
(1991) 10 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1208 of 1991

State of Punjab and Another	Vs	APPELLANT
Rai Agri. Farm Cold Storage and Others		RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Constitution of India, 1950 — Article 19
Essential Commodities Act, 1955 — Section 3

Citation : (1992) 101 PLR 131

Hon'ble Judges : M.R. Agnihotri, J;B.S. Nehra, J

Bench : Division Bench

Advocate : O.P. Goyal, A.A.G, for the Appellant; Vinod Sharma, for the Respondent

Final Decision : Allowed

Judgement

M.R. Agnihotri, J.—This judgment shall dispose of Letters Patent Appeals No. 1207 and 1908 of 1991 arising out of C.W.P Nos. 194 of 1990 and 14725 of 1989, respectively, which were filed by certain Cold Storage owners. The learned Single Judge while allowing both the writ petitions by the common judgment held that the owners were entitled to levy the storage charges at the rate of Rs. 35/- per bag of 85 kg. of potatoes as an interim measure.

2. Briefly stated, the petitioners who are running Cold Storage at various places in the State of Punjab are aggrieved of the notification issued by the State of Punjab on 4th September 1989 by which the State Government had fixed the cold Storage charge"s at "rupees twenty-live per bag of eighty-five kilograms of potatoes for the period commencing from the month of February and ending with the month of November or any part thereof". This notification was issued under Clause 18 of the Punjab Cold Storage Order, 1979, promulgated u/s 3 of the Essential Commodities Act" 1955" Clause 18 of the said Order provides as under :-.

"18. (1) Notwithstanding any contract to the contrary entered into whether

before or after the commencement of this Order, the licensee shall not levy for any period after the commencement of this Order, storage charges exceeding the charges notified for each foodstuff by the State Government in the official gazette after taking into consideration the cost of storage and other relevant factors.

(2) The State Government may, by notification in the Official Gazette, revise the cold storage charges, if on a consideration of the cost of storage and other relevant factors it so thinks fit.

(3) For the purpose of sub clause (1) where any foodstuff was stored before the commencement of this Order and storage charges excess of those notified by the State Government under sub-clause (1) were agreed for the entire period of storage, but remained wholly or partly unpaid till such commencement the payment so remaining to be made shall be subject to the condition that the licensee shall be entitled to storage charges for the period before the said date at the agreed rate, after spreading the agreed rate over the entire period of actual storage pro rata on a daily basis and to storage charges for the period beginning from the said date at a maximum rate as notified by the State Government after spreading the said rate over the period specified in the said notification pro rata on daily basis.

(4) The Storage charges as notified by the State Government under this clause shall include charges for labour involved in weighing the foodstuff or in carrying it from the precincts of the cold storage where the foodstuff is unloaded by the hirer to the cold storage and in carrying the goods back from the cold storage to the precincts and unfilling, drying and filling for purposes of return and no separate charges shall be levied on any such account whatsoever.

(5) Every licensee must issue a receipt for the money received by him from the hirer or his agent for the storage charges".

In pursuance to this provision, earlier the State Government had fixed the storage charges for potatoes in 1979 at the rate of Rs. 11.50 per bag of 85 kg. Seven years later, in November, 1986, the rate was revised to Rs. 14/-, and in 1988 to Rs. 22/-; and finally on 4th September, 1989, to Rs. 25/-. Since the petitioners felt that the electricity tariff in the State had undergone an upward increase and labour charges and other expenses had also increased, the storage charges should also be accordingly increased. The position in neighbouring States of U. P., Delhi, Haryana, Chandigarh etc. was also brought to the notice of the Government. Therefore, the petitioners were not satisfied with the increase and fixation of the cold storage charges at Rs. 25/- per bag of 85 kg. potatoes. The main plea of the petitioners before the learned Single Judge was that in view of the aforesaid circumstances, the fixation of storage charges should be at Rs. 54/- per bag.

3. In reply, the respondents pleaded that the State Government had taken all the relevant factors into consideration and had also heard the petitioners and

representatives of the other interested and affected bodies. It was thereafter that the rate at Rs. 35/- per bag had been fixed ; hence, the petitioners could not claim a higher revision of storage charges as a matter of right.

4. The learned Single Judge, while allowing the petition has laid great emphasis on the fact that the Constitution of India ensure freedom of trade and commerce as enshrined in Article 19 and the State was empowered to impose only reasonable restrictions. Since no standard of reasonableness had been prescribed, it was an accented principle that every person engaged in trade or business was entitled to a reasonable return on his investment. Since nothing had been produced before the learned Single Judge to show that the petitioners had been assured of reasonable return on his investment at the rate fixed by the State Government, the learned Single Judge thought it advisable to issue a writ of mandamus to the State of Punjab to re-fix the storage charges after taking into consideration all the relevant factors and as an interim measure declared the petitioner as entitled to levy storage charges at the rate prevalent in Union Territory, Chandigarh, that is, at Rs. 35/- per bag of 85 kg. of potatoes.

