

(1975) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2453 of 1974

Sohan Lal Loonkaran

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-03-1975

Acts Referred:

Essential Commodities Act, 1955 — Section 5

General Clauses Act, 1897 — Section 21

Rajasthan (Display of Prices of Essential Commodities) Order, 1966 — Section 3

Citation : AIR 1975 Raj 215 : (1975) RLW 199 : (1975) WLN 158

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : H.M. Parekh, for the Appellant; D.S. Shisodiya, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.M. Lodha, J.—Only one short point has been argued in support of this writ petition and it is this--that Section 5-A inserted in the Rajasthan (Display of Prices of Essential Commodities) Order, 1966 (which will hereinafter be referred to as "the order") is ultra vires and void having been made without the prior concurrence of the Central Government and, therefore, the orders Exhibit-1 and Exhibit 2 dated 3 May, 1974 and 1 July, 1974 respectively, issued by the Collector, Banner and the confiscation of the cement and the prosecution launched against the petitioner in pursuance thereof are liable to be quashed.

2. In exercise of the powers conferred by Section 5 of the Essential Commodities Act (Act No. 10 of 1955), the Central Government, vide S. O. No. 1844 dated June 18, 1966, directed--

"(a) that the powers conferred on it by Sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clauses (d), (e), (i), (g), (h), (i). (ii), and (j) of Sub-section (2) thereof shall, in relation to all commodities other than food-stuffs and fertilisers (whether inorganic, organic or

mixed), be exercisable also by a State Government or, in relation to a Union Territory, by the Administrator thereof, subject to the following conditions, namely,

(i) xxx xxx xxx

(ii) that all orders under clause (f) shall require the prior concurrence of the Central Government;

(iii) xxx xxx xxx

(b) xxx xxx xxx"

3. Section 3 of the Essential Commodities Act, 1955 deals with "Powers to control production, supply, distribution etc., of essential commodities," The relevant portion of this section reads as under:--

"(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices (or for securing any essential commodity for the defence of India or the efficient conduct of military operations), it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide;

(a) xxx xxx xxx (b) xxx xxx xxx (c) xxx xxx xxx (d) xxx xxx xxx (e) xxx xxx xxx (f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order."

4. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 read with the notification No. SO/1844 dated June 18, 1966 with the prior concurrence of the Central Government the State Government made an order called the Rajasthan (Display of Prices of Essential Commodities) Order, 1966. Clause 5 of the Order provides that:

"No dealer shall--

(i) sell to any person any article mentioned in the schedule at a price higher than that specified in respect of such article in the list of prices;

(ii) refuse to sell such article to any person at the price so specified or marked;

(iii) sell any article to any person without issuing a cash memo or a bill and without keeping a duplicate copy of such memo or bill:

Provided that it shall not be necessary to issue such cash memo (giving

particulars of the purchaser i. e. address etc.) or bill or to keep any such duplicate copy in respect of sale of any article costing not more than Rs. 7/- unless demanded by the purchaser."

5. By another notification No. F. 37 (39) Ind (A) 66 dated 23 December, 1966, the Government of Rajasthan made an order to amend the Order and, inter alia, added the following new clause after Clause 5 (already extracted above):

"5-A(i) The Government or any competent officer, if so authorised in writing by the Government may, in respect of any Essential Commodity issue directions to any dealer or class of dealers that such Essential Commodity shall be sold by him in such quantity or number, subject to such conditions, after such intervals and in such manners as may be specified in such directions.

(ii) On and from the receipt of such directions, the dealer shall be bound to comply with such directions."

6. The Collector, Barmer, issued the directions (Ex, 1) dated 3 May, 1974 in exercise of the powers conferred upon him by the aforesaid clause "5-A" whereby he ordered that the dealers in cement shall be entitled to sell only 30% of the cement in their stock in the open market and the rest 70% shall be kept in reserve. He also directed that no dealer in cement shall export any cement outside the district of Barmer without written permission from the Collector.

7. On the night of 6 September, 1974 a truck loaded with 68 bags of cement was found standing outside the godown of the petitioner and a suspicion having been aroused that the cement may be exported outside the district, investigation was made at the spot by the officer concerned and besides 68 bags of cement, some more cement was seized by the officer and a report was made to the Collector against the petitioner for violating the directions issued by the Collector vide his order dated 3 May, 1974 (Ex. 1). The Collector by his order dated 14 January, 1975 (Ex. 3) found that 49 more bags of cement were lying in the godown than revealed by the stock register of the petitioner and that 68 bags of cement loaded in the truck were to be exported. Consequently he directed that all the 1350 bags of cement lying in the godown of the petitioner shall be confiscated and so also 68 bags of cement loaded in the truck. He further directed that the petitioner be prosecuted u/s 3/7 of the Essential Commodities Act for defiance of his order. It appears that the petitioner was subsequently challaned in the court of Chief Judicial Magistrate, Barmer.

