
(2000) 01 PAT CK 0108

In the Patna High Court

Case No : C.W.J.C. No's. 10861 and 11405 of 1999

Vidyapati Cold Storage Pvt. Ltd. and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2000) 2 BLJR 878 : (2000) 2 PLJR 102

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Both these writ petitions have been taken up together because both of them raise common questions of law and facts, and are directed against the same impugned order. In view of the prayer made by the learned Counsel for the parties, the same are being disposed of by a common judgment.

2. The facts would as far as possible be taken from C.W.J.C. No. 10861 of 1999, excepting where reference to the analogous C.W.J.C. No. 11405 of 1999 would be headed. The common impugned order is contained in memo No. 5181, dated 25.10.99 (Annexure-1), issued by the Collector of the district of Samastipur, notifying the Government decision fixing Rs. 100/- per quintal to be charged by the owners of cold storages in the State of Bihar for storing any foodstuff during the year 1999. The writ petitions are further directed against the Government notification published by the State Government in the Department of Agriculture (Measurement, Weights & Horticulture), in the local dailies on 11.7.99 (Annexure 1/A), being consequential to the aforesaid notification dated 25.10.99 (Annexure-1). The rate has been so fixed by the State Government. In exercise of its powers u/s 29 of the Bihar State Regulation of Cold Storages Act, 1992 (hereinafter referred to as ("the Act")), read with Rule 20 of the Cold Storage Order, 1980 (hereinafter referred to as "the Order"), which has been issued in exercise of the powers conferred u/s 3 of the Essential Commodities Act.

3. While assailing the validity of the impugned orders, learned Counsel for the petitioner submits that the season for a cold storage is from January to December of the same year. He relies on Rule 22 of the Bihar State Regulation of Cold Storage Licensing Rules, 1993 (hereinafter referred to as the "Rules"), and is set out hereinbelow for the facility of quick reference:

22. Reservation of space.-(1) Maximum 50% of the total capacity of the Cold Storage may be reserved and such reservation may be done till 31st of January.

(2) As an advance, for reservation, payment of ten per cent of the hire charge is essential.

(3) If the reserved space is not utilised by whom the reservation is taken by 15th of March, in that case, the reservation shall automatically be deemed to be cancelled and shall not be entitled to take refund of the amount advance.

Learned Counsel submits that the owner of a coldstorage can reserve space up to a maximum 50% by accepting the advance from the customers up to 31st of January of that year.- He is, therefore, right in his submission that it is inherent in Rule 22 that the State Government must fix the rate in accordance with law well before 31st January, failing which the coldstorage owners would be at liberty to enter into contracts with the customers as per their own volition. In the present case, the State Government had issued the Gazette Notification published in the Extraordinary Issue of the State Government on 12.7.99, by which time half of the period was over, and all contracts had been concluded. Therefore, on account of such belated action on the part of the respondent-authorities the impugned order becomes illegal and unenforceable in view of the provisions of Rule 22. The Gazette Notification was published on 12.7.99, which renders the impugned order invalid in view of the delay involved in promulgating it. Any other construction put on the wordings of Rule 22 would render it functionless. I have, therefore, no hesitation in striking down the impugned orders on the ground of delay which has made it completely otiose. If the impugned notifications are not struck down, the same bring about commercial chaos in this particular field in the whole State of Bihar, whereby all the contracts concluded between the coldstorage owners and the growers would be jeopardised.

4. Learned Counsel for the petitioner has next invited my attention to Clause 20 of the aforesaid Order which reads as follows:

20. Fixation of charges for storage Keeping in view the cost of the machinery, depreciation, electric charges, etc. the Licensing Officer may by order in the Official Gazette, from time to time, fix the maximum charges which a licensee may charge for storing any foodstuff in the Cold Storage or for any other service connected therewith.

Provided that the Licensing Officer may, if he is satisfied, that certain categories of Cold Storage need exemption from fixation of maximum charge exempt such Cold Storages by notification in the Official Gazette.

It is manifest from a plain reading of Clause 20 of the Order that it is incumbent on the respondent-authorities, while fixing the price for the foodstuff for the purpose of storing it in the cold storage, to take into account the factors mentioned therein, namely, the cost of machinery, depreciation, electric charges, etc. Learned Counsel for the respondent-authorities invited my attention to the minutes of the Advisory Committee dated 17.4.99 (Annexure-E to the counter-affidavit in C.W.J.C. No. 11405/99), which, in his submission, clearly shows that the respondent-authorities had applied their mind to various aspects of the matter. From a plain reading of the said minutes, it is clear that the same leaves much to be desired. It is couched in general terms, and it is not demonstrable on the face of it that the relevant factors mentioned in the aforesaid Clause 20 have really and genuinely been taken into account. For example, the electricity factor. For example, I take judicial notice of the extremely poor condition of generation and supply of electricity in the State of Bihar. There are chosen places in this State where supply of electricity is satisfactory. Being the capital of Bihar, the township of Patna is adequately supplied with electricity. Likewise, supply of electricity is very good in the industrial city of Jamshedpur, because of the Generation and supply of power by the Tata Group of Industries, but the situation is unsatisfactory in the adjoining areas which do not get power from the industrial house. The same is the position with the industrial township of Bokaro Steel City because generation and distribution of power is from the captive power plant of Bokaro Steel Plant. Speaking euphemistically, the situation is quite unsatisfactory in the adjoining city of Chas. This is not being exhaustive, but surely presents the poor position of electricity all over the State. It is, therefore, manifest from a plain reading of the aforesaid minutes (Annexure-E), that the respondent-authorities did not take into account the poor position of generation and distribution of power supply in the State of Bihar, as a result of which generator may have to be used giving rise to the costs. This should not be taken to me on that the respondent-authorities were required to take into account individual difficulties, but surely in general terms electricity as a factor should have received their serious consideration. I particularly say so in view of the submission made on behalf of the petitioners that they have stopped purchasing power from the Bihar State Electricity Board, which has the monopoly of-generation and distribution of power in the State of Bihar, and are operating the coldstorages entirely with the help of their captive generators. This Court gets an impression that it was passed in a mechanical manner, and some materials were borrowed from the previous order, which may or may not be applicable to the current year. In such circumstances, I reach the conclusion that the aforesaid minutes dated 17.4.99 (Annexure-E), suffers from non-application of the mind.

5. This takes me on to the question of validity of the Gazette Notification. Counsel for the petitioner has invited my attention to Section 30 of the Act which is set out hereinbelow for the facility of quick reference:

30. Charges to be notified.-The charges fixed by the State Government u/s 29 shall be notified in the official Gazette.

It is manifest from a plain reading of Section 30 of the Act that it is incumbent on the State Government to notify the charges fixed u/s 29 by publishing the same in the official Gazette. Counsel for the petitioner sought to challenge the validity of the Gazette Notification. The stand taken in the writ petition is that the same was never published. However, in view of production of a copy of the Gazette Notification along with the counter-affidavit, learned Counsel for the petitioner sought to challenge its authenticity on the ground that it has been ante-dated. In view of the conclusions arrived at hereinabove, there is no need to decide this question.

6. In the result, both the writ petitions are allowed, the impugned order dated 25.10.99 (Annexure-1), and Government Notification dated 11.7.99 (Annexure-1/A), are hereby quashed.