

Sukhvinder Pal Bipan Kumar vs State Of Punjab & Ors on 2 December, 1981

Equivalent citations: 1982 AIR 65, 1982 SCR (2) 31, AIR 1982 SUPREME COURT 65, 1982 (1) SCC 31, 1982 (1) SC CRI R 119, (1982) 2 SCR 31 (SC), 1982 UJ (SC) 113, (1982) SC CR R 119, (1982) EFR 257

Author: A.D. Koshal

Bench: A.D. Koshal, A.P. Sen, V. Balakrishna Eradi

PETITIONER:
SUKHVINDER PAL BIPAN KUMAR

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 02/12/1981

BENCH:
KOSHAL, A.D.
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KOSHAL, A.D.
SEN, A.P. (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1982 AIR 65 1982 SCR (2) 31
1982 SCC (1) 31 1981 SCALE (3) 1795
CITATOR INFO :
D 1987 SC 294 (40)
RF 1991 SC 1557 (21)

ACT:

Punjab Foodgrains Dealers Licensing and Price Control Order, 1978-Second proviso to clause 11-Scope of-Licensing Authority could suspend a licence without giving reasonable opportunity of stating a licensee's case for a period not exceeding ninety days during pendency or in contemplation of proceedings for cancellation of licence-Power, if excessive and unguided.

HEADNOTE:

Clause 11 of the Punjab Foodgrains Dealers Licensing

Price Control Order 1978 (as amended in 1980) empowers the licensing authority to cancel or suspend a licence if the licensee contravenes any of the terms and conditions of his licence or any provision of the order. The first proviso to this clause enjoins on the authority to give to the licensee a reasonable opportunity of stating his case before cancelling or suspending his licence. The second proviso provides that "the licensing authority may suspend a licence without giving a reasonable opportunity to the licensee of stating his case for a period not exceeding 90 days during the pendency or in contemplation of the proceedings for cancellation of his licence."

The petitioners, whose licences had been suspended under clause 11, contended that the second proviso to clause 11(1) of the Order conferred on the licensing authority unguided, uncontrolled and arbitrary power to suspend a licence which infringed their fundamental right under Article 19(1)(g) of the Constitution and that conferral of such unguided power offended Article 14 of the Constitution and (2) that the suspension of the licence was mala fide and motivated because it was passed on extraneous considerations namely, to prevent them from exporting wheat from the State to other parts of the country in the course of inter state trade and commerce.

Dismissing the petitions,

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HELD: The power conferred on the licensing authority under the second proviso to clause 11(1) of the Order is not of an excessive nature and beyond what is required in the interest of general public.

The power of suspension conferred by the second proviso to clause 11 is by way of an interim measure, pending an enquiry as to whether there was any breach which must result in cancellation of the licence. The power of suspension is a necessary concomitant of the power to grant a privilege or a licence.

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So long as the dealers complied with the conditions of licence and the provisions of the Order they are free to carry on their trade or business in foodgrains. If they commit a breach they must face the consequences that their licence may be cancelled or suspended and also face further consequence of suspension of their licence during the pendency or in contemplation of the proceedings for such cancellation if the breach is of such a nature that it must result in the cancellation of a licence. The power of suspension conferred under the second proviso is an important step taken by the Government to subserve the object of the legislation and in is public interest. Nor could it to be said that it does not satisfy the test of reasonableness. [37 A-G]

Nor again could it be said that there is warrant for the submission that the second proviso confers upon the

licensing authority unguided, uncontrolled and uncanalised power to suspend a licence. It does not suffer from the vice of arbitrariness and is, therefore, not violative of Article 14 of the Constitution. [37 G]

