

ORISSA HIGH COURT

Pusparaj and Co

Vs

Collector of Balasore

Original Jur. Case No. 606 of 1971

(G.K. Misra, C.J. and K.B. Panda, J.)

02.05.1972

JUDGMENT

G.K. Misra, C.J.

1. The petitioners are dealers in tyres and tubes at Bhadrak. Collector of Balasore (opposite party No. 1) issued a circular, annexure 1, on 27th May, 1971. The main terms of that circular are extracted hereunder.

"To

All Motor Tyres and Tubes Dealers of the District.

Sub :- Distribution of motor tyres and tubes :

x x x x x

According to one of the decisions taken in that meeting, the motor tyres/tubes dealers of this district will send immediate intimation to the Civil Supplies Officer, Balasore, whenever they got any supplies of motor tyres and tubes. Secondly the dealers will also furnish lists of their customers for such tyres and tubes to the Civil Supplies Officer. Accordingly, you are requested to please intimate to the Civil Supplies Officer in the pro forma given below the number of motor tyres and tubes held in stock in date, or whenever you receive supplies in future, invariably, in order to arrange for its equitable distribution as decided upon in that meeting.

x x x x x

In this connection you are also requested to furnish a list of your customers for such tyres and tubes to the undersigned with a copy to the Secretary, Orissa Truck Owners Association,

Balasore or Bhadrak as the case may be. The stock of tyres and tubes in hand, or to be received meanwhile, should not be sold to anybody until unless you receive further instructions from this office regarding mode of distribution etc. which please note.

Yours faithfully,

Sd/- Illegible,

for Collector, Balasore.

The Collector issued another letter, Annexure 2, on 9th July, 1971. So far as is relevant, it runs thus :-

"To

All Motor Tyres and Tubes Dealers of Balasore District.

Sub :- Distribution of Truck/Bus Tyres/ Tubes.

x x x x x

2. Since these Branch Committees of Balasore and Bhadrak will distribute the tyres received by the dealers in Balasore and Bhadrak sub-division respectively, the tubes and tyres dealers of Balasore and Bhadrak will send receipt intimation within 24 hours of the receipt of tyres and tubes consignments by them, to the respective branch Secretaries of Balasore and Bhadrak for the purpose of distribution under intimation to the Civil Supplies Officer, Balasore. Until further orders, stocks of tyres and tubes of the sizes 900 x 20 and 1000 x 20 only need be intimated for such distribution. The other tyres and tubes may be sold by dealers themselves to their *bona fide* customers.

3. As soon as an intimation from a dealer is received the Branch Committee will make distribution immediately and inform the dealer within 24 hours with a copy to the Civil Supplies Officer, Balasore.

x x x x

Yours faithfully,

Sd/- Illegible,

For Collector, Balasore."

The Tyre Dealers' Association, Bhadrak, addressed a letter, Annexure 3, on 9-7-71 protesting against the control exercised by the Collector in the matter of distribution of tyres and tubes. The Orissa Truck Owners' Association (opposite party No. 3) addressed Annexure 4 on 21st July, 1971, to some of the petitioners. The subject of the letter (Annexure 4) was : intimation regarding

arrival of tyres, with reference to Collector's letter, Annexure 2, dated 9th July, 1971. Therein, they said as follows :

" x x x

In this connection I am very sorry to inform you that some of you have received tyres in the meantime, that is, after the receipt of the above letter under reference, but we have not yet been intimated. However, we request you to kindly inform us in future all tyres and tubes received by you as per the letter of Collector. After receipt of your intimation we will issue coupons to the consumers, who will receive tyres from you on payment of cash." The writ application has been filed under Article 226 of the Constitution for quashing annexures 1 and 2.

