

Shaibya Shukla Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-13-1992

Reported in : AIR1993All171

Judge : S. Saghir Ahmad and ;H.N. Tilhari, JJ.

Acts : [Constitution of India](#) - Articles 21, 37, 47, 48 and 51-A

Appeal No. : W.P.No. 978 of 1991

Appellant : Shaibya Shukla

Respondent : State of U.P. and Others

Advocate for Def. : Mr. Mohd. Abid Ali and ;Mr. T.R. Singh, Adv.

Advocate for Pet/Ap. : M. Qamar Ahmad, Adv.

Judgement :

ORDER

H.N. Tilhari, J.

1. This petition has been filed by petitioner Smt. Shaibya Shukla alleging to be in public interest keeping in view the provisions of Art. 51A of the [Constitution of India](#). The petitioner has by this writ petition sought for the following relief:--

the writ, order or direction in the nature of writ certiorari quashing the tender notice dated 2-6-90, contained in annexure-1 to the writ petition as well as for quashing of annexure-2, 4 and 5 to the writ petition dated 9-1-91, 15-1-91 and 8-2-91 respectively. The petitioner has further sought writ, order or direction in the nature of mandamus directing the opposite-parties 1 to 3 not to sell chemically treated Soyabean seed as per notice dated 2-6-90 (annexure-1). The petitioner has further sought a writ of mandamus directing the opposite-party No. 5 not to buy 6339.65 quintals of chemically treated Soyabean seed and for such other reliefs as may be deemed just and proper.

2. The brief facts of the case are that opposite-party No. 3 Deputy Director, Agriculture, Jhansi Mandal issued a tender notice contained in annexure-1 to the writ petition for calling tenders for the purpose of auction of chemically treated Soyabean seed and in pursuance of the notice dated 2-6-90, tenders were offered by opposite-parties 4 and 5. The tender rate offered by opposite-party No. 4 was Rs. 501 /- per quintal while the tender rate offered by opposite-party No. 5 i.e. the Managing Director Co-operative Federation was Rs. 605/- per quintal for processing at their factory i.e. M/s. Soyabean Vanaspati Industries, Haldwani. The Director of Agriculture opposite-party No. 2 by letter dated 15-1-91 (annexure-4) to the writ petition directed that the Soyabean seed be disposed of at the rate of Rs. 605/- per quintal to the provincial Co-operative Federation, opposite-party No. 5 in accordance with the directions of the State Government and in pursuance of the orders of the Director dated 15-1-91. The Joint Director Agriculture (Extension) directed the officials working under opposite-party No. 3 at Jhansi, Jalaun, Hamirpur, Banda and Lalitpur to contact the officials of the Provincial Co-operative Federation and get the quantity of chemically treated Soyabean mentioned in the orders disposed of as has been referred to and mentioned in annexure-1. The petitioner, in this petition, has asserted vide paragraph 11 of the writ petition that officials of opposite-party No. 5 were not prepared to give an affidavit to the effect that the purchased Soyabean seeds would not be used for processing commodity for human consumption. The petitioner further asserted that the petitioner has got reasons to believe that opposite-party No. 4 has also made an offer to lift chemically treated soyabean locally at the rate of Rs. 605/- per quintal i.e. the price which has been offered by Provincial Co-operative Federation. The

petitioner, in this petition, has alleged that to the best of petitioner's knowledge the Soyabean in question has not been lifted either by opposite-party No. 4 or 5 and if it is lifted by either of them or any other factory which will process it to make edible oil, food or feeds for human or cattle consumption, it may result in great human miseries and may also result in the loss of human life and health as well as life of animals, as well as may result in paralysis. The petitioner further averred with reference to annexures-1 & 7 to the writ petition that 6339.65 quintals of soyabean seeds in question sought to be sold by opposite-parties 1 to 3 is chemically treated soyabean which has been declared unsuitable for human consumption and if the opposite-parties 1 to 3, according to the petitioner are allowed to sell such contaminated or adulterated food in the market, the same is likely to create health hazards and the same is likely to be misused by them by being mixed with other edible food stuff as well as by processing it to produce oil and other food stuff to be consumed by human beings which may also include the petitioner. The petitioner in this connection has tried to take shelter and assistance of the provisions of Art. 21 of the [Constitution of India](#). As has been mentioned earlier that petitioner having felt aggrieved by annexures-1, 2, 4 and 5 having been apprehensive of the likely consequences of soyabean in question i.e. chemically treated soyabean being sold to opposite-party No. 5 as well as to others who deal in food stuff seed or oil and the articles produced in which oil is being used the sale of chemically treated soyabean is likely to create great hazards. The petitioner keeping in view the letters and spirit of Art. 51A of the [Constitution of India](#) has preferred this writ petition for the reliefs mentioned in the earlier part of this order.

