

SUPREME COURT OF INDIA

Madhya Bharat Cotton Association Ltd.

Vs.

Union of India

Petn. No. 273 of 1953

(Mehr Chand Mahajan, C.J.I., B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan, JJ.)

25.01.1954

JUDGEMENT

BOSE J.:

1. This is a petition made by the Madhya Bharat Cotton Association Limited, under Article 32 of the Constitution, complaining of discrimination under Article 14 and restraint of trade under Article 19(1)(g). The restraint of trade is because the petitioner has been prevented by certain notifications, which it impugns, from carrying on the business of hedge contracts; the discrimination lies in the fact that whereas the petitioner has been prevented from carrying on this trade, the East India Cotton Association Limited, Bombay. has been allowed to do so and has been given a virtual monopoly in India.

2. The action of which complaint is made was taken under the Cotton Control Order of 1950. Clause 4 of this Order banned all cotton contracts and options in cotton except those permitted by the Textile Commissioner by a general order made under Clause 6. The Textile Commissioner was also authorised to place such restrictions and conditions as he thought fit on the contracts and options which he permitted.

3. Acting under this authority the Textile Commissioner made the following orders:

(1) S.R.O. 2045, dates 11-12-1952

(2) S.R.O. 1425, dated 16-7-1953

(3) S.R.O. 1651, dated 3-9-1953

Under the first he lifted the ban on

"Hedge Contracts: that is to say Forward Contracts entered into by members of the

East India Cotton Association Limited, entitled to the use of the Clearing House of the Association where such contracts are made in accordance with 'rules and bye-laws of the Association in the official markets of the Association."

The second order gave the same exemption but limited the lifting of the ban to hedge contracts for February 1954 delivery. The third order added contracts for may 1954 delivery. These are the orders

which are impugned. The petition was filed in August 1953. The last of the three orders was made after this, namely on 3-9-1953, and was included at a later date.

3. Cotton was listed as an 'essential commodity' under Section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946), so the right of the State to control, and even to prohibit, transactions in it is evident. "Hedging" is of vital importance in cotton trading. It not only acts as an insurance and protects cotton growers, manufacturers and merchants but also acts as a check on reckless speculation and gambling when properly controlled. Consequently, it is important to have this type of dealing under proper supervision and control, other-wise, as in the case of Banks and insurance companies, innocent persons may have to suffer for the reckless gambling and speculation of handful of persons anxious to get rich quickly. Further, cotton being a commodity essential to the life of the community, it is reasonable to have restrictions which may, in certain circumstances, extend to total prohibition for a time, of all normal trading in the commodity. Accordingly, we are of opinion that Clause 4 of the Cotton Control Order of 1950 does not offend Article 19(1) (g) of the Constitution because sub-clause (5) validates it.

4. Turning now to Article 14. It is not disputed that the East India Cotton Association of Bombay is a well organised association which has been dealing in hedge contracts for some twenty years and the fitness of that Association to be given an exemption has not been challenged. What the petitioner alleges is that the Madhya Bharat Cotton Association of Ujjain is also well organised and has almost identical rules and is also capable of operating hedge contracts. Therefore, it complains that it has been discriminated against.

5. Now the Madhya Bharat Cotton Association was not incorporated till 3-10-1952. It is therefore an association of very recent date, and as the first of the three Orders under review was made on 11-12-1952 and the last on 3-9-1953 it was within the Textile Commissioner's discretion to view it with caution and to wait until it was better established before allowing it to operate hedge contracts. "Hedging", like insurance and banking, requires experience and stability; also, it so vitally affects the welfare of a large section of the people of India and India's economic stability in world markets that it cannot be lightly entrusted to inexperienced hands.

6. The petitioning Association, however, contends that though it has been incorporated recently it is in reality a successor of a much older Association, the "New Ujjain Souda Forward Delivery Society", and has a long history of hedging behind it. As the petitioner's affidavit disclosed no details, we adjourned the case to enable the petitioner to give us further details. These have now been filed and we get the following facts from them.

