MANU/SC/0030/1954

Equivalent/Neutral Citation: AIR1954SC224, 1954 INSC 1, [1954]1SCR803

IN THE SUPREME COURT OF INDIA

Petition No. 326 of 1953

Decided On: 11.01.1954

Dwarka Prasad Laxmi Narain **Vs.** The State of Uttar Pradesh and Ors.

Hon'ble Judges/Coram:
M.C. Mahajan, C.J., B. Jagannadhadas, B.K. Mukherjea, Ghulam Hasan, Vivian Bose, JJ.

JUDGMENT

B.K. Mukherjea, J.

1 . This is an application presented by the petitioners under article 32 of the Constitution, complaining of infraction of their fundamental rights guarantee under article 14 and clauses (f) and (g) of article 19(1) of the Constitution and praying for enforcement of the same by issue of writs in the nature of mandamus.

2. To appreciate the contentions that have been raised on behalf of the petitioners, it would be necessary to give a short narrative of the material facts. The petitioners are a firm of traders who had, prior to the cancellation of their license, been carrying on the business of retail sellers of coal at a coal depot held by them in the town of Kanpur. It is said that the District Magistrate of Kanpur as well as the District Supply Officer, who figure respectively as respondents Nos. 2 and 3 in the petition, had been for a considerable time passed issuing directives from time to time upon the petitioners as well as other coal depot holders of the town, imposing restrictions of various kinds upon the sale of coal, soft coke, etc.

It is stated that prior to the 14th of February, 1953, the prices that were fixed by the District Officers left the coal dealers a margin of 20 per cent profit upon the sale of soft coke and 15 per cent profit on the sales of hard coke and steam coal, such profits being allowed on the landed costs of the goods up to the depot. The landed costs comprised several items and besides ex-colliery price, the middleman's commission and the railway freight, there were incidental expenses of various kinds including labour duty, loading and unloading charges, cartage and stacking expenses.

After making a total of these cost elements, an allowance was given for shortage of weight at the rate of 5 mds. and odd seers per ton in the case of soft coke and 3 mds. and odd seers in the case of hard coke and steam coal, and it was on the basis of the net weight thus arrived at that the price was calculated. On the 14th of February, 1953, the District Supply Officer issued a directive reducing the selling prices of coke, coal etc., much below the existing rates. This reduction was effected in a three-fold manner. In the first place, the allowance for shortage of weight was made much less than before; secondly, a sum of Rs. 4-12-0 only was allowed for all the incidental expenses, and thirdly, the margin of profit was cut down to 10 per cent.

On the 22nd of May, 1953, a representative petition was filed by seven colliery deposit holders of Kanpur including the present petitioners challenging the validity of the executive order, dated the 14th of February, 1953, mentioned above inter alia on the

ground that it infringed the fundamental rights of the petitioners under articles 14 and 29 of the Constitution. There was an application for ad interim stay in connection with this petition which came up for hearing before the learned Vacation Judge of this court on the 1st of July, 1953. On that day an undertaking was given by the State of Uttar Pradesh to the effect that they would withdraw the order of the 14th February, 1953, and apparently the consideration that weighted with the State in giving this undertaking was that it was a purely executive order without any legislative sanction behind it.

The order of the 14th February was in fact withdrawn, but on the 10th of July, 1953, the State of Uttar Pradesh promulgated by a notification an order titled "The Uttar Pradesh Coal Control Order, 1953" purporting to act in exercise of the powers conferred upon it by section 3(2) of the Essential Supplies Act, 1946, read with the notified order of the Government of India issued under section 4 of the Act. As the constitutionality of this Coal Control Order is the main object of attack by the petitioners in the present proceeding, it would be convenient to set out the material provisions of the order in respect of which the controversy between the parties primarily centers :

"THE UTTAR PRADESH COAL CONTROL ORDER, 1953.

.....

2. In this Order unless there is anything repugnant in the subject or context

(a) "Coal" includes coke but does not include cinder and ashes.

(c) "The Licensing Authority" means the District Magistrate of the District or any other officer authorised by him to perform his functions under this Order and includes the District Supply Officer of the district.

