

Surinder Pal v. State of Punjab and others (M. M. Punchhi, J.)

to hold that the approval of Japson Pharmaceuticals (Punjab) Ltd. was tainted by legal *mala fides*. It is, indeed, true that the members of the family of S. Surjit Singh Barnala, who was Chief Minister of Punjab at the material time, were the promoters of this Company; but that in itself does not lead to the conclusion that the authorities while declaring this Company as an approved source have not acted *bona fide*.

(19) The policy in this behalf had been changed and amongst others, all the joint sector companies in which the Punjab State Industrial Development Corporation held equity of at least 50 per cent and which were manufacturing various articles used by the Government Departments, were made eligible for consideration for declaration as the approved sources for the supply of those articles by the Administrative Department concerned. This policy was confined only to the joint sector companies manufacturing drugs and pharmaceuticals. It encompassed all joint sector companies in which P.S.I.D.C. has 50 per cent shares. The Managing Director of the PSIDC had moved the Administrative Department to grant approval to all the three joint sector companies manufacturing drugs/pharmaceuticals for being declared as approved sources. The Director of Health and Family Welfare, Punjab (Respondent No. 2) had also made a similar recommendation. No material has been brought on the file to show that any favour had been shown to Respondent No. 9 in this behalf or the claim of any deserving applicant had been wrongly turned down.

(20) For the foregoing reasons, we allow this writ petition and quash the policy decisions of the Government dated October 29, 1984 (Annexure R-1) and dated February 12, 1987 (Annexure R-III) and the orders dated August 5, 1985 (Annexure P-2) and dated March 2, 1987 (Annexure P-6) passed by Respondent No. 2 and direct Respondents 1 to 3 to make purchases of drugs/medicines in accordance with law. No costs.

R.N.R.

Before M. M. Punchhi and M. R. Agnihotri, JJ.
SURINDER PAL,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 3533 of 1988

May 6, 1988.

Essential Commodities Act (X of 1955)—Section 2(a)—Essential commodity—Definition of—Expression 'Food Stuffs'—Meaning of.

Held, that the way the expression 'essential commodity' has been defined, it appears to us patent that one item may overlap another and may even be inclusive of another. Significantly, the expression 'food-stuffs' which in common parlance means a substance used as food, is not confined to human beings alone excluding its use for animals. Rather the word 'food' is a very general term and applies to all what is eaten for the nourishment of the body not only of humans but also for animals. We are not inclined to interpret the expression 'food-stuffs' in a restricted way, so as to keep within its purview 'stuff' meant for human beings excluding from its purview (Para 5)

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) *An appropriate writ, direction or order especially in the nature of Certiorari be issued to quash Annexure P-2 i.e., the Punjab Regulation of compounded Cattle Feed, Concentrates and Mineral Mixtures Order, 1988.*
- (ii) *Respondents Nos. 1 to 3 be directed not to take any action/proceedings under 'the order' issued,—vide notification Annexure P.2.*
- (iii) *Complete records of the case be sent for;*
- (iv) *any other relief to which the petitioners may be found entitled to be also granted;*
- (v) *filing of certified copies of the annexures and service of prior notices upon the respondents be dispensed with;*
- (vi) *costs of the petition be awarded to the petitioner;*
- (vii) *during the pendency of the instant writ petition the operation of 'the order' made,—vide notification, Annexure P. 2 be stayed and the respondents be directed not to initiate any action thereunder against the petitioner.*

CIVIL MISC. No. 4499 of 1988.

Application under section 151, Code of Civil Procedure, 1908, praying that during the pendency of the instant writ petition in this Hon'ble Court, the operation of impugned notification (Annexure P. 2) be stayed and the respondents be directed not to initiate any action thereunder against the petitioner.

H. L. Sibal, Sr. Advocate with B. M. Lal, Advocate, for the Appellant.

H. S. Riar, Sr. D.A.G., Punjab, for the Respondent.

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ORDER

M. M. Punchhi J.

Challenge has been made in this writ petition to the newly enacted and enforced order called as "The Punjab Regulation of Compounded Feed, Concentrates and Mineral Mixtures Order, 1988 (for short, the Order).

(2) The petitioner claims that he is a manufacturer of compounded cattle feed, which is a mixture of cattle feed ingredients containing nutrients derived from grains, seeds, by products of grain, oil cakes and meals, tubers and roots, animals products and other agro-industrial by products. Clause (3) of the Order prohibits a dealer from manufacturing, selling or/and distributing in any manner compounded cattle feed, concentrates or mineral mixtures unless these are of B.I.S. specifications and unless such a dealer gets himself registered under the Order. The B.I.S. specifications, provides clause 2(i) of the Order, are those specifications as are laid down by the Bureau of Indian Standards of Government of India. Since the Order has the effect of causing disturbance to the present activity of the petitioner towards manufacturing compounded cattle feed etc. he has approached this Court to have the Order declared to have been enacted and enforced without authority of law.

(3) Mr. H. L. Sibal, learned counsel for the petitioner, submitted that the State Government of Punjab could not enact and enforce the Order unless it had been delegated powers under section 5 of the Essential Commodities Act, 1955. That provision reads as follows :—

*"Delegation of Powers :—*The Central Government may, by notified order, direct that the power to make orders or issue notifications 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 :—

- (a) such officer or authority subordinate to the Central Government, or
- (b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction."

