

As a result of the foregoing discussion, this petition is allowed with regard to the three employees, namely, Ajit Singh, driver and Harcharan Singh and Major Singh conductors, and their appeal before the District Court will have to be decided on the merits. The parties are directed through their counsel to appear before the District Court on the 19th of April, 1965, when another date will be given for the hearing on the merits. In the peculiar circumstances of this case there will be no order as to costs.

Karnail Singh
and others
v.
Balwant Singh
Dhillon
—
Dua, J.

R.S.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

M/s JASWANT SUGAR MILLS LTD.,—*Petitioner*

versus

UNION OF INDIA AND ANOTHERS,—*Respondent*

Civil Writ No: 442-D of 1964.

*Sugar Control Order (1963)—Cl. 8—Delhi Administration—
Whether a person or organisation which can be constituted a nominee
for distribution of sugar.*

1965

March, 23rd.

Held, that the Delhi Administration is neither a person nor an organisation and cannot, therefore, be constituted a nominee for the distribution of sugar under clause 8 of the Sugar Control Order, 1963, issued under Rule 125(2) of the Defence of India Rules, 1962. It is a State as defined in section 3(4) of the General Clauses Act.

Petition praying that a Writ of Quo Warranto be issued to the Respondents and the allotments made by the Director of Food and Civil Supplies, Delhi, in July, 1964, for the month of July-August, 1964, be quashed and a Writ of Mandamus be issued to the Respondents directing them to cancel the allotment of sugar already made for the month of July-August, 1964, for permits to import sugar issued to the Sugar dealers of Delhi and prohibiting the respondents in future from making arbitrary allotments as already made in June and July, 1964 and directing them to make allotments in future in accordance with the rules as adopted by the Central Government, prior to the transfer of work of allotment to the Delhi Administration or to make allotments to all the eligible licence-holders on equal distribution basis OR any appropriate Writ, order or direction as may be just and proper in the circumstances of the case, be issued.

A. R. WHIG, S. S. CHADHA AND M. K. CHAWALA, ADVOCATES, for the Petitioner.

S. N. SHANKAR, ADVOCATE, for the Respondents.

ORDER

Mahajan, J.

MAHAJAN, J.—This order will dispose of fourteen petitions (Civil Writ petition Nos. 442-D/1964 to 455-D/1964), which have been filed by different petitioners, but in which the allegations made are identical. In these petitions, a prayer has been made for the issuance of a writ of Quo Warranto and Mandamus restraining the respondents (Union of India and the Director of Food and Civil Supplies, Delhi), from issuing orders for allotment of permits for import of sugar for the months of July-August, 1964 to Delhi licence holders for the Delhi territory and to quash the present system of allotment of sugar introduced by respondent No 2 and restore the system of allotment adopted by the Union of India for allotment of sugar quota prior to 22nd May, 1964, or to make allotment to all sugar dealers, licence holders on the basis of equal distribution.

These fourteen petitioners are by some out of the sugar dealers who were holding licenses under the Delhi Sugar Dealers Licencing Order, 1963. The total quota for Delhi territory allotted by the Central Government was 65,000 bags per month. This quota was distributed by the Directorate of Sugar and Vanaspati, Ministry of Food and Agriculture, Government of India. After 22nd June, 1964, according to the petitioner, the Central Government transferred this work of distribution of sugar to licensed dealers to the Delhi Administration, 'whereas according to the return filed by the Central Government as well as by the Delhi Administration, the Central Government appointed the Delhi Administration as one of the nominees under clause 8 of the Sugar Control Order, 1963, issued on the 17th April, 1963, under rule 125(2) of the Defence of India Rules, 1962.

The Director of Food and Civil Supplies, Delhi, made a list of 54 dealers, but according to the Administration, of 64 dealers, to whom this quota was to be distributed for retail sale in the market. The petitioners are not in the list of 64 dealers, though they were licensed sugar dealers prior to 22nd June, 1964. As the petitioners have been deprived of their right to deal in sugar under the licences held by them before 22nd June, 1964, they have moved this Court with the prayer already set out in the earlier part of this judgment.

In the petition, the simple stand taken up by the petitioners was that the Director had been conferred with arbitrary power in the matter of allotment of the sugar quota. The reply of the Delhi administration as well as the Central Government was that there was no question of the Director exercising arbitrary powers because the entire distribution of sugar had been made over under clause 8 of the Sugar Control Order, in the Delhi territory to the Delhi Administration. In view of this stand taken up by the respondents, Mr. A. R. Whig, learned counsel for the petitioner, has raised a short contention, namely, that under clause 8 of the Sugar Control Order, the Delhi Administration cannot be constituted a nominee by the Central Government. Clause 8 of the Sugar Control Order reads as follows:—

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“The Central Government or the Chief Director may, from time to time, by order issue directions to any producer or recognized dealer to supply sugar of such type or grade, in such quantities and to such areas or markets or to such persons or organizations as may be specified in the order and at a price not exceeding the price or the maximum price fixed under clause 6”.

