

CASE NO.:
Appeal (civil) 5048 of 2000

PETITIONER:
The State of West Bengal and Ors

RESPONDENT:
M/s Veejay International (India) & Ors

DATE OF JUDGMENT: 20/02/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Calcutta High Court holding that clauses 9 and 10 of the Notification No.4784-F.S./FS/Sectt/Food/148-1/97, dated 19.12.1997 issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (in short the 'Act') read with Government of India, Ministry of Agriculture and Irrigation (Department of Food) Order No. G.S.R. 800 dated 8th June, 1978 was contrary to the policy declared under the Foreign Trade Development and Regulation Act, 1992 (in short 'Foreign Trade Act'). Accordingly, it was held as follows:

"In view of our findings aforementioned it must be held that the order does not conform to the policy laid down by the Central Government in exercise of its power conferred upon it under Section 5 of the 1992 Act inasmuch as in terms thereof, the Central Government could not even itself interfere with the proclaimed policy relating to import and export adopted by it in terms of Section 5 of the 1992 Act."

By the abovesaid notification order in question was made which was called West Bengal Rice and Paddy Control Order, 1997 (for short 'the Control Order').

Background facts in a nutshell are as follows:

The notification in question was issued purportedly with a view to regulate the price and availability of rice in the State of West Bengal. The State Government in exercise of delegated power given under the Act, by the notification No.G.S.R. 800 dated 8th June, 1978 promulgated West Bengal Rice and Paddy (Restriction on Movement) Order, 1981 (in short 'Movement Order').

Clause 5 of the said order authorizes Officers to enter into any premises and make search and seizure of essential commodities or vehicle etc. Vires of the said orders were considered by a Division Bench of Calcutta High Court.

Thereafter, the Control Order was issued. Clauses 9 and

10 of the said Control Order are relevant for the purpose of the present dispute. They read as follows:-

"9. Regulation of storage of rice and paddy for export \026

(1) No person shall store or attempt to store or transport any quantity of rice or paddy procured for export without a valid permit in Form 'D' granted by the Director or by the Controller, if so authorized by the Government.

(2) In the case of transshipment of stocks from one vehicle to another in exigencies, by an exporter without a valid permit such transshipment shall be made only with the prior permission of the nearest Controller, stating in total the reason for such transshipment.

10. Regulation of export of rice produced in West Bengal -

No person shall export or attempt to export any rice or paddy produced or grown in West Bengal without a written authority granted by the Government in this behalf, and if the Government or such authorized officer is satisfied that such export of rice will not adversely affect the price and availability of rice in the local market, the Government or such authorized officer may grant authority for export of specified quantity and variety of rice as may be determined by the Government or such authorized officer."

Respondent filed a writ petition before the Calcutta High Court questioning the legality of the aforesaid clauses primarily on the ground that they were repugnant and inconsistent with the policy declared by the Foreign Trade Act. The State took the stand that the clauses in question are regulatory in nature and do not suffer from any infirmity.

The High Court accepted the challenge and, inter alia, concluded as follows:

"Clause 9(1) of the Control Order deals with restriction on transport whereas; clause 4.21 of the export and import policy framed by the Central Government under Section 5 of the 1992 Act clearly states that items allowed for export shall not be withheld/delayed for any reason by any agency of the Central or State Government. Both the provisions, thus, are in direct conflict with each other. Clause 9.2, provides for a prior permission of the nearest controller when transshipment takes place from one vehicle to another. If clause 9.1 is bad, clause 9.2 cannot survive independently.

Clause 10 of the Control order is in mandatory form. It totally prohibits export or import. It confers absolute unguided,

unbridled and uncontrolled power upon the authorities named therein to consider as to whether a permit for export should be granted or not. By reason of an order made under the delegated notifications no authority of the State Government can authorize to issue permit for export. Such a contingency is contemplated only in terms of paragraph 5 of the 1992 Order. Once in terms of EXIM policy non Basmati rice is considered to be free for export which decision must have been taken into consideration by the Central Government upon taking into consideration all aspects of the matter viz. availability thereof in the country, the quantum of production and the requirement within the courts, the State Government in exercise of its delegated power cannot be held to have any say in the matter. If the State Government has any difficulty in relation thereto, it may bring the same to the notice of the Central Government so that at the time of registration of such contract entered into by and between the exporter and the foreign country, the same may borne in mind by the appropriate authority so as to restrict number of registrations of contract by and between the exporters from India and the Foreign Countries."

As noted above, an escape route was suggested as would be seen from the quoted portion of the High Court's order.

