

Indian Nut Products and Others

Vs

Union of India and Others

and

Kerala Nut Foods Co. and Others

Vs

Union of India and Others

Writ Petition (C) No. 415 Of 1988 With Nos. 445 of 1989, 3950-61 of 1982, 429-433 of 1979 and 490 of 1989

(Kuldip Singh, P.B. Sawant, N. P. Singh JJ)

12.05.1994

JUDGMENT

N. P. SINGH, J. -

Writ Petition (C) No. 415 of 1988

1. This writ petition has been filed on behalf of the petitioners, who are owners and occupiers of cashew factories. They have questioned the validity of an order dated 6-7-1988, issued by the Government of Kerala, in exercise of the powers conferred on it by Section 3(1) (c) of the Kerala Cashew Factories (Acquisition) Act, 1974 (hereinafter referred to as "the Act") declaring that the cashew factories of the petitioners mentioned in the schedule of the said order shall stand transferred to, and vest in, the Government.

2. The object of the Act aforesaid is to acquire cashew factories in the public interest, in order to prevent large scale unemployment of workers in the cashew industry and to provide employment to such workers who have been rendered unemployed. Cashew factory has been defined under Section 2(b) to mean a factory as defined in the Factories Act, wherein processing of cashew nuts is being carried on and includes the factory building, the site thereof, and the buildings, and lands appurtenant thereto used or necessary thereof, and the buildings, and lands appurtenant thereto used or necessary for, or in connection with the working of the factory. Section 3 provides :

"Order of acquisition. - (1) The Government may, if they are satisfied -

(a) that the occupier of a cashew factory does not conform to the provisions of law relating to safety, conditions of service or fixation and payment of wages to the workers of the factory; or

(b) that raw cashew nuts allotted to a cashew factory by the Cashew Corporation of India are not being processed in the factory to which allotment has been made or that

such nuts are being transferred to any other cashew factory; or

(c) that there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew factory,

by order published in the Gazette, declare that that cashew factory shall stand transferred to, and vest in, the Government :

Provided that before making a declaration under this sub-section in respect of a cashew factory, the Government shall give the occupier of the factory and the owner of the factory, where he is not the occupier, a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice.

Explanation. - For the purposes of this sub-section, the expressions 'lay off' and 'retrenchment' shall have the meanings respectively assigned to them, in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(2) The notice referred to in the proviso to sub-section (1) shall also be published in two newspapers published in the State of Kerala and such publication shall be deemed to be sufficient notice to the occupier, to the owner where he is not the occupier and to all other persons interested in the cashew factory.

(3) On the making of a declaration under sub-section (1), the cashew factory to which the declaration relates, together with all machinery, other accessories and other movable properties as were immediately before the appointed day in the ownership, possession, power or control of the occupier in relation to the factory and all books of accounts, registers and other documents relating thereto shall stand transferred to, and vest in, the Government."

The other sections relate to the vesting, inventory of properties, power of the Government to direct vesting of such cashew nut factories in the Corporation, payment of compensation to the occupier of the cashew factory and the continuance of employment of the employees after vesting.

3. It appears that in view of the proviso to sub-section (1) of Section 3 of the Act, the Government gave notice to the petitioners in respect of their intention to take action under the aforesaid sub-section, directing the petitioners to file objections, pursuant to the said notice. The relevant part of the said notice dated 20-6-1988 is as follows :

"NOTICE Notice under Rule 3 of the Kerala Cashew Factories (Acquisition) Rules, 1974.##

WHEREAS it has been brought to the notice of the Government that in respect of cashew factories detailed below, there exist grounds as detailed below, warranting action under Section 3(1) of the Kerala Cashew Factories (Acquisition) Act, 1974, notice is hereby given to all concerned of the intention of the Government to take action under the abovesaid section of the Act. Interested persons are hereby directed to file their objections, if any, before the Government of Kerala against the proposed action within seven days of the receipt of this notice or the publication of this notice in the newspapers, whichever is earlier or if they so desire, appear before the Special

Officer for Cashew Industry, Quilon at Quilon at 11 a.m. on 4-7-1988 and state their objections. If no objections are received within the said period or no person appears on the said date it will be presumed that there are no objections against the proposed action and further steps will be taken"

In the said notice the names of 36 cashew factories including that of the petitioners have been mentioned and thereafter the grounds on which the factories were being acquired have been stated as follows :

"GROUNDS

It has been reported by the authorised officer that your factory is lying closed and that there is no possibility of it to start functioning within a period of ten days or in the immediate future. Government are, therefore, of opinion that the said situation will lead to a large scale unemployment, other than by way of lay off or retrenchment, of the workers of the cashew factory."

