

ALLAHABAD HIGH COURT

Union of India

Vs.

Bullion and Agricultural Produce Exchange Ltd

Special Appeal No. 8 of 1966. against judgment and order of R.S. Pathak, J. in
Civil Writ No. 1066 of 1965

(Satish Chandra and N.D. Ojha, JJ.)

11.11.1965. 01.09.1972

JUDGMENT

Satish Chandra, J.

1. This appeal raises an important question as to the powers possessed by the Forward Markets Commission, appellant No. 2.

2. The Bullion and Agricultural Produce Exchange Limited, the respondent, is a public limited company. It carried on the business of regulating and controlling forward contracts in various goods. The respondent made an application to the Forward Markets Commission for being registered under the Forward Contracts (Regulation) Act, No. 72 of 1952, on 15-12-1962. The Commission issued a registration certificate to the respondent showing that the respondent was entitled to carry on business in Arhar-ki-chooni. One of the conditions mentioned in the certificate was that the respondent shall not conduct forward trading in any commodity other than those specified there under except with the previous approval of the Forward Markets Commission. The respondent was, however, content with this condition and it permitted its members to do the business of forward trading in Arhar-ki-chooni only. On June 1, 1964, the Central Government issued a notification under section 17 (1) of the Forward Contracts (Regulation) Act the effect of which was that trading in Arhar-ki-chooni was prohibited. The respondent thereupon discontinued trading in this commodity. At that time forward contracts in linseed oil was permissible. The respondent company permitted its members to trade in linseed oil. On 24th December, 1964, forward trading in linseed oil was also prohibited. At this time groundnut oil was not a prohibited commodity. So, the respondent commenced

business in groundnut oil.

3. Meanwhile, on June 2, 1964, the Forward Markets Commission had issued a directive to the respondent company not to trade in non-transferable specific delivery contracts in any commodity without the prior approval in writing of the Commission. This apparently was a reminder to the respondent company of the conditions contained in the certificate of registration. The respondent, however, ignored this directive and continued its business in ground-nut oil. The Commission felt that the respondent had violated the conditions of the certificate of registration and was liable to be prosecuted under Sections 20 and 21 of the Forward Contracts Act. Apprehending this, the respondent company instituted a writ petition in this Court. The principal point urged in it was that the commission had no power to require a registered association to obtain the Commission's prior permission before permitting its members to carry on forward trading in non-transferable specific delivery contracts in a commodity like groundnut oil, the forward trading in which was not prohibited under Chapter IV of the Act, even though such a commodity was not mentioned in the certificate of registration.

4. A learned Single Judge held that Section 14-A (1) prohibits an association concerned with regulation and control of business relating to forward contracts in carrying on such business except under and in accordance with the conditions of a certificate of registration. It was observed :

"The conditions must be such as are related to the carrying on of the business. It is under those conditions and in accordance with them that the business must be carried on. It is the conduct of the business, and the manner of its conducting it, to which reference is made here. It is not contemplated that business shall be carried on relating to forward contracts only in respect of certain commodities and no other. That would not relate to the conduct of the business or the manner of its being carried on. That would imply the curtailment of the business, the business being confined in relation to specific commodities only, and no business being permissible in relation to other commodities."

It was held that Section 14-A (1) does not empower the Commission to prevent a registered association from carrying on its business in any commodity without

its prior approval.

5. The learned Judge held that if the Commission is construed to have such a power it may entail a restriction upon the fundamental rights to carry on forward trading in certain commodities in violation of Article 19 (1) of the Constitution. The Forward Market Commission was not a body parallel but subordinate to the Central Government. Ample power has been conferred upon the Central Government to control forward trading in respect of commodities. There was no reason why grant of power should be duplicated and conferred also upon the Commission. Another feature of the Act which appealed to the learned Judge was that Section 6 expressly provided for specification of goods for the grant of recognition of an association. If the Legislature so intended, a similar clause for specifying commodities could have found place in Section 14-A (1). It was held that forward contracts other than non-transferable specific delivery contracts in various commodities were covered by Sections 15 and 17 while Section 18 authorizes the Central Government to control and regulate non-transferable specific delivery contracts and so since such a power is not contained in the express terms of Section 14-A (1) no necessary intendment has been proved to warrant its implication from the other provisions of the Act. Ultimately, the writ petition was allowed. The second condition contained in the certificate of registration as well as the direction issued on June 2, 1964, were quashed and the Commission was restrained from taking any proceedings against the respondent company consequent upon the supposed contravention in respect of the said condition and direction.