(d) "Licensee" means a person holding a license under the provisions of this Order in Form 'A' or in Form 'B'.

3. (1) No person shall stock, sell, store for sale or utilise coal for burning bricks or shall otherwise dispose of coal in this State except under a license in Form 'A' or 'B' granted under this Order or in accordance with the provisions of the Order.

(2) Nothing contained in sub-clause (1) -

(a) Shall in so far as it related to taking out a licence for stocking or storing coal for their own consumption, apply to the stocks held by persons or undertakings obtaining coal on permits of the District Magistrate or the State Coal Controller for their own consumption.

(b) Shall apply to any person or class of persons exempted from any provision of the above sub-clause by the State Coal Controller, to the extent of their exemption.

4. (1) Every application for licence under this Order shall be made in the form given in Schedule, I appended to this Order.

(2) A licence granted under this Order shall be in Form 'A' or Form 'B' appended to this Order and the holder of a licence granted under this Order shall comply with any directions that may be issued to him by the Licensing Authority in regard to the purchase, sale, storage or distribution of coal.

(3) The Licensing Authority may grant, refuse to grant, renew or refuse to renew a licence and may suspend, cancel, revoke or modify any licence or any terms thereof granted by him under the Order for reasons to be recorded. Provided that every power which is under this Order exercisable by the Licensing Authority shall also be exercisable by the State Coal Controller or any person authorised by him in this behalf.

.....

7. The State Coal Controller may by written order likewise require any person holding stock of coal to sell the whole or any part of the stock to such person or class of persons and on such terms and prices as may be determined in accordance with the provisions of clause (8).

8. (1) No licensee in Form 'B' and no person acting on his behalf shall sell, agree to sell or offer for sale, coal at a price exceeding the price to be declared by the Licensing Authority in accordance with the formula given in Schedule III.

(2) A licensee in Form 'A' or any other person holding stock of coal or any other person acting for or on behalf of such licensees or person transferring or disposing of such stocks to any person in accordance with clause 6 or clause 7 shall not charge for the coal a price exceeding the landed cost, plus incidental and handling charges, plus an amount not exceeding 10 per cent of the landed cost as may be determined by the Licensing Authority or the State Coal Controller.

Explanation :- (1) Landed cost means the excolliery price of the coal plus the L.D.C.C. and Bihar Sales tax plus middleman's commission actually paid and railway freight.

(2) Incidental and handling charges mean the cost of unloading from wagons, transporting to stacking site, unloading at the stacking site, plus godown rent, plus choukidari charges, if any not exceeding Rs. 8-8-0 per ton as may be determined by the Licensing Authority or the State Coal Controller according to local conditions.

.....

11. The District Magistrate shall within a week of the commencement of this Order prepare and publish in a local paper a list of persons carrying on the business of sale of coal in his district and upon the publication of the list, the persons included therein will be deemed for purposes of this Order to be licensee until three months next following the publication of the list in Form A or B may be specified.

12. If any person contravenes any of the provisions of this order, or the conditions of licence granted thereunder, he shall be punishable under section 7 of the Essential Supplies (Temporary Powers) Act, 1946, with imprisonment for a term which may extent to three years or with fine or with both and without prejudice to any other punishment to which he may be liable....."

Schedule III referred to in the Order is as follows :

SCHEDULE III.

(Formula for declaration of prices of soft coke/hard coke/steam coal).

1. Ex colliery price	Actual.
2. L.D.C.C and Bihar Sales tax	Actual.
3. Middleman's Commission	Actual paid subject to the maximum laid down under clause 6 of the Government of India Colliery Control Order, 1945.
4. Railway freight	Actuals.
5. Incidental and handling charges including	Maximum of Rs. 8-8-0 per ton as may be determined by the Licensing Authority according to local conditions, provided that at places which are extra-ordinarily distant from the railway head a higher rate may be allowed by the Licensing Authority.
(i) Unloading from wagons.	
(ii) Transport upto premises	
(iii) Unloading and stacking the premises or depot.	
(iv) Godown rent and choukidari charges, if any	
(v) Weighing charges, if any.	
6. Local taxes Octroi, etc.	Actuals.
7. Shortage	Not exceeding 31/2 maunds per ton in the case of soft coke and 21/2 maunds in the case of hard coke and steam coal as may be determined by the Licensing authority.
8. Profit	At 10 per cent on total items 1 to 6 above except item No. 5.