3. Notice of this petition on behalf of opposite-parties 1 to 3 has been accepted by the learned Chief Standing Counsel but no counter-affidavits have been filed on behalf of opposite-parties 1 to 3. On behalf of opposite party No. 4 Shri Mohd. Abid Ali, an Advocate of this Court has put in appearance. Along with Shri Abid Ali Shri T.R. Singh, Jaipal Singh and Syed Husain Mehdi have also put in appearance and filed their power along with a counter-affidavit on 22-8-91. Notice on behalf of opposite-party No. 5 i.e. Managing Director, Provincial Co-operative Federation has been accepted by Shri A.K. Tewari, on 11-3-91 but the counter-affidavit appears to have been filed on behalf of opposite-party No. 5 challenging the

petitioner's assertion. On behalf of petitioner rejoinder-affidavit has been filed on 7-10-1991. We have heard learned counsel for the petitioner and the learned Standing Counsel representing the State as well as Shri Mohd. Abid Ali representing opposite-party No. 4.

4. It has been argued by Shri Qamar Ahmad, learned counsel for the petitioner that in view of the fact that chemically treated soyabean is not fit for consumption or being used by human beings nor is fit for use as fodder or part of fodder for cattle, and in fact it is poisonous as per own admission of opposite-parties 1 to 3 vide paragraph 14 of annexure 1, in which it is provided that the person or firm or proprietor will be entitled to the tender and to make offer to lift the chemically treated soyabean provided he gives an affidavit in writing to the effect that chemically examined soyabean seed will not be used for the purpose of being used as food or part of food for human beings and as fodder or part of fodder for animals. Annexure-6, to the writ petition i.e. the government order issued by the government and in particular by the Director of Agriculture, U.P. Beej Evam Prakashetra Anubhag states :

^^'kksf/kr cht tgjhyh nokvksa ls 'kksf/kr gkrsgSa tks euq';ksa vkSj tkuojksa ds [kkus esa iz;ksx ugh fd;s tk ldrs A buchtksa dk lkoZtfud :i ls uhyke Hkh ugh fd;k tk ldrk A**

Annexure-6 dated 16-8-86 provides that chemically treated soyabean seeds, since are being treated with poisonous chemicals are not fit for consumption for human beings or by cattle and so shall not be disposed of in open auction. In the counter-affidavit of opposite-party No. 4 the opposite-party No. 4 has dared to assert that soyabean seeds in question, namely, chemically treated soyabean is fit for consumption, both by human beings and the cattle vide paragraph 3 of the counter-affidavit. The relevant portion of paragraph 3 states:

^^iz'uxr lks;kchu ds cht euq';,oa tkuoj & nksuksa ds gh bLrseky ds fy;s mi;qDr gS**

and the opposite-party No. 4 in support of his allegation has filed the photostat copy of the report alleged to have been prepared from the Department of Soil & Agriculture Chemistry, C. S. A. University of Agriculture and Technology, Kanpur

which has been annexed as annexure-A1, to the counter-affidavit. This report per se appears to be signed by one Kalyan Singh, Pesticide Chemist of the Department of University of Agriculture and Technology, Kanpur. We have perused annexure-A1 to the counter-affidavit. We do not find any such observation nor find that any mention has been made therein that chemically treated soyabean in question is fit for consumption either by human being or by cattle. We also called upon the learned counsel for the opposite-parties to indicate the paragraphs or any part of annexure-A1 from which it may be clear or in which it has been clearly stated that soyabean seeds in question is fit for human consumption. The learned counsel failed to point out any such thing in the report to the effect that soyabean in question is fit for human consumption. In view of the contents of annexure-6 quoted above and contents of paragraph 14 of annexure-1 quoted hereinafter it is clear to us that the opposite-parties are not correct in asserting that the soyabean in question i.e. chemically treated soyabean is fit for human consumption, and as such their assertion is wrong and unreliable, particularly, when the opposite-parties its 1 to 3 who being interested in disposal of that soyabean on higher rate themselves admit (sic) the soyabean in question to be unfit for human consumption as well as for consumption by cattle also, and so we are of the opinion as such the soyabean in question is dangerous and unfit:

[*.....]

The [Constitution of India](#) as per preamble thereof indicates a resolve by the people of India to secure to all its citizens justice, liberty and equity and to promote among them all fraternity assuring the dignity of the individual and unity and integrity of nation and makes provision pertaining to life and liberty. It is to be taken that dignity of individual and right to life and personal liberty conferred by Art. 21 of the [Constitution of India](#) have got much importance. If life is put in danger or in hazardous condition by permitting the sale or auction of such material or goods which are not fit for human consumption to those who deal in goods for human consumption simply for the sake of getting higher bids that will be an action against the letter and spirit of the [Constitution of India](#). Dignity of individual is the first thing to be preserved, and, as such, the framers of the constitution guaranteed the right to life under Art. 21 of the Constitution itself as a fundamental right. Art.

21 provides that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law.