6. Aggrieved, the Union of India as well as the Commission have come up in appeal. During the pendency of the appeal this problem was raised before the Delhi High Court in (*Messrs. Rajdhani Grains and Jaggery Exchange Ltd. v. Union of India*).¹ A learned Single Judge of that Court accepted the views expressed in the judgment under appeal before us and held that the Commission had no such power. This judgment dated 27th July, 1967, was affirmed by a Division Bench of the Delhi High Court in Letters Patent Appeal No. 7 of 1968 decided on 4th August, 1972 : (reported in AIR 1973 Delhi 1).

7. A perusal of the judgment under appeal shows that the learned counsel for the parties concentrated their attention on Section 14-A for their respective

contentions. This is what happened also at the hearing of the appeal before us. We, however, felt that there were other provisions in the Act which were germane to the question of powers possessed by the Commission. We posted the appeal for further hearing and heard learned counsel again.

8. In order to appreciate the interconnection of the various provisions of the Forward Contracts (Regulation) Act, 1952, it may be useful to keep in mind its legislative history. The Statement of Objects and Reasons appended to this Act stated that forward trading which normally plays a useful part in tempering price fluctuations, tends in certain situations to exaggerate such fluctuations to the detriment of the interests of producers as well as consumers. During the war and immediately thereafter, the Central Government issued orders under Rule 81 of the Defense of India Rules, prohibiting forward trading in commodities such as food grains, oil-seeds, oil cakes, vegetable oils, raw cotton, spices, sugar and bullion. After the Defense of India Rules lapsed, orders in respect of food grains, edible oilseeds and oils, raw cotton and spices were kept in force under the Essential Supplies (Temporary Powers) Act, 1946. Before the lapse of the Essential Supplies (Temporary Powers) Act, Parliament enacted the Forward Contracts (Regulation) Act, 1952. The scheme of this Act was that the Central Government was authorized to extend the provisions of the Act by notification to different classes of goods and to different areas as and when necessary. The main principle underlying the provisions of the Act was that forward contracts should be allowed to be entered into only in accordance with the rules and bye-laws of a recognized association. The Central Government was to exercise supervisory powers over such associations. The Act constituted a Forward Markets Commission and entrusted a variety of functions, duties and powers upon it.

9. After about six years working of this Act it was felt that its provisions were not adequate to deal with excessive speculation and other malpractices now prevalent in the forward markets. Persons indulging in illegal forward trading cannot be prosecuted for want of adequate documentary evidence. With this object Parliament enacted the Amending Act 62 of 1960, inter alia, introducing Section 14-A in the Act. Under this provision no association concerned with the regulation and control of business relating to forward contracts could carry on such business except in accordance with the conditions of a certificate of

registration granted by the Forward Markets Commission. Under it the Commission was authorized to issue a certificate of registration to the existing recognized associations as well as others who applied for it, and to lay down the conditions for carrying on the business of regulation and control of business relating to forward contracts.

10. Section 3 of the Act authorized the Central Government to establish the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under the Act. The Commission was a high powered body consisting of not less than two but not more than four members to be appointed by the Central Government. The members to be so appointed were to be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the Commission.

11. Section 4-A related to the nature of the Commission. Under it the Commission had the powers of a Civil Court under the Code of Civil Procedure in the matter of summoning and enforcing the attendance of witnesses, discovery and production of documents, requisitioning any public record or any other matter which may be prescribed by rules. Under sub-section (3) of Section 4-A the Commission was deemed to be a Civil Court and under sub-section (4) any proceeding before the Commission is to be deemed to be a judicial proceeding within meaning of Sections 193 and 228 of the Indian Penal Code.

12. Section 4 provided for the functions of the Commission. It stated :

"The functions of the Commission shall be (a) to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act;

(b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary in exercise of the powers assigned to it by or under this Act;

(c) to collect and whenever the Commission thinks it necessary publish

information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of the forward markets relating to such goods;

(d) to make recommendations generally with a view to improving the organization and working of forward markets;

(e) to undertake the inspection of the accounts and other documents of any recognized association or registered association or any member of such association whenever it considers it necessary and

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed."

