

K. N. Oil Industries and Others

Vs

Secretary to The Ministry of Forest, Bhopal and Others

With

The State of M. P.

Vs

Sal Udyog (P) Ltd. and Others

Special Leave Petitions Nos. 14636, 15126-27, 15212-14, 15697

(A. P. Sen, S. Natarajan JJ)

10.04.1986

ORDER

1. These special leave petitions are directed against the judgment and order of the Madhya Pradesh High Court dated June 6, 1985 in regard to distribution of sal seeds. The operative part of the judgment of the High Court in paragraph 54 contains a direction to the effect :

In the light of the discussion above, therefore, these petitions are disposed of with the direction that the allotment which has been maintained by this Court to the new units and the allotment made to the Mandla Unit at the rate of 10,000 tons per year, could not be altered at the concessional rate for 5 years from the beginning and the remaining sal seeds available every year could only be fairly distributed to all the old units on the basis of their capacity and there appears to be no justification for any concessional rate to these units which could only be allotted the quantity available at the market rate as there is no justification for any concessional rate to the old units.

2. It would be seen that the first part of the direction keeps intact the right of the new units viz. Messrs Bastar Oil Mills Industries Limited, Messrs. Sal Udyog Limited, Messrs Allied Oil Industries Limited and Messrs. Madhya Pradesh Glychem to allotment of sal seeds to the extent of 10,000 tons per year at a concessional rate guaranteed in terms of the contracts entered into by them with the State Government of Madhya Pradesh. But there is obviously a mistake as to the period of five years mentioned therein as we shall presently show.

3. The second part of the direction relates to "the remaining sal seeds available every year" and this, according to the High Court, could only be fairly distributed as between the old units viz. Messrs M. P. Oil Extraction Pvt. Ltd., Messrs K. N. Oil Industries and Messrs General Food Pvt. Ltd. on the basis of their capacity. As regards the distribution of the remaining sal seeds available every year, the High Court had held that there was no justification of any concessional rate of supply to these units which could only be allotted the quantity available at the market rate. There is some controversy as to the basis upon which distribution of sal seeds is to be made to these units i. e.

whether upon the basis of their capacity or on the basis of their utilisation.

4. After hearing learned counsel for the parties at considerable length and having given the matter our anxious consideration, we are satisfied that the High Court was justified in making the first part of the direction as regards the guaranteed supply of 10,000 tons per year of sal seeds to the new units as per the terms of the contract entered into with them by the State Government, and there could be no alteration of the concessional rate as stipulated for in their contracts. The reason for this is obvious. The appeals preferred by Messrs M. P. Oil Extraction Pvt. Ltd. and by Messrs K. N. Oil Industries being Civil Appeals 2941-95/81 having been withdrawn on January 5, 1984, the result was that the judgment of the High Court reported in *M. P. Oil Extraction Pvt. Ltd. v. State of M. P.* became final. No doubt, the said appeals were withdrawn by the petitioners because they had arrived at a settlement dated November 16, 1983 with the State Government. Admittedly, the aforementioned new units were not parties to the settlement, nor were their representatives present at the meeting held on June 20, 1983 when the terms of the settlement were reached. It is undisputed that the new units had no notice of the aforesaid meeting nor were they apprised that the State Government contemplated any change in the quantity of sal seeds to be supplied or as to the area of supply. The first part of the direction must therefore be upheld, subject to a modification as to the period mentioned therein.

5. There is an obvious error in the judgment of the High Court which has to be rectified. The High Court has throughout proceeded on a wrongful assumption that the new units under the terms of their contracts with the State Government were assured the supply of sal seeds at a concessional rate for a period of five years. This is plainly contrary to the terms of the contract as between the parties. Under Clause 6 of the contract, the State Government had undertaken to supply to them sal seeds at a concessional rate for a period of four years. It is clarified that the first part of the direction which relates to the guaranteed supply of 10,000 tons per year to the new units at a concessional rate as stipulated in Clause 3 (1) of their contracts with the State Government would be limited to a period of four years. The direction made by the High Court is accordingly modified.

6. It is however urged on behalf of the new units that the term of four years stipulated for by Clause 6 was impossible of compliance till this Court lifted the embargo by its order dated May 6, 1982 by directing that the stay orders operative till that date shall be kept in abeyance and that the contracts with the new units be implemented. It is submitted that because of this, supply of sal seeds to the new units could not be effected till the year 1982. This is controverted by learned counsel appearing on behalf of the State Government. We refrain from expressing any opinion on this aspect. The question whether the period of supply at a concessional rate for a period of four years has to be reckoned from the date of the contract as specified in Clause 1 thereof or from the date of actual supply, may give rise to a dispute for which these units may take recourse to arbitration as provided for in Clause 23 of the agreement.

7. We must then revert to the second part of the direction made by the High Court as to the distribution of the remaining sal seeds available every year i. e. the quantity of sal seeds remaining for distribution after the State Government had complied with its contractual obligations of making supply to the new units at 10,000 tons per year. According to the High Court, the remaining quantity of sal seeds available every year could only be fairly distributed among the old units according to their capacity. There is no discussion in the judgment as to how the apportionment has to be made of the remaining quantity of sal seeds among the old units. During the course of arguments before us, conflicting claims were made as to the basis on which the allotment is to be made. According to learned counsel appearing for Messrs K. N. Oil Industries and Messrs M. P. Oil Extraction Pvt. Ltd.,

the basis of allotment should not be the capacity but utilisation. The contention to the contrary put forward by learned counsel appearing on behalf of Messrs General Food Pvt. Ltd. is that fair and equitable distribution necessarily implies that the basis of allotment should be according to capacity and not utilisation. He drew our attention to the fact that his clients for want of allotment were perforce required to purchase huge quantities of sal seeds from the market at an exorbitant price.

8. We accordingly remit the matter to the High Court for a decision afresh limited to this aspect only i. e. as to the basis for distribution of the remaining quantity of sal seeds available per year as between the old units. The High Court shall reach a decision afresh on the question after affording opportunity to all parties affected. The parties may amend their pleadings and place such additional material in support of their respective claims as they may be advised.

9. The special leave petitions are disposed of accordingly. There shall be no order as to costs.

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