
(1997) 12 MP CK 0006
In the Madhya Pradesh High Court
Case No : L.P.A. No. 184 of 1996

Shriniwas Fertilizers Ltd. and Another	APPELLANT
Vs	
State of M.P. and Another	RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 19(1)

Citation : (1998) 2 JLJ 169 : (1998) 1 MPJR 408

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : A.K. Gohil, J.P. Singhi and A. Sanghi, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

These Letters Patent Appeals are directed against common judgment of the learned single Judge dated 12.9.1996 whereby the learned single Judge has dismissed the petitions filed by the Appellants/Petitioners.

Brief facts giving rise to these appeals are that in the year 1993, Government of India granted price concession on various fertilizers including Single Super Phosphate (for short "SSP"). The price concession was to bring down the price of the fertilizers to a level comparable and competitive with the price at which the imported product is being sold. The Central Government asked the State Government to continuously monitor market price of the imported product while implementing the scheme. The principle underlying the price concession extended by the Government of India is to make decontrolled fertilizers widely available and more affordable to the farmers. According to the decision of the Central Government, suitable mechanism for effective implementation of the scheme as per the guidelines was required to be evolved by the State Government. The price concession given by the Government of India for SSP was

Rs. 340/- per ton. According to the scheme, the manufacturers of the aforesaid fertilizer were required to sell the same at a price less by Rs. 340/- and the same amount was to be reimbursed by the Central Government. It is alleged that earlier the Central Government, placed at the disposal of the State Government, the funds for the said purpose but later on the amount of price concession has been decided to be paid by the Central Government on certification by the State Government. The aforesaid scheme which was contemplated by the Government of India is Ex. P-2 dated 16th June, 1993. The Scheme reads as under:

From

Santha Sheela Nair, Joint Secretary (Fart), Min. of Agriculture No. 1-1/93-FD in continuation of Telegram dated 12.5.1993 from Secretary Agriculture, Government of India on the scheme of concession on the sale of decontrolled fertilizer to farmers during 1993-94, the following are guidelines for implementation of the scheme during kharif 93.

(1) product-wise concessions are as follows:

Grade Date of concession for tonne (in Rs.)

...

...

(C) SSP (16% p) 340

...

(2) While prices are no longer under statutory control, intention of Government for extension of concession for decontrolled fertilizer under the scheme is to bring down prices of these fertilizers to a level comparable and competitive with the prices at which the imported products are being sold. State Governments must therefore, continuously monitor the market prices of imported products while implementing the scheme. The expected sale price to farmers after concession may be as follows:

....

...

SSP Rs. 1900 - 2000 per tonne (Excl. local taxes)

The prices of complexes are expected to be concerned by the prices of

(3) No concession will be available for imported DAP or complexes (.) Repeat. No concession will be available for imported DAP or Complexes.

(4) An amount of Rs. ...crores has been earmarked for your State/U.T. during Kharif 93 (comprising Rs. ...crores for DAP, Rs. ...crores for MCP, Rs. ...crores for SSP, Rs. ...crores for complexes).

(5) Funds allocated for one product will not be diverted for sale of other products. State Governments must strive to ensure balanced consumption of all required crop nutrients.

(6) In order to assist expeditions implementation, it is proposed to release forthwith 25% of the total amount earmarked to the State/U.T. (after suitable adjustment of unspent balance, if any, from scheme implemented during 1992-93).

(7) Remaining funds will be released in suitable instalments on the basis of receipt of utilisation certificates from the State for not less than 75% of the previous release.

(8) The State Government must ensure that a clear distinction made between imported and indigenous DAP/complexes and concession given only to the indigenous product.

(9) It is emphasised that concession is being extended by Government of India to make decontrolled fertilizer widely available and more affordable. State Governments should ensure maximum availability of decontrolled fertilizer to all categories of farmers.