4. On behalf of the petitioners, objections were filed to the said notice, pointing out, that the first allotment of raw cashew nut under the scheme of monopoly procurement, was made to them by allotment orders dated 15-4-1988 and as such at the earliest, the factory could have started around 1-5-1988. It was also pointed out that cashew nut industry was essentially a seasonal industry. With the available raw nuts in Kerala State and the scheme of monopoly procurement of raw nuts in force, if all the cashew factories were to take allotment of raw nuts, such factories would work only for 45 to 60 days in the year 1988. It was also pointed out that in the year 1987, they worked for 192 days. It was asserted that there had been no unemployment in their factories and as such there was no justification to issue notice in exercise of the power under Section 3(1)(c) aforesaid.

5. On 4-7-1988 which had been fixed as the date of hearing of the objections to the notices aforesaid, before the Special Officer for Cashew Industry, Quilon, a detailed written submission was also filed on behalf of the petitioners, pointing out that the notice had been issued, not in terms of the requirement of Section 3(1)(c). Hence, on the basis of such notice, the power of the State Government to declare that the factories mentioned therein shall stand transferred to the State Government, cannot be exercised. It was asserted that the issuance of notice was nothing but a colourable exercise of statutory powers with oblique motives and the processors felt that the acquisition of factories and driving the owners out of the industry was a foregone conclusion.

6. The impugned order was issued on 6-7-1988 saying :

"Whereas it has been brought to the notice of the Government that there has been large scale unemployment, other than by way of lay off or retrenchment of the workers of the cashew factories mentioned in the Schedule below.

AND WHEREAS Government have given notice to the owners/occupiers of the said factories of the intention of the Government to take action under Section 3 of the Kerala Cashew Factories (Acquisition) Act, 1974 (29 of 1974) and considered the objections that were preferred in pursuance of the said notices.

AND WHEREAS Government are satisfied that there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of the cashew factories mentioned in the Schedule below :

Now therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 3 of the Kerala Cashew Factories (Acquisition) Act, 1974 (29 of 1974), the Government of Kerala hereby declare that the factories mentioned in the Schedule below shall stand transferred to and vest in the Government with effect from 6-7-1988."

Section 3 vests power in the Government, to declare that the cashew factory in question shall stand transferred to and vest in the Government, if the Government is satisfied that any of the three conditions mentioned in the said sub-section (1) of Section 3 exists. That power has not been questioned in the present writ application. But it was pointed out that the proviso to sub-section (1) Section 3 enjoins upon Government, before issuing a declaration, to follow a procedure which is imperative and mandatory in nature i.e.' the Government shall give the occupier of the factory and the owner of the factory, where he is not the occupier, a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice'.

7. It cannot be disputed that in view of the proviso to sub-section (1), it is incumbent on the part of the Government to disclose the ground or the grounds specifically, in the notice on the basis of which, the Government is satisfied that one of the three situations mentioned in sub-section (1) of Section 3 exists necessitating an action under that sub-section. The person to whom such notice along with the ground or grounds is served, is entitled to file objections and to demonstrate and satisfy that in fact no such ground exists for issuance of an order for the transfer of the factory in question.

8. It appears that in the notice, there is only reference to Section 3(1) of the Act, without disclosing whether the Government was satisfied in respect of the existence of any of the situations under clause (a), (b) or (c) thereof. No details have been mentioned in the said notice. Towards the end of the said notice, under the heading "Grounds" it has been stated that the factory was lying closed and that there was no possibility of it to start functioning within a period of ten days or in the immediate future and, therefore the Government was of the opinion that the said situation "will lead to a large scale unemployment". It need not be impressed that an order under Section 3(1) on the ground specified in clause (c) and sub-section (1) can be issued by the State Government only when the State Government is satisfied that "there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew nut factory". The grounds do not even state that there has been any unemployment much less large scale unemployment. The grounds simply state that the factory was lying closed and there was no possibility of its starting functioning within a period of ten days or in the immediate future, which will lead to large scale unemployment. No details have been mentioned in the said notice as to from what date each of the factories was lying closed. We are not able to appreciate as to how by a common notice all the 36 cashew factories could be summoned to show cause without giving particulars of conditions existing in different factories. The learned counsel, who appeared on behalf of the State, could not point out, as to how different occupiers or the owners of the factories could have filed objections to such common notice which did not refer to any conditions pertaining to their factories.