13. It will be seen that like Section 3, clause (f) of Section 4 contemplated that duties and powers may be assigned to the commission in various ways, namely either by the Act or under the Act or as may be prescribed. The term "prescribed" has been defined by Section 2 (h) to mean prescribed by rules made under this Act. Section 28 of the Act conferred power upon the Central Government to make rules for the purpose of, inter alia, carrying into effect the objects of this Act.

14. Dealing with the phrase "by or under this Act or as may be prescribed" under clause (f) of Section 4, the Supreme Court in *I. P. Gupta v. W. R. Natu*,² held that the expression "conferred by the Act" would mean conferred expressly or by necessary implication by the Act itself, while "under the Act" refers to powers conferred by bye-laws that may be framed under Sections 11 and 12, whereas the expression "as may be prescribed" refers to the rules that may be made by the Central Government.

15. Construing clause (f) of Section 4 the Supreme Court held that so far as the terms of clause (f) of Section 4 are concerned, there is no limitation upon the nature of the power that might be conferred except that which might flow from its having to be one in relation to the regulation of forward trading in goods which the Act is designed to effectuate. It was also held that there is no common positive thread running through clauses (a) to (e) of the section such as

would bring them under one genus and negatively they do not expressly include any administrative or executive functions and that itself might be a reason why the expression "other" occurring in clause (f) should receive the construction that it is intended to comprehend such a function.

16. The Court observed that where the Court is concerned with the question whether it is legally competent to vest a particular power in a statutory body, the proper rule of interpretation would be that unless the nature of the power is such as is incompatible with the purpose for which the body is created, or unless the particular power is contra-indicated by any specific provision of the enactment bringing the body into existence, any power which would further the provisions of the Act could be legally conferred on it.

17. In the light of these principles we have to see as to what powers have been conferred upon the Commission either by the Act or by the bye-laws or rules and then to see whether any particular power furthers the objects of the Act or is contra-indicated by any specific provision of this Act.

18. In exercise of its rule-making power the Central Government framed the Forward Markets (Regulation) Rules, 1954. Rule 2 defined the term "form" to mean a form appended to the rules. Rule 3-A stated that an application under Section 14-A of the Act for registration of an association shall be made in triplicate in Form D to the Forward Markets Commission. Rule 7-A provided that the certificate of registration granted to an association under Section 14-A shall be in Form E and the certificate of registration granted to an association under Section 14-B shall be in Form F. It also stated that in each case the certificate shall incorporate the conditions, if any, subject to which it is granted. Form D (meant for an application for registration) provided for specification of the goods or classes of goods in respect of which the applicant-association was concerned with the regulation and control of business relating to forward contracts. The annexure to this form required the applicant to answer 37 questions mentioned in it dealing with, inter alia, member-ship, Board of Management and various aspects of its dealings in forward contracts including the commodities in which it regulated forward contracts. Form F provided for the certificate of registration. Paragraph 2 thereof stated :

"The registration hereby granted is subject to the condition (i) that the

said association shall comply with such directions as may from time to time be given by the Forward Markets Commission and (ii) that the said association shall not conduct forward trading in any commodity other than those specified hereunder except with the previous approval of the Forward Markets Commission."

19. Condition No. 2 read with R. 7-A (under which the certificate was to incorporate the conditions subject to which it was granted) read with Section 4 (f) and Section 3 clearly conferred statutory power upon the Commission to specify the commodities in the certificate of registration and to require the association not to conduct forward trading in any other commodity except with the previous approval of the Commission. As observed by the Supreme Court in I. P. Gupta's case, the forward Markets Commission was competent to receive powers given by the rules.

20. The object of the Act was to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith. It was urged that the impugned power does not regulate forward contracts but it totally prohibits the registered association from carrying on business in forward trading in any other commodity except with the previous approval of the commission.