It cannot be said that licensing authority has an unrestrained power of suspension of licence because the suspension can only be for specified reasons which are spelt out in the second proviso. The power of suspension is not exercisable unless there is a breach and the breach is of such a nature that it must entail cancellation of the licence. The first proviso is in the nature of limitation on the power contained in clause 11(1) and the second proviso carves out an exception to the first proviso by dispensing with the requirement of affording a reasonable opportunity to the licensee in case of suspension of his licence during the pendency or in contemplation of the proceedings for cancellation. The power of suspension during the pendency of an enquiry cannot be exercised unless there is contravention of any of the terms and conditions of the licence or any of the provisions of the Order. Secondly, it provides for a reasonable safeguard in that it limits the period of suspension which would necessarily depend upon the nature of the breach which in no case can exceed 90 days. Thirdly, as a check on improper exercise of power of suspension by the licensing authority an additional safeguard is provided by way of appeal to the Director of Food Supplies. [38 E-H]

On the material on record there is nothing to show that the licensing authority acted with improper motives or was actuated with bias in directing the suspension of the licence held by the petitioners. The affidavit filed by a partner of one of the petitioners does not fulfil the requirements of Order XIX rule 3 of the Code of Civil Procedure under which it is incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particularity. The allegations in the writ petition are not sufficient to constitute an averment of mala fide so as to vitiate the orders of suspension. The burden of establishing mala fides lies very heavily on the person who alleges it. [39 E F]

JUDGMENT:

ORIGINAL/CIVIL APPELLATE JURISDICTION: Writ Petitions Nos. 7477-79 of 1981 (Under article 32 of the Constitution of India) AND SPECIAL LEAVE PETITION (CIVIL) NOS. 9116 & 8735 of 1981 From the judgment and order dated the 15th October, 1981 and 22nd September, 1981 of the Punjab and Haryana High Court in Civil Writ Petitions Nos. 4734/81 & 4370/81 respectively.

B. Datta for the Petitioners in Writ Petitions. Ravindra Bana for the Petitioners in both SLPs. O. P. Sharma and M. S. Dhillon for the Respondents. The Judgment of the Court was delivered by SEN, J.

These petitions under Art. 32 of the Constitution and the connected special leave petitions mainly challenge the constitutional validity of the second proviso to sub-cl.(1) of cl 11 of the Punjab Foodgrains Dealers Licensing and Price Control Order, 1978 (for short 'the Order'), as inserted by the Punjab Foodgrains Dealers Licensing and Price Control (First Amendment) Order, 1980, with effect from March 27, 1980, as violative of Arts. 14 and 19 (1) (g) of the Constitution, as also the legality and propriety of the action of the licensing authorities in suspending the licences held by the petitioners.

It appears that the licences held by the petitioners who are foodgrains dealers in the State of Punjab, have been suspended by orders passed by the District Food and Supplies Controllers, Faridkot and Bhatinda, for a period not exceeding ninety days under the second proviso to sub-cl. (1) of cl. 11 of the Order. The orders of suspension of licence in each of these cases rest on the allegation that the licensee has committed a breach of conditions Nos. 4, 8 and 10 of the licence. The petitioners have all been served with notices under the first proviso to sub-cl. (1) of cl. 11 of the Order to show cause why their licences should not be cancelled.

Some of the petitioners accept that in the recent past their licences were suspended under the second proviso to sub-cl. (1) of cl. 11 of the Order for alleged breach of the licence conditions for having sold large quantities of wheat to dealers outside the State without disclosing the names of the purchasers in their stock registers. It, therefore, appears that the present suspension is for a repeated breach. These petitioners have filed the petitions under Art. 32 of the Constitution for protection of their fundamental rights to carry on trade or business as foodgrains dealers within the meaning of Art. 19 (1) (g) read with Art. 301 thereof.

The other petitioners allege that because they approached the High Court by way of petitions under Art. 226 of the Constitution, complaining against restrictions placed on movement of wheat by rail, their licences have been suspended under the second proviso to sub-cl. (1) of cl.11 of the order as a punitive measure. Incidentally, these petitioners had first moved the High Court under Art. 226 of the Constitution, but the High Court dismissed their writ petitions summarily. The connected special leave petitions are directed against the order of the High Court.

The State of Punjab in the counter-affidavits filed by the Deputy Secretary to the Government of Punjab, Food and Supplies Department, Chandigarh, and the District Food and Supplies Controller, Faridkot, controvert the allegations of the petitioners. It is stated that the petitioners have been served with show-cause notices under the first proviso to sub-cl.(1) of cl. 11 of the Order for cancellation of their licences, for breach of the licence conditions.

