

(1985) 09 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No"s. 10110 of 1984, 1493 and 2151 of 1985

Silver Cloud Tea Factory and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 23-09-1985

Acts Referred:

Tea Act, 1953 — Section 30(3)

Citation : AIR 1986 Mad 297

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : K. Ramamani and K.T. Palpandian, for the Appellant; M.R. Narayanaswami, for R. Shanmugham, Addl. Central Govt. Standing Counsel and K. V. Subramaniam for S. Seshadri, for the Respondent

Judgement

1. Messrs. Silver Cloud Tea Factory, a partnership firm, is the petitioner in W. P. 10110 of 1984 and 1493, of 1985. The petitioner in W. P.

2151 of 1985 is carrying on business as a retail dealer in tea dealing exclusively with that commodity supplied by Messrs. Silver Cloud Tea

factory. In W. P. 10110 of 1984, the petitioner has prayed for the issue of a writ of declaration that the Tea (Marketing) Control Order, 1984

(hereinafter referred to as " the Order ") dt. 19-4-1984 is unconstitutional and ultra vires. However, in W. P. 1493 of 1985, the petitioner has

prayed for quashing of the order of the second respondent therein dt. 21-8-1984 and to direct him to grant relaxation to the petitioner. In so far as

the W. P. 2151 of 1985 is concerned, the petitioner therein has prayed for a writ of declaration that Cl. 17 of the Order dt. 19-4-1984 is void and

inoperative.

2. The petitioner in W. P. 10110 of 1984, and 1493 of 1985, namely Messrs.

Silver Cloud Tea Factory, applied to the Chairman of the Tea Board, Calcutta, which has been constituted the Registering authority for purposes of Cl. 17 of the Order under Cl. 20) thereof, on 11-7-1984, that it should be given the benefit of relaxation under the proviso to Cl. 17 of the Order from selling any tea through public auctions, as according to it, it had been selling tea directly in organised private outlets for several years past and if the provision of Cl. 17 of the Order to sell 70 per cent through public auction is applied, it will totally dislocate the entire organisation and would also result in the business built up with considerable effort, expense and sacrifice over several years being adversely affected. On 21-8-1984, the application for relaxation from the provisions of the Order sent in by Messrs. Silver Cloud Tea Factory was disposed of as under -

I am directed to refer to your letter dated 11-7-1984, and to say that it has not been possible for the registering authority to accept your request.

The grievance of the petitioner in W. P. 1493 of 1985 is that its request for relaxation under the proviso to Cl.17 of the Order had been rejected summarily without making any enquiry and even without giving an opportunity to the petitioner and further that the order also does not set out any reasons for the rejection of the relaxation claimed by it. It was also the further case of the petitioner in W. P. 1493 of 1985 that in the absence of guidelines having been laid down and prescription of yardstick for the exercise of the power of relaxation, the power of the Registering authority for granting or declining to grant the relaxation is arbitrary.

3. In W. P. 10 110 of 1984, Messrs. Silver Cloud Tea Factory has challenged the validity of the Order on the ground that discrimination had been practised in the application of the Order only to certain States in the Union of India, and not others and that the Order is violative of Art. 19(1)(b) of the Constitution of India. Besides, it was also claimed that making available 70 per cent of tea production to be handled by private licensed auctioneers under the clauses of the order amounted to conferment of favouritism on one class of persons, while depriving others of their business and that such diversion from one private hand to another was not in any manner sanctioned by

law. The petitioner in W. P. 10110 of 1984 also maintained that it had adopted a system of distribution and pricing which had worked out very

well over the years and which, it was claimed, could not in any manner be bettered or improved upon by the adoption of the auction sales system.

On the aforesaid as well as other similar grounds set out in the affidavit, Messrs. Silver Cloud Tea Factory prayed for the issue of a writ of

declaration that the provisions of the Order are unconstitutional and ultra vires.

4. In the counter-affidavit filed on behalf of the Union of India, it is contended that auction sales of tea had been found to be the most advantageous

and equitable method of sale of tea and that there cannot be any objection for making available 70 per cent of the tea production for distribution by

that method. The provisions of the Order were justified as being valid and legal and issued in the exercise of the powers conferred under S. 30(3)

of the Tea Act, The Order, according to the Union of India, was a regulatory measure. and left intact 30 per cent of the tea production to be sold

or disposed of otherwise than through the auction, and, therefore, there was no substance in the complaint that the business of the petitioner was

affected. The restriction was also characterised to be a reasonable one in public interest, and, therefore, not in any manner opposed to any of the

provisions of the Constitution of India. It was also claimed that the Registering authority was not under any obligation to record reasons while

declining to grant the relaxation and that, therefore, no exception could be taken to the impugned order dt. 21-8-1984.

