

# RAJASTHAN HIGH COURT

Nagaur Co-operative Marketing Society Ltd.

Vs.

State of Rajasthan

Civil Writ Petn. No. 1992 of 1992

(Sunil Kumar Garg, J.)

11.07.2002

## ORDER

**Sunil Kumar Garg, J.**

1. This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner against the respondents on 8-4-92 with a prayer that by an appropriate writ, order or direction, the order dtd. 8-7-87 (Annex. 3) passed by the DSO, Nagaur, order dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur and order dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Supply Department, *Rajasthan, Jaipur* be quashed.

2. It arises in the following circumstances:

- i) That the petitioner-Society is a duly registered co-operative marketing society and its area of operation extends to the revenue limits of Tehsil Nagaur and Jayal.
- ii) That the petitioner-Society was issued the authorization for a distribution of essential commodities in its area of operation.
- iii) That the petitioner-Society has been dealing in distribution of levy sugar in accordance with the directions issued to it from time to time by the State Government.
- iv) That the godown of the petitioner-Society has been in the charge of its godown keeper Sri Chena Ram since 1-2-86.
- v) That the petitioner-Society received complaints from its retailers regarding non-delivery of levy sugar despite the fact that they had already deposited the required amount. On receiving the complaints, the Manager along with Vice

Chairman of the petitioner-Society went to the godown and inspected the same on 27-5-87 in the presence of godown-keeper Shri Chena Ram Godara. On physical verification of the godown 400 bags of sugar were found missing. The inspection report of this physical verification was prepared on the spot.

vi) That inspection report was placed before the Chairman of the petitioner-Society on 28-5-87. The Chairman of the petitioner-Society after going through the report issued a direction to lodge a first information report against Chena Ram, godown-keeper.

vii) That on 30-5-87, the manager of the petitioner-Society lodged a first information report at the police station Nagaur against Chena Ram, godown keeper. On this report, a case for offences under Sections 409, 467, 468, and 471, I.P.C. was registered and investigation commenced. The petitioner-society also submitted a copy of FIR to the District Supply Officer, Nagaur (respondent No. 4) with a request to take appropriate step in the matter.

viii) That after receiving this information, DSO, Nagaur (respondent No. 4) made an inspection of the godown of the petitioner-society on 1-6-87 and in his inspection report, allegations regarding contravention of the terms and conditions of the authorization letter issued to the petitioner-society were leveled. Thereafter respondent No. 4 (Dist. Supply Officer, Nagaur) issued a show cause notice to the petitioner-society on 4-6-87 (Annex. 1).

ix) That the petitioner-society submitted its reply to respondent No. 4 (Dist. Supply Officer, Nagaur) through communication dtd. 22-6-87 in which it was alleged that Shri Chena Ram, godown-keeper was in charge of the godown of the petitioner-society and the petitioner-society on knowledge of misappropriation by Sri Chena Ram, godown-keeper had lodged a first information report. Sri Chena Ram, godown-keeper was also relieved from his duty as godown-keeper and criminal as well as disciplinary actions were taken against him. A copy of reply is marked as Annex. 2. It was further alleged in the reply filed by the petitioner-society that proceedings initiated against Sri Chena Ram, godown- keeper under Section 74 of the Rajasthan Co-operative Society Act, 1965 (hereinafter referred to as the Act of 1965) culminated into an order of recovery for a sum of Rs. 2,48,799,80/- dtd. 5-2-88 passed by the Special Court, Joint Registrar, Co-operative Societies, Udaipur.

x) That despite all these facts, the Dist. Supply Officer, Nagaur (respondent No. 4) through his order dtd. 9-7-87 (Annex. 3) ordered the petitioner-society to deposit an amount of Rs. 57,083.50/- as the difference price for the shortage of

401 quintals and 29 kgs. of sugar by 20-7-87 as also an amount of Rs. 1000/- out of security amount was ordered to be forfeited by way of fine. It is further mentioned that recovery of above amount which was ordered through order dtd. 9-7-87 (Annex. 3) was in pursuance of circular dtd. 5-12-75 (Annex. 4) issued by the Food and Supply Department, Government of *Rajasthan Jaipur*. The circular dtd. 5-12-75 (Annex. 4) pertains to "Chhijat" i.e. shortage of sugar and does not pertain to shortage of sugar by misappropriation by the godown-keeper and since the present case was case of shortage of sugar by misappropriation by the godown-keeper, therefore, invoking the provisions of the circular dtd. 5-12-75 (Annex. 4) by the DSO, Nagaur (respondent No. 4) was palpably wrong.

