

District Collector, Chittoor and Others

Vs

Chittoor District Groundnut Traders' Association, Chittoor and Others

Civil Appeal Nos. 2591-2597 of 1987

(K. N. Singh, L. M. Sharma JJ)

18.01.1989

JUDGMENT

SINGH, J. –

1. These appeals are directed against the judgment and order of a Division Bench of the High Court of Andhra Pradesh dated February 11, 1987 affirming the judgment of a learned Single Judge of the court allowing the respondents' writ petitions made under Article 226 of the Constitution and quashing the State Government's order dated June 21, 1985.

2. The respondents are oil millers and traders who carry on business in the sale and purchase of groundnut seed and groundnut seed oil which is edible. The millers purchase groundnuts and manufacture oil in their mills thereafter they sell the same in the State and outside the State. Similarly the traders purchase the groundnut seed and groundnut oil and sell the same in the State and outside the State of Andhra Pradesh. The State Government issued a circular order dated June 21, 1985 containing directions regulating the transport and export of groundnut seeds and oil outside the State. The oil millers and traders were permitted to export oil and groundnut seeds only on the condition contained in the order according to which all millers and traders were required to deliver oil to the State Government at a fixed price in proportion of one tonne of oil for every three tonnes to be transported outside the State and similarly a trader was required to supply to the State Government one tonne of oil for every five tonnes of groundnut seeds proposed to be transported outside the State on the price fixed by the State Government. The oil millers and traders were required to execute undertaking for complying with the directions issued by the State Government. The Government order warned the oil millers and traders that action would be taken against them if they failed to comply with the directions of the government. In substance the State Government imposed compulsory levy on oil millers and traders on the transport and export of groundnut oil and seeds. The respondents challenged the validity of the order of the State Government by means of writ petitions before the Andhra Pradesh High Court. A learned Single Judge quashed the order of the State Government on the findings that the directions contained therein violate Articles 19(1)(g) and 301 of the Constitution. On appeal by the State Government a Division Bench of the High Court held that the government order was violative of Section 3(2)(f), Section 3(3-B) and Section 3(5) of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') as the directions contained in the order amounted to imposition of levy which could not be done without obtaining prior concurrence of the Central Government in terms of Section 3(2)(f) of the Act. The bench further held that the directions contained in the impugned government order are outside the power of the State Government under clause 12 of the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. The Division Bench did not record any finding on the question whether the government order violated the constitutional guarantee of free trade under

Article 301 of the Constitution.

3. Mr. Chaudhary, learned counsel for the appellants contended that the directions contained in the Government Memo dated June 21, 1985 were issued by the State Government in exercise of its powers under clause 12(2) of the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982 (hereinafter referred to as the '1982 Order') which had been made by the State Government with the prior concurrence of the Central Government in exercise of the powers conferred by Section 3 of the Act. The impugned directions are legal and valid as the same are within the purview of 1982 Order. Having given our anxious consideration to the submissions made on behalf of the appellants we find no merit in these appeals.

4. The 1982 Order was framed by the State Government in exercise of delegated powers under Section 3(1) of the Act with the prior concurrence of the Central Government. The Act is a Central enactment providing for the control of the production, supply and distribution, trade and commerce in certain specified essential commodities. Section 3 confers power on the Central Government to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein if it 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. The Central Government has the legal sanction to issue orders under the aforesaid provisions for securing the aforesaid objectives which may include control of price, regulation of production and manufacture of any essential commodity, regulation, movement, transport, sale and distribution of the essential commodities and other allied matters. Section 5 empowers the Central Government to delegate its powers under Section 3 for issuing orders or notifications to such officers or authorities subordinate to the Central Government or to State Government or such officers or authorities subordinate to State Government as may be specified in the order in relation to such matters and subject to such condition as it may specify in the order. The Central Government is competent to delegate powers to the State Government or its officers and it may further specify restrictions and conditions for the exercise of the delegated power. Any order issued under Section 3 of the Act is legislative in nature and is required to be notified in the official gazette under Section 3(5) of the Act. The Central Government in the Ministry of Agriculture and Irrigation (Department of Food) issued the Notification No. GSR 800 dated June 9, 1978 delegating its powers under Section 3(1) of the Act to the State Governments to make orders in respect of the matters specified in various sub-clauses of sub-section (2) of Section 3 in relation to foodstuffs subject to certain conditions specified therein. The notification is as under :