3. It is said that on the 16th of July, 1953, the respondent No. 2 issued a declaration whereby he fixed the retail rates for the sale of soft coke, coal, etc. at precisely the same figures as they stood in the directive issued on the 14th February, 1953. The result, according to the petitioners, was that the selling prices were reduced so much that it was not possible for the coal traders to carry on their business at all. In accordance with the provision of clause 11 of the Control Order set out above, the petitioners' name appeared in the list of B licence holders and they did apply for a licence in the proper form as required by clause (4). The licence, it is said, was prepared, though not actually delivered over to the petitioners. By a letter dated the 3rd of October, 1953, the Area Rationing Officer, Kanpur, accused the petitioners of committing a number of irregularities in connection with the carrying on of the coal depot. The charges mainly were that there were two other depots held and financed by the petitioners themselves in the names of different persons and that the petitioners had entered into agreements for sale of coal at more than the fixed rates. The petitioners submitted an explanation which was not considered to be satisfactory and by an order

dated the 13th of October, 1953, the District Supply Officer, Kanpur, canceled the petitioners' licence. In the present petition the petitioners have challenged the validity of the Coal Control Order of the 10th of July, 1953, the declaration of prices made on the 16th of July following and also the order cancelling the petitioners' licence on the 13th of October, 1953.

4. The constitutional validity of the Uttar Pradesh Coal Control Order has been assailed before us substantially on the ground that its provisions vest an unfettered and unguided discretion in the licensing authority or the State Coal Controller in the matter of granting or revoking licenses, in fixing prices of coal and imposing conditions upon the traders; and these arbitrary powers cannot only be exercised by the officers themselves by may be delegated at their option at any person they like. It is argued that these provisions imposing as they do unreasonable restrictions upon the right of the petitioners to carry on their trade and business conflict with their fundamental rights under article 19(1)(g) of the Constitution and are hence void. With regard to the order dated the 16th of July, 1953, by which the prices of coke, coal, etc. were fixed, it is pointed out that it was not only made in exercise of the arbitrary power conferred upon the licensing authority by the Coal Control Order, but the prices as fixed, are palpably discriminatory as would appear from comparing them with the prices fixed under the very same Control Order in other places within the State of Uttar Pradesh like Allahabad, Lucknow and Aligarh. The order of the 13th October, 1953, cancelling the petitioners' licence is challenged on the ground that the charges made against the petitioners were vague and indefinite and that the order was made with the ulterior object of driving the petitioners out of the coal business altogether. It is said further that as a result of the cancellation order, the petitioners have been made incapable of disposing of the stocks already in their possession, though at the same time the holding of such stock after the cancellation of their licence has become an offence under the Coal Control Order.

5. It is not disputed before us that coal is an essential commodity under the Essential Supplies (Temporary Powers) Act of 1946, and by virtue of the delegation of powers by the Central Government to the Provincial Government under section 4 of the Act, the Uttar Pradesh Government was competent to make provisions, by notified order, for regulating the supply and distribution of coal in such a way as they considered proper with a view to secure the objects as specified in section 3 of the Act. All that is necessary is that these provisions should not infringe the fundamental rights of the citizens guaranteed under Part III of the Constitution and if they impose restrictions upon the carrying on of trade or business, they must be reasonable restrictions imposed in the interests of the general public as laid down in article 19(6) of the Constitution.

6 . Nobody can dispute that for ensuring equitable distribution of commodities considered essential to the community and their availability at fair prices, it is quite a reasonable thing to regulate sale of these commodities through licensed vendors to whom quotas are allotted in specified quantities and who are not permitted to sell them beyond the prices that are fixed by the controlling authorities. The power of granting or withholding licences or of fixing the prices of the goods would necessarily have to be vested in certain public officers or bodies and they would certainly have to be left with some amount of discretion in these matters. So far no exception can be taken; but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority.