5. In W. P. 2151 of 1985, the petitioner therein has complained of the diversion of 70 per cent of the tea production to public auction by the

application of the provisions of the Order and that had been characterised as an infraction of the right of the petitioner therein to buy the entire

quantity from Messrs. Silver Cloud Tea Factory. It was also further stated that the order had deprived the retailers of their right to purchase goods

from the manufacturers directly and that in the absence of any control over the produce after the holding of the auctions, the whole object of

regulating the sale would be lost and in the absence of any guidelines in the Order for regulating the auctions or for fixing the price of tea, the whole

object of the Order would be totally defeated; and, therefore, the provisions of the Order are invalid and should be struck down.

6. Mr. K. R. Ramamani, learned counsel for the petitioner in W. P. 10110 of 1984 and 1493 of 1985, first contended that the order impugned in

W. P. 1493 of 1985 was passed under the first proviso to Cl. 17 of the Order without in any manner adverting to the grounds set out by the

petitioner in its application dt. 11-7-1984, and the order dt. 21-8-1984 does not even set out the grounds on which the relaxation was asked for

and had also omitted to give any reason whatever for declining the relaxation and under those circumstances, the Order cannot be considered to

be a speaking order at all and should be quashed. In answer to this, the learned counsel for the Standing Counsel appearing for the Union of India,

Mr. M. R. Narayanasami, submitted that no exception could be taken to the order dt. 21-8-1984, as even according to the first proviso, to Cl. 17

of the Order, reasons have to be recorded in writing only in cases where the Registering authority is satisfied that a registered manufacturer should

be given the benefit of relaxation from the provisions of the Order and not in other cases.

7. It is seen from pages 18 to 25 of Vol. I of the paper book furnished by the petitioner in W. P. 10 110 of 1984 and 1493 of 1985, that Messrs.

Silver Cloud Tea Factory had submitted a statement of the circumstances under which it prayed for relaxation under the first proviso to Cl. 17 of

the Order. A perusal of the same discloses that it had adopted a marketing strategy which is claimed to be productive of certain results and also

better than the mode of auction on certain grounds. The relative advantages of the marketing system adopted by the petitioner over the auction

system and the difficulties likely to be experienced in the event of 70 per cent of the production being made available for public tea auctions has

also been set out. Clause 17 of the Order provides that on and from 19-4-1984, every registered manufacturer in Assam, West Bengal, Tamil

Nadu and Kerala shall sell not less than 70 per cent or such higher percentage as may be specified from time to time by the Board, of tea

manufactured by him in a year through public tea auctions in India held under the control or auspices of organisers of tea auction licensed to do so

under the provisions of the Order. The first proviso enables the Registering authority to grant relaxation to any manufacturer from complying with the

provisions of the Order, if satisfied that undue hardship would result in enforcing compliance with the provisions of the Order. The second proviso

to Cl. 17 of the Order is not relevant for purposes of these writ petitions, and need not, therefore, be noticed.

8. Before the power of relaxation under the first proviso to Cl. 17 of the Order can be exercised, there must be an application submitted by a

registered manufacturer. That there was such an application by Messrs. Silver Cloud Tea factory dt. 17-7-1984 is beyond dispute. The second

condition for the application of the proviso is that the Registering Authority should be satisfied that undue hardship would result to any manufacturer

by the enforcement of the compliance with the provisions of the Order. In the application submitted by Messrs. Silver Cloud Tea factory on 11-7-

1984, it has referred to the hardship that is likely to be caused to it if the provisions of the Order are enforced. A careful perusal of the

communication dt. 21-8-1984 does not in any manner indicate that the Registering authority was satisfied one way or the other. There is no

indication in that communication whether, after taking into account the circumstances referred to by Messrs. Silver Cloud Tea Factory in the

representation dt. 11-7-1984, the Registering authority felt satisfied that compliance with the provisions of the Order would or would not result any

undue hardship to it. The next requirement under the first proviso is that reasons have-to be recorded in writing. In this case, careful perusal of the

communication dt. 21-8-1984, does not disclose any reasons at all. Only after being satisfied on the application submitted by a registered

manufacturer that undue hardship would be caused by enforcing compliance with the provisions of the Order, relaxation from the provisions of the

Order can be granted, for the reason to be recorded in writing. Laying emphasis upon the word "relax" occurring in the first proviso to Cl. 17 of

the Order, the learned counsel for the Union of India strenuously contended that this requirement would apply only in a case where the Registering

authority finally decides to grant relaxation from the provisions of the Order with reference to a particular registered manufacturer and that,

therefore, there is no obligation on the part of the Registering authority to give reasons or to act in accordance with the first proviso in other cases.

