

SUPREME COURT OF INDIA

Nagrik Uphhokta M. Manch

Vs.

Union of India

C.A.No.3249-3250 of 2002

(R. C. Lahoti and Ashok Bhan JJ.)

20.04.2004

JUDGMENT

R. C. Lahoti, J.

1. In the States of Madhya Pradesh, kerosene was being distributed and made available for sale to consumers through public distribution system and by appointing fair price shops and retailers.

2. By executive instructions, the State of Madhya Pradesh evolved a system called rounding off of the price in the name of securing distribution of kerosene at uniform prices. The effect of the system was that the prices for sale by the wholesalers and the retailers were so strategically appointed as to generate a margin which was collected by Collectors in several districts and the Director of Civil Supplies at the State level. Such fixation of prices, based on rounding off, was challenged by filing writ petitions in the High Court which were dismissed. The matter came up in appeals by special leave before this Court. This Court allowed the appeals. The judgment of the High Court was set aside and the system of rounding off of the prices so as to build up funds available with the Director and the Collectors was directed to be quashed being ultra vires of Article 265 of the Constitution and Section 3 of the *Essential Commodities Act 1955* and para 2(d) of the *Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993*.

3. During the pendency of the writ petition and the appeals, the State of Madhya Pradesh was reorganized into two States by carving out the State of Chhattisgarh separately from out of the State of Madhya Pradesh. The State of Chhattisgarh was joined as party to the appeals in this Court. Huge funds, running into crores of rupees, were found to have been collected by the two States the figures whereof were brought to the notice of this Court. However, the collection had continued during the pendency of the appeals. Vide its judgment dated May 2, 2002 (reported as) apart from striking down the system of rounding off, the Court made the following further directions:-

"However, on the facts brought to the notice of this Court, the matter cannot be left at

that alone. We have the figures of the collection and utilization of the fund up to 31-7-2001 brought to our notice. During the pendency of these appeals, further amount must have been collected and also spent. Some directions would be required to be made for utilizing the fund so available with the officers of the State Government. This Court would also like to know how and for what purpose the fund has been utilized and whether timely audits of the fund were carried out. For this purpose we request the Accountant-General of Madhya Pradesh to carry out the audit of the fund as available with the Director and the Collectors of the districts in the States of Madhya Pradesh and Chhattisgarh, the latter State having been carved out and formed during the pendency of these special leave petitions. Apart from carrying out the usual audit, we request the Accountant-General of Madhya Pradesh to compile the expenditure under different heads and sub-heads so as to clearly indicate for what purpose the fund has been utilized. We hope the audit will be completed in a period of 4 months from the date of communication of this order to the Accountant-General of Madhya Pradesh. On receipt of the report of the Accountant-General, the same shall be laid before the Court soliciting further directions. Till then, the amount collected in the said fund by the Director of Food and Civil Supplies and the Collectors of the districts shall stand frozen."

4. The Principal Accountant-General of Madhya Pradesh has carried out the audit in terms of the directions made by this Court. It was a voluminous task and could not be completed within the appointed period of four months and, therefore, the time was extended. In February, 2003, the report has been filed on behalf of the Principal Accountant-General (Audit)-I of Madhya Pradesh, Gwalior after carrying out the audit of funds available with the two Directorates of Food and Civil Supplies and with the Collectors of 61 districts in the States of Chhattisgarh and Madhya Pradesh. We record our appreciation of the commendable work done by the office of the Principal Accountant-General (Audit)-I abovesaid within a reasonable time and very expeditiously. The report satisfies the directions made by this Court.

5. The States of Madhya Pradesh and Chhattisgarh, on having been furnished with the copies of the audit reports, have filed responses. They took time for completing the process of reconciliation, recovery and adjustments in the light of the audit report and to carry out the directions made by this Court. On 10.11.2003, after hearing the Advocates General for the States of Madhya Pradesh and Chhattisgarh, the Court made the following directions:-

"There is substantial amount collected and lying unspent the recovery whereof by the Directorate and Collectors of several Districts has been held to be illegal. Such amount must be available to be utilized consistently with the directions to be made by this Court. For this purpose before passing further orders, we would like to have the following information filed in a tabulated form, supported by affidavit within three weeks:-

(i) The total amount collected by way of rounding up charges;

(ii) The amount spent out of it (Districtwise); and

(iii) The amount as to which recovery is yet to be made by the Directorate/Collectors of Districts.

We would also like to know if the audit is complete or something yet remains to be done for want of information made available by the Districts.