A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but

be held to be unreasonable. As has been held by this court in Chintamon v. The State of Madhya Pradesh MANU/SC/0008/1950 : [1950] S.C.R. 759, the phrase "reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under article 19 and the social control permitted by clause (6) of article 19, it must be held to be wanting in reasonableness. It is in the light of these principles that we would proceed to examine the provisions of this Control Order, the validity of which has been impugned before us on behalf of the petitioners.

7. The provision contained in clause 3(1) of the Order that "no person shall stock, sell, store for sale or otherwise utilise or dispose of coal except under a licence granted under this Order" is quite unexceptional as a general provision; in fact, that is the primary object which the Control Order is intended to serve. There are two exceptions engrafted upon this general rule : the first is laid down in sub-clause (2)(a) and to that no objection has been or can be taken. The second exception, which is embodied in sub-clause (2)(b) has been objected to by the learned counsel appearing for the petitioners. This exception provides that nothing in clause 3(1) shall apply to any person or class of persons exempted from any provision of the above sub-clause by the State Coal Controller, to the extent of such exemption. It will be seen that the Control Order nowhere indicates what the grounds for exemption are, nor have any rules been framed on this point. An unrestricted power has been given to the State Controller to make exemptions, and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. Clause 3(2)(b) of the control Order seems to us, therefore, prima facie to be unreasonable. We agree, however, with Mr. Umrigar that this portion of the Control Order, even though bad, is severable from the rest and we are not really concerned with the validity or otherwise of this provision in the present case as no action taken under it is the subject matter of any complaint before us.

8. The more formidable objection has been taken on behalf of the petitioners against clause 4(3) of the Control Order which relates to the granting and refusing of licenses. The licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same, and the choice can be made in favour of any and every person. It seems to us that such provision cannot be held to be reasonable. No rules have been framed and no directions given on these matters to regulate or guide the discretion of the licensing officer. Practically the Order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licences in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same. Mr. Umrigar contends that a sufficient safeguard has been provided against any abuse of power by reason of the fact that the licensing authority has got record reason for what he does. This safeguard, in our opinion, is hardly effective; for there is no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officer. The reasons, therefore, which are required to be recorded are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the aggrieved person. It was pointed out and with perfect propriety by Mr. Justice Matthews in the well-known American case of Yick Wo v. Hopkins (118 U.S. 356 at 373.), that the

action or non-action of officers placed in such position may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation. In our opinion, the provision of clause 4(3) of the Uttar Pradesh Coal Control Order mush be held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under article 19(1)(g) of the Constitution and not coming within the protection afforded by clause (6) of the article.

9. As this provision forms an integral part of the entire structure of the Uttar Pradesh Coal Control Order, the order cannot operate properly unless the provision of clause 4(3) is brought in conformity with the constitutional requirements indicated above. The licence of the petitioners having been canceled in pursuance with the above clause of the Control Order, the cancellation itself should be held to be ineffective and it is not necessary for us to enquire further whether or not the grounds upon which the licensing authority purported to act were vague or indefinite or could constitute proper grounds for cancellation.

10. The two other clauses of the Control Order to which exception has been taken on behalf of the petitioners are clauses (7) and (8). Clause (7) empowers the State Coal Controller to direct, by written order, any person holding stock of coal to sell the whole or any part of the stock to such person or class of persons and on such terms and prices as may be determined in accordance with the provision of clause (8). Clause 8(1) provides that no licensee in Form 'B' shall sell or agree to sell coal at a price exceeding the price to be declared by the licensing authority in accordance with the formula given in Schedule III. With regard to both these clauses, the contention of the petitioners' counsel, in substance, is that the formula for determining the price, as laid down in Schedule III, is per se unreasonable as it is made dependent on the exercise of an unfettered and uncontrolled discretion by the licensing authority. An unfair determination of the price by the licensing authority, it is argued, would be totally destructive of the business of the coal traders and the grievance of the petitioners is that is exactly what has been done by the declaration of prices made on the 16th of July, 1953.