It is rather difficult to accept the contention of the learned counsel for the Union of India, that only in cases where relaxation from the provisions of

the Order is finally decided to be given, reasons need be given and that in other cases no reasons at all need be stated. It must be borne in mind

that the Registering authority is one functioning under the Order made in the exercise of the powers conferred by subsec. (3) of S. 30 of the Tea

Act 1953. In other words, the Registering authority is a functionary under a statutory order. The granting of an exemption from the operation of the

provisions of the Order or a relaxation from the same is also a function to be performed by the Registering authority under the provisions of the

statutory order. An application for relaxation from the provisions of the order may be disposed of either by granting it or by declining to grant it. In

either event, it would be the performance of a duty cast on the Registering authority under the first proviso to Cl. 17 of the Order, which as noticed

already, is a statutory order. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Supreme Court pointed out

that the power of giving licences means power to withhold them and this gives control to the Government or to the agents of the Government on

the lives of many people. Likewise, in this case, the Registering authority, acting under the first proviso to Cl. 17 of the Order, had the power to

grant relaxation as well as to withhold it. The effect of withholding a relaxation would undoubtedly have certain consequences upon the business

activity of Messrs. Silver Cloud Tea Factory, namely, the production as well as marketing of tea produced by it. By the withholding of relaxation,

Messrs. Silver Cloud Tea factory was subjected to the provisions of the Order, despite its claim that it could not be so subjected by the granting of

a relaxation in its favour from the provisions of the Order. Besides, any statutory functionary dealing with applications for granting of exemptions or

relaxation is ordinarily expected to either grant or decline to grant the same with reasons for the particular conclusion arrived at. Unless, the order

granting or declining to grant a relaxation, is supported by reasons, it would be extremely difficult for Courts when such an order is under challenge

to ascertain whether matters relevant to the exercise of a power of relaxation had been taken into account or not. To accept the argument of the

learned counsel for the Union of India would be to say that the rejection of an application by the Registering authority for relaxation from the

provisions of the Order can be totally arbitrary and unsupported by reasons. In my view, when a Registering authority such as the one we have in

these cases is dealing with an application for relaxation under the provisions of a statutory order, it is bound to set out reasons for coming to the

conclusion actually arrived at, be it in favour of the person praying for relaxation or even against him. Inasmuch as in this case, the Registering

authority has summarily rejected the application for relaxation from the provisions of "the order sent in by Messrs. Silver Cloud Tea Factory on

11-7-1984, without assigning any reason whatever,, that order cannot be sustained. On this short ground, the communication dated 21-8-1984

has to be quashed and the second respondent in W. P. 1493 of 1985 is directed to consider afresh the application made by Messrs. Silver Cloud

Tea Factory under the first proviso to Cl. 17 of the Order on its merits after, giving it an opportunity and taking into account the representation dt.

11-7-1984, and pass an appropriate as well as a reasoned order within six weeks from this day. Consequently, the rule nisi is made absolute and

W. P. 1493 of 1985 is allowed.

9. In the course of the hearing of W. P. 1493 of 1985 counsel in W. P. 10110 of 1984 and 2151 of 1985, very fairly submitted that in the event of

the petitioner in W. R 1493 of 1985, succeeding in that writ petition, it may not be necessary at this stage to consider whether the whole of the

Order or at least Cl. 17 thereof would be ultra vires and unconstitutional on the several grounds set out in support of the writ petitions in W. P.

10110 of 1984 and 2151 of 1985, and that the petitioners may be permitted to withdraw the writ petitions. In view of the orders passed in W. P.

1493 of 1985, it is unnecessary to consider W. P. 10 110 of 1984 and 2151 of 1985 on their merits. At this stage, therefore, it would suffice to

state that it has become unnecessary to go into the merits of those writ petitions and the writ petitions are dismissed as withdrawn. Consequently,

W. P. 1493 of 1985 is allowed and W. P. 10110 of 1984 and 2151 of 1985 are dismissed as withdrawn. There will be no order as to costs.

9. Order accordingly.