(10) These concessions are applicable to sales during kharif 93 commencing from 12.6.1993. Unsold stocks of manufacturers as on 1.4.1993 being sold after 12.6.1993, will be eligible for concession. It should be strictly ensured that concession is available only for sale of decontrolled fertilizer for bona fide agricultural purposes.

(11) States must ensure that unsold stocks on which concession has already been availed from funds released during rabi 92-93 are not given concession again under the present scheme.

(12) Agencies found guilty of any violation, malpractice including submission of wrong information and making false claims for concession besides being liable for criminal prosecution and proceeded against as per term's of EC A/Fertilizer Control Order, should also be black-listed and prevented from further participation in the scheme under intimation to Government of India.

(13) Suitable mechanism for effective implementation of the scheme as per the above guidelines may be evolved by the State Governments immediately and furnished urgently to this Department.

(14) The scheme of concession may be widely published upto village level for the benefit of all farmers.

Agrindia

Sd/- (Sanitha Seela Nair) Joint Secretary (Fert.) Ministry of Agriculture Krishi Bhawan, New Delhi 16.6.1993

In pursuance of the guidelines provided under Clause (13) of the Scheme dated

16.6.1993 (Annex. P-2) which lays down that the State shall make a suitable mechanism for effective implementation of the Scheme, the State Government issued guidelines which are contained in Ex. P-4 dated 28th June, 1993. In Ex. P-4 dated 28th June, 1993, the condition laid down provided that this concession will be available only to the farmers on fertilizers through the Government institutions. It is further stated that Primary Co-operative Marketing Societies and Tilhan Utpadak Sahakari Societies will be utilized for sale of fertilizers. It is further laid down therein that this concession will also be available to the Agro Industries Corporation for sale of fertilizers through its retail outlets. It was also laid down in condition No. 13 that private manufacturers of fertilizers shall not sell their fertilizers at a rate lower than the rate of fertilizers so that the Sangh is not put to disadvantage and in case of violation of this condition, action will be taken against them.

It appears that when some of the private manufacturers of fertilizers took up the matter with the Central Government contending that this concession is being made available by the State through the State agencies only and private agencies are not being permitted to avail benefit of this concession, then a letter appears to have been addressed by the Agriculture Minister, Government of India to the Governor of Madhya Pradesh on 23rd July, 1993 (Annex. P-5) wherein it was requested that all channels should be permitted to sell the fertilizers at concessional rate so that the objective of reaching decontrolled fertilizers with concession to all farmers is achieved and the funds allotted are utilized in full. But no response seems to have evoked from the State. Thereafter, some fresh guidelines were also issued by the Government of India vide Ex. P-6 dated 9.6.1994 which contained a condition that suitable mechanism should be evolved by the State for implementing the scheme. Again a notification dated 29th June, 1994 (Annex. P-7) was issued by the Government of India to the same effect and it also impressed upon the State to take steps for sale of decontrolled fertilizers with concession after negotiating with the manufacturers and after taking into consideration all relevant factors.

Again Ex. P-8 dated 4th July, 1994, a telegram, was sent by the Government of India stating that it is understood that some States are restricting the sale of decontrolled fertilizers to the farmers through state-owned marketing institutions only. It was advised by the said telegram that the States should utilise all available channels of distribution to maximize sale of decontrolled fertilizers with concession to the farmers. By memo dated 17th August, 1994 (Annex. P-9), again the Government of India directed that payments will be made by them directly to the manufacturers/importers on the basis of the reports of sales verified by the State. They sent a proforma which provided a verification to be done by the State authorities for sale of decontrolled fertilizers and payment is to be made by the Government of India as per modified procedure communicated through letter dated 7th September 1994 (Annex. P-13). By Annex. P-14 certain guidelines were issued by the Government of India laying down conditions in regard to payment of concession to be made.