21. Licenses or permits are well recognized forms of regulating the conduct of trade or business. Clause 3 of the Cotton Textiles (Control of Movement) Order, 1948, provided for a citizen to take a permit from the Textile Commissioner for transporting cotton textiles. In *Harishanker Bagla v. M. P. State*,³ the Supreme Court held that this provision did not deprive the citizen of his right to dispose of or transport cotton textiles purchased by him. Such a requirement was only a restriction which was reasonable within meaning of Article 19 (1) (f) and (g) of the Constitution. Similarly in *P. V. Sivarajan v. Union of India*,⁴ the power to prohibit trade in coir industry except under a permit or license was held to be regulation of the coir industry. So the requirement of a previous permission before business could be carried on is well within the significance of the term "regulation". It is at best a restriction upon the right to carry on business, and not a total prohibition. It has not been disputed that the regulation of forward contracts is in the interest of the public within meaning of Article 19 of the

Constitution. It cannot hence be said that the requirement of obtaining previous approval of the Commission in any way violates the fundamental rights guaranteed by Article 19 (1) (f) and (g) of the Constitution. It cannot therefore be said that the conferment of such a power is contra-indicated by Article 19 of the Constitution. In this connection it may be noticed that the respondent company, a juristic personality, is not possessed of any fundamental right under Article 19 (1) (f) and (g) of the Constitution This has been settled by the Supreme Court in several decisions *State Trading Corpn. v. C.T. O.*, ⁵ *Swadeshi Cotton Mills v. S. T. O.*, ⁶ The respondent company cannot also complain that the Commission could not validly be the recipient of such a power in relation to it, because it furthers the object of the act, to regulate forward trading in goods and commodities.

22. The learned Single Judge held that such a power could not be implied from Section 14A (1) of the Act. Since the power has been expressly conferred by Section 4 (f) read with the rules, it is not necessary to find same power in Section 14A (1). Of course, the position would be different if Section 14A (1) contra-indicates the conferment of such a power. So the proper approach to Section 14-A should be to see whether it contra-indicates it.

23. Section 14-A (1) provides :-

"No association concerned with the regulation and control of business relating to forward contracts shall, after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (hereinafter referred to as such commencement), carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission."

24. This provision contemplates that the Commission can lay down conditions in the certificate of registration; and in accordance with such conditions, the association can carry on the business or regulation and control of business relating to forward contracts. The learned Single Judge held that the conditions must be such as are related to the carrying on of the business. It is the conduct of the business and the manner of conducting it to which reference is made here. Specification of the commodities in which alone business may be carried

on would not relate to the conduct of the business or the manner of its being carried on. That would entail the curtailment of the business.

25. As already seen, prohibiting the carrying on of a business except under a permit or license previously obtained, is regulation and not curtailment in the sense of total prohibition. It may be a restriction upon the right to carry on business, but 'condition' has been defined to mean a qualification, restriction or limitation modifying or destroying the original act with which it is connected, (see Bouvier's Law Dictionary, page 203). Section 14-A clearly contemplates the placing of restrictions or qualifications upon the carrying on of such business.

26. "Carry on" is a phrase of the widest amplitude. In *Erichsen v. Last*,⁷ Jessel, M. R. said :

"There is no principle of law which decides what 'carrying on' trade is a multitude of circumstances make up what is called 'carrying on' a trade; for it is a compound fact made up of a variety of things."

27. All facets of activities involved or engaged in, in order to sub serve or achieve the purpose of the business, would be within the concept of 'carrying on' the business. Entering into transactions for regulating the transactions of buying and selling in particular commodities by the members of the association, would be the association's carrying on of its business. The commodities in which the activities of the association are engaged, would be an integral part of the carrying on of its business. The commodities in which business is carried on cannot be divorced from the carrying on of its business. The decision of the House of Lords in *South Behar Rly. Co. Ltd. v. Commrs. of Inland Revenue*,⁸ is apposite in this connection. In that case the Railway company under a contract with the Secretary of State for India was to find the money and material for the construction of the railway. The Secretary of State was to work and maintain the railway and to pay a share of the gross receipts of the railway to the company. He could determine the contract on 12 months notice and become the owner of the railway. By a supplementary contract it was agreed that in consideration for the company relinquishing the railway to the Secretary of State, it would receive a fixed annuity from the latter in lieu of the percentage of earnings payable

under the principal contract. Since the supplementary contract, the only business of the company was to receive annuity and to declare dividends. It was held that though the company can no longer be called upon to fulfill its first purpose namely to make advances for the construction of the line, because all the necessary funds have been already advanced, but it is still fulfilling its second purpose which was to receive an income for its share-holders, while the line was running and to distribute it among them, and while this was happening the company still carried on business.

