

**(2014) 07 CAL CK 0080****Calcutta High Court****Case No:** W.P. 21121 (W) of 2014

Northbrook Jute Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision:** July 25, 2014**Hon'ble Judges:** Joymalya Bagchi, J**Bench:** Single Bench**Advocate:** Partha Sarathi Sengupta, Shyamal Sarkar, Rajesh Gupta, Smita Mukherjee and Meghajit Mukherjee, Advocate for the Appellant; Koushik Chanda, Kushagra Ghosh, S.N. Mukherjee, Aniruddha Chatterjee and Rahul Karmakar, Advocate for the Respondent**Final Decision:** Disposed Off**Judgement**

Joymalya Bagchi, J.

Writ petition has been filed, inter alia, praying for issuance of production of control orders in favour of the petitioner no. 1/company, which carries on business in the manufacture and sale of jute and various jute products including B-Twill jute bags. The Central Government had enacted Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (hereinafter referred to as the "Packaging Act of 1987") for compulsory use of jute packaging material in the supply and distribution of certain commodities in the interests of production of raw jute and jute packing material.

2. In terms of the aforesaid legislation as well as under the Jute and Jute Textiles Control Order, 2000 (hereinafter referred to as the "Control Order") Jute Commissioner is entitled to issue requisition for jute bags from manufacturers of jute products/jute mill owners. It has been pleaded that the petitioner was manufacturing B-Twill jute bags and supplying the same as per such requisitions issued by the Jute Commissioner in favour of the jute mills owned by petitioner no. 1, company. It has also been pleaded that necessary undertakings for supply of such B-Twill jute bags have been submitted with the Jute Commissioner till date. It has been further pleaded that in an arbitrary manner the requisition of B-twill jute bags

were gradually reduced in respect of the jute mills owned by the petitioner no. 1/company. In the month of June, 2014 an unfortunate incident occurred in the premises of one of the Jute Mills owned by the petitioner no. 1, company resulting in the death of one of its Managers allegedly at the hands of irate workmen. It appears that a criminal case has been registered with regard to the aforesaid incident. Owing to such circumstances beyond its control there was a temporary suspension of work in the concerned Jute Mill. It appears that pursuant to negotiation between the management and the operating unions on 30th June, 2014, the Jute Mill again commenced functioning from July, 2014. The Jute Commissioner issued monthly allotment chart of production control orders to various jute mills for the month of July, 2014. To the utter surprise of the petitioners it was noticed that no allotment of production control order have been made in favour of the petitioner no. 1 for the month of July, 2014. The petitioners requested the Jute Commissioner to issue control orders for the month of July, 2014 but to no effect. On the other hand, it appears that pursuant to inspections conducted in the mill premises of the petitioner no. 1, company by the officials of the Jute Commissioner it has been alleged by the latter that severe irregularities have been detected in the manufacture and sale of B-twill jute bags in violation of the directions issued by the Commissioner under the aforesaid Control Order. In this regard hearing was also given to the petitioner on 10th July, 2014. Notices had also been issued upon the petitioners to submit necessary documents in course of preliminary enquiry undertaken by the Jute Commissioner. It appears that notice dated 15th July, 2014 was issued by Jute Commissioner calling upon the petitioner to supply details of shipment within fifteen days from the date of issuance of letter failing which allocation of production of control order may be withheld. It has been pleaded that in view of such arbitrary withholding of production control orders, the petitioners have been put into a precarious condition as the running of the Jute Mill which is limping back to normalcy commenced functioning on and from 1st July, 2014 has received a severe blow. Accordingly, petitioners have approached this court, inter alia, for direction upon the respondent no. 2/Jute Commissioner to allot production control orders in favour of Jute Mill of petitioner no. 1/company in accordance with law. During pendency of this writ petition, notice dated 21.07.2014 has been issued upon the petitioner no. 1 calling upon it to appear before the office of the Jute Commissioner on 28th July, 2014 with all supportive documents in rebuttal to the allegations contained therein. A supplementary affidavit has been filed placing on record the said show-cause notice issued upon the petitioners.