Appellants also gave their statement of amount of fertilizers sold by them vide Annexures P-15 and P-16 but the State declined to verify the same as per their policy decision dated 21.2.1993 (Annex. P-17). Hence, the Appellants/Petitioners approached this Court by filing the writ petitions. However, by Ex. P-19 dated 24/27th May, 1993, the State of Madhya Pradesh has now clarified that in view of revised instructions of Government of India, the concession shall now be available to private dealers provided these manufacturers sell 65% of their manufactured fertilizers to Vipanan Sangh, Marketing Society, Tilhan Sangh, State Agro Industries Development Corporation. The grievance of the Appellants/Petitioners was that they are entitled to the concession on the sale made by them at the rate of Rs. 340/- per tonne. Therefore, the Petitioners/Appellants filed the present writ petitions and sought a writ of mandamus and prayed for quashing Ex. P-19 issued by the State and sought a writ of mandamus directing the Respondents to pay concession for the sale of the fertilizers by traders for the period from 12th June, 1993 to 31.3.1994, The matter was contested by the State and the Union of India did not file any counter and supported the stand of the State Government. Learned single Judge after considering the matter came to the conclusion that the Appellants/Petitioners have no case and dismissed the writ petitions. Hence, the present Letters Patent Appeals are filed by the Appellants/Petitioners.

Shri Sanghi, learned Counsel for the Appellants submitted that the State cannot evolve a new scheme for excluding the private traders of the benefit of subsidy. It was contended that the State has no executive power to control the sale of SSP fertilizer in absence of any provision of law. Learned Counsel submitted that fertilizers being essential commodity, it is only the Central Government to regulate the sale and concession. It was submitted that the embargo put by the State is violative of Article 14 and 19(1)(g) of the Constitution of India as it puts a check on the freedom of trade. It was contended that the conditions imposed by the State created an unfair monopoly in favour of the State. He also invoked the principle of promissory estoppel.

As against this, learned Counsel for the State submitted that the concession was not a subsidy to the traders but it is essentially a subsidy to the farmers. Therefore, the Appellants/Petitioners who are traders have no right to maintain the writ petition. It was submitted that the Central Government framed a scheme and left to the State Government to frame mechanism for implementing the said scheme. The scheme framed by the Central Government was in accordance with their executive power and it was left to the State to further frame guidelines for implementation of the said scheme. It was submitted that the State Government thought it proper to distribute this subsidy through the Government agencies so that private traders may not exploit the farmers. Hence, there is no question of violation of right to trade of the traders nor the scheme framed by the State is unfair and unreasonable because the State wanted to distribute subsidy effectively and in proper manner.

We have heard learned Counsel for the parties and perused the record. It is no doubt true that the Fertilizers Control Order, 1985 was enacted by the Central Government in exercise of powers conferred under the Essential Commodities Act, 1955. The traders regulate their business as per the provisions of Fertilizers Control Order, 1985. But the question before us is not with regard to the licences issued to these traders under the said Order of 1985. A scheme was framed by the Central Government in order to make the home product competitive with the imported product. Therefore, subsidy was provided to the farmers and the benefit of subsidy has to go to the farmers and not to the traders. It is strange as to under what law these traders could bring the writ petitions seeking mandamus against the State or the Central Government that concession should be made available to them. No mandamus can be issued to any of the authorities as there are no statutory provisions which are alleged to have been violated by the Respondents, nor their right of freedom to trade enshrined under Article 19(1) (g) of the Constitution is affected by this administrative arrangement.

In fact, the Central Government realised that distribution of subsidy is not possible through their own mechanism; therefore, they directed the State Governments to regulate distribution of subsidy to the farmers and the State Governments were left free to work out their mechanism. The State Government in exercise of executive power thought it proper to distribute this subsidy to the farmers by way of sale effected through their institutions so that the benefit of the scheme could be assured in favour of farmers. The private traders have no right whatsoever to seek any mandamus that fertilizers should be sold through their medium also. If the Central Government feels that the distribution of subsidy will be safer in the hands of the State and left it to the State to work out mechanism, then the traders cannot claim any right whatsoever. The amount of subsidy was financed by the Central Government and it was to be distributed to the farmers through the medium of the State Government authorities and for that purpose, the State authorities evolved their own mechanism. In this arrangement, it cannot, by any stretch of imagination, be said that the rights of the traders is affected in any manner.