In support of the appeal, learned counsel for the appellants submitted that the High Court completely lost sight of the fact that the two clauses were regulatory in nature. There was no complete ban on export or import and, it cannot be said that there was any absolute, unguided, unbridled and uncontrolled power upon the authorities to decide whether the permit for export shall be granted or not. The purpose was to ensure that the export does not affect the price in the local market and the availability of stock. As a matter of fact, there was no conflict as was held by the High Court.

In *K. Ramanathan v. State of Tamil Nadu and Anr.* (1985 (2) SCC 116) it was held as follows:

"The appellants impugned clause 3(1-A) of the 1982 Order on the grounds that it was ultra vires the State Government being in excess of the delegated powers. It was urged (i) that the delegation of a specific power under Section 3(2)(d) of the Essential Commodities Act by the Central Government notification dated June 9, 1979 issued under Section 5 of the Act to regulate the storage, transport, distribution, disposal, etc. of an essential commodity, in relation to foodstuffs, does not carry with it the general power of the Central Government under sub-section (1) of Section 3 to regulate or prohibit the production, supply and distribution thereof and trade and commerce therein, and (ii) that the word 'regulating' in clause (d) of Section 3(2) of the Act does not take in 'prohibiting' and as such there cannot

be a total prohibition on transport, movement or otherwise carrying of paddy out of the areas in question under clause (d) but only regulation of such activities in the course of trade and commerce by grant of licences or permits."

Decision in *Harishankar Bagla and Anr. v. The State of Madhya Pradesh* (AIR 1954 SC 465) throws considerable light on the controversy. Para 7 of the judgment read as follows:-

"7. The first question canvassed by Mr. Umrigar was that the provisions of Section 3 of the Control Order infringed the rights of a citizen guaranteed in sub-clauses (f) and (g) of Article 19(1) of the Constitution. These sub-clauses recognize the right of a citizen to dispose of property and to carry on trade or business. The requirement of a permit to transport by rail cotton textiles to a certain extent operates as a restriction on the rights of a person who is engaged in the business of purchase and sale of cotton textiles. Clause (5) of Article 19 however permits such restrictions to be placed provided they are in the public interest. During the period of emergency it was necessary to impose control on the production, supply and distribution of commodities essential to the life of the community. It was for this reason that the Legislature passed the Essential Supplies (Temporary Powers) Act authorizing the Central Government to make orders from time to time controlling the production, supply and distribution of essential commodities.

Clause 3 of the Control Order does not deprive a citizen of the right to dispose of or transport cotton textiles purchased by him. It requires him to take a permit from the Textile Commissioner to enable him to transport them. The requirement of a permit in this regard cannot be regarded as an unreasonable restriction on the citizen's right under sub-clauses (f) and (g) of Article 19(1). If transport of essential commodities by rail or other means of conveyance was left uncontrolled it might well have seriously hampered the supply of these commodities to the public. Act XXIV of 1946 was an emergency measure and as stated in its preamble, was intended to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities. The number of commodities held essential are mentioned in Section 2 of the Act, and the requirement of a permit to transport such commodities by road or rail or other means of transport, cannot, in any sense of the term, be said, in a temporary Act, to be unreasonable restriction on the citizens' rights mentioned in clauses (f) and (g) of Article 19(1). The High Court was therefore right in negating the contention raised regarding the invalidity of the Control Order as

abridging the rights of the citizens under Article 19 (1) of the Constitution."

Section 5 of the Foreign Trade Act authorizes the Central Government to formulate and announce, by notification in the Official Gazette, the export and import policy as also to amend the same in like manner. If the clauses 9 and 10 of the Control Order and Section 5 of the policy of the Foreign Trade Act are harmonized, that rules out any conflict. As a matter of fact, Section 6 of the Act is also of relevance and it reads as follows:

"6. Effect of orders inconsistent with other enactments - Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

The Control Order was passed in exercise of power available under the Act. "Export" under the Foreign Trades Act involves several activities. It includes transport, international contract between parties, interstate movement and delivery to the buyer outside the country. The impugned clauses of the Control Order relate to certain restrictions on some parts of the activities. By no stretch of imagination they can be considered to be opposed to the policy of export. The clauses are regulatory in nature and character without in any manner affecting the policy flowing from Section 5 of the Foreign Trade Act. It is not that any unbridled and/or arbitrary power was given to the authorities as held by the High Court. In fact, the parameters of exercisable of power are inbuilt in Clause 10. Reasons were required to be recorded. This was to be done objectively and not subjectively as appears to have been concluded by the High Court. Looked at from any angle, the High Court's judgment is indefensible and is set aside.

The appeal is allowed with no order as to costs.