

## CIVIL MISCELLANEOUS

*Before Daya Krishan Mahajan, J.*

M/S RAM CHANDRA, KANSHI RAM,—*Petitioners.*

*versus*

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 2155 of 1964.

1964

November, 18th *Punjab Gram (Regulation of Distribution) Order, 1964—Clause 3—Permit for export of gram granted and gram loaded in wagons—Clause 3 amended meanwhile—Whether effects the export in pursuance of previous permit granted under old clause 3—Punjab General Clauses Act (I of 1898)—Ss. 22 and 27—Effect of.*

*Held*, that the requirements of the Punjab Gram (Regulation of Distribution) Order, 1964, which was promulgated on 12th June, 1964, were complied with because the petitioners held permit from the Government under clause 3 of the Order. That permit was not revoked when the new clause 3 was substituted for the old clause 3 on 21st September, 1964. In view of the provisions of section 22 of the Punjab General Clauses Act, 1898, read with section 27 of that Act, the result would be that the permits will hold good under the new clause 3 and, therefore, the action of the District Magistrate in not allowing the wagons loaded on 22nd September, 1964, to proceed to destination was not justified. This action of the District Magistrate was also *ultra vires* Article 14 of the Constitution as the wagons of some other traders similarly situated were allowed to proceed to destination and there was no reason why the petitioners should have been treated differently.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari or any other appropriate writ, order or direction be issued quashing the order of the District Magistrate, Hissar, dated 23rd September, 1964, detaining 5 wagons of gram dal duly loaded for export in the Railway wagons, under Railway Receipt Nos. 53556 and 9677 duly issued, under permits duly granted.*

C. L. AGGARWAL AND S. S. MAHAJAN, ADVOCATES for the Petitioners.

H. L. SONI, ADVOCATE FOR THE ADVOCATE-GENERAL, for the Respondents.

#### ORDER

MAHAJAN, J.—The undisputed facts of this petition under Articles 226/227 of the Constitution of India are as follows:—

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The petitioners are grain dealers duly registered and licensed under the Punjab Agricultural Produce Markets Act. They are Mill-owners for grinding gram (*dal* and *churi*) in Nai Mandi, Hissar. Gram and its bye-products have been declared essential commodities under the Essential Commodities Act, 1955. Under section 3 of the Punjab Gram (Regulation of Distribution) Order, 1964, promulgated on 12th June, 1964, no licensee without obtaining prior permission in writing from the Punjab Government in that behalf could export or cause to be exported, outside the State of Punjab, gram either whole

M/s. Ram or split as indicated in clause 3 of the Punjab Government  
 Chandra Kanshi notification dated 12th June, 1964, which is in the follow-  
 Ram ing terms:—

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“3. *Regulation of export of gram.*—No licensee shall, without obtaining prior permission in writing of the Government in this behalf, export or cause to be exported outside the State of Punjab, whether directly or through his agent or servant or any other person acting on his behalf, gram either whole or split, in quantity exceeding—

- (a) 33-1/3 per cent of the stocks of gram held by him at the commencement of this order; and
- (b) 33-1/3 per cent of the quantity of gram purchased by him from a producer in market, after the commencement of this Order.”

The petitioners applied for permission under this clause and in consequence thereof permit for export was granted to them. See in this connection Annexure ‘A’ to the petition. Export had to be made within ten days of the date of the permit and the date of the permit is 21st September, 1964. The petitioners loaded certain wagons on 21st September, 1964 and some wagons on 22nd September, 1964. On 21st September, 1964, clause 3 of the Punjab Gram (Regulation of Distribution) Order, 1964, was replaced by a new clause 3, which is in the following words:—

“3. *Regulation of export of gram.*—No person, whether a licensee or not, shall, without obtaining prior permission in writing of the Government or any officer authorised by it in this behalf, export or cause to be exported gram outside the State of Punjab, whether directly or through his agent or servant or any other person acting on his behalf.”

Acting under the new clause 3, the District Magistrate, Hissar, directed the Station-master not to despatch the wagons loaded by the petitioners and to recall those which have been despatched. The petitioners thereafter

approached the Chief Minister and the result of this was that the wagons loaded on 21st September, 1964 were allowed to proceed to destination and those loaded on 22nd September, 1964, were detained and the petitioners were asked to unload those wagons. Thereafter the petitioners approached the authorities concerned but without success. Hence the present petition.

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Three contentions have been raised by the learned counsel for the petitioners:

- (1) That the petitioners held a prior permission for export of gram and that permission had not been revoked by the substituted clause 3, and therefore, the order of the District Magistrate with-holding the wagons was unauthorised and *mala fide*.
- (2) That the persons similarly situated have been differently treated, i.e., wagons loaded by them on 22nd September, 1964, have been allowed to proceed to destination. These allegations have been made in the replication filed to the return of the State and a copy of which was given to the counsel for the State and this fact is not disputed. Argument is that the petitioners are being differently treated from other gram dealers similarly situated and, therefore, the action of the Government being discriminatory, it should be struck down.
- (3) That loading started on 21st September, 1964 and under sections 23 and 34 of the Sale of Goods Act, the export was completed when the loading started as the goods had been appropriated to the contract.

It is not necessary to deal with third contention because it depends on the determination of a number of questions of facts on which there is a dispute.

So far as the first question is concerned, there appears to be substance in the contention of the learned counsel. The requirements of the Export Order are complied with because the petitioners held permit from

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the Government though that permit was under the earlier clause 3 which was replaced by the new clause 3 which is now in force but the permit under the old clause 3 was not revoked, when the new clause 3 was substituted for old clause 3. In view of the provisions of section 22 of the Punjab General Clauses Act read with section 27 of that Act, the result would be that the permits will hold good under the new clause 3 and, therefore, the action of the District Magistrate in not allowing the wagons to proceed to destination is not justified. Mr. Soni for the State contended that all permits granted under the old clause 3 automatically came to an end on the promulgation of new clause 3 because the conditions for the grant of permits under the old clause 3 were different from those under the new clause 3. Under the old clause 3 it is urged, the permission of export or sale was automatic whereas under new clause 3 it is not automatic. The fact, however remains that the earlier permit for export has not been cancelled; it hardly makes any difference whether that permit was under one clause or the other. So far as the new clause is concerned, its requirements are satisfied. Therefore, the contention of the learned counsel for the State is of no consequence. Therefore, it must be held that action of the District Magistrate in not allowing the wagons to proceed to destination was wholly uncalled for.

So far as the second contention is concerned it must also succeed because it is not disputed that traders similarly situated have been allowed to send their wagons loaded on 22nd September, 1964 to destination. There is no reason why the petitioners should be differently treated. Therefore, the action of the District Magistrate in dealing with the petitioners differently would be *ultra vires* Article 14 of the Constitution.

For the reasons given above this petition is allowed. The order of the District Magistrate with-holding the wagons loaded on 22nd September, 1964 by the petitioners under permit Annexure 'A' is quashed. The petitioners are permitted to have their wagons sent to destination. The petitioners will get their costs which are assessed at Rs. 50:

B.R.T.