

(1960) 03 MP CK 0025
In the Madhya Pradesh High Court
Case No : L.P.A. No. 44 of 1958

Vrijlal Mannilal and Co.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-03-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) J LJ 127

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : B.L. Seth and S.L. Golsica, for the Appellant; M. Adhikari, Advocate General for State, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—This is a Letters Patent appeal from an order of Chaturvedi J., rejecting an application filed by the Appellants under Article 226 of the Constitution for quashing an order made by the Deputy Commissioner of Sagar on the 6th August 1956 under Clause 25 of the Madhya Pradesh Yarn Dealers Licensing Order, 1956.

2. Clause 25 of the Order runs as follows:

The licensing authority or any person authorised by it by general or special order in this behalf may, if such authority or person has reason to believe that a contravention of any provision made by or under this order has been, is being or is about to be committed by any person—

(a) require such person to give any information in his possession in respect of any business carried on by himself or any other person;

(b) inspect or cause to be inspected any books or documents, as well as stocks of yarn, belonging to, or under the control of any person;

(c) enter and search, or authorise any person to enter and search any premises

and seize, or authorise any person to seize any article in respect of which the authority or officer has reason to believe that a contravention of this order has been, is being, or is about to be committed.

On 6th August 1956 the Deputy Commissioner, Sagar, in exercise of his powers under this clause made an order authorising Shri K. N. Nagpure, Food and Civil supplies Inspector, Sagar, to inspect all books and documents concerning yarn as well as the stock of yarn belonging to, or under the control of the Petitioner-firm and to enter and search the premises of the firm and seize any article in respect of which the Inspector had reason to believe that a contravention of the Licensing Order had been, was being, or was about to be committed by the firm. On the 7th February 1957 the Petitioner-firm filed an application under Article 226 of the Constitution praying that an appropriate writ or direction be issued for quashing the order dated the 6th August 1956 of the Deputy Commissioner, Sagar, and that the opponents be restrained from taking any action against the Petitioner firm for the alleged infringement of the Order or launching any prosecution against the firm. The Petitioner (Appellant) challenged the validity of the order dated the 6th August 1956 mainly on the ground that the firm M/s Vrijlal Mannilal & Co., was not a dealer as defined in Clause 2 (a) of the Licensing Order, 1956; that; therefore, the Deputy Commissioner had no power to pass the order that he did under Clause 25, and that not being a dealer, the firm could not be said to have contravened the Licensing Order if it purchased yarn from the manufacturer for using it for wrapping the bundles of Bidis rolled by it. The petition was opposed by the opponents who averred that the Petitioner got Bidis manufactured through contractors known as "Sattadars" and the Petitioner-firm sold the yarn to the Sattadars at a price higher than that paid by the firm for the purchase of yarn; and that, therefore, it was a dealer within the meaning of Clause 2 (a) of the Order.

3. Before the learned Single Judge the controversy centred round the question whether the Petitioner-firm was or was not a dealer as defined in Clause 2 (a). The learned Single Judge took the view that there was no transaction of sale of any yarn by the Petitioner when it supplied yarn to the Sattadars. He, however, concluded that the Petitioner-firm was a dealer within the meaning of Clause 2 (a) and that it had been purchasing yarn from mills for several years and thus carrying on the business of buying yarn as contemplated by Clause 2 (a). On this view, the Appellant's petition under Article 226 of the Constitution was dismissed.

4. To us it appears that the learned Single Judge, and the opponents also, did not focus their attention on the real point arising for determination in the petition under article 226. By its application under Article 226 the Appellant-firm had challenged the validity of the order dated the 6th August 1956 of the Deputy Commissioner, Sagar. under Clause 25, and prayed that the said order be quashed and the opponents be restrained from conducting any enquiry against the firm or launching any prosecution for the alleged contravention of the Licensing Order. Now, Clause 25 of the Order is plain enough to show that a

direction under that clause can be made by the licensing authority against any person, whether the person is or is not a dealer as defined in Clause 2 (a). It is open to the licensing authority to make an order under Clause 25 if it has reason to believe that a contravention of any provision of the Order has been, is being, or is about to be committed by any person. The exercise of the power under Clause 25 does not, therefore, depend on proof of contravention of any provision of the Order by any person who is a dealer under the order. If the licensing authority has reasonable ground for believing that any person, no matter whether he is a dealer or not under the Order, has committed or is about to commit any contravention of the Order, then the authority would be justified in making an order under Clause 25 in respect of that person. It is, therefore, wholly irrelevant in the present case to consider whether the Appellant-firm is or is not a dealer or whether when it supplied to Sattadars yarn purchased by it that transaction did or did not amount to sale of yarn or whether the sum was carrying on the business of buying yarn wholesale or retail for sale. The legality of the order made by the Deputy Commissions did not depend on these considerations. It had to be adjudged with reference to the provisions of Clause 25 alone and by the fact whether the Deputy Commissioner did or did not have reason to believe that a contravention of the Order had been, was being, or was about to be committed by the Appellant. The reason which persuaded the Deputy Commissioner to act under Clause 25 cannot be questioned in proceedings under Article 226 of the Constitution, and it was never the case of the Appellant before the learned Single Judge that the Deputy Commissioner had no reason whatsoever to form the belief mentioned in Clause 25. It is not that the Deputy Commissioner had no material before him at all to form the requisite belief. The order dated the 6th August 1956 of the Deputy Commissioner must, therefore, be upheld. Learned Counsel for the Appellant stated that in compliance with the order issued by the Deputy Commissioner, the Food and Supplies Inspector visited the premises of the firm, inspected all books and documents concerning yarn and seized some yarn also. If that be so, there can be now no question of quashing the order of the Deputy Commissioner so as to prevent the Food and Supplies Inspector, Sagar, from inspecting the yarn stock of the Appellant-firm.

5. In regard to the Appellant's prayer for the issue of a direction restraining the Respondents from conducting any enquiry against the firm or launching any prosecution for the alleged contravention of the Order, we are unable to see how such a direction giving immunity to the firm from any enquiry or prosecution under the Order can be granted in the face of clear provisions of Cls. 3 and 25. Cl. 3 says that no person shall deal in yarn except under and in accordance with the conditions of a licence granted by the licensing authority. If the Appellant's dealings are hit by the Licensing Order, and if there has been any contravention of the Order on the part of the Appellant-firm, then it would be an abuse of the power under Article 226 to enter into an investigation of the dealings of the firm for finding out whether there has been any contravention of the Order to prevent the Respondents from taking any proceedings against the firm which they are

entitled to under the Order and the Essential Commodities Act, 1955.

6. For these reasons, the order of the learned Single Judge rejecting the Appellant's petition under Article 226 is upheld. It seems needless to add, but it must be pointed out, that nothing in the order of the learned Single Judge shall be taken as a conclusive adjudication of the question of the Appellant-firm being a dealer or of the nature of the transaction of the supply of yarn by the firm to Sattadars or of any other point which, as we have endeavoured to point out, was wholly unnecessary for determining the legality of the order of the Deputy Commissioner under Clause 25.

7. The result is that this appeal is dismissed. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of the security deposit shall be refunded to the Appellant.