

Anumati Sadhukhan Vs. Assistant Regional Controller, Procurement, Alipur

Anumati Sadhukhan Vs. Assistant Regional Controller, Procurement, Alipur

SooperKanoon Citation : sooperkanoon.com/858433

Court : Kolkata

Decided On : Nov-27-1952

Reported in : AIR1953Cal187,57CWN194

Judge : Lahiri and ;Guha Ray, JJ.

Acts : [Constitution of India](#) - Articles 19(1) and 226; ;West Bengal Rice Mills Control Order, 1949

Appeal No. : A.F.O.O. Nos. 101 to 105 of 1951

Appellant : Anumati Sadhukhan

Respondent : Assistant Regional Controller, Procurement, Alipur

Advocate for Def. : Jajneswar Majumdar, ;Mihir Kumar Sarkar and ;Smriti Kr. Roy Choudhury, Advs.

Advocate for Pet/Ap. : S. Das and ;Binode Bihari Haldar, Advs.

Disposition : Appeals dismissed

Judgement :

Lahiri, J.

1. In these five appeals the appellants challenge the validity of Para. 15 of the West Bengal Rice Mills Control Order, 1949. The appellants are owners of Rice

Mills in Baraset Sub-Division in the District of 24-Perganas and carry on the business of husking paddy. By an order, dated 12-10-1950, the Assistant Regional Controller of Procurement, Alipore, granted permits to the appellants restricting the quantity of paddy to be husked by them and by another order, dated 7-12-1950, he directed that the husking mill owners would be authorised to husk half of their previously permitted quantities upto 14-12-1950, and that no husking mill should be run after that date without obtaining further orders.

2. The appellants applied under Article 226 of the [Constitution of India](#) and obtained Rules upon the Assistant Regional Controller of Procurement, Alipore, requiring him to revoke his order, dated 7-12-1950, and to forbear from giving effect to the said order and also to show cause why a writ in the nature of a Mandamus should not issue directing the Assistant Regional Controller not to impose any restriction as regards the quantity of paddy to be husked by the appellants.

3. Bose J, who heard the Rules set aside the order of the Assistant Regional Controller of Procurement, dated 7-12-1950, holding that the said order was illegal and gave liberty to the appellants to apply for fresh licenses and directed the Assistant Regional Controller of Procurement to deal with the applications according to law. Bose J., however, refused to issue the writ in the nature of a Mandamus directing the Assistant Regional Controller of Procurement not to impose any restriction upon the quantity of paddy to be husked by the appellants and it is against that part of the judgment that the appellants have filed the present appeals.

4. Mr. Das, appearing in support of these appeals, has argued that restrictions on the quantity of paddy to be husked are imposed under Paragraph 15 of the West Bengal Rice Mills Control Order, 1949 and that this paragraph is invalid, inasmuch as it imposes an unreasonable restriction on the exercise of the appellants' fundamental right guaranteed by Article 19(1)(G) of the [Constitution of India](#). It is argued that the imposition of these restrictions would render the running of the appellants' rice mills uneconomical and it is also argued that the power conferred by Paragraph 15 of the West Bengal Rice Mills Control Order, 1949, may be

abused. Reliance has been placed by Mr. Das upon the decision of the Supreme Court in the case of --'Chintamon Rao v. State of Madhya Pradesh', : [1950]1SCR759 .

5. Before dealing with the merits of 'the arguments of Mr. Das, it is necessary to point out that by Memo No. 19121 (75) AP/VIT-244 (51)', dated December 27, 1951, issued by the Assistant Regional Controller of Procurement, it was directed that from that date onwards no permits for husking paddy would be necessary. Mr. Das himself placed this notification before us and in view of the fact that no permits are now necessary for husking paddy it must be held that the appellants have at present no grievance in respect of their fundamental rights.

6. Mr. Das has argued that so long as Paragraph 15 is there, there is a potential threat to the exercise of the appellants' fundamental rights. In an application under Article 226 of the [Constitution of India](#), we are not required to grant a declaration in favour of the applicant unless that declaration is necessary for the exercise of the applicant's rights. In the well known case of -- 'Charanjit Lal v. Union of India', : [1950]1SCR869 at pp. 52-53, Mukherjea J. made the following observations with regard to Article 32 of the [Constitution of India](#) :

'To make out a case under this Article it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislature but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. ... A proceeding under this Article cannot really have any affinity to what is known as a declaratory suit.'

7. The power of issuing writs granted to the High Court by Article 226 of the [Constitution of India](#) is wider, as the High Court is authorised to issue a writ not only for the enforcement of fundamental rights but also 'for any other purpose'; but if the appellants on their own showing have no existing grievance, I cannot give the declaration asked for. See the decision of the Supreme Court in the case of -- 'State of Orissa v. Madan Gopal', 1952 SCR 28 at p. 33.

8. Turning now to the merits of the appellants' arguments, it is to be noticed that in the case of -- 'Chintamon Rao v. State of Madhya Pradesh', : [1950]1SCR759 , it was decided that a statute which arbitrarily or excessively interferes with the running of private business by a citizen cannot be said to contain the element of reasonableness. In that case an Act was passed imposing total prohibition on carrying business of bidi manufacture in a particular season and the Supreme Court came to the conclusion that this was an unreasonable restriction of the applicant's right under Article 19(1)(G) of the [Constitution of India](#). In the case before us, however, there is no total prohibition of the carrying on of the appellants' business. All that is sought to be done is to control the husking of paddy by issuing permits and the object of the imposition of this control is to guard against unauthorised movement of paddy and rice, smuggling and black-marketing. The fact that the imposition of the control has rendered the running of the appellants' mills uneconomical cannot, in my opinion, be said to be an unreasonable restriction of the appellants' fundamental rights.

9. Mr. Das has further argued that the power conferred by Paragraph 15 of the West Bengal Rice Mills Control Order, 1949, is liable to be abused, and it must therefore, be held to be invalid. On this point the Supreme Court held in the case of -- 'Dr. N. B. Khare v. State of Delhi', 1950 SCJ 328 at p. 332 as follows:

'Abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension.'

10. In the cases before us, the appellants have produced in Court certain permits granted to the rice mill owners. Mr. Das states that these permits are granted under Paragraph 15 of the West Bengal Rice Mills Control Order, 1949. Reading Paragraph 15, however, I find that there is nothing in it to authorise the granting of permits to mill owners. That paragraph merely authorises the issue of permits to persons to whom the husked paddy is to be delivered by the owners of the mills who have obtained licenses for the running of their mills. We are told that this practice of granting permits to mill owners have now been discontinued by the authorities.

11. For the reasons given above, I see no reason to interfere with the judgment of Bose J. These appeals must accordingly fail, but in the circumstances of these cases, I think that the parties should bear their own costs. The cross-objections are not pressed and they are, therefore, dismissed without costs.

Guha Ray, J.

12. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com