# Published in the Gazette of India (Part II) Section 3 sub-section (i) dated June 17, 1978/27 Jyaistha, 1900 (Saka) \* \* \* Ministry of Agriculture and Irrigation (Department of Food) \* \* \* ORDER New Delhi, June 9, 1978##

GSR 800. - In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the order of the Government of India in the late Ministry of Agriculture, (Department of Food) No. GSR 315(E) dated June 20, 1972, the Central Government hereby directs that the powers conferred on it by sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), and (j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions :

(1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf;

(2) that before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution of disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government; and

(3) that in making an order relating to any of the matters specified in the said clause (j), the State Government shall authorities only an officer of the government.

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Sd/- (K. Balakrishnan)

Deputy Secretary to the Government of India No. 3 (Genl) (1) - D & R (1) – 59

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By clause (2) of the notification the Central Government while delegating its powers under Section 3 of the Act to the State Government for issuing orders in respect of the matters specified therein, expressly placed restriction on the State Government relating to any matters specified in clauses (a), (c), (d) and (f) sub-section (2) of Section 3 of the Act to the extent that while making an order pertaining to any matters specified in the aforesaid clauses the State Government shall obtain prior concurrence of the Central Government. The notification is manifestly clear that the Central Government did not delegate to the State Government its general power to pass any order under Section 3(1) of the Act for regulating or prohibiting the production, supply and distribution of the specified essential commodities and trade and commerce therein. On the other hand the State Government was delegated limited power to make orders in relation to foodstuffs subject to certain conditions specified in the notification after obtaining prior sanction of the Central Government. Any order made by the State Government regulating matters specified in clause (2) of the Notification without obtaining the prior sanction of the Central Government would be in contravention of the delegated power. A delegate is not entitled to exercise powers in excess or in contravention of the delegated powers. If any order is issued or framed in excess of the powers delegated to the authorities, such order would be illegal and void.

5. In the instant case the State Government in exercise of its powers conferred by Section 3 of Essential Commodities Act as delegated to it by Notification GSR 800 dated June 9, 1978 made the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982, after obtaining prior concurrence of the Central Government. This Order seeks to regulate the sale and purchase of scheduled commodities as specified in Schedule I to the Order. Edible oil seeds and edible oil are included in Schedule I to the Order. Clause 3 of the Order provides that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued by the licensing authority other provisions relate to the procedure for grant, renewal, and cancellation of licence. Clause 11 places restriction on storage of scheduled commodities; it provides for the maximum quantity which is permitted to be stored by a licensee. Clause 13 provides that the government/Commissioner/Collector may direct a dealer to convert edible oil seeds into edible oils stored or held by him. Clause 14 provides that a licence holder transacting business in purchase and sale of scheduled commodities shall not purchase commodities at prices lower than the notified procurement price from farmers. Similarly, clause 15 provides that the licensee shall not sell the scheduled commodities at a price higher than the maximum price fixed if

any by the Central Government or by the State Government. It is not necessary for the purpose of the present cases to refer to the other clauses of the Order. There is no dispute that the provisions of the Order do not place any restriction on the movement or transport of groundnut oil seeds or oil outside the State nor the Order fixes any price for the edible oil. It appears that a number of millers, traders were exporting groundnut seeds and oil outside the State of Andhra Pradesh. The State Government issued directions to the Collectors and licensing authorities to ensure that groundnut seeds and oil produced in a district is sold within the district and in the State and the same is not permitted to be moved out of the State. The oil millers and traders were told to ensure that the price of edible oils are maintained around Rs. 14 per kg. in the retail market. By a circular letter dated December 6, 1983 the State Government directed the licensing authorities, Collectors and other officers of the State to ensure that producers, millers and traders are not permitted to transport the groundnut seeds or oil outside the State and it further directed that the restriction imposed on movement of groundnut be removed with immediate effect so far as bona fide farmers are concerned but so far as the millers and traders were concerned movement of oil seeds and oil was subject to their agreement to supply certain quantities of groundnut seeds and oil to the State Government at the price fixed by it. Since there was problem of storage the millers and traders were required to give undertaking in writing that they would deliver the quantities due from them whenever demanded and on the basis of such undertakings they were permitted to transport three times quantity of oil for which undertaking was furnished. The policy as set out in the Government's Order dated December 6, 1983 was enforced for the year 1983-84. For the year 1984-85 the government took policy decision details of which were communicated to the licensing authorities, Collectors and other authorities of the State under its circular letter dated June 21, 1985. Under the revised policy bona fide farmers were permitted to move and sell groundnut produced in their own field without any restriction anywhere in the country. But the policy requiring the oil millers and traders to deliver to the State Civil Supply Corporation, a specified quantity of oil enabling them to transport oil and groundnut seeds outside the State was continued. By the Government Order dated December 6, 1985 the policy adopted for the year 1984-85 was directed to be continued for the year 1985-86.

