years, the Government itself thought that the newsprint deserved total exemption. On the material now available to us, while it is not possible to come to the conclusion that the effect of the levy is indeed so burdensome as to affect the freedom of the press, we are also not able to come to the conclusion that it will not be burdensome. This is a matter which touches the freedom of the press which is, as we said, the very soul of democracy.

12. Sri J.N. Tiwari, learned counsel for the petitioner, appearing in this case and Sri R.A. Sharma, who is a counsel in Writ Petition No. 1042 of 1985, Shree Bhagwati Roller Flour Mills v. Sales Tax Officer (printed at page 117 infra) referred to a number of paragraphs from this decision and pointed out that the discretion of the State Government to issue a notification of exemption was not unfettered and that it had to be exercised according to law. The submission in so far as it goes cannot be questioned as erroneous. The power of granting exemption, which is discretionary, has to be exercised by taking into account the relevant considerations and not by irrelevant. The relevant consideration which was considered or taken into account by the State Government while issuing notification u/s 4-B, was to hold the purchase of wheat from exemption of payment of purchase tax so that atta, maida and suji may be available to the consumers at cheaper rates and also to help the industries for development. But since now the compulsion of purchasing of wheat does not survive and it can be had from the open market at competitive rates, there was no point in extending the benefit of exemption to the purchases of wheat of roller flour mills from open market. The petitioner can still get the benefit of exemption by purchasing the wheat from the Food Corporation of India. It, therefore, follows that the

 

argument of arbitrariness is an argument of despair and is devoid of merit.

13. For the purpose of exempting a co-operative society from the operation of the Employees'' Provident Fund Act or the Rent Control Act or from excise duties on goods produced by them, it has been held in Baburao v. Bombay Housing Board [1954] SCR 572, Mohmedalli and Others Vs. Union of India (UOI) and Another, and Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), , that the co-operative society has to be treated on a special footing as compared with other establishments of corporation. In the instant case, if the notification impugned is considered from the point of view of changed circumstances and by taking the fact of the intention to push up the sale of wheat in possession of the Food Corporation of India, there will be no doubt that the notification exempting payment of purchase tax on wheat is fully justified.

14. The principle of equality does not take away the State''s power of classifying a person for legitimate purpose.

15. The petitioner''s counsel had cited a number of decisions in support of its argument but since we are unable to find them relevant for the purpose of deciding the point involved, we have not referred them in this judgment.

16. For what we have said above, the writ petition fails and is dismissed summarily. Interim stay order is discharged.

 