Learned counsel for the petitioners seek to assail the constitutional validity of the second proviso to sub-cl. (1) of cl.11 of the Order on two grounds. First of these is that the second proviso to sub cl. (1) of cl. 11 of the Order, inserted by the Punjab Foodgrains Dealers Licensing and Price Control (First Amendment) Order, 1980, confers upon the licensing authority unguided, uncontrolled and arbitrary power to suspend a licence and it, therefore, infringes the fundamental right to carry on trade or business guaranteed under Art. 19 (1) (g) of the Constitution. It is also urged that the conferral of such unguided, uncanalised and arbitrary power on the licensing authority, without any

guidelines whatsoever, makes the impugned proviso unconstitutional as offending Art. 14 of the Constitution. The second contention is that the suspension of the foodgrains dealers' licences held by the petitioners was mala fide and motivated, as in reality it was not on account of any breach of the licence conditions on their part, but on extraneous considera-

tions. It is said that the real purpose was to prevent them from exporting wheat from the State of Punjab to various other States in the course of inter-State trade and commerce within the meaning of Art. 301 of the Constitution. We are unable to accept any of these contentions.

To make the point intelligible, it is necessary to deal with the scheme of the Order. Cl. 3 of the Order provides that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence granted by the licensing authority. Cl. 7 (3) thereof provides that where an application for grant of a licence is not refused, the licensing authority shall grant a licence in Form B subject to the conditions specified therein. Condition No. 4 of the licence enjoins that the licensee shall submit to the licensing authority concerned fortnightly returns in Form C of the stock receipts and deliveries. Condition No. 8 of the licence lays down that the licensee shall exhibit the price list of foodgrains held by him for sale and it shall indicate separately the prices of different varieties of foodgrains. Condition No. 10 thereof interdicts that the licensee shall give all facilities at all reasonable times to the licensing authority or any officer authorised by it or the State Government, for the inspection of his stocks and accounts at any shop, godown or other place used by him for the storage, sale or purchase of foodgrains etc. Cl. 11 of the Order provides for cancellation or suspension of a licence. The power of cancellation or suspension of a licence which was subject to the giving of a reasonable opportunity to the licensee of stating his case was not adequate and sufficient to effectively check and control flagrant breaches of the provisions of the order, during the pendency of the proceedings for cancellation of a licence. The State Government, therefore, inserted the second proviso to sub-cl. (1) of cl. 11 of the Order. Cl. 11 of the Order, as amended, in so far as material, reads:

"Cancellation or suspension of licence:-(1) If a licensee or his agent or any person acting on his behalf contravenes any of the terms and conditions of his licence or any provision of this Order then, without prejudice to any action that may be taken against him, the licensing authority may by an order in writing, cancel or suspend licence in so far as it relates to the foodgrains in respect of which contravention has been made.

Provided that no order shall be made under this clause unless the licensee has been given a reasonable opportunity of stating his case;

Provided further that the licensing authority may suspend a licence without giving a reasonable opportunity to the licensee of stating his case for a period not exceeding ninety days during the pendency or in contemplation of the proceedings for cancellation of his licence."

It is plain upon the terms of sub-cl. (1) of cl. 11 of the order that it deals with the substantive punishment of cancellation or suspension of a licence. The power of cancellation or suspension of a licence of a foodgrains dealer under sub-cl. (1) of cl. 11 of the Order is, however, subject to the limitation contained in the first proviso. The power of cancellation or suspension of a licence is, therefore, not exercisable by the licensing authority until it affords a reasonable opportunity to the licensee of stating his case. This necessarily entails the holding of an inquiry into the question of the alleged breach. The making of an inquiry into the breach of licence conditions by a foodgrains dealer is a time-consuming process which may many a time verily frustrate the purpose and object of the Order. The State Government was evidently of the opinion in the light of the experience gained in the recent past, that for effective control and regulation of the trade in foodgrains, it was necessary and expedient that the licensing authority should be clothed with powers to suspend a licence on the spot when it detects contravention of any of the terms and conditions of the licence or any of the provisions of the Order. Otherwise, a foodgrains dealer after committing flagrant breaches of the terms and conditions of his licence and the provisions of the Order, may, with impunity, carry on his trading activities without any check or control.

