Supreme Court of India
Food Corporation Of India And Ors vs Jagannath Dutta And Ors on 18 March, 1993
Equivalent citations: 1993 AIR 1494, 1993 SCR (2) 497
Author: K Singh
Bench: Kuldip Singh (J)

PETITIONER:
FOOD CORPORATION OF INDIA AND ORS.

Vs.

RESPONDENT:
JAGANNATH DUTTA AND ORS.

DATE OF JUDGMENT18/03/1993

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1993 AIR 1494 1993 SCR (2) 497
1993 SCC Supl. (3) 635 JT 1993 Supl. 85
1993 SCALE (2)84

ACT:
Constitution of India 1950: Articles 14 and 226-Contractual agreement for clearing, transporting, storing and distribution of foodgrains-FCI-Terminating agreement-Relief in writ petition-Whether permissible-Held contractual agreement terminated pursuant to policy decision.

HEADNOTE:
The Food Corporation of India appellant entered into an agreement dated August 14, 1967 with the respondent No. 1 entrusting him the work of clearing, transporting, storing and distribution of foodgrains on behalf of the Corporation viz. a storage agency by the Corporation. Clause 37 of the agreement provided that either party was at liberty without assigning any reason to terminate the agreement on giving two months prior notice in writing.
The Managing Director of the Corporation in the meeting of the Zonal Managers, Senior Regional Managers and other officers held on September 20/21, 19S4 pointed out that the private storage agencies were responsible for high transit losses (if the foodgrains in the State of West Bengal, and directed that the desirability of continuing the system of storage agents be examined. Immediately a Committee was

formed to go into this question. The Committee reported against continuing the storage agency system, and the report was accepted in principle, a final decision to abolish the storage agency was taken, and a target date for abolition was fixed for compliance. This decision was contained in the letter of the Zonal Manager dated 14th March 1985.

The District Manager by his notice dated June 25, 1987 terminated the storage agency agreement with the respondent with effect from August 31, 1987. The respondent challenged the validity of the notice by way of a writ petition under Article 226 of the Constitution before the High Court. The respondent challenged the termination notice on the grounds that : (i) clause 37 of the agreement was arbitrary and as such violative of Article 14 of the Constitution, (ii) clause 37 was unilateral, against natural

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justice, unlawful and as such was void under section 24 of the Indian Contract Act, and (iii) the action of the Corporation was arbitrary against public policy and public interest.

A Division Bench of the High Court did not go into any of the aforesaid grounds contended by the respondent and instead examined the correspondence and various office orders placed before it by the Corporation, and came to the conclusion that in fact no policy decision was taken by the FCI before terminating the agreement, and set aside the notice dated June 25, 1987.

Allowing the appeal of the FCI, this Court,

HELD : 1. The High Court was not justified in quashing the notice especially when the terms and conditions of the Contract permitted the termination of the agreement by either of the parties. [501G]

2. The High Court should not have gone into the question of contractual obligation in its writ jurisdiction under Article 226 of the Constitution. [501G]

3. The High Court misread the documents on record and grossly erred in reaching the conclusion that no policy decision was taken by the FCI to terminate the storage agencies in the State of West Bengal. [501H]

In the instant case, there is no manner of doubt that a policy decision was taken at the level of the Zonal Manager to abolish the storage agencies and the said decision was approved by the Head Office of the FCI. The letter dated March 14, 1985 of the Zonal Manager indicates the plan to be worked out for abolishing the storage agencies in the West Bengal Region. [504B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 977 of 1991. From the Judgment and Order dated 31.5.89 of the Calcutta High Court in Appeal No. 662 of 1987.

K.T.S. Tulsi, Additional Solicitor General, Vivek Gambhir and S.K. Gambhir for the Appellants.

R.K. Jain, Ascom Mehrotra, Sunil K Jain, Vijay Hansaria and Ms. Sangeet Mehrotra for the Respondents. The Judgment of the Court was delivered by KULDIP SINGH, J. Food Corporation of India (FCI) entered into an agreement dated August 14, 1967 with Jagannath Dutta entrusting him the work of clearing, transporting, storing and distribution of foodgrains on behalf of the FCI. In other words he was given a storage agency by the FCI. The District Manager, FCI by his notice dated June 25, 1987, terminated the agreement with effect from August 31, 1987. Jagannath Dutta challenged the validity of the notice by way of a writ petition under Article 226 of the Constitution of India before the Calcutta High Court. A Division Bench of the High Court by its judgment dated May 31, 1989 allowed the writ petition and set aside the notice dated June 25, 1987. This appeal by way of special leave is against the judgment of the High Court.