Learned Counsel for the Petitioners/Appellants invited our attention to the various instructions issued by the State Government from time to time as mentioned above, but in these instructions, it is now where laid down that the Central Government at any time objected to the scheme evolved by the State Government. In fact, in their later communication, the Central Government again emphasised that the subsidy will only be distributed on certificate given by the State authorities i.e. Director of Agriculture and other authorities. If the Central Government wanted to object to this mode of distribution of subsidy, they could have discontinued the mechanism evolved by the State Government and they could have made payment directly without the involvement of the State, but till the last circular issued by the Central Government, all through it was insisted that certificate will have to be got appended by the traders from the State authorities and then only the subsidy will be released to them. If the Central

Government wanted certificate from the State authorities in respect of fertilizers sold, it was within the power of the State Government as to how to regulate the grant of certificate. It is their prerogative to frame the scheme in respect of grant of certificate. The State Government in exercise of their discretion have evolved their mechanism for distribution of fertilizers in order to give the benefit of subsidy to the farmers. In that situation, we are of the opinion that neither Article 14 nor Article 19(1)(g) of the Constitution is violated in any manner. Submission of learned Counsel for the Appellants that the State cannot put any embargo in exercise of their executive power is without any basis. The scheme framed by the Central Government was in exercise of their executive powers and the discretion was left to the State Government to evolve their mechanism and it was also in exercise of their discretionary power. There is no question of violation of any Constitutional provision. All submissions made by the learned Counsel are totally without any basis.

In this connection, learned Counsel for the Appellants/Petitioners also invoked the principle of promissory estoppel. In our opinion, there is no question of principle of promissory estoppel as no representation was made by the Central Government/State Government to the traders. The concession was to be made available on the sale of the fertilizers and for that the State Government was left free to work out their mechanism. The concession was not for traders but was for farmers and there was no promise made to the traders whatsoever so as to invoke the principle of promissory estoppel.

Learned Counsel for the Petitioners/Appellants also invited our attention to the cases of Narendra Kumar and Others Vs. The Union of India (UOI) and Others, , Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, and J.R. Raghupathy and Others Vs. State of A.P. and Others, . In the case of Godfrey Philips India Limited (supra), their Lordships of Supreme Court have observed that principle of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and in order to invoke the doctrine of promissory estoppel one has to see whether there was any promise at all made by the State or not. That will depend upon the facts of each case. For invoking the principle of promissory estoppel, one has to show that he has suffered detriment as a result of acting in reliance of the promise of the authority. The doctrine of promissory estoppel would operate where injustice would be caused to the promisee if the promisor would be allowed to go back on the promise. Question is whether there was any such promise made by the State or the Central Government.

As per the scheme which has been mentioned above, it would appear that no promise or representation was made by any person in authority, therefore, the basic foundation for invoking the principle of promissory estoppel is missing as no representation was made either by the Central or the State Government to the Appellants/Petitioners that for sale of goods as per concessional price, they

would be entitled for subsidy at the rate of Rs. 340/- per tonne. It was only a scheme framed by the Central Government and sent to the State Government to work out mechanism for sale of these fertilizers at a concessional rate to the farmers so that the farmers can buy fertilizers at concessional rate and indigenous fertilizers can stand in the market. It was not a concession to the traders. It was only with a view to benefit the farmers and for that a subsidy was provided and left to the State Government to prepare a scheme and the State Government in pursuance of the scheme so framed by the Central Government, framed their own mechanism for distribution of the fertilizers through their State agencies. Thus, the principle of promissory estoppel is not applicable.

