C.F. 200=00

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 932 of 2001

PETITIONERS : 1. M/s. GRASIM CEMENT,
GRASIM INDUSTRIES LIMITED,
RAWAN, DISTRICT RAIPUR,
Through its Deputy Manager (Accounts),
Shri Anup Kumar Srivastava.

2. SUPREME WARE HOUSING,
Carrying and Forwarding Agent
of Grasim Cement, Malviya Road,
District Raipur.

P. R. No. 9357/2001
Presented by Shri Atul Shrivastava
dated 31/5/2001

Versus

RESPONDENT : STATE OF CHHATTISGARH
Through District Collector,
District Raipur.

RECEIVED COPY.
31/5
CLERK TO A.G. BILASPUR

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

(104)

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No.932 of 2001

M/s Grasim Cement & Another

Versus

State of Chhattisgarh

And

Other connected matters

Post for pronouncement of orders on the 18th day of May, 2017

Sd/-
Prashant Kumar Mishra
Judge

18 -5-2017

NAFR

105

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17.03.2017

Judgment delivered on 18.05.2017

WP No. 932 of 2001

- M/s Grasim Cement & Another

---- Petitioner

Versus

- State of Chhattisgarh

---- Respondent

And

WP No. 917 Of 2001

- M/s Associated Cement Companies Ltd.

---- Petitioner

Vs

- State Of Chhattisgarh & Others

---- Respondent

And

WP No. 918 Of 2001

- M/s Century Cement

---- Petitioner

Vs

- State of Chhattisgarh & Others

---- Respondent

And

WP No. 933 Of 2001

- M/s Lafarge India Ltd. & Another

---- Petitioner

Vs

- State of Chhattisgarh & Others

---- Respondent

106

For Petitioners — Shri Ashish Shrivastava, Adv. in WP No.918 of 2001 and Shri Bhaskar Payasi, Adv. in WP Nos.932, 917 & 933 of 2001

For Respondent/State Shri P. K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The petitioner Cement Companies have thrown challenge to the order passed by the Collector, Raipur and the appellate order by the Special Judge (Session Judge), Essential Commodities Act, Raipur, whereby the cement seized from the petitioners' business premises/godown has been confiscated for violation of clauses 4 (c), 6 (1) and 6 (2) of the Chhattisgarh Essential Commodities (Exhibition of Prices & Price Control) Order, 1977 (for short 'the 1977 Order') as amended in the year 1998. Initially, the petitioners had also challenged the vires of the amended notification dated 10.09.1998 through which cement was brought as item No.6 to the Schedule of the 1977 Order, however, the relief concerning challenge to the constitutional validity was subsequently withdrawn. Even otherwise, the vires of the said amendment has already been upheld by the Division Bench of this Court in **M/s Ultra Tech Cemco Ltd. v. The State of Chhattisgarh and others**[1] and other connected matter.

1 WP No.500 of 2001 (decided on 27.08.2012)

(107)

2. The petitioners were served with show cause notice mentioning that (i) as per the stock register seized on 29.12.2000, the petitioners have sold thousands of metric tonnes of cement from 01.04.2000 till the date of inspection/seizure, but not a single bill has been issued, therefore, it appears, in order to earn unauthorized profit, cement has been sold without bill, which is in violation of clause 6 (2) of the 1977 Order; (ii) in the account maintained with regard to sale of cement, there is no mention of purchase and sale price of cement, which proves that on the sale of cement, undeclared amount is also recovered and price has been charged by exceeding marginal, which is in violation of clauses 4 (c) & 6 (1) of the 1977 Order; and (iii) from the cement sold, it does not appear as to what is the profit earned by the companies.

3. In reply to the notice, the petitioners stated that the company distributes cement through the Clearing & Forwarding Agent (C&F Agent), who distributes the cement to the stockist for which the bills are issued by the Regional Office, therefore, mere non-availability of bills at the relevant time with the C&F Agent does not violate any provision of the 1977 Order. It was also stated that the 1977 Order does not apply to the C&F Agent and the petitioners being manufactures or purchasers also do not fall within the term of '***dealer***'.