Clause 37 of the agreement dated August 14, 1967 is as under "Notwithstanding anything herein contained, either party may be at liberty without assigning any reason to terminate this agreement on giving two months' prior notice in writing so to terminate this agreement." The operative part of the notice dated June 25, 1987 terminating the agreement is as under :-

> "According to the Article 37 of the Agreement.. the Food Corporation of Indian has the right to terminate the Agreement and relinquish your Agency with two months prior Notice without assigning any reason. The Food Corporation of India has taken the policy of terminating the storing Agencies gradually and I have been directed by the Food Corporation authorities to give effect to that policy early.
>
> Under the circumstances, 1, Dr. Priti Madhab Dey, District Manager, Food Corporation of India, Hoogly... Serve this notice upon you under the provisions made in para 37 of the said Article of Agreement terminating your storing Agency at Belmuri with effect from 31st day of August, 1987."

Jagannath Dutta challenged the termination-notice on the grounds that (i) clause 37 of the agreement was arbitrary and as such violative of Article 14 of the Constitution,

(ii) clause 37 was unilateral, against natural justice, unlawful and as such was void under section 24 of the Indian Contract Act and (iii) the action of the FCI was arbitrary against public policy and public interest. The High Court did not go into any of these questions and instead set aside the impugned notice on the short ground that the FCI had not taken any policy decision before terminating the agreement. The High Court examined the correspondence and various office-orders placed before it by the FCI and came to the conclusion that in fact no policy decision was taken by the FCI. The High Court held that the impugned notice having been issued apparently as a result of a policy decision by the FCI and there being no such decision on the record the impugned notice was liable to be quashed. We reproduce the High Court reasoning hereunder :

> "From the foregoing facts, it appears that the desirability of abolishing the system was raised by the Managing Director and the entire correspondence shows that it was

> an issue which was pending at the Headquarters's level and the decision was expected to be taken at the level of the Managing Director. The Zonal Manager (East) or the Zonal Office did not and could not take any decision in the matter. The issue always remained pending for decision at the level of the Managing Director .... Even assuming that the letter dated 14th March, 1984 does, contain a policy decision and the letter dated 30th March/2nd April, 1985 contains the Headquarters' approval to the above decision, the said policy decision as contained in the letter dated 14th March, 1985 is not a valid policy decision. If a phase-wise or a gradual abolition. of a system is to take place there must be a plan this plan must be preconceived. The preconceived plan must be reasonable and rational with particular reference to the local conditions. Implementation of any such policy must depend on an action plan drawn up and implemented on a rational basis with reference to the arising situation and circumstances... For the foregoing reasons we, are of the view that the case of the F.C.1 to the effect that the policy decision was taken in the Zonal Office and endorsed and/or approved by Chief Commercial Manager, New Delhi, runs wholly contrary to the records of the case and therefore cannot be accepted... As we have already observed that no policy decision was finalised by the F.C.I. and they were proceeding arbitrarily by picking and choosing for the purpose of terminating the storing agency. In some cases, terminations were made not on the ground of policy decision, but on the ground of misappropriation. In some cases, as we have already referred to, the order of termination was withdrawn or kept in abeyance. Where the Court has passed ad-interim order staying the order of termination, no further steps have been taken by the F.C.I. In one of the cases we have referred to hereinbefore, would show that termination was kept in abeyance on a consideration that the concerned storing agent would provide the FCI with a godown. Therefore, the termination of this particular, agreement by invoking clause 37 has to be justified by the F.C.I. on the basis of policy decision and implementation on the policy uniformly in cases of the storing agents. Such termination cannot be justified with reference to other extraneous considerations."

We are of the view that the High Court was not justified in quashing the impugned notice especially when the terms and conditions of the contract permitted the termination of the agreement by either of the parties. The High Court should not have gone into the question of contractual-obligation in its writ jurisdiction under Article 226 of the Constitution. Even otherwise the High Court misread the documents on the record and grossly erred in reaching the conclusion that no policy decision was taken by the FCI to terminate the storage agencies in the State of West Bengal. We may refer to some of the documents on the record.