7. First, it is evident that there have been dealings in hedge contracts in the area, or part of it, that now embraces Madhya Bharat, from as far back as 1913. We find that Regulations were passed in the years 1913, 1936, 1940 and 1941. But that, in itself, is not of much use because we are concerned with the history of the New Ujjain Society and the effect of its continuity, if any. The petitioner relies on the following. In the year 1933 an Association called the Ujjain Cotton Merchants' Association was formed. This is not the New Ujjain Souda Forward Delivery Society which the petitioner relies on. It is merely an association of certain cotton merchants in Ujjain. There is nothing to indicate that the Society was incorporated, and hedge contracts are not mentioned either in its Memorandum or its Rules. Apart from general assistance to its members, its main object appears to have been

"to control the cotton trade 'at Ujjain' for the benefit of the trade in a better and useful way."

8. From there, there is a jump of thirteen years to 1946 and it is said that the New Ujjain Sauda Forward Delivery Society was formed and incorporated in 1946 or 1947. Nothing has been produced to establish this though we adjourned the case for over two months to enable the petitioning Association to make good its assertions. However, accepting the fact that it was duly incorporated we come to 7-8-1946.

9. On this date there was a meeting of 'some of the members of the Cotton Merchant's Association, Ujjain. Hedge trading is mentioned for the first time (so far as our papers are concerned) on this date. The object of the meeting was to form a 'separate' institution for the 'development' of forward contracts in cotton. It was proposed that the new institution should be called "the New Ujjain Sauda Forward Delivery Society". The meeting thus convened did not form the new body; it merely made a proposal that such a body should be formed. It is not clear whether the meeting thus convened was a meeting of the old Ujjain Cotton Merchant's Association formed in 1933 because here the meeting called itself the Cotton Merchant's Association, Ujjain, and the heading says it was a meeting of 'some' of the members of the Cotton Merchants' Association, Ujjain. There is therefore doubt whether the meeting was of the Association itself or only of certain of its members who decided to meet and pass such a resolution.

10. On 26-12-1948 the Sauda Forward Delivery Associations, at Indore and Ujjain were permitted by a Gwalior Notification to carry on the business of Hedge Contracts.

11. The next document on which reliance is placed is a resolution of 4-10-1951 of the Managing Board of the New Ujjain Sauda Forward Delivery for handling hedge contracts in the newly formed State of Madhya Bharat. The resolution stressed the need of a new body to be organised "on modern lines" and suggests that it should be called either the Madhya Bharat Cotton Exchange or the Madhya Bharat Cotton Association. It continues -

"When all the legal formalities of this new institution are complete the deposits of the members of the Society be handed over to this....."

12. But it took a full year for the new association to get going. It was not incorporated till 3-10-1952. Two months later, New Ujjain Society acted on its resolution of 4-10-1951 and on 1-12-1952 its Secretary wrote to the Development Director of the petitioning Association and forwarded its resolution of 4-10-1951.

On 6-12-1952 the Development Director appears to have decided that confirmation of the General Body of the Society was necessary before there could be any merger. Five days later (11-12-1952) came, the first of three impugned Orders.

On 23-3-1953 the General Body of the New Ujjain Sauda Forward Delivery Society confirmed the proposal of 4-10-1951 and resolved that the necessary steps for merger with the Madhya Bharat Cotton Association be taken.

On 16-4-1953, the petitioning Association took over the New Ujjain Sauda Forward Delivery Society.

After that, on 16-7-1953, the second of the three impugned Orders was passed. Then came the present petition on 20-8-1953 and next the third of the three impugned Orders.

13. It will be seen that the New Ujjain Society did not merge with the petitioning Association till

after the impugned Order was passed. The fact of merger cannot therefore be used to impugn that Order; and as regards the other two Orders, they were made within four and six months of the merger and that has not left the Textile Commissioner sufficient time to judge of the effectiveness of the merger. The merger has been accomplished in a very leisurely and somewhat unbusiness like way; for example, it took from 4-10-1951 to 23-3-1953 to effect the merger. Consequently, there is justification for the omission to include the petitioning Association in the exemption given to the East India Cotton Association of Bombay. Also, the two associations cannot be said to be on a footing of equality, so no question of discrimination under Article 14 can arise.

14. The petition is dismissed with costs.

Petition dismissed.

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