6. The policy decision taken by the State Government and enforced under the aforesaid circular letter placed restriction on the transport and movement of edible oil and oil seeds and it further imposed compulsory levy requiring the millers and traders to supply oil to the State Government at the price fixed by it. There is no doubt that these steps were taken bona fide to ensure availability of the edible oil and oil seeds for public distribution at fair price but the steps taken by the State Government were not permissible in law as the 1982 Order did not confer power on the government to place such restrictions. Section 3(2) (d) provides for regulating by licence, permits or otherwise the storage transport, distribution, disposal acquisition, use of consumption of any essential commodity. Clause (f) of Section 3(2) of the Act confers power for making an order requiring any person holding in stock or engaged in the production or in the business of buying or selling of any essential commodity to sell the whole or specified part of quantity held in or produced or received by him to the government or to an officer or agent of the government. Clause (d) among other things provides for regulating transport and movement of an essential commodity while clause (f) confers power to impose compulsory levy on a person holding the essential commodity in stock by selling the same to the government. Section 3(3) provides that a person selling any essential commodity to the government in compliance with the order made with reference to clause (f) of sub-section (2) shall be paid controlled price if any fixed by the government or agreed between the parties and in the absence of agreement the price payable would be at the market rate prevailing in the locality on the date of sale. The 1982 Order which was framed by the State Government in

exercise of the delegated powers does not contain any provision placing any restriction on the transport or movement of the edible oil or oil seeds nor it provides for imposition of compulsory levy, further it does not fix any price. The directions issued by the government placing restriction on the movement of oil seeds and oil and imposing compulsory levy and requiring millers and traders to sell oil seeds and oil at a price fixed by it, are outside the purview of the 1982 Order. Those directions have no sanction of law. If the State Government was facing any problem it could have made amendments in the 1982 Order regulating matters specified in clauses (d) and (f) Section 3(2) of the Act after obtaining the prior concurrence of the Central Government. No such course was followed. There is therefore no escape from the conclusion that the directions contained in the impugned government order are illegal and void as the same have been issued in exercise of and in contravention of the power delegated to the State Government under the notification dated June 9, 1978.

7. Learned counsel for the appellants urged that the directions issued by the State Government placing restriction on the transport, movement and compulsory levy on the edible oils and oil seeds were placed with the prior concurrence of the Central Government. We find no merit in the submission. The State Government failed to place any material before the court to show that the prior concurrence of the Central Government as contemplated by clause (2) of the notification dated June 9, 1978 issued by the Government of India, was obtained. The State Government while issuing or making orders in respect of the essential commodities under Section 3 of the Act could make provision to the extent and subject to the conditions specified in the notification dated June 9, 1978, it had no power to make any order in respect of matters for which it had not been authorised to exercise powers under Section 3 of the Act. The State Government clearly transgressed the legislative authority in issuing the directions as contained in its circular letters dated December 6, 1983 and June 21, 1983. In fact an affidavit was filed on behalf of the Central Government stating that no concurrence of the Central Government had been obtained and the State Government had no competence to exercise powers in respect of matters specified in clauses (d) and (f) of Section 3(2) of the Act. The purpose and object for obtaining prior concurrence is to ensure availability of essential commodity throughout the country. The State Governments are not authorised to impose restrictions on the movement of the essential commodities as it would have reflection in other States both in regard to the price and in regard to the availability of the commodity for distribution. The Central Government has the responsibility of maintaining a balance between the interest of the various States and it has to ensure the availability of essential commodities for distribution at a fair price in other States also. All relevant aspects are necessary to be scrutinised by the Central Government in giving or refusing its concurrence not merely from the point of view of the State imposing restrictions but bearing in mind the conditions of trade and industry and the demand and supply of the concerned commodities in other States. Unless the Central Government is satisfied that it would be in the interest of all concerned, it may withhold concurrence for imposing restrictions on free movement of essential commodities. It is in this context that while delegating the powers to the State Government under Section 3 of the Act for making orders in respect of the matters specified in Section 3 of the Act the Central Government placed limitations in respect of matters specified in clause (f) of Section 3(2) of the Act by providing that such power shall not be exercised by the State Government without obtaining its prior concurrence. Before the learned Single Judge the entire correspondence which passed between the State Government and the Central Government was placed and on perusal of the same the learned Single Judge recorded a positive finding that the Central Government was opposed to restrictions on export of groundnut seeds and groundnut oil. The State Government's directions requiring the millers and traders to sell groundnut oil to the State Government is a matter directly specified within the terms of Section 3(2)(f) of the