I.A. No. 14-15/2003 (filed by the State of Chhattisgarh)

The State Government shall take steps for recovery of rounding off charges lying deposited with the wholesalers so as to bring them into the funds available for utilization in accordance with the orders passed by this Court."

6. Compliance has been made and reported.

7. The question that remains to be decided is as to the utilization of the crores of rupees lying available with the two States consisting of the principal, the interest and the recoveries effected consequent upon the directions made by this Court.

8. The two States have submitted that the funds which have been frozen under the orders of this Court may be released respectively to them for the purpose of utilization by them to strengthen the public distribution systems in the two States. The traders (wholesalers and retailers) have desired that the amount be refunded to them as it was contributed by them.

9. On 25.3.2004, an affidavit sworn in by Shri P.G. George, Under Secretary in the Ministry of Petroleum and Natural Gas, New Delhi, has been filed wherein it is stated, inter alia, as under:-

"5. That the Central Government vide resolution No. PPD/OPC/IR/75 dated 14.7.1975 had decided to setup Oil Coordination Committee for administering the Pool Account, deciding on allocation of crude oil and monthly production patterns; and coordinating transportation arrangements for crude oil imports and coastal movements. Secretary, Ministry of Petroleum and Natural Gas, Government of India, was the Chairman of the OCC.

The subsidy on Public Distribution system of Kerosene was borne by the Oil Pool Account till 31.3.2002. The subsidy on Public Distribution System on Kerosene was funded by way of cross subsidy on Petrol and Aviation Turbine Fuel and surcharges on petroleum products. The Central Government vide resolution No. P-20029/22/2001- PP dated 28.3.2002 had decided to dismantle Oil Coordination Committee w.e.f. 1.4.2002 and Oil Pool Accounts have been wound up. The Central Government has also decided that the outstandings of the Oil Companies from the Oil Pool Account would be taken over by it. The liability of Oil companies would be

discharged through issue of Special Government Bonds. The Oil Companies have already been issued Special Government Bonds for Rs.9000/- crores and balance outstandings would be liquidated after the completion of CAG's Audit which is in progress.

Thereafter the Central Government, has also decided vide resolution number No.P-20029/18/2001-PP dated 28.1.2003 that subsidy on Public Distribution System Kerosene and domestic LPC effective 1.4.2002 would be borne by fiscal budget. The budgetary allocation for the subsidy on Public Distribution System Kerosene and Domestic LPG is as follows:

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6. That from the resume of the facts, it would be in the interest of justice that the State Governments, that is, Madhya Pradesh and Chhattisgarh are directed to deposit all this amount in the General Receipts of the Central Government as kerosene subsidy is being funded by the Central Government."

10. We have heard the learned Addl. Solicitor General appearing for the Union of India, Advocates General/Standing Counsel for the States of Madhya Pradesh and Chhattisgarh and the learned counsel appearing for the several interveners. We do not find any merit in the claim of the traders. Whatever amount they have contributed to the funds generated by the State Governments in the name of rounding off, the burden thereof has been passed on to the hundreds and thousands of consumers. A refund to them would amount to their unjust enrichment and would not reach the ultimate consumers who have really parted with the amount.

11. We do not also see any merit in the claims of the two State overnments. Firstly, they were responsible for illegally collecting the fund. The information made available by the two State Governments and the facts collected by the report of the Principal Accountant- General reveal misutilisation of the funds and several irregularities some of them termed serious. To a large extent recoveries have been effected which would not have been possible but for the Court's intervention.

12. Substantial amounts have ceased to be recoverable.

13. Apart from suggesting that the amount of the fund would be utilized for strengthening the public distribution system, the State Governments have not come out with any concrete plan suggesting utilization of funds. We do not think the claims of the State Governments can be countenanced.

14. We do find merit in the submission made on behalf of the Central Government. The most appropriate thing to do, in our opinion, is to direct the funds lying with the two State Governments to be made over to the Central Government so that the same can be utilised by

way of general receipts of the Central Government as the Central Government is funding the kerosene subsidy.

15. The States of Madhya Pradesh and Chhattisgarh are directed to makeover the amount of fund lying frozen with them, including the principal and interest, alongwith such recoveries as have been effected or may be effected hereafter to the Ministry of Petroleum and Natural Gas, New Delhi to be utilized for the purpose of funding kerosene subsidy by the Central Government. Funds available at hand shall be handed over in six weeks. Amounts, which are in the process of being recovered, shall be so recovered and handed over to the Central Government in 4 months from today.

16. The matters stand disposed of.

17. All the pending intervention applications be treated as dismissed.