Mr. Sibal said that the Central Government,—*vide* order No. GSR-800 dated June 9, 1978 (Annexure P-1) had empowered the State Government to make an Order in relation to class of commodities known to section 2(a) (v) relating to 'food stuffs including edible oil-seeds and oils' and not in relation to class of essential commodities known to section 2(a) (i) 'cattle fodders including oilcakes and other concentrates'. And since the matter covered by the impugned Order was in relation to cattle and 'cattle fodder' oilcakes and other concentrates, the State Government could not enlarge the scope of 'food-stuffs' to envelop in its sweep cattle fodder, oilcakes and concentrates. Specific attention was drawn to the terms of the Order wherein power patently has been drawn from Order No. GSR-800 dated June 9, 1978, which related to 'food-stuffs'.

(4) Notice of motion was issued by us and the State filed a short reply on the affidavit of the Milk Commissioner, Punjab. The attack to the Order was otherwise met by the learned Sr. Deputy Advocate-General, Punjab. Having heard the learned counsel for the parties, we thought it expedient to dispose of this petition at the motion stage itself.

(5) Section 2(a) of the Essential Commodities Act provides :—

“(a) “essential commodity” means any of the following classes of commodities :—

- (i) cattle fodder, including oilcakes and other concentrates;
- (ii) ...
- (iii) ...
- (iv) ...

(v) food-stuffs, including edible oil-seeds and oils ;”

The argument of Mr. Sibal was that items (i) and (v) carried different connotations and, therefore, despite overlapping the one which was more specific should hold the field. Reliance was placed by him on *J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh and others* (1) to contend that when there was conflict between a specific provision and a general provision, the specific provision shall prevail over the general provision and that the

(1) A.I.R. 1961 S.C. 1170.

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general provision applies to only such cases which are not covered by the special provision. The rule undoubtedly is unexceptionable, but the way the expression 'essential commodity' has been defined, it appears to us patent that one item may overlap another and may even be inclusive of another. Significantly, the expression 'food-stuffs' which in common parlance means a substance used as food, is not confined to human beings alone including its use for animals. Rather the word 'food' is a very general term and applies to all what is eaten for the nourishment of the body not only of humans but also for animals. We are not inclined to interpret the expression 'food-stuffs' in a restricted way. So as to keep within its purview 'stuff' meant for human beings excluding from its purview 'stuff' meant for animals.

(6) The matter is not *res integra*. A Division Bench of this Court in *Sat Pal Gupta and others v. The State of Haryana* (2) when examining a similar attack in relation to rice bran in the context of the Punjab Rice Dealers Licensing Order, 1964, subject of attack on the ground that the normal use of rice bran was to feed poultry and sometimes cattle, observed as follows :—

“Animals also have life and whatever they eat is food, though in a very narrow sense it is said 'food for animals' whereas similarly whatever human beings eat is said 'food for human beings' but that does not mean that the expression 'food-stuff' merely means that which is only consumed by human beings. In this view of the matter, we are constrained to hold that the learned counsel is not right in his contention that the expression 'foodstuff' as used in the order dated 24th July, 1967, is merely restricted to human beings. We, therefore, repel the first contention.”

Being in complete agreement with the view expressed by the Division Bench, we hold that the State of Punjab had been properly empowered under Government Order No. GSR-800 dated June 9, 1978 (Annexure P-1) to enact and enforce an order in relation to foodstuffs consumed by animals and the opening paragraph of the said Order rightly points out the necessity for regulating the quality of compounded cattle-feed concentrates and mineral mixtures.

(7) The second ground raised was that ingredients which go to make cattle feed are not available of the specifications laid down by the Bureau of Indian Standards of Government of India. Reliance was placed on Annexure P-3 a certificate issued by the Professor of Animal Nutrition, Department of Animal Sciences, Punjab Agriculture University, Ludhiana, an ex-Member of I.S.I. Feed Committee. All what is said in the certificate is that feed ingredients available in the market have very wide variation. Fear has been expressed that the specifications asked for in the impugned order would be very difficult to meet and that steps should be taken to ensure the availability of feed ingredients of the requisite standards.

(8) Mr. Riar, learned Sr. DAG Punjab, states that the State would ensure their availability and if the ingredients of the said specification are not available in Punjab and there is difficulty in getting them from other States within India, the State would ensure that they are available to the feed manufacturers, for it has a duty towards preserving the cattle wealth of India and indirectly towards economic growth on that aspect. We are satisfied by the assurance given by the learned Sr. D.A.G. Punjab. So, this ground also fails.

(9) As a result, we dismiss the petition at the motion stage *in limine*.

S. C. K.

Before V. Ramaswami, C.J. and Jai Singh Sekhon, J.

K.S.S. NAYYAR,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 8822 of 1987

(Civil Misc. No. 6378 of 1987)

May 6, 1988.

Constitution of India, 1950—Arts. 226 and 320(3)(b)—Appointment on deputation—Chief Engineer U.T.—Post to be filled from Chief Engineers of Punjab cadre—Non-availability of Chief Engineers—Superintending Engineers eligible for post provided senior enough to be in zone of consideration as Chief Engineers—Requisition by U.T. Administration—Lending department submitting panel