2. No counter has been filed on behalf of opposite party No. 3. Opposite parties 1, 2 and 4 have filed a counter-affidavit. It is conceded therein that annexures 1 and 2 have got no legally binding effect on the motor tyres and tubes-dealers including the petitioners. The circumstances in which annexures 1 and 2 came into existence have been narrated thus :- A meeting was called on 21-5-71 by the Collector, Balasore, at the request of Orissa Truck Owners' Association to discuss regarding smooth and fair distribution of tyres and tubes. The dealers of the district of Balasore, including the petitioners and the members of the Orissa Truck Owners' Association attended the meeting. In token of their attendance in the meeting, the petitioners along with others put their signatures on a paper (see annexure A/1). It was agreed upon in that meeting that the dealers would intimate the Civil Supplies Officer and the Truck Owners' Association soon after receipt of tyres and tubes by them for smooth, fair and equitable distribution. Copy of the proceeding of the meeting is annexure B/1. In pursuance of the undertaking arrived at the meeting, the Collector issued the instructions in annexures 1 and 2 to all the motor tyres and tubes-dealers of the district. Thus, annexures 1 and 2 are not in the nature of any orders issued by the Collector. On the other hand, the Collector, as the senior most executive officer of the District Welfare State took upon him the extra responsibility to facilitate smooth, fair and equitable distribution of motor tyres and tubes in the district, and invited co-operation from the petitioners in the aforesaid meeting. Annexures 1 and 2, therefore, have no binding effect on the petitioners in the eye of law, nor do they affect the legal rights of the petitioners. These are the outcome of a general agreement in the meeting which was expected to be honoured by those who agreed to the same. As no legal right of the petitioners are affected by annexures 1 and 2 the present writ application is not maintainable. A rejoinder was filed by the petitioners saying that they put their signatures to annexure A/1 only in token of the fact of their presence in the meeting, and not as evidence of their being consenting parties to the arrangement.

3. From the aforesaid narration of facts it would be clear that the Collector did not issue Annexures 1 and 2 on the strength of any law. The State of Orissa accepts the position that the petitioners cannot be penalized for infringement of the mandate issued in those circulars.

4. It was very seriously contended by the learned Government Advocate and Mr. Patnaik that as no legal right of the petitioners was infringed by annexures 1 and 2 the writ application is not maintainable. As would appear from annexures 1 to 4, control was exercised over the petitioners in the matter of equitable distribution of tubes and tyres without sanction of law. Doubtless, the object of the Collector was laudable. There was short supply of tyres and tubes. Whatever was also supplied to Orissa appears to have been diverted to other States. There was black-marketing in sale of tubes and tyres, both inside the State of Orissa, and by sending the same outside Orissa. If the Collector was aware of the position that large-scale black-marketing took place in the sale of tyres and tubes, his duty was to apprise the State Government for enacting necessary laws for effecting equitable distribution, and necessary laws should have been enacted for that purpose by the State. Without legal sanction, control should not have been exercised by resorting to a subterfuge by organizing a discussion amongst Truck Owners' Association and persons carrying on the business in the sale of tyres and tubes. The Collector ought to have visualised the position that an arrangement, not enforceable in law, should not be given effect to, by issue of circulars.

5. The effect of this arrangement was to infringe the right of the petitioners, under Article 19 (1) (g) of the Constitution, which lays down that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. Thus, the petitioners had the full right to carry on their business of selling tyres and tubes in any manner they liked. This right is, however, subject to the restriction imposed in Article 19 (6). It prescribes that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

6. As has been conceded on behalf of the opposite parties there is no legal sanction behind annexures 1 and 2. The restriction might be reasonable, but not the authority of law. The impugned arrangement, purporting to have given a colour of voluntariness whereby the petitioners are said to have agreed to the exercise of control on them by opposite party No. 1, is, on the face of it, colorable. The Collector of a district exercises wide executive powers, and can harass the petitioners in different ways if they are not agreeable to the arrangement proposed in the meeting presided over by the Collector. We are satisfied that though the Collector did the entire arrangement with the *bona fide* intention of resolving the difficulty arising out of inequitable distribution, the same cannot be sustained in law. The Collector should have brought the matter of existence of blackmarketing, in distribution of tyres and tubes, to the notice of the State Government who should have resorted to statutory control orders to effect equitable distribution arising out of short supply. What cannot be done directly by authorities vested with powers should not be taken recourse to indirectly. On the aforesaid analysis, we reject the objection regarding maintainability. In the result, the writ application is allowed, but in the circumstances, without costs. A writ of certiorari be issued quashing annexures 1 and 2. A writ of mandamus be issued to the opposite parties prohibiting them not to give effect to the impugned annexures.

Panda, J.

7. I agree.

Petition allowed.