The power of suspension conferred by the second proviso to sub-cl. (1) of cl. 11 of the Order is by way of an interim measure, pending the holding of an inquiry as to whether there is any breach which must result in cancellation of the licence. It is true that the suspension of licence is a drastic measure, if taken without affording to the dealer a reasonable opportunity of stating his case, but it is a measure of social control in the interests of the community. The power of suspension is a necessary concomitant of the power to grant a privilege or a licence. By reason of cl. 3 of the Order, no dealer can engage in the business of purchase and sale of foodgrains except under and in accordance with the terms and conditions of a licence issued by the licensing authority in that behalf. The dealers are free to carry on their trade or business in foodgrains, subject to their complying with the terms and conditions of their licence and the provisions of the Order. But, if they commit a breach, they must face the consequence that their licence may be cancelled or suspended under sub-cl. (1) of cl. 11 of the Order. They must face the further consequence of suspension of their licence during the pendency or in contemplation of the proceedings for cancellation of the licence, if the breach is of such a nature that it must result in the cancellation of a licence. As already stated, the power of suspension is a necessary adjunct of the power to grant a licence. In view of the acute shortage of foodstuffs in the country, the Government is bound to take all effective steps to implement the provisions of the Act and the various orders issued under s. 3 thereof, from time to time. The conferral of the power of suspension of the licence of a foodgrains dealer under the second proviso to sub-cl. (1) of cl. 11 of the Order during the pendency or in contemplation of the proceedings for cancellation of his licence, is an important step taken by the Government to subserve the object of the legislation and is in public interest. It cannot be said that the second proviso to sub-cl. (1) of cl. 11 of the Order does not satisfy the test of reasonableness. It seeks to strike a proper balance between the freedom of trade or business guaranteed under Art. 19 (1) (g) and the social control permitted by cl. (6) of Art. 19 of the Constitution. It is, therefore, difficult to hold that the second proviso to sub-cl. (1) of cl. 11 of the Order is of an excessive nature beyond what is required in the interests of the general public.

There is no warrant for the submission that the second proviso to sub-cl. (1) of cl. 11 of the Order confers upon the licensing authority unguided, uncontrolled and uncanalised power to suspend a licence and is, therefore, void by reason of Art. 14 of the Constitution. It is urged that the impugned orders of suspension in these cases are for a period of 89 days, and the licensing authority would, as in the past, pass fresh orders of suspension ad infinitum completely paralysing the business of the petitioners. There is no substance in the contention that repeated orders of suspension of a licence can be passed under the second proviso in respect of the same breach. The second proviso expressly states that the licensing authority may suspend a licence for a period not exceeding ninety days. It, therefore, fixes the period of suspension. From its very terms, it is obvious that there cannot be repeated orders of suspension of a licence under the second provision in respect of the same breach. Normally, the order of suspension under the second proviso to sub-cl. (1) of cl. 11 of the Order after the expiry of the period of 90 days, would automatically lapse. However, if the licensee commits another breach, after the expiry of the period of suspension, there is nothing to prevent the licensing authority to suspend his licence afresh.

