

In Re: Gautam Roy

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Court : Kolkata

Decided On : Dec-22-1989

Reported in : (1990)1CALLT429(HC)

Judge : Kalyanmoy Ganguli, J.

Acts : [Constitution of India](#) - Article 254(1); ;[Essential Commodities Act, 1955](#) - Section 5; ;Industries (Development and Regulation) Act, 1951; ;West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order,1982

Appellant : In Re: Gautam Roy

Advocate for Pet/Ap. : Kashi Kanta Moitra and ;Aloke Kumar Ghosh, Advs.;Sovanlal Hazra, ;J.N. Ram and ;Satya Brata Majumder, Advs.

Disposition : Application allowed

Judgement :

Kalyanmoy Ganguli, J.

1. In this application under Article 226 of the [Constitution of India](#) the petitioner, inter alia, prays for a writ in the nature of Mandamus commanding the respondents to do their public duties in accordance with law and to forbear them from giving any effect or any further effect to the provisions of the West Bengal Licencing of Dealers of Cement and Distribution of Levy cement Order, 1982 to non-levy

cement business.

Although the matter was contested by the State but no affidavit-in-opposition has been filed by the State.

2. The short point involved in the case is as to whether the provisions of West Bengal Licencing of Dealers of Cement and Distribution of levy Cement Order, 1982 are applicable in case of non-levy cement business.

3. Section 3 of the Essential Commodities Act, inter alia, provides that the Central Government may, in appropriate cases, by, an order provide for regulating by licences; permits or otherwise the production or manufacture of any essential commodity or for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity.

4. Section 5 of the said Act of 1955, inter alia, provides that the Central Government may, by notified order, direct that the power to make order of issue notification under Section 3, shall, in relation to such matters and subject to such conditions if any, as may be specified in the direction, be exercisable also by the State Government or such Officer or authority subordinate to a State Government.

5. It has been unequivocally held in the case of Raymond Woolen Mills Ltd. v. State of West Bengal and Ors., reported in 1987(1) CLJ 257, that non-levy cement is not an essential commodity. Similar is the view expressed in the case of Safikur Rahaman v. The State of West Bengal and Ors. reported in 1988(2) CHN 257.

6. The said decisions are binding upon me sitting in a coordinate jurisdiction and I have no reason either to differ from or distinguish the said cases.

7. So far as levy cement is concerned the West Bengal Order regulating the business of any levy cement holds good but as non-levy cement has virtually been declared to be a non-essential commodity, Section 5 of the Essential Commodities Act deprives the State Government from issuing any order regulating the business in non-levy cement as the language used in Section 5 is 'subject to such conditions'. The decontrolling of the business in non-levy cement by the Central

Government which was effected by the Cement Control (third amendment) Order, 1982 read with the provision of Section 5 of the [Essential Commodities Act, 1955](#) adequately expressed the intention of the Central Government that the State Government should no longer be permitted to regulate business in non-levy cement as the expression 'subject to such conditions' comes into play. As the Central Government has virtually decontrolled the business of non-levy cement, any attempt by the State Government to impose any restrictions on such business will immediately attract Article 254(1) of the [Constitution of India](#) the law made by the State Government will, to that extent be repugnant to the law made by the Central Government and be void. The position will be the same even if such change of law is not made in the Essential Commodities Act but in the Industries (Development and Regulation) Act as the said two laws have the same field of operation so far at least non-levy cement is concerned. A reference may also be made to the case of *Motibhai Fulabhai Patel & Co. v. R. Prosad Collector of Central Excise, Baroda and Ors.* reported in AIR 1970 SC 829, wherein it has, inter alia, been decided that in case of unlawful mixing of duty paid tobacco with non duty paid tobacco, the authority concerned cannot confiscate the entire mixture but can confiscate only the non duty paid portion of the tobacco in the mixture. If the analogy is applied to the case of levy cement and non-levy cement the position that will emerge is that the State Government will retain the power to promulgate any order regulating the business of levy cement but it has no power to regulate the business, by issuance of licence or permits, relating to non-levy cement.

8. In the circumstances, the application succeeds and it is declared that non-levy cement is no longer an essential commodity by virtue of aforesaid Cement Control (third amendment) Order, 1982 and as such the State Government has no power to enforce the provisions of the West Bengal Licencing of Dealers of Cement and Distribution of Levy Cement Order, 1982 in case of any trade or business in non-levy cement.

9. I, however, make it clear that if a trader is required under any other law for the time being in force to take out any other licence or permit then he is to comply with such law or laws.

10. There will be no order as to costs.

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