The case of Assistant Commissioner, Commercial Taxes v. Dharmendra Trading Co. (supra) was a case under the Sales Tax Act. Certain incentive scheme was framed by the Government for giving concession in sales tax to the new entrepreneurs and in that context, their Lordships held that it is not open for sales tax officers and the State itself to contend that the scheme itself is ultra vires of the statutory provisions. That is not the case here, as already pointed out. In the present case, no promise to benefit was made to the traders. Hence, the basis for invoking the principle of promissory estoppel is totally missing. In the case of J.R. Raghupathy (supra) which is a case in which question was with regard to establishment of location of Mandal Head-quarters, it was held that it is purely a discretionary power of the Government under Article 162 of the Constitution and the Court should not interfere.

Learned Counsel for the Petitioners/Appellants also submitted that the scheme in question is unfair and creates monopoly in favour of the State and in support of this submission, he has invited our attention to the case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, . There is no element of unfairness involved in the present scheme of things. If the subsidy is to be distributed through the State controlled agencies for sale of fertilizers, that cannot be said to be unfair activity on the part of the State. If the State wants to ensure that the benefit of subsidy should go to the farmers and this object can only be achieved through its agencies, it cannot be said to be unreasonable, unfair or creating a monopoly in favour of the State in any manner.

Learned Counsel also invited our attention to the cases of Shree Meenakshi Mills Ltd. Vs. Union of India (UOI), and Oudh Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, . In the case of Shres Meenakshi Mills (2), challenge was to the Cotton Textiles (Control) Order, 1948 on various grounds. This case has no relevance so far as the present case is concerned. In the case of Oudh Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, , question was as to what reasonable restriction can be imposed under Article 19(1)(g) of the Constitution i.e. freedom of trade. In that context, their Lordships observed that right to trade is a guaranteed freedom and that can be restricted only by law, considered by the Courts as reasonable in the circumstances. In the present case, there is no question of the Appellants/Petitioners' right of trade being infringed. Question is

whether the traders are entitled as a matter of right to the benefit of subsidy scheme formulated by the Central Government or not. The right of the Appellants/Petitioners is nowhere being infringed by any of the agency i.e. Central Government or the State Government. They are free to do their trade in accordance with the provisions of law. In our opinion, so far as the question of seeking writ of mandamus by the Petitioners/Appellants against the State Government or the Central Government to seek benefit of subsidy is concerned, they have no such right whatsoever.

Learned Counsel also invited our attention to the cases of Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan Vs. Collector of Central Excise, Jaipur, Rajasthan, , Bombay Chemical Pvt. Ltd. Vs. Collector of Central Excise, Bombay I, Bombay, and MAC Laboratories (Pvt.) Ltd. Vs. The Collector of Central Excise, Bombay, , in order to support his contention that the exemption notification must be strictly construed. There is no two opinion in that matter that any concessional or any exemption notification has to be construed strictly; but in our opinion, as mentioned above, the Appellants/Petitioners have no right whatsoever to seek mandamus against the State Government or the Central Government to direct them to extend the benefit of subsidy to the Appellants also. The argument advanced is totally misplaced and misconceived. The benefit of subsidy has to go to the farmers and it is open to the Central or the State Government to regulate the benefit of subsidy to the farmers by evolving a reasonable and just scheme. In the present case, the Central Government left it open to the State to prepare a proper scheme for distribution of the subsidy to the farmers and the State Government in exercise of its executive power framed the scheme for distributing the fertilizers through their agencies and to provide subsidy through the State agencies only. This was done in the public interest and for the benefit of farmers and the traders cannot have any grievance whatsoever in that regard. We are satisfied that the traders have no legal right whatsoever to claim the benefit under the scheme of subsidy. Learned single Judge has therefore rightly dismissed the writ petitions.

Learned counsel also invited our attention to a decision of Delhi High Court in the case of Ram Ganga Fertilizer and Ors. v. Union of India and Ors. 1993 (1) Del 202. This was a case with regard to fixing ceiling on subsidy payable to manufacturers of Single Super Phosphate. This case has no applicability in the present case.

As a result, the Letters Patent Appeals are dismissed being bereft of merit and substance, with cost of Rs. 5000/- each.