On a fair reading of the second proviso to sub-cl. (1) of cl. 11 of the Order, it cannot be said that it commits to the unrestrained will of the District Food and Supplies Controller, who is the licensing authority, the power of suspension of a licence. It does not confer arbitrary and uncontrolled power because the suspension can only be for specified reasons and the second proviso lays down the circumstance or grounds on which the power may be exercised. Such guidelines are expressly and specifically stated. In the first place, the power of suspension is not exercisable unless there is a breach and the breach is of such a nature that it must entail cancellation of the licence. The substantive provision contained in sub-cl. (1) of cl. 11 of the Order provides for the power of cancellation or suspension, if any dealer commits any contravention of the 'terms and conditions of his licence or any provision of this order'. The first proviso is in the nature of a limitation on the power contained in sub-cl. (1), and there can be no cancellation or suspension of a licence unless the licensee is afforded a reasonable opportunity of stating his case. The proper function of the second proviso is to carve out an exception to the first proviso. It dispenses with the requirement of affording a reasonable opportunity to the licensee in case of suspension of his licence during the pendency or in contemplation of the proceedings for cancellation. It must, however, be read along with the main enacting provision in sub-cl. (1), and, if so construed, the power of suspension during the pendency of an inquiry cannot be exercised unless there is contravention of any of the terms and conditions of the licence or any of the provisions of the Order. Secondly, it provides for a reasonable safeguard, in that it limits the period of suspension. The period of suspension would necessarily depend upon the nature of the breach, and in no case, can it exceed ninety days. During this period, the licensing authority is expected to complete the inquiry and take a decision as to the cancellation or otherwise of the licence. Thirdly, as a check upon possible injustice that might result from an improper exercise of the power of suspension of a licence by the licensing authority under the second proviso, there is an additional safeguard to a dealer by way of an appeal to the Director, Food and Supplies, under cl. 13 of the Order. This Court has repeatedly laid down that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. It would, therefore, appear that the second proviso to sub-cl. (1) of cl. 11 of the Order furnishes sufficient guidelines for the exercise of the power of suspension of a licence during the

pendency of or in contemplation of the proceedings for cancellation thereof, and it does not suffer from the vice of arbitrariness and is, therefore, not violative of Art. 14 of the Constitution. On the contrary, as already indicated, it affords reasonable safeguards.

There still remains the question whether the impugned orders of suspension are mala fide or motivated. We are unable to hold from the material on record that the licensing authorities acted with improper motives or were actuated with bias in directing the suspension of the licences held by the petitioners. All that is averred in para 9 is:

"(Under oral instructions of the Punjab Government from the Civil Supplies and Food Department to all the Licensing Authorities, including the Food Department and Supplies Controllers, instructions were issued that if any one dealer is found exporting wheat to another State, there being no direct or indirect ban on such movement, he should be punished at the spot by way of suspension of licences so that the dealer may not export wheat to any other State for which there are no restrictions imposed by any law or notified order or even the terms and conditions of the licence."

The petitioners then go on to say in para 12:

"Under oral instructions from the Secretary, Food and Supplies Department, the Director Food and Civil Supplies, and up to the District Food and supplies Controller, the Punjab Government has imposed restriction on inter-State movement of foodgrains. There are already restrictions on stock holding and dealer to dealer sale. The petitioners have never violated any conditions of the licence except that they have been, in exercise of their fundamental rights, exporting foodgrains to various destination outside the State of Punjab..."

In the case of M/s Sukhwinder Pal Bipan Kumar in support of the petition, there is an affidavit of one Raj Kumar, claiming to be a partner, who asserts that the allegations in paras 9 and 12 are 'correct to the best of my knowledge'. To say the least, this is no affidavit at all. Under order XIX, Rule 3, of the Code of Civil Procedure, 1908, it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particularity. The allegations in the petition are, therefore, not supported by an affidavit as required by law. That being so, the State Government was fully justified in answer, 'Denied. There is no restriction on the movement of wheat'. The Deputy Secretary in his counter affidavit has further denied that the impugned orders of suspension were passed on the direction of the State Government. In our view, the allegations in the writ petitions are not sufficient to constitute an averment of mala fides so as to vitiate the impugned orders of suspension. The Court would be justified in refusing to carry out investigation into allegations of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the petition. The burden of establishing mala fides lies very heavily on the person who alleges it. The petitioners who seek to invalidate the impugned orders of suspension must establish the charge of bad faith or bias or misuse by the Government of its powers. The impugned orders of suspension ex facie show breaches of conditions Nos. 4, 8 and 10 of the licence by the petitioners. The question whether or not, they committed the breaches is a matter for inquiry by the licensing authorities

under sub-cl. (1) of cl. 11 of the Order.

In the result, the petitions must fail and are dismissed with costs.

P.B.R.

Petitions dismissed.