Under clause 8, the Central Government has the power to issue directions to any producer or recognized dealer to supply sugar to such *persons* or *organizations*, as may be specified in the order.

The short contention raised by the learned counsel for the petitioner is that the Delhi Administration is neither a person nor an organization and, therefore, it could not be constituted a nominee under clause 8 of the Sugar Control Order. Therefore, no distribution of sugar could be made by the Delhi Administration. This contention appears to be sound. The word ‘Person’ has been defined in the General Clauses Act in the following terms:—

“ ‘person’ shall include any company or association or body of individuals, whether incorporated or not,”

‘Government’ is also defined in section 3 (23) of the General Clauses Act in the following terms.—

“ ‘Government’ or ‘the Government’ shall include both the Central Government and any State Government.”

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It would, therefore, be obvious that 'person' would not include the Government. So far as Delhi Administration is concerned, it is a State as defined in section 3(41) of the General Clauses Act. In this connection, reference may be made to a decision of Calcutta High Court in *Ramrichpal Agarwalia and others v. The State of West Bengal* (1), wherein it was held that the word 'person' would not include a 'State' or the 'Government' carrying on its ordinary governmental functions.

The next question that arises for determination is whether Government is included in the phrase 'organization'. Every organization would imply a congregation of persons. This would be so particularly in the context in which the phrase has been used and as Government is not a person, it cannot, therefore, be held to fall within the phrase 'organization'. It is, therefore, obvious from what has been stated above that the Central Government could not constitute the Delhi Administration as its nominee for the distribution of sugar under clause 8 of the Sugar Control Order.

In this situation, the short question that arises for determination is what relief has to be given to the petitioner. So far as the quota with regard to the period so far run out is concerned, it cannot be directed to be handed over to the petitioners, because the quota has been distributed and consumed by the public and it is impossible to recreate the sugar which has been consumed, in case it be held by the proper authority that the petitioner is entitled to the quota. Applications were made to the proper authority, that is, the Central Government by the petitioners. These applications were returned by the Central Government to the petitioners with the remark that they should approach the Delhi Administration, that is, the Director of Food and Civil Supplies. As already held, Director, Food and Civil Supplies, has no *locus standi* in the matter of distribution of sugar. He could not consider the applications made to him. These applications have to be considered by the Central Government. I, therefore, direct that the petitioner should make the applications to the Central Government for the next quota and the Central Government should consider those applications on their merits.

(1) A.I.R. 1958 Cal. 257.

The Central Government is prohibited from issuing the quota to the Delhi Administration. The petitions are partly allowed to the extent indicated above; but there will be no order as to costs.

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B.R.T.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

DALIP SINGH,—*Petitioner*

versus

R. P. BISWAS,—*Respondent*

Criminal Revision No: 262-D of 1964:

Code of Criminal Procedure (Act V of 1898)—Ss. 204 (1-A), 252(2) and 540—Complaint relating to warrant case—Complainant—Whether entitled to examine witnesses other than those mentioned in the list of witnesses filed with the complaint or submitted under section 204(1-A).

1965

March, 30th.

Held, that even if a witness is not named in the list which is furnished with the complaint or before the process is issued against the accused, the complainant is entitled to add the names of his witnesses and approach the Court for summoning them when under sub-section (2) of section 252, the names of his witnesses are ascertained from him by the Court. Though after the amendment of the year 1955, a separate procedure is prescribed for cases instituted on private complaint and those on the report of the police, sub-section (1-A) of section 204 of the Criminal Procedure Code, which provides that no summons or warrant shall be issued against the accused under sub-section (1) of section 204, until a list of prosecution witnesses has been filed, applies to both categories of cases, whether instituted on a police report or a private complaint. Thus, so far as the cases instituted on complaints are concerned, the list furnished with the complaint is not the final list and it can be added to at least at the time the complainant, before the framing of charges, is questioned by the Magistrate under sub-section (2) of section 252 of the Criminal Procedure Code to ascertain from the complainant the names of the persons who are acquainted with the facts of the case. But once the prosecution closes its "pre-charge" evidence, it tantamounts to a statement under sub-section (2) of section 252 of the Code of Criminal Procedure, that excepting the witness, named in the list filed with the complaint, there was no other witness who was able to give evidence for the prosecution and thereafter the complainant is not entitled to add to the list of his witnesses. This, however, does not affect the power of the magistrate to examine a witness under section 540 of the Code of Criminal Procedure.