9. There is no dispute that the cashew nut factories do not work throughout the year but work for varying periods depending upon the supply of raw nuts etc. As such the particulars of the alleged closure of each of the factories were required to be furnished to the individual owner to meet the case against him. The object of the Act is to safeguard the interests of the workers in the cashew factories and it is to safeguard their interests that the power has been vested in the State Government

to issue orders for the transfer of the factories. The transfer or vesting of the factories has to be in accordance with the procedure prescribed in the Act. As already pointed out above, the proviso to sub-section (1) not only requires a notice to be given to the occupier or the owner of the factory in respect of the intention of the Government to take action under the said sub-section, but also requires to furnish the grounds on which such action is considered necessary. In the present case, according to us, the notice does not comply with and conform to the requirement of the proviso to sub-section (1) of Section 3.

10. It is well-settled that if a statute requires an authority to exercise power, when such authority is satisfied that conditions exist for exercise of that power, the satisfaction has to be based on the existence of grounds mentioned in the statute. The grounds must be made out on the basis of the relevant material. If the existence of the conditions required for the exercise of the power is challenged, the courts are entitled to examine whether those conditions existed when the order was made. A person aggrieved by such action can question the satisfaction by showing that it was wholly based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of the circumstances in question is open to judicial review.

11. It cannot be disputed that serious consequences follow on the basis of the order passed by the Government on grounds mentioned in clauses (a), (b) and (c). Hence it is all the more necessary that the Government furnishes the full particulars on the basis of which the Government claims to be satisfied that there is a case for taking over the factory. As already pointed out above, there is not even an assertion in the notice that there has been any unemployment much less large scale unemployment. The ground simply says that the Government was of the opinion that the closure of the factory "will lead to a large scale unemployment". We are of the view, that in the facts and circumstances of the present case, the notice issued to the petitioners with the so-called grounds was not in accordance with the requirement of the provisions of sub-section (1) of Section 3 of the Act. The notices issued to different petitioners are, therefore, declared to be null and void. Consequent thereto, the order dated 6-7-1988 is also quashed.

12. However, it is made clear that it shall be open to the Government to exercise the power conferred on it by sub-section (1) of Section 3, whenever it is satisfied on the basis of the relevant material, that any of the three conditions mentioned therein exists in individual factories, by following the procedure prescribed therein.

13. In order to work out the equities and the rights and liabilities which have arisen between the date of the transfer of the factories and passing of this order, we direct :

(i) The possession of the factories shall be handed over to the respective owners within two weeks from the date of this order. As and when possession is given, an inventory of all the materials shall be made.

(ii) The daily workers other than the members of the staff engaged by the Kerala State Cashew Development Corporation Ltd., or the State Government, as the case may be, shall be retained by the factory owners and shall not be retrenched except in accordance with law. So far as the members of the staff are concerned, it shall not be the obligation of the factory owners to retain them, in view of the interim order passed by this Court on 19-7-1988.

(iii) The petitioners shall pay the same salary and emoluments which were being paid

by the State Government while the factories were with the State Government.

(iv) Any claim for compensation in respect of any damage or loss caused to the machinery, equipments, building etc. during the period of occupation by the Kerala State Cashew Development Corporation Ltd., shall be assessed by the District Judge, Quilon. Similarly, any claim in respect of any amount for an additional construction made or additional machinery installed by the Kerala State Cashew Development Corporation Ltd., shall be determined by the District Judge, Quilon, on proper application being filed before it.

(v) The Kerala State Cashew Development Corporation Ltd., shall be entitled to remove any machinery or materials installed by it within one week of preparation of the inventory; and

(vi) Any disciplinary enquiry pending against any of the workmen may be continued by the owner of the factory concerned, if he chooses to do so.

Subject to the directions given above, the writ petition is allowed. But in the facts and circumstances of the case, there shall be no order as to costs.

WP (C) Nos. 445 and 490 of 1989, 3950-61 of 1982, 429-33 of 1979

The abovementioned writ petitions are disposed of, in terms of the judgment of this Court, in Writ Petition (C) No. 415 of 1988, delivered today.

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