

Suraj Mal Kaailash Chand and Others

Vs

Union of India and Another

Writ Petitions Nos. 3334-3343 of 1981

(A.P. Sen, Baharul Islam JJ)

25.09.1981

JUDGMENT

A.P. SEN, J. –

1. In exercise of the powers conferred by Clause 18 of the Rajasthan Trade Articles (Licensing and Control) Order, 1980 (hereinafter referred to as the Order), the State Government of Rajasthan, on May 23, 1981, with the prior concurrence of the Central Government, by a notification fixed the maximum limit of wheat to be possessed by a dealer at any time at 200 quintals. The petitioners who are dealers in foodgrains challenge the constitutional validity of the impugned notification as violative of their fundamental rights under Articles 14 and 19(1)(g) of the Constitution.

2. Clause 18 of the Order reads as follows :

18. No person shall, either by himself or by any person on his behalf, store or have in his possession at any time any trade article mentioned in Schedule I and Schedule II in quantity exceeding the limits fixed -

(i) under an order issued by the Central Government; or

(ii) by the State Government with prior concurrence of the Central Government by issuing a notification in Official Gazette from time to time.

This Court, in *Krishan Lal Praveen Kumar v. State of Rajasthan* [(1981) 4 SCC 550] has held that the impugned notification does not offend against the fundamental right guaranteed under Article 19(1)(g) of the Constitution. Learned counsel for the petitioners contends that the judgment in that case does not stand in his way. It is urged that the impugned notification fixing the maximum quantity of wheat permitted to be possessed by a dealer at 200 quintals at any time is not only arbitrary, irrational and irrelevant and thus violative of Article 14, but it is also an unreasonable restriction on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution. We are afraid, none of these contentions can prevail.

3. In support of these contentions, learned counsel for the petitioners challenged the impugned notification on four grounds, namely, (1) No guidelines have been laid down in fixing a limit of 200 quintals for a dealer at any time as to the manner of disposal of the stock of wheat in excess of the limit so fixed; (2) There is no distinction made between a wholesale dealer and a retailer in as much as the maximum quantity of wheat permitted to be possessed by them is the same, i.e. 200 quintals at any time; (3) The governmental action in fixing the maximum limit at 200 quintals displays

arbitrariness as there is no differentiation made between different varieties and grades of wheat; and (4) The fixation of the maximum quantity of wheat to be possessed by a dealer at any time at 200 quintals is also arbitrary because in the case of pulses, the maximum quantity of pulses permitted to be possessed by a dealer at any time is much higher.

4. As already stated, the Court, in *Krishan Lal* case [(1981) 4 SCC 550] upholding the validity of the impugned notification, observed :

The notification providing for the maximum quantity of wheat which may be possessed by any dealer at any one time is clearly designed to prevent hoarding of foodgrains and is certainly a reasonable restriction within the meaning of Article 19(6) of the Constitution.

In view of the above observation, it is difficult to conceive as to how the contention based on Article 19(1)(g) of the Constitution can at all survive.

5. If the governmental action is arbitrary or there is no rational nexus to the object sought to be achieved, it is liable to be struck down as violative of Article 14 of the Constitution. Sub-section (1) of Section 3 of the Essential Commodities Act, 1955 provides that 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, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) thereof provides that without prejudice to the generality of the powers conferred by sub-section (1), the Central Government may make an order in respect of any of the matters enumerated therein and by virtue of delegation of powers under Section 5 of the Essential Commodities Act, 1955, the State Government may, in relation to such matters and subject to such conditions as may be specified, exercise the powers of the Central Government under Section 3 of the Act. The State Government has adopted various measures in the interests of the general public for the control of production, supply and distribution of, and trade and commerce in, essential commodities. To obviate hoarding and black-marketing in essential commodities, the State Government has promulgated the Rajasthan Trade Articles (Licensing & Control) Order, 1980. The Order introduces a system of checks and balances to achieve the object of the legislation, i.e. to ensure equitable distribution and availability of essential commodities at fair prices. Clause 18 of the Order enables the Government to fix the stock-limits of essential commodities.