11. We have examined the formula given in Schedule III to the Control Order with some care and on the materials that have been actually placed before us, we are not in a position to say that the formula is unreasonable. The prices, as said already, calculated on the basis of the landed costs of coke and coal up to the depot, to which a profit of 10 per cent is added. The landed costs comprise seven items in all which are enumerated in Schedule III. With regard to items 1, 2, 3, 4 and 6 of the Schedule the actual costs are taken into account and to that no objection can possibly be taken. The entire dispute is with regard to incidental charges specified in item 5 and the allowance for shortage which forms item 7. So far as incidental charges are concerned, the Schedule allows a maximum of Rs. 8-8-0 per ton to be determined by the licensing authority according to local conditions. The rates undoubtedly vary according to local conditions and some amount of discretion must have to be left in such cases to the local authorities. The discretion given to the licensing authority in fixing these rates is, however, not an unlimited discretion, but has got to be exercised with reference to the condition prevalent in the locality with which the local officers must be presumed to be familiar. The grievance of the petitioners is that in the declaration of 16th of July, 1953, the licensing authority allowed incidental charges only at the rate of Rs. 4-12-0 per ton and that is grossly unfair. It is pointed out that at Lucknow, Aligarh, Allahabad and

other places much higher rates were allowed, though the local conditions of these places are almost identical; and there has been consequently a discrimination in this respect which makes the declaration void altogether. The statements that have been made by the petitioners in this connection are not supported by any affidavit of any person who is familiar with the local conditions in the other places and on the materials that we have got here we are unable to say that the rates fixed by the licensing authority of Kanpur are really discriminatory. It is certainly not open to us to substitute our own determination in the matter of fixing the prices for that of the licensing authority and provided we are satisfied that the discretion that has been vested in public officer is not an uncontrolled discretion and no unfair discrimination has resulted from the exercise of it, we cannot possibly strike down as illegal any order or declaration made by such officer.

12. The same reasons apply, in our opinion, to the seventh item of Schedule III which relates to allowances for shortage of weight. Here also the Control Order specifies a maximum and the determination of the allowance in particular cases has been left to the discretion of the licensing authority. We are not satisfied from the materials placed before us that this provision is unfair or discriminatory. The formula allows a profit of 10 per cent upon the cost items with the exception of item No. 5 which relates to incidental charges. We do not know why this item has been omitted and Mr. Umrigar, appearing for the respondents, could not suggest any possible reason for it. But even then, the result of this omission would only be to lower the margin of the profit a little below 10 per cent and nothing more. If the other traders in the locality are willing to carry on business in coal with that amount of profit, as is stated on the affidavits of the respondents, such fixation of profit would undoubtedly be in the interests of the public and cannot be held to be unreasonable. The counsel for the petitioners is not right in his contention that the Control Order has only fixed the maximum profit at 10 per cent and has left it to the discretion of the licensing authority to reduce it in any way he likes. Schedule III fixes the profit at 10 per cent upon the landed costs with the exception of item No. 5 and as this is not the maximum, if would have to be allowed in all cases and under clause 8(1), the 'B' licensees are to sell their stocks of coal according to the prices fixed under Schedule III. Clause 8(2) indeed is not very clearly worded, but we think that all that it provides is to impose a disability upon all holders of coal stocks to charge prices exceeding the landed costs and a profit upon the same not above 10 per cent as may be determined by the licensing authority. The determination spoken of here must be in accordance with what is laid down in Schedule III and that, as has been said above, does specify a fixed rate and not maximum and does not allow the licensing authority to make any reduction he likes. On the whole we are of the opinion the clauses (7) and (8) of the Control Order do not impose unreasonable restrictions upon the freedom of trade enjoyed by the petitioners and consequently the declaration of the 16th of July, 1953, cannot be held to be invalid. The result is that, in our opinion, clause 4(3) of the Control Order as well as the cancellation of the petitioners' licence should be held to be invalid and a writ in the nature of mandamus would issue against the respondents opposite parties preventing them from enforcing the cancellation order. The rest of the prayers of the petitioners are disallowed. We make no order as to costs.

14. Agent for the petitioners : Ganpat Rai.

15. Agent for the respondents : C. P. Lal.