xi) That after being aggrieved by the order dtd. 9-7-87 (Annex. 3) passed by the DSO, Nagaur (respondent No. 4), the petitioner-society preferred an appeal to the Collector, Nagaur (respondent No. 3) which was dismissed by the Collector, Nagaur (respondent No. 3) vide judgment dtd. 9-11-87 (Annex. 6).

xii) That after being aggrieved by the judgment dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur (respondent No. 3), the petitioner-society preferred a revision petition before the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) which was rejected by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) vide judgment dtd. 18-4-91 (Annex. 8). Hence, this writ petition with the abovementioned prayer.

3. Reply to the writ petition was filed by the respondents on 17-7-92. The main case of the respondents in their reply is that the petitioner-society too is liable for any wrong committed by its employees as contained in Section 10(1) and 10(2) of the Essential Commodities Act, 1955 (hereinafter referred to as the Act of 1955). Hence this writ petition be dismissed.

4. In this writ petition, the following submissions have been raised by the learned counsel for the petitioner :

i) That the judgment dtd. 8-7-87 (Annex. 3) passed by the DSO, Nagaur (respondent No. 4) is illegal and the learned DSO erroneously invoked the circular dtd. 5-12-75 (Annex. 4) in the present case as the circular dtd. 5-12-75 (Annex. 4) issued by the state Government deals with shortage of sugar and it has been further argued that the circular dtd. 5-12-75 could not have been relied

upon in the instant case for ordering realization of difference in price for shortage of sugar because it was not a case of "Chhijat", but was a case of shortage of sugar by misappropriation by godown-keeper Chena Ram.

ii) That the petitioner-society on receiving complaint from fair price shopkeepers inspected the godown where Shri Chena Ram, godown-keeper was in charge and on inspection the petitioner-society found that around 400 bags of levy sugar were missing and promptly reported that matter and on the basis of that report, a FIR was lodged against Chena Ram, godown keeper and departmental proceedings were also initiated against Chena Ram, godown keeper and he was punished also. In these circumstances the order 9-7-87 (Annex. 3) passed by the learned DSO, Nagaur (respondent No. 4) and judgment dtd. 9-11-87 Annex. 6) passed by the Collector, Nagaur (respondent No. 3) and the judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) are without jurisdiction and should be set aside.

5. On the contrary, the learned counsel for the respondents has supported the order dtd. 9-7-87 (Annex. 3) passed by the DSO, Nagaur (respondent No. 4), judgment dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur (respondent No. 3) and judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) and submitted that the writ petition filed by the petitioner should be dismissed.

6. I have heard both and perused the record.

7. There is no dispute in this case that the petitioner-society conducted inspection of its godown on 27-5-87 and found that 400 bags of levy sugar were missing and on that, a report was lodged by the petitioner-society against the godown-keeper Shri Chena Ram and disciplinary proceedings as well as criminal proceedings were initiated against him and he was also punished and an order for recovery of a sum of Rs. 2,48,799.80/- dtd. 5-2-88 was passed by the Special Court, Joint Registrar, Co-operative Societies, *Jaipur* against Shri Chena Ram, godown-keeper.

8. There is also no dispute on the point that on the basis of circular dtd. 5-12-75 (Annex. 4) which deals with "Chhijat of sugar", the petitioner-society was found responsible for shortage of sugar by the DSO, Nagaur (respondent No. 4) through its order dtd. 8-7-87 (Annex. 3).

9. In my considered opinion order dtd. 8-7-87 (Annex. 3) passed by the learned DSO, Nagaur (respondent No. 4), judgment dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur (respondent No. 3) and judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) cannot be sustained as the present case is not a case of shortage of sugar, but the present case is a case of misappropriation of sugar by the godown-keeper, Chena Ram and Sri Chena Ram, godown-keeper was also punished and an order for recovery of a sum of Rs. 2,48,799.80/- dtd. 5-2-88 was passed by the Special Court, Joint Registrar, Co-operative Societies, Udaipur against Sri Chena Ram. A criminal case was also lodged against him for misappropriation of levy sugar. Therefore, the learned DSO, Nagaur (respondent No. 4) has wrongly applied the circular dtd. 5-12-75 (Annex. 4) in the present case.