5-A. It is futile to contend that the impugned notification must be struck down as it provides no guidelines as to the manner of disposal of stock of wheat in excess of the limit of 200 quintals with a dealer at any one time, i.e. as to when, in what circumstances and in what manner the excess stock can be disposed of. Once the State Government has issued a notification under Clause 18 of the Order specifying the maximum quantity of wheat to be possessed by a dealer at any time, the machinery provisions of the Order come into play. Clause 25 of the Order provides as follows :

The State Government or the Collector or the Licensing Authority may issue directions to any dealer with regard to purchase, sale, disposal, storage or exhibition of the price and stock list of all or any of the trade articles.

6. The contention that there is no distinction made by the impugned notification between a wholesale dealer and a retailer because the maximum quantity of wheat permitted to be possessed by them is the same, i.e. 200 quintals at any time, is equally unsuitable. Merely because the impugned notification makes no distinction between a wholesale dealer and a retailer, it does not make the fixation of the maximum limit of wheat permitted to be possessed by them to be irrational. One cannot forget that the State of Rajasthan is a deficit region and is largely dependent on import of wheat from other States to meet its normal requirements. It is a matter of common knowledge that wholesale dealers mainly operate in large cities and town and have means and capacity to manipulate the market by withholding stocks of wheat. Fixation of the maximum quantity of wheat to be possessed by a dealer at any time is a purely governmental function. The Government is the best judge of the situation in the State. This year witnessed unprecedented floods in some parts of the State of Rajasthan and in some others near drought conditions prevail. The State Government was more concerned with ensuring adequate supply of wheat to the rural areas. There was, therefore, nothing wrong in the State Government's providing that the maximum quantity of wheat to be possessed by a retailer at any time should also be 200 quintals, looking to the requirements of the rural population, so as to ensure the availability of this essential foodgrain at fair prices to the consumer.

7. We are also not impressed with the submission that the maximum quantity of wheat permitted to be possessed by a dealer, at any one time, must have rational relation to the quality of wheat. In large cities and towns, a dealer would naturally cater to the needs of the more sophisticated classes and keep in stock superior qualities of wheat. Looking to the different varieties of wheat one has to take a pragmatic view of things. All that the notification provides is that the maximum limit of all types of wheat to be possessed by a dealer at any one time should not exceed 200 quintals. It is not necessary for the State Government to prescribe different maximum limits for different varieties of wheat. The supply would take note of the demand and in the rural areas a dealer would normally stock the cheaper varieties of wheat which are normally in greater demand. The fixation of maximum limit of wheat to be possessed by a dealer at 200 quintals at any time is, therefore, neither arbitrary nor unreasonable.

8. The fixation by the impugned notification of the maximum quantity of wheat allowed to be possessed by a dealer at 200 quintals at any time can not be held to be arbitrary merely because in case of pulses, the maximum quantity allowed to be possessed by a dealer at any time is substantially higher. There was greater need for control of stocks of wheat which forms staple food of the people rather than pulses. For all we know, the maximum limit of pulses was to be higher looking to its production and availability in the market. Looking to the spiral rise of prices of foodgrains, the State Government would be well advised to limit the stock of pulses as well to prevent hoarding and black-marketing in that commodity also. However, it is not necessary for us to dilate on this question because there is no material placed before us challenging the impugned notification on this ground.

9. Learned counsel having failed to persuade us to accept his point of view, submits that by virtue of ad interim prohibitory Orders passed by the Court earlier, the petitioners are holding in stock larger quantities of wheat than permitted under the impugned notification. If that be so, the petitioners are not without any remedy. Under Clause 25 of the Order, they are at liberty to move the State Government to issue necessary directions for the disposal of the excess quantity of wheat in their possession. We hope and trust that the State Government would allow a reasonable time within which the petitioners are permitted to dispose of the excess quantity of wheat, if any. The State Government shall be at liberty to take over the excess stocks under Clause 19 of the Order at the

procurement price. However, nothing that we have said should be construed as a fetter on the discretionary power of the State Government under Clause 25 of the Order to make such directions as it may deem fit.

10. In the result, the write petitions must fail and are dismissed. There shall be no order as to costs. If there be any order staying the operation of the impugned notification, it stands vacated forthwith and no formal order for vacating such stay need be issued.

</html