5. After hearing the learned counsel for the parties at length, we have not been able to persuade ourselves to agree with the view taken by the learned Single Judge. It is a matter of record that before the fixation of cold storage charges, the matter was thoroughly considered and representatives of various organisations were heard. In this regard, note dated 2nd August, 1989, recorded on the departmental file by the Financial Commissioner Development Punjab,

would be of advantage and is reproduced hereunder :-

"A deputation of the Cold Storage Owners Association met me today to reiterate the economics of the rates allowed by us to the Cold Storage owners. They have pointed out in the main that the power tariff on consumption of electricity has gone up very steeply with effect from April this year and even the labour costs have escalated very steeply. Since the Cold Storages are dependent on power, it is, therefore, very necessary that any increase in storage charges allowed should take into consideration the escalated tariff rate and the labour costs.

2. Among the other difficulties pointed out by the Association was the condition regarding drawing and sorting of the produce and regarding the weight of the bags. It was stated tint the condition regarding drawing and sorting is not insisted upon in any other State of the country and that against the standard bag of 85 kg. in Punjab along we are insisting upon bag being of 85 Kg. weight.

3. We may ascertain the position obtaining with regard to the conditions regarding drawing and sorting of produce and regarding the bag weights as prevalent in the adjoining States and adopt a uniform pattern while working out the costs of storage for the purpose of determining storage rates. We should take into consideration the escalated costs of labour and power I was told by the deputation that recommendations for revision of rates are under process. In case, it is so, the above considerations may be taken cognizance of and the case

may be processed urgently

Sd/- F. C. D. J.S.A. 2-8-1989."

Thereafter, immediately before fixation of the cold storage charges, the matter was again examined and all the relevant factors were taken into consideration by the Special Secretary Agriculture whose minutes recorded on 30th August, 1989, and approved by the Financial Commissioner Development on 31st August, 1989, are very relevant and are reproduced below :-

"FCD may kindly recall his observations at page 29 (n). I have discussed the matter with Director Horticulture. Last year vide our notification dated 26th September, 1988, the cold storage charges were revised from Rs. 14/- to Rs. 22/- per bag of 85 kgs. of potatoes, for the period commencing from the month of February and ending with the month of November. This big jump had been given in view on the fact that the rates were revised after a gap of about 5 years. In so far as the present case is concerned, I think the recommendations for revising storage charges from "A" existing Rs. 22/- per bag of 85 kgs. to Rs. 25 are reasonable both from the point of view of the farmers as also from the Cold Storage owners, and may, therefore, be accepted.

2. It is also true that Haryana Government has not fixed any cold storage rates for the year 1988-89. And whether or not these rates should be revised periodically, is a subject which requires lot of thought and consideration because in actual practice, the cold storage charges are determined by the forces of demand and supply. During lean years the owners have no option but to charge less than the rates notified, and during the period when production increases and the space availability is less, the owners charge more than the fixed rates. Which are acceptable both to the farmers and owners of the cold storages will depend largely on the forces of demand and supply in a particular area.

Sd./- S. S. A. F.C.D. 30-8-1989. As proposed at "A" above. Sd/- 31-8-1989 S. S. A. "

6. The aforesaid minutes recorded by the senior officers of the State Government lead us to the conclusion that it was after proper application of mind and appraisal of relevant factors and after consideration of all the statutory requirements that fixation of storage charges at Rs. 25/- per bag of 85 kg. of potatoes was ordered. There is nothing arbitrary or whimsical about it. Even if the learned Single Judge or for that matter, this Court, finds that the storage charges fixed by the impugned notification deserved to be revised and were on lower side, the Courts had no jurisdiction to issue mandamus for doing the same, much less issuing a mandatory direction to "fix the same at a certain rate by way of a provisional or interim measure.

7. Mr. Vinod Sharma, learned counsel appearing on behalf of the respondents vehemently contends, by invoking to his aid the judgment of Allahabad High Court in C.W.P. No. 10154 of 1986 (The Ice and General Mills, Railway Road,

Meerut City v. State of Uttar Pradesh)¹, dated 18th December, 1986, that it was open to this Court to issue a writ of mandamus to the Government for re-fixation of storage charges as also to fix certain rate by way of interim measure.

8. With respect, we have gone through the above judgment very closely but do not find any such proposition having been laid by the Hon''ble Judges of the Allahabad High Court. On the other hand, a para from the aforesaid judgment goes to provide otherwise, which runs thus-

"The learned counsel for the petitioners, Shri S. P. Gupta has urged that this Court under Article 226 of the Constitution of India, should itself determine the hiring charges and it has the power to do so. As mentioned. earlier, the potato growing season has come to an end and there is no great emergency requiring this Court to enter into an exercise to determine what should have been the maximum hiring charges. It is appropriate to leave this ? function to the State Government."

9. Consequently, we allow these appeals and reverse the judgment of the learned Single Judge and dismiss C.W.P. Nos. 134 of 1990 and 14725 of 1989, with no order as to costs.