10. Hence, it is held that present case is not a case of "Chhijat" as concluded by the lower authorities, but it is a case of shortage of sugar by misappropriation by the godown-keeper Shri Chena Ram and it is wrong to recover an amount of Rs. 57,083,50.- from the petitioner-society treating it to be a case of "Chhijat".

11. For the reasons mentioned above, the impugned order dtd. 8-7-87 (Annex. 3) passed by the learned DSO, Nagaur (respondent No. 4), judgment dtd. 9-11-97 (Annex. 6) passed by the Collector, Nagaur and judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) cannot be sustained.

12. Apart from this fact that a criminal case for misappropriation of levy sugar was lodged against Shri Chena Ram, godownkeeper, he was also punished and an order for recovery of a sum of Rs. 2,48,799.80/- dtd. 5-2-88 was passed by the Special Court, Joint Registrar, Co-operative Societies, Udaipur against Sri Chena Ram, therefore, petitioner society could not be held responsible and penalty could not be imposed on the petitioner-society for the same act.

13. So far as the argument that the petitioner-society is also liable for any wrong committed by its employees is concerned, this argument carries no weight for the reasons just mentioned above.

14. For bringing the case of a person within the mischief of Section 10(1) of the Act of

1955, two things must be satisfied viz. (i) the offence in the first instance must have been committed by the company which includes a partnership firm and for that the company must be first charged as such; and (ii) the person, besides the company, who is sought to be made liable by virtue of Section 10(1) of the Act of 1955, must be in charge of and responsible to the company for the conduct of its business.

15. In the present case, none of above two conditions appears to have been satisfied for making out a case against the petitioner-society as it is a clear case of misappropriation by the godown-keeper Shri Chena Ram. Hence, the petitioner-society cannot be made liable by virtue of Section 10(1) of the Act of 1995 and thus, the argument that the petitioner-society too is liable for any wrong committed by its godown-keeper is rejected.

#### ON THE POINT OF APPLICABILITY AND SCOPE OF ARTICLE 227 OF THE CONSTITUTION OF INDIA

16. It is well established that it is only when an order of a tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution of India.

17. The power of general superintendence conferred by Article 227 involves a duty on the part of the High Court to keep all courts and tribunals within its territorial jurisdiction within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. This means that the High Court can interfere in cases of-

- (a) Erroneous assumption or Excess of jurisdiction.
- (b) Refusal to exercise jurisdiction.
- (c) Error of law apparent on the face of the record, as distinguished from a mere mistake of law or error of law relating to jurisdiction.
- (d) Violation of principles of natural justice.
- (e) Arbitrary or capricious exercise of authority, or discretion.
- (f) Arriving at a finding which is perverse or based on no material.

18. Under Article 227, the High Court cannot interfere with the exercise of a

discretionary power vested in the inferior Court or Tribunal, unless its finding or order is clearly perverse or patently unreasonable.

19. It may be stated here that the learned DSO Nagaur (respondent No. 4) has wrongly applied the circular dtd. 5-12-75 (Annex. 4) to the facts and circumstances of the present case especially when the present case is not a case of Chhijat, but is a case of misappropriation by godown-keeper Sri Chena Ram and the learned Collector, Nagaur (respondent No. 3) and the learned Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) have wrongly affirmed the illegal order dtd. 9-7-87 (Annex. 3) passed by the learned Dist. Supply Officer, Nagaur (respondent No. 4). Therefore, the order dtd. 9-7-87 (Annex. 3) passed by the DSO, Nagaur (respondent No. 4), judgment dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur (respondent No. 3) and judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) are based on erroneous assumption. Hence, the present case is covered by clause (a) of the grounds just mentioned above as to when this Court under Article 227 of the Constitution of India can interfere.

20. For the reasons mentioned above, the impugned order dtd. 9-7-87 (Annex. 3) passed by the DSO, Nagaur (respondent No. 4), judgment dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur (respondent No. 3) and judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) are liable to be set aside and this writ petition is liable to be allowed. For the reasons mentioned above, this writ petition is allowed and the order dtd. 9-7-87 (Annex. 3) passed by the DSO, Nagaur (respondent No. 4), judgment dtd. 9-11-87 (Annex. 6) passed by the Collector, Nagaur (respondent No. 3) and judgment dtd. 18-4-91 (Annex. 8) passed by the Additional Commissioner, Food and Civil Supply Department, *Jaipur* (respondent No. 2) are set aside.

Cost made easy.

Petition allowed.