5. Life does not mean bare animal life or life without health. Anything that adversely affects life of human being materially, physically or from the point of the health or anything that creates obstruction in the physical, moral or other development of the individual and his dignity, anything that deprives or adversely affects the human life and any act of offering such goods for sale for human consumption, -- whether there is very meagre possibility of same being used for human consumption after sale that will be an act interfering with the fundamental right of life. As in the present case the opposite-parties were never prepared to give affidavit that the soyabean seeds in question will not be used for processing commodity of human consumption and annexure-6 indicates that in fact the chemically treated soyabean is not fit for human consumption there does not appear any reason or justification for the opposite-parties 1 to 3 to offer the same for sale by auction in general and to any one, i.e. individual or factory simply on the basis that the intended purchasers offers higher bid. This action of the opposite-parties, in particular, of opposite-party No. 3 of offering the chemically treated soyabean in question for auction in general i.e. to any one, irrespective of its admittedly being unfit for human consumption as well as its being unfit for consumption by cattle runs counter to the mandate and directions contained in Arts. 47 and 48 of the [Constitution of India](#). Art. 47 and 48 of the [Constitution of India](#) as contained in Part IV reads as under:--

'Article 47. Duty of the State to raise the level of nutrition and standard of living and improve public health. -- The State shall regard the raising of level of nutrition and standard of living of its people and improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48. Organisation of agriculture and animal husbandry. -- The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds,

and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

6. A bare reading of these two articles per se shows that it is the primary duty of the State to raise the level of nutrition and standard of living of people and to improve the health of its people and public health as well as to prohibit consumption of intoxicating drinks and drugs which are injurious to people's health and that it is another and further obligation of the State to preserve and improve the breeds of, cows and calves and other milch and draught cattle.

7. The principle enshrined in the Articles contained in Part IV of the Constitution under the head 'Directive of Principles of State Policy' are not mere pious declaration but are the directions and principles for the guidance and governance of State Policy and action and are to be treated as fundamentals and fundamental basis of all legislative and executive action as Art. 37 provides, and that it is the duty of the State to apply these principles in matter of legislative and executive action being done. Encouragement to sell such as chemically treated soyabean seeds which are treated with poisonous chemicals and, as such, are unfit for consumption is negation of principle of law under Arts. 21, 47, 48 of constitution as its offer for sale by auction in general market to any one definitely apart from creating hazards to human life or is likely to create danger to the life and health of human being as well as of cows, calves and other milch animals. In this view of the matter and the facts and circumstances narrated above keeping in view the letter and spirit of the [Constitution of India](#), its preamble as well as the provisions contained in Art. 21 37, 47 and 48 of the Constitution, in our opinion, the offer for sale by auction of chemically treated soyabean seeds in question is an illegal act having tendency of depriving the citizens as well as cattle of their lives and health and, as such, appears to be against the provisions of the Constitution as well. A perusal of annexure-6, dated 28-8-86 clearly shows that thereunder it was directed by the Directorate of seeds, Uttar Pradesh and chemically treated soyabean seeds being unfit for human consumption should not and cannot be made subject matter of public auction. Such seeds can only be sold to the companies and organisations which produces or manufactures or process starch therefrom, and, as such, Joint Directors and the Deputy Director of various divisions should try to find out the

starch manufacturing companies or institution which are prepared to purchase chemically treated soyabean for the purposes of producing starch and rates he obtained. It does not appear as to why the opposite-party No. 3 the Deputy Joint Director, Agriculture Jhansi Mandal has taken a stand quite different and contrary to the directions contained in annexure-6, i.e. the direction, issued by the Directorate of Agriculture, Beej Prakshetra Anubhag, U.P., Lucknow. In our opinion, as such, as the soyabean in question is dangerous for human life, health as well as cattle life and is not fit for consumption by any of them the opposite parties are not justified in offering the same for sale by public auction and are desirous to sell in favour of appellate-party No. 4 who is not prepared to give certificate that it will not be sold or used for human consumption instead tried to assert that it is fit for human consumption quite contrary to the stand that it is not fit for human consumption.

8. We, therefore, issue a writ of mandamus after having held that annexure-1, 2, 4 and 5 dated 2-6-90, 9-1-91, 15-1-91 and 8-2-91 are the acts of the State authorities which are illegal and have got the tendency of interfering with the life and health of human being, and cattle and so are illegal and contrary to law, and, as such, the same shall not be given effect to. We further direct that the opposite-parties 1 to 3 not to sell the soyabean seeds in question in pursuance of annexures-1, 2, 4 and 5 nor to any other person or institution who is not covered by annexure-6. We further direct that the soyabean seeds in question shall not be offered for sale to any person or institution that deals in the commodities for human consumption or the consumption by cattle as cattle fodder. We further clarify that it may be Open to the opposite-parties to offer the soyabean seeds in question to these institutions or factories which produce starch from such soyabean or such goods. It may be offered for sale to the companies producing or dealing with starch as indicated in annexure-6 if they are prepared to purchase the same as per directions contained in annexure-6. Any sale to the contrary is being prohibited by writ of mandamus to that effect. We further direct that opposite-parties 1 to 3 may return the sum of Rs. 60,000/- deposited by opposite party No. 4 with them at the time of sub-mitting his tender with opposite-parties 1 to 3 is alleged in paragraph 9 of the counter-affidavit of opposite party No. 4, as there is no counter-affidavit on behalf of the State in this regard. The writ petition is

allowed. We make the costs easy.

9. Petition allowed.

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