

(1982) 12 BOM CK 0021

Bombay High Court

Case No: Writ Petition No. 1336 of 1982

Shamji Mithubhai Vora

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Dec. 17, 1982

Acts Referred:

- Constitution of India, 1950 - Article 14
- Essential Commodities Act, 1955 - Section 3(2)

Citation: AIR 1983 Bom 219 : (1983) 1 BomCR 411

Hon'ble Judges: Pendse, J

Bench: Single Bench

Advocate: Madhukar Soochak, for the Appellant; M.D. Rijhwani and S.M. Dixit, for the Respondent

Judgement

1. The petitioner has filled this petition in a representative capacity and I must confess that it is difficult to appreciate how the petitioner can be permitted to sue in a representative capacity on the facts and circumstance of the case. The facts set out hereinafter would make it clear that the relief sought by the petitioner was totally misconceived.

2. The Essential Commodities Act, 1955 was passed by the Central Government for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. S. 2(a) enables the Central Government to notify by order any commodity as an essential commodity. Cement has been declared to be an essential commodity by the Central Government. S. 3 of the Act enables the Central Government by order to provide for regulating or prohibiting the production, supply and distribution thereof. Sub-section (2) (d) of S. 3 confers power upon the Central Government to provide for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. S. 5 of the Act enables the Central Government to delegate its

powers to any State Government or Officer or authority subordinate to the State Government . In exercise of the powers, the Central Government has delegated the power to the Government of Maharashtra. In exercise of these powers, on May 21, 1973, the Government of Maharashtra published Maharashtra Cement (Licensing and Control) Order, 1973 (hereinafter referred to as the "Order"). S. 2(g) of this order defines "stockiest" as a person who deals in cement involving the purchase, sale and storage for sale of cement, but does not include a manufacture of cement Section 3 of the Order reads as under:--

"Stockiest to obtain licence:---

(1) On and after the date of the coming into force of this Order, no person shall carry on the business as a Stockiest except under the in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority;

Provided that any person who is doing business as Stockiest at the commencement of this Order, may obtain the licence within 10 days from the date of the coming into force of this Order.

(2) A Stockiest shall be required to have separate licence for each place of business".

A person who deals in cement involving the purchase, sale and storage for sale of cement is required to have separate licence for each place of business.

3. On March 1, 1982, the Central Government informed the Secretary, Food and Civil Supplied Department of the Government of Maharashtra that the Government of India has announced partial decontrol of cement effective from Feb. 28, 1982. The letter further recites that under the new system of cement distribution, the cement factories would be required to make available to the Government, for sale at controlled prices, a part of their productions as levy cement while the production in excess of the quantity of levy of cement will be sold by them in the open market without any price and distribution control. In pursuance of this letter, the Government of Maharashtra amended the Order of 1973 on March 20, 1982. In accordance with the amendment carried out, the Government informed the Controller of Rationing, Bombay about the fact of the partial decontrol of cement.

4. The petitioner claims that on March 23, 1982, the Association to which the petitioner belongs, addressed a letter to the Minister informing that the Retail Dealers will henceforth deal in Free Sale Cement. The Assistant Controller of Rationing informed the President of the Bombay Building Material Retail Shop Association on April 13, 1982 that the retail shopkeepers, dealing in building material and who document not hold licences under the Order of 1973 will be inviting prosecution if they are found to deal in cement. Certain guidelines were provided by the Government of Maharashtra by Resolution dated April 26, 1982 in respect of distribution of cement but it is not necessary to make a reference to those guideline for the purpose of deciding the present petition. On June 9, 1982, the

petitioner Shamji Mithubhai Vora filed an application for licence as required by S. 3 of the Order. On June 21, 1982, the petitioner was called upon to comply with certain requirements and the petitioner claims that those requirements were complied with by June 26, 1982. The grievance of the petitioner is that in spite of compliance, the Deputy Controller of Rationing has refused to grant him licence. The petitioner, in the petition which was lodged in this Court on July 12, 1982, sought the following reliefs:

(1) Declaration that the Maharashtra Cement (Licensing and Control) Order, 1973 (as amended up-to-date), does not require retail dealers in non-levy cement to hold the Stockiest's licences.

(2) Writ of certiorari for quashing Cls. 2 (g), 3 and 4 of the Order, 1973 in so far as the provisions require the holding of Stockiest's licences by the retail dealers in non-levy cement.

(3) quashing the imposition of five impugned requirements enumerated in Para 11 of the petition and provided as condition precedent to the grant of the licence. and

(4) Writ of mandamus directing the respondent to issue to the petitioner the Stockiest's licence in disregard of the five requirements.

The petition was amended at the later stage and the liberty was sought to file the petition in a representative capacity. As observed hereinabove, it is, indeed difficult to appreciate how the petition could not be filed on behalf of large number of Stockiests who want to deal in non-levy cement.