28. If one were to ask what business the association is carrying on, the answer would naturally be, the business contemplated by its Memorandum and Articles of Association. If they be read, it is clear that the respondent was entitled to do business in various commodities. Its doing business in them was carrying on its business. The commodities were the subject-matter or media for the carrying on of business. The specification of the commodities in which the business of regulation and control of forward contracts could be carried on would be a condition under and in accordance with which such business could be carried on.

29. In our opinion, Section 14-A does not contra-indicate the conferment of such a power upon the Commission. When it authorizes the Commission to lay down the conditions, it clearly contemplates a condition of the kind impugned in the present case.

30. It was urged that if the Legislature intended to confer on the Commission power to specify commodities, one would have expected a clause in Section 14-A like the one mentioned in Section 6. Section 6 provides for recognition of associations. Under it the Central Government is to grant recognition in such form and subject to such conditions as may be prescribed and is to specify in such recognition the goods or classes of goods. It is true that there is an express provision for specification of goods in Section 6; but no principle of law says that a Legislature must confer power though of the same kind, but upon different institutions, in the same language or in the same form. Section 6 confers power on the Central Government while the Legislature in its wisdom left the discretion to confer similar powers to the Commission upon the Central Government, through its rule-making power. The different mode in which

power is conferred cannot by itself negative the existence of power.

31. It was urged that the Forward Markets Commission was the creature of the Central Government and subordinate to it. It should not be impliedly held to possess coordinate powers with the Central Government. In this connection reference was made to the various regulatory powers conferred on the Central Government by Sections 15 to 19 of the Act. There is, in our opinion, neither duplication of power nor creation of a parallel body. The Commission is subordinate to the Central Government. Under Sections 15 to 18 the Central Government by notification regulates forward contracts in specified commodities and in specified areas. Under those provisions the Central Government does not deal directly with individual associations. The powers of the Commission, on the other hand, relate to individual associations, and neither to commodities nor to areas, in general.

32. It was submitted that the power conferred on the Commission is unrestrained. The Commission may in exercise of its powers prohibit an association to conduct its business in a commodity which is not prohibited by the Central Government under its regulatory powers. If the Commission does so, its individual orders may be liable to be questioned. The Commission is a high powered body of experts. All its proceedings are judicial. It is deemed to be a civil court. It is obvious that it is plainly ordained to pass orders on objective considerations, in the light of various other provisions of the Act. The possibility of an individual order being illegal on any such ground will not be relevant and material while considering whether the power exists.

33. Learned counsel for the company urged that clause (f) of Section 4 should be read *eiusdem generis* with its other provisions, and so read it contemplates conferment of powers in relation to matters mentioned in clauses (a) to (e). This submission stands repelled by the decision of the Supreme Court in *I. P. Gupta's case*, AIR 1963 Supreme Court 274 (*supra*) where the Supreme Court held that there is no common positive thread running through clauses (a) to (e) such as would bring them under one genus. The rule of *eiusdem generis* cannot apply.

34. It was also submitted that the form appended to the rules framed under the Act cannot enlarge the scope of powers conferred by Section 14-A (1). There is

no such general rule or principle of law. If the provisions of the Act specifically authorized the rules to confer powers, the same can be done, validly. The decision in *Sarveswara Rao v. Umamaheswara Rao*,⁹ is not applicable. There it was held that the provisions of Section 3 of Act 4 of 1938 are perfectly plain and it is impossible to read them as if the criterion for the exclusion was the actual period for which the tax was payable and not the time within which the assessment was made. In that context it was held that the meaning of the Act cannot be derived from the forms prescribed under the rule-making power. Obviously, the matter referred to in Section 3 was not one for which the rules could prescribe anything.

35. The condition No. 2 mentioned in the certificate of registration of the respondent company was valid. The directive issued by the Commission on June 2, 1964, was within its powers. The respondent was not entitled to any relief.

36. In the result, the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed with costs. Appeal allowed.

Cases Referred.

1. Civil Writ No. 360 of 1967 (Del)
2. AIR 1963 SC 274
3. AIR 1954 SC 465
4. AIR 1959 SC 556
5. AIR 1963 SC 1811
6. AIR 1965 All 86
7. (1881) 8 QBD 414
8. 1925 AC 476
9. AIR 1941 Mad 152