3. Mr. Sengupta and Mr. Sarkar, learned senior counsels appearing for the petitioners submit that the action of the respondent no. 2/Jute Commissioner is an arbitrary and biased one. It would be evident from the notice dated 21st July, 2014 (signed on 22nd July, 2014) and the imputations contained therein that opinion has already been formed by the Jute Commissioner as to violations by the petitioner no. 1/company of the directions issued by the Jute Commissioner under the Control

Order with regard to the production, manufacture and sale of B-Twill jute bags. Enquiry/inspection reports which have been relied on, according to the learned senior counsels, were prepared behind their back and have not been supplied to their clients. They categorically disputed the allegation that the petitioners had violated the directions of the Jute Controller in any manner whatsoever. It is agitated that there is no power in the Jute Commissioner to suspend the supply of allocation of production control orders pending enquiry relating to violations of directives issued by the Jute Commissioner. Accordingly, it is prayed that appropriate directions for allotment of production Control Orders in favour of the petitioners may be issued.

4. Mr. Chanda, learned senior counsel appearing for Union of India and learned counsel for Jute Commissioner submit that adequate opportunities were given to the petitioners in the course of investigation and enquiry. It is further submitted that unimpeachable materials collected during investigations show that the petitioners blatantly violated directions issued by Jute Commissioner under the Control Order. It is also submitted that the conditions prevailing the Jute Mill were not conducive to the manufacture and supply of jute bags. It is disputed that the respondent authorities have acted in an unfair manner or had already formed any opinion prejudicial to the interest of the petitioner prior to issuance of show cause notice. On the contrary, as the petitioners were unable to discharge their responsibilities under the Control Order, production control orders were withheld.

5. I have considered the submissions of the parties. Packaging Act of 1987 read with the Control Order empowers the Jute Commissioner to issue requisitions for purchase of jute bags from various jute mills by issuing production control orders on monthly basis. Such manufacture, branding & supply of jute bags are to be made in terms of directions issued by the Jute Commissioner under the Control Order. It appears that the petitioners had been allotted production control orders till the month of June, 2014. Since July, 2014, no allocation of production control order have been made in favour of the petitioners. It has been argued before me that in view of materials collected in course of preliminary investigations disclosing violations of directions issued by the Commissioner regarding manufacture, making and supply of bags and bearing in mind the suspension of work in June, 2014, no production orders were allotted. I am of the considered opinion that since the production control order had been allotted in favour of the petitioner no. 1/company till June, 2014, until an adverse finding was recorded against the petitioners after giving them opportunity of hearing in accordance with law as to contravention of the directions issued by the Jute Commissioner under the Control Order and/or the allied laws, no decision to stoppage allocation of control orders in favour of the petitioner could have been passed. There is no provision in law empowering the Jute Commissioner to issue interim measures as to suspension of Production control orders pending enquiry into violations of directions issued under the Control Order.

6. Moreover, it does not appear either from the letter dated 15th July, 2014 or from the averments in the show-cause notice dated 22nd July, 2014, that any informed decision in accordance with law had been taken by the Jute Commissioner that it is of immediate necessity to suspend allocation of production control orders in favour of the petitioner no. 1/company pending such enquiry. I am, however, not in agreement with the submission of the petitioners that the show-cause notice dated 21st July, 2014 issued upon the petitioner suffers from a closed mind. Allegations against the petitioner have been set out in extenso in the show-cause notice. The findings of preliminary enquiry/inspections (which are basis of show-cause notice) have only been quoted therein.

7. It is trite law that the findings of the officers conducting preliminary investigations cannot be treated as the opinion of the Jute Commissioner issuing the show-cause notice. They are merely the factual foundations for issuance of the show-cause notice and nothing more.

8. For the aforesaid reasons, I am of the considered opinion that the expressions used in the show-cause notice do not betray any closed mind on the part of the Jute Commissioner. He is at liberty to proceed with the said show-cause notice in accordance with law. The petitioners shall be entitled to appear in response to such notice before the Jute Commissioner on 28th July, 2014. They would be entitled to copies of all the inspection/enquiry reports relied upon in the aforesaid show-cause notice and would be given opportunity to reply thereto. The Jute Commissioner shall proceed with the enquiry report after giving due opportunity of hearing to the petitioners in the manner as indicated above and in accordance with law and conclude the same as expeditiously as possible preferably within thirty days from 28th July, 2014. Till any adverse decision is taken against the petitioners pursuant to such enquiry, the respondent no. 2, Jute Commissioner shall continue to allot production control orders in favour of the petitioner no. 1, company in accordance with law.

9. With the aforesaid directions, the writ petition is disposed of.

10. I make it clear that I have not expressed any opinion as to the merits of the allegations in the show-cause notice and it would be open to the Jute Commissioner to take a decision thereon independently and in accordance with law after giving due opportunity of hearing to the petitioners.

11. Since the respondents have not been called on to file affidavits, the allegations levelled against them are not deemed to have been admitted.