5. Shri Soochak, learned counsel appearing in support of the petitioner, submitted that as the Central Government has decontrolled the cement and the cement could not be purchased in open market without any price and distribution control, it is not permissible for the Government to insist that licence must be secured by the Stockiest's for dealing in non-levy cement involving the purchase, and sale storage for sale of cement. This is the principle contention urged in support of the reliefs sought in the petition. The submission cannot be entertained. S. 3(2)(d) of the Essential Commodities Act, enables the Government to regulate by licences, the storage of any essential commodity. The expression "Stockiest" u/s 2 (g) of the Order defines "Stockist" as a person who deals in cement involving the purchase, sale and storage for sale and storage for sale of cement. The ambit of the definition is very wide and it includes all those persons who deal in cement including the storage of cement for subsequent sale. Shri Soochak submitted that as the cement has been decontrolled and can be purchased in open market without any price and distribution control, the Government of Maharashtra cannot insist that the person dealing in cement should obtain a licence. The submission is incorrect because by the order of decontrolling a part of the cement, the Central Government would not be able to regulate the purchase and sale of non-levy cement but the regulation as regards the storage of non-levy cement to purchase or sell such non-levy cement for

any value, it is not open for the him to store any non-levy cement for the purpose of sale without obtaining licence. The submission of Shri Soochak that no licence is required as the petitioner desire to deal only in non-levy cement it, therefore, not correct. The expression Stockiest for non-levy cement is not restricts only to purchase and sale but would cover the storage of the such non-levy cement fro the purpose of ultimate sale. Faced with this situation, which is so clear by plain reading of the order, Shri Soochak submitted that the order of the Central Government providing for the decontrol of cement, inter alia, state that the cement can be sold in open market without any price and distribution control and the expression "distribution control" would also cover the storage of non-levy cement for ultimate sale. It is not possible to accept this submission. It is not permissible for Shri Soochak to stretch the expression "distribution" and to include in its sweep the act of storing cement in the godown for the purpose of ultimate sale. Shri Soochak then submitted that the petitioner is a petty trader and it would be unreasonable to require him to obtain a licence for the purpose of storage of non-levy cement for ultimate sale. It is difficult to appreciate any merit in the submission. In case, a person desire to store cement for ultimate sale it is not open for him to claim that merely because he is a petty trader, he would not obtain the licence. The submission of Shri soochak that the fundamental right guaranteed under Art. 14 of the Constitution of India are violated by such unreasonableness cannot be accepted in these circumstance. In my judgment, the requirement to obtain licence for dealing in non-levy cement for the purpose of storage with a view to ultimately sell it can by no stretch of imagination be said to be unreasonable.

6. Shri Soochak then submitted that even assuming that the petitioner is require to secure a licence as he would be a Stockiest within the meaning of definition of S. 2(g) of the Order still the conditions impose by the Deputy Controller of Rationing by letter DT. June 21, 1982, the copy of which is annexed as Ex. G to the petitioner, are so unreasonable that the said conditions should be struck down. Conditions No. 1 is that the applicant for licence should produce. a copy of the appointment letter for Company appointing the applicant as selling agent/distributor/Stockiest. On the face of it, such a condition is unreasonable and Shri Rijhwani, learned counsel appearing on behalf Court respondent realising this position state that the licensing authority would not insist on compliance with this condition. The other condition set out in this letter are:

- (1) Affidavit regarding non-conviction under Essential Commodities Act,.
- (2) Original Bank Certificate indicating financial soundness and Bank balance.
- (3) Latest rent receipt of the office and godown premises, and
- (4) the copy of the Income Tax Certificate.

In my judgment, the requirement to produce these document cannot be said to be unreasonable. It was urged that the petitioner may not be able to produce the rent

receipt for the premises where the desires to stock the non-levy cement. It hardly requires to be stated that the expression "rent receipt" is not to be understood as are under the provisions of the Bombay Rent Act. What the applicant has to do is to satisfy that he is occupation of the premises lawfully and holds valid document in support of the claim.

7. Shri Soochak then made a reference to the additional condition set out in the letter dated June 18, 1982 of the Deputy Controller of Rationing and the copy of which is annexed as Ex. L to the petition. I have perused all the conditions with the assistance of the learned counsel and save and except Condition NO. 8, in my judgment, the other condition are neither unreasonable, nor such which cannot be complied with. As regards Condition No. 8, Shri Rijhwani stated condition licensing authority would not insist on the compliance of said condition, In view of the statement made by Shri Rijhwani, it is not necessary to deal with that condition any further, In my judgment, the other conditions set out in this letter and the earlier letter dated June 21, 1982 are neither unreasonable nor illegal and the petitioner cannot make any grievance about the same. The petitioner has applied for requisite licence and now should comply with the requisite conditions. The licensing authority then shall issue the licence within 15 days from the date of compliance of the condition. Save and except this relief, the petitioner is not entitled to any other relief. As mentioned hereinabove, the filing of the petitioner in a representative capacity was misconceived as it is necessary for the licensing authority to consider the application of such application independently and ascertain whether the condition are complied with or not.

8. Accordingly, the petition fails and the rule is discharged but without any order as to costs.

9. Shri Soochak, at this stage, informs me that in pursuance of the interim order passed by this Court, several licenses have been issued, It is open for the Government to consider whether all those licence-holders comply with the requirements as mentioned hereinabove in the judgment, In case, the Government finds not complied with the requirements. It is open for the Government to give him them a notice and permit them to comply with the condition within a stipulated period. In case, any of the license-holding are unable to comply with the requirements within the stipulated period, then the Government can revoke their licences, but the Government shall not take any penal action against them the interregnum between the date of interim order the this Court and the stipulated period.

10. Rule discharged.