(109)

4. In its final order, the Collector held that the petitioner companies are 'dealers' as defined in the 1977 Order, therefore, the petitioners were obliged to follow the provisions of the 1977 Order, which they have failed to do and, as such, the quantity of cement seized from their premises deserves to be confiscated. The Sessions Judge also held that by amendment incorporated in the 1977 Order, a manufacture has also been included in the definition of dealer, therefore, the finding recorded by the Collector appears to be proper.

5. It is argued that the premises inspected by the officers of the Food Department of District Collectorate belonged to the C&F Agent and not to the petitioner companies, therefore, the quantity of cement cannot be confiscated. It is also argued that there is no *mens rea* in committing violation of the 1977 Order and, thus, there is no material to constitute violation of the relevant clauses of the 1977 Order.

6. Per contra, learned counsel appearing for the State would submit that the question as to whether the petitioners are dealers or not has been settled by the Division Bench of this Court in **M/s Ultra Tech Cemco Ltd.** (supra). According to him, if a person is found to have contravened the provisions of the 1977 Order, it being a case of strict liability the element of *mens rea* is inbuilt, therefore, they have rightly been held liable for violation of the relevant clauses of the

(109)

1977 Order. It is further put forth that the petitioners' control over the goods is deep and pervasive as would be clear from the contents of the agreement executed between the petitioner companies and the C&F Agent.

7. Rejecting the challenge to the vires of the notification dated 10.09.1998 including the commodity cement as item No.6 in the schedule of the 1977 Order, the Division Bench of this Court in **M/s Ultra Tech Cemco Ltd. (**supra) held thus at para 25 :

> 25. In our opinion, this was a case where the commodity 'Cement' was already declared as an essential commodity in the parent Act (Essential Commodities Act) and hence its inclusion in the Schedule appended to The Order 1977 by the State by way of amendment was well within their powers either at the time of enacting The Order 1977 or by way of amendment at a later date. Indeed once the prior concurrence of Central Government was obtained for issuance of The Order 1977 and further prior consultation was done with the Central Government whether to include the Cement in the Schedule or not, then it was not necessary for the State Government to seek prior concurrence of each and every amendment so long as it did not relate to subject squarely falling under Section 3(2)(f) read with Clause (ii) of order dated 30.11.74 ibid. In any event, this procedure having been followed in this case, the challenge does not then survive.

The Division Bench, thereafter, vacated the interim orders passed in the writ petitions, reserving liberty in favour of the authorities to proceed in accordance with law pursuant to the show cause notice issued to the petitioner companies.

(110)

8. The petitioners have not questioned the vires of the definition of the dealer as amended by the notification dated 10.09.1998, which defines the word ***"dealer"***, to mean a person (except the exceptions mentioned below under this clause) who caries on the business of purchase, sale, or storage for sale, or processing or manufacturing any of the following essential commodities:- (i) if dealing with any essential commodity for which price has been fixed by the Central Government or the State Government. Thus, the petitioner companies, being manufacturer of cement, which is included in the Schedule of the 1977 Order, have been included within the term dealer and, as such, the 1977 Order applies to them. Similarly, even if the petitioners have not sold the cement directly to the retailers or consumers, they having stored the commodity through their C&F Agent having deep and pervasive control over the stock, they are covered within the term dealer, who is engaged in storage & sale of the commodity.

9. At this stage, it would be apt to refer the agreement executed between the petitioner ACC Cement and its C&F Agent (WP No.917 of 2001), in which clauses 2 to 6, 12 & 13 provide thus :

> 2. Cement belonging to ACC will be sent to Raipur (name of the rly station) under Railway receipts (freight prepaid or freight to pay) from any of our Cement Works containing the name of ACC as the consignee. These railway

(111)

receipts will be sent to your aforesaid address. On receipt of the railway receipts, you will unload cement from the railway wagons at the aforesaid station on our behalf within the free time allowed by the railways and without incurring any demurrage, wharfage, etc. transport it from the railway yard to our godown and unload it there. In cases of non-receipt of RRs, you shall arrange to clear the consignments against Indemnity Bond/s without incurring any demurrage, wharfage etc.