Act; it is therefore clear that the State Government had no authority to place any such restriction without the prior concurrence of the Central Government.

8. Learned counsel for the appellants then urged that impugned restrictions could validity be placed by the State Government in public interest in exercise of its powers under clause 12 of the 1982 Order which had been framed with the prior concurrence of the Central Government. There is no dispute that clause 12 of the 1982 Order was framed by the State Government with the prior concurrence of the Central Government but the question is as to whether clause 12 of the 1982 Order confers any authority on the State Government to place restriction on the movement and transport of edible oil and seeds or to subject the millers and traders to compulsory levy. Clause 12 of the Order is as under :

12. Power to issue direction. - (1) The government, the Commissioner, the Collector or the licensing authority may issue instructions or directions on all matters covered by the provisions of this Order and all dealers shall comply with the same.

(2) Without prejudice to the generality of the foregoing power such directions may be issued to any dealer that all or any of the commodities mentioned in Schedule I to this Order may be sold to only such persons or institutions, in such quantities and at such intervals as the Commissioner, Collector, or the licensing authority may by general or special order, direct.

Sub-clause (1) of clause 12 authorises the government, Commissioner, Collector or the licensing authority to issue instructions and directions in matters covered by the provisions of the 1982 Order; it further provides that such direction shall be complied by all dealers. The power of the authorities specified in sub-clause (1) to issue instructions and directions is limited to the subject matter of the 1982 Order. Such directions and instructions cannot pertain to regulate matters which are not covered or dealt with by the 1982 Order. Sub-clause (2) of clause 12 of the Order provides that directions may be issued to any dealer to sell an essential commodity (as mentioned in Schedule I to the Order) only to such persons or institutions in such quantities as may be directed by the Commissioner, Collector or the licensing authority. This clause regulates the sale of essential commodity to the specified persons and institutions in such quantities as may be directed by the authorities. Neither of these two clauses confer any power on the authorities to impose levy or to fix price for the essential commodities supplied to the government. As already noticed, restriction on transport, imposition of levy and fixation of price was not the subject matter of the 1982 Order, therefore the State Government had no authority in law to issue orders in respect of the aforesaid matters in exercise of its powers under clause 12 of the 1982 Order. If the submissions made on behalf of the State Government are accepted it would nullify the restrictions and limitations placed by the notification dated June 9, 1978 delegating legislative power to the State Government. The State Government could not impose any restriction on the export of groundnut seed or oil to outside State and further it could not issue directions for the compulsory levy at the specified price in view of the limitations placed on exercise of its powers under the notification dated June 9, 1978. What it could not do directly could not be permitted to be done indirectly by virtue of clause 12 of the 1982 Order. The scope and ambit of clause 12(2) of the 1982 Order could not and did not authorise the State Government to impose the impugned restrictions.

9. We are therefore of the opinion that no exception can be taken to the view taken by the High Court that the impugned restrictions placed by the State Government are ultra vires its powers. The High Court has rightly struck down the directions issued by the State Government. We find no merit

in these appeals and the same are accordingly dismissed with costs.

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