8. Aggrieved by the action of the Collector in confiscating the bags of cement and prosecuting him, the petitioner has filed this petition under Article 226 of the Constitution of India and prayed for granting the following reliefs:--

(1) That the provisions of the Rajasthan (Display of Prices of Essential Commodities) Order, 1966 along with the amendment order be declared void.

(2) That the orders Exhibits 1 and 2 issued by the Collector be quashed.

(3) That the respondents be restrained from interfering in any way with the business of purchase, sale and distribution of cement of the petitioner.

(4) That the stock of the cement seized by the Collector be released and the proceedings started by him u/s 6A of the Essential Commodities Act, 1955 be quashed.

(5) That the prosecution of the petitioner u/s 3/7 of the Essential Commodities Act in the Court of Chief Judicial Magistrate, Barmer be quashed.

(6) That the order of the Collector dated 14 January, 1975 (Ex. 3) be quashed.

9. The orders Exhibit 1 and Exhibit 2 issued by the Collector, Barmer have already been withdrawn vide Ex. R/I -and, therefore, relief No. 2 has become infructuous.

10. During the pendency of this writ petition the Government of Rajasthan has promulgated the Rajasthan Cement (Licencing and Control) Order, 1974 under which licence for selling of cement has to be obtained. The relief No. 3 has also, therefore, become infructuous.

11. Learned counsel for the petitioner has given up the prayer for declaring the original Rajastnan (Display of Prices or Essential Commodities) Order, 1966 void and has, thus, confined himself, as already stated above, to one relief that clause 5-A inserted by way of amendment in the Order is void and the order Exhibit 3 passed by the Collector is liable to be quashed. His sole contention is that by virtue of para (a) (ii) of S. O, No. 1844 of June 18, 1966 read with Section 21 of the General Clauses Act, clause 5-A is void, inasmuch as it was introduced without the prior concurrence of the Central Government. There is no denying the fact that prior concurrence of the Central Government was not taken while issuing the Notification dated 23rd December, 1966. It has not been asserted in the reply that such a prior concurrence was taken. On the other hand, it has been pleaded in para No. 4 of the reply that there was no necessity of taking such concurrence. This is conceded on behalf of the State Government also that no prior concurrence of the Central Government was taken. The only question, therefore, which survives for decision is whether clause 5-A is valid in spite of there being no prior concurrence of the Central Government for inserting it in the order.

12. Section 21 of the General Clauses Act (Act No. 10 of 1897) which is equivalent to Section 23 of the Rajasthan General Clauses Act, provides that where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. There is a clear direction in the notification by the Central Government dated June 18, 1966 that all orders under Clause (f) shall require the prior concurrence of "the Central Government. Admittedly the order as originally promulgated by

notification dated 19 August, 1966 was issued with prior concurrence of the Central Government. The State Government has no doubt power to add to, amend or vary the order but that power must be exercised in the like manner and subject to the like sanction and conditions. It was, therefore, obligatory for the State Government to have obtained the prior concurrence of the Central Government before adding new clause 5-A to the order. Since it was not done, Section 5-A, so far as it relates to cement, is liable to be struck down. As a necessary corollary, the directions issued by the Collector, Barmer (Ex. 1 and Ex. 2) were also void.

13. There is no denying the fact that the impugned order dated 14 January, 1975 (Ex. 3) was passed by the Collector for the alleged violation of his order (Ex. 1) and since Ex. 1 is void, the order (Ex. 3) must also fall, with the result, that the order directing confiscation of the cement as well as prosecution of the petitioner must be quashed.

14. In the result, I allow this writ petition, set aside the impugned order of the Collector, Barmer, dated 14 January, 1975 (Ex. 3) and quash the direction given by him for confiscation of the bags of cement in question and prosecution of the petitioner.

15. Let a copy of this order be sent to the Chief Judicial Magistrate, Barmer for dropping the criminal proceedings instituted against the petitioner in pursuance of the orders Ex. 1 and Ex. 3. There will be no orders as to costs.