3. Likewise, in case of road supplies cement will be consigned to ourselves and the entire quantity will be stored by you in the godown which will be sold from there to our ACC Stockists.

4. Any demurrage/wharfage imposed by the Railways will be on your account only.

5. You will pay, if required by us freight to Railways/Road Transporters on our behalf. The amount of freight so paid by you, will be reimbursed to you on presentation of your bill along with the proof of payment.

6. You will be responsible for the safe custody of cement received at the aforesaid railway station/godown until such time as it is in your charge.

12. You will be true and faithful in all your dealings with us and will do your best to safeguard our interest.

13. You will be responsible for any claims/disputes arising from non-receipts/short receipt of material by dealer/parties vis-a-vis dispatches/deliveries made by you. Claims arising due to non-receipt/short receipt of material by dealers/parties vis-a-vis dispatches/deliveries made by you will be debited to your account.

10. A plain reading of the above terms of the agreement between the petitioner and its C&F Agent would clearly indicate that the agent was storing the goods on behalf of the

(112)

petitioner and such storage was for sale of the commodity through the Regional Sales Office (RSO) of the petitioner company, therefore, at the time of inspection and seizure, the commodity was within the control of the petitioner and the same was stored for sale, therefore, the provisions of the 1977 Order is fully applicable.

11. The issue concerning absence of *mens rea* has to be understood in the context of the provisions contained in Sections 3 & 7 of the Essential Commodities Act, 1955 (for short 'the EC Act), because the 1977 Order has been enacted in exercise of powers conferred under Section 3 of the EC Act. The adverse action against the petitioners is about confiscation of the cement, but prosecution has not been initiated, as no criminal proceeding has been drawn by filing a complaint or charge sheet for offence under Sections 3 & 7 of the EC Act. Even otherwise, the issue concerning existence of *mens rea* in offence under Sections 3 & 7 of the EC Act has been dealt with by the Supreme Court in **State of Madhya Pradesh v. Narayan Singh and others**[2] to hold thus in paras 6 & 11:

> 6. Taking up the first question for consideration, we may at once state that the Trial Magistrate and the High Court have failed to comprehend and construe Section 7(1) of the Act in its full perspective. The words used in Section 7(1) are "if any person contravenes whether knowingly, intentionally or otherwise any Order made under Section 3". The Section

2 (1989) 3 SCC 596

113

> is comprehensively worded so that it takes within its fold not only contraventions done knowingly or intentionally but even otherwise i.e. done unintentionally. The element of *mens rea* in export of fertiliser bags without a valid permit is therefore not a necessary ingredient for convicting a person for contravention of an order made under Section 3 if the factum of export or attempt to export is established by the evidence on record.
>
> 11. We are in full agreement with the enunciation of law as regards Section 7 of the Act in Swastik Oil Industries (supra). We therefore hold that the Trial Magistrate and the High Court were in error in taking the view that the respondents in each of the appeals were not liable for conviction for contravention of the F.M.C. Order read with Sections 3 and 7 of the E.C. Act since the prosecution had failed to prove *mens rea* on their part in transporting fertiliser bags from Madhya Pradesh to Maharashtra.

12. The scope of interference with the finding and orders concurrently by two subordinate authorities including the Sessions Judge has been considered by the Supreme Court in **B. K. Muniraju v. State of Karnataka and Others**[3], wherein the following has been held in para 22 :

> 22. It is settled law that a writ of Certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave mis-carriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of Certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or

3 (2008) 4 SCC 451

(114)

has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

13. For all the above stated reasons, this Court does not find any substance in the writ petitions, accordingly all the writ petitions are liable to be and are hereby dismissed.

14. There shall be no order as to cost(s).

Sd/-
Prashant Kumar Mishra
Judge

Gowri