The Managing Director, FCI, in a meeting of Zonal Managers, Senior Regional Managers and other officers held on September 20/21, 1984 pointed out that the private storage agencies were responsible for high transit losses of the foodgrains in the State of West Bengal. He directed that the desirability of continuing the system of storage agents be examined. Immediately thereafter the Senior Regional Manager, West Bengal formed a Committee to go into the question. The Senior Regional Manager by his letter dated January 21, 1985 forwarded the report of the Committee to the

higher authorities. The Committee had reported against continuing the storage agency system. The report of the Committee was accepted in principle Deputy Zonal Manager in the office note dated February 23, 1985 examined the Committee-report and suggested fixation of target date for abolition of the storing agencies. The Deputy Manager (Finance) on March 4, 1985 also recommended the abolition of storing agency by giving additional reasons. A meeting was held in the chamber of the Zonal Manager in the first week of March, 1985 which was attended by five senior zonal officers including the Zonal Manager. In the said meeting the report of the Committee was accepted and the final decision to abolish the storage agency was taken. The Zonal Manager by his letter dated March 14, 1985 communicated the decision to the Senior Regional Manager for compliance. The said letter is reproduced hereunder:

"No. E. 12(1)/81-Stg. Dated : 14.3.1985
TO
Shri B.K. Mukhopadhyay,
Senior Regional Manager,
Food Corporation of India,
Calcutta.

Sub : Abolition of Storing Agency in West Bengal Region, FCI.

Sir, Please refer to the correspondence resting with your letter No. E/25/(17)/82-Stg. (c)/74 dated 21st January, 1985 regarding abolition or otherwise of Storing Agency System in West Bengal Region. The matter has been examined in consultation with the Zonal Finance and the following decisions have been taken.

1. Immediate abolition of Storing Agency depots in the Districts falling under the M.R. areas where CWC, SWC and owned godowns including JM(PO) exists.

2. Where there is no existence of SWC, CWC and owned godowns, FCI should make arrangement for hiring godowns to replace the storing agents godowns in phases keeping in view the distribution in M.R. areas and rake points to accommodate stocks from Northern India.

3. Storing Agents godowns in S.R. areas of Calcutta Complex may continue for some time for maintaining supply' line, but all our efforts should be made by SRM, West Bengal for sending as less stocks as possible to S.A. godowns in Calcutta Complex. As for example, in Calcutta (South) with the opening of Kalighat siding and two feeding depots like Lake and Behala, Storing Agents need be used only if absolutely necessary.

You are, therefore, requested to take action on the line as aforesaid and draw out an Action Plan and confirm the same to this Office under intimation to Headquarters. You are also requested to send us a detailed list of all the existing Storing Agents godowns both for M.R. and S.R. areas district- wise on the line as indicated above in (1), (2) & (3) as per proforma enclosed.

Approved by Zonal Manager.

Your faithfully Sd/- V.Ballachandran Dy. Zonal Manager For Zonal Manager (East)."

Further the letter dated March 30, 1985 by Chief Commercial Manager '(in the Head Office) to the Zonal Manager shows that the decision of the Zonal Manager to abolish the Storage agency was approved by the Head Office. The sequence of proceedings narrated by us leaves no manner of doubt that a policy decision was taken at the level of the Zonal Manager to abolish the storage agencies and the said decision was approved by the Head Office of the FCI. We are, therefore of the view that the High Court was not justified in reaching the conclusion that there was no policy decision by the FCI The High Court, without noticing any specific instance, made general observations to the effect that clause 37 of the contract was not uniformly invoked by the FCI. The High Court failed to appreciate that the policy decision contained in the letter dated March 14, 1985 indicates the plan to be worked out for abolishing the storage agencies. Although the decision to abolish the storing agencies with immediate effect was taken but it was stated in para 2 therein that FCI should make arrangement for hiring godowns to replace the storing agents in phases keeping in view the distribution of the foodgrains arriving from Northern India. It was also part of the decision that storing agents godowns in the Calcutta Complex were to continue for sometime for maintaining the supply line. It was, therefore, in the nature of the policy decision that the agreements with the storage agents were to be revoked in phased manner. It is not disputed that with effect from September 30, 1985 the West Bengal Government has taken over the public distribution system in the State of West Bengal. The State of West Bengal has taken over the godowns from the FCI and is operating the same. There is thus no scope for operating the private storage agencies in the State of West Bengal. We, therefore, allow the appeal, set aside the judgment of the High Court and dismiss the Writ petition filed by respondent- Jagannath Dutta with costs. We quantity the costs as Rs.10,000.

N.V.K. Appeal allowed.