(1983) 10 PAT CK 0003

In the Patna High Court

Case No : C.W.C. No. 3260 of 1963

Shyam Sunder Prasad Bhadani and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 03-10-1983

Acts Referred:

Essential Commodities Act, 1955 — Section 3
Industries (Development and Regulation) Act, 1951 — Section 18G, 25

Citation : (1984) 32 BLJR 134 : (1984) PLJR 17

Hon'ble Judges : L.M. Sharma, J;Anand Prasad Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioners are dealers in cement and carry on their business at Gaya and Jhumritalaya respectively. By the present application, they have challenged the order of the Food Commissioner, Bihar, respondent No. 2, as contained in Annexure 1, so far it asks the District Magistrate to seize the stock of non-levy cement and to get the seized stock sold to eligible buyers at the controlled price. Accordingly, 647 bags of non-levy cement has been seized by Annexure 2. It has been stated in Annexure 1 that the State Government is seriously concerned about the inadequate despatches of levy cement to the districts and in spite of an instruction in this regard, only some of the producers have shown promptness. The District Magistrate is, therefore, advised that if full quantity of levy cement is not supplied he should seize the sock of non-levy cement in possession of the dealers and sell it to eligible buyers at the controlled price.

2. For the purpose of securing equitable distribution and availability of cement at fair price the Central Government in exercise of the powers conferred by Sections 18G and 25 of the Industries (Development and Regulation) Act, 1951 made the Cement Control Order, 1967. The provisions of the Order, inter alia, vested in the Central Government the power to control, removal, sale, transport etc. of the cement by purchaser as also the price. The clause directed the cement to be sold

by a dealer at a price to be fixed by the State Government. Under the powers conferred by Section 3 of the Essential Commodities Act, 1955 read with the Notification No. Section O. 1844 dated 18.2.1966 of the Government of India and with the concurrence of the Central Government, the Bihar Cement Control Order, 1972 was made laying down the conditions and procedure of distribution and sale of cement. On 28.2.1982, the Central Government Order was amended by insertion of a new Clause (1A) and Sub-clauses (d) and (e) in Clause 2. Original Clause 2(a) defining ''cement'' was retained. By the new Sub-clauses (d) and (e), cement was divided into two classes, levy cement and non-levy cement. Levy cement was defined as that part of production of cement with reference to the installed capacity of cement plant as may be determined by the Central Government (not being more than 66.6 percent) and the remaining part as non levy cement. Clause 1(a) said that the provisions of the Cement Control Order, 1967 (except Clause 9A which is not relevant in the present case) would apply only in relation to levy cement. The Bihar Cement Control Order, 1972 was also amended in similar terms by introduction of the definition of levy cement and non-levy cement in Clause 2. By a new Clause 8(a) the District Magistrate has been empowered to fix the price per bag of levy cement and the amended Clause 9 requires a person desirous of purchasing levy cement to obtain a permit. The original Clause 12 prohibiting the sale of cement at a higher price than fixed has been amended by substituting levy cement in place of cement.

3. The contention on behalf of the petitioners has been pressed on the basis of the aforesaid amendments mentioned in the writ application and in course of the argument the learned State counsel his not challenged this position nor bas placed any other provision. It has been further stated in the writ application that the impugned circular in Annexure ''A'' has neither been issued by the State Government nor the concurrence of the Central Government has been obtained. No counter affidavit has been filed in the case and Mr. Government Pleader stated on 30.9 1983 when the case was heard that he has not received any instruction from the department concerned. He, however, wanted to make a fresh effort to contact the department but today again it is stated that no instructions are being received in spite of reminder.

4. A perusal of the new provisions brought in by amendment and discussed above indicates that non-levy cement has been completely released from the restrictions and control applicable earlier to the total production of cement Only the levy cement is now affected by them. The power to ear-mark levy cement out of the total production lies with the Central Government. The District Magistrate or the Food Commissioner or the State of Bihar does not have any authority to interfere with same. The effect of seizing stock of non-levy cement and selling the same at the controlled price is to disturb the proportion fixed in this regard by the Central Government. This is not permissible. As observed above, the law as it stands now does not permit any control of price of non-levy cement. In Annexure 1 it has been mentioned that some times scarcity of levy cement is created on account of inadequate despatches and the direction

mentioned therein should be followed and action taken only in such a situation. It is regrettable that artificial scarcity is occasionally created, but the problem cannot be solved by exercise of power not vested in the authority. It has to be remedied by a lawful action.

5. For the reasons mentioned above, we are of the view that the impugned orders are illegal. Accordingly, we quash the order in Annexure 2 and that part of Annexure 1 which directs the District Magistrate to seize non-levy cement and convert the same into levy cement and sell them at controlled price. The writ application is accordingly allowed.