

ORDER SHEET
WPO NO. 336 OF 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BHRAMARI TEA ANDE INDUSTRIES PVT. LTD. & ANR
Versus
THE UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 21st January, 2021

Appearance :

Mr. Madhusudan Sarkar,
Mr. Sayan Dutta,
Mr. Mousamjit Sarkar, Advs,
for the petitioner.

Ms. Chandreyi Alam,
Adv., for the respondent no.2.

Mr. Sukanta Ghosh, Adv.,
for the respondent no.1.

Mr. Amitesh Banerjee, Sr. Adv.,
Mrs. Ipsita Banerjee, Adv., for the State.

The Court : The petitioner challenges an order dated June 15, 2020 (Annexure P-15 at page 57 of the writ petition), whereby the Tea Board refused to grant 'no objection' certificate for the petitioner to set up a new unit of manufacture of tea. Learned Counsel for the petitioner submits that such refusal is contrary to the Tea Act, 1953 and the corresponding Tea (Marketing) Control Order, 2003.

Learned Counsel contends that the Tea Board had no authority to issue the Circular dated June 7, 2019 (Annexure P-14 at page 52 of the writ petition), on the basis of which the no objection was apparently refused. By placing reliance on a copy of the Circular, which was admittedly downloaded by the petitioner from the official portal of the Tea Board of India (as mentioned in Ground XII at page 13 of the writ petition), learned Counsel argues that the same contains no memorandum or reference number.

The only reference given in the second page of the said Circular pertains to the year 2008, whereas the Circular is dated June 7, 2019. It is argued that the reference number appears in the communication portion of the Circular and, as such, obviously refers to the communication and not the main Circular.

It is, thus, argued that the respondent authorities acted without jurisdiction in refusing the petitioner's request for a no objection certificate for setting up a new unit.

Learned Counsel appearing for the Tea Board submits that the said Board has sufficient powers to regulate the manufacture of tea, and to grant no objection certificate or to refuse the same in appropriate cases under Rule 3 of the 2003 Control Order. It is submitted that the Circular which was relied upon by the petitioner is backed up by appropriate reference number, although the same might not appear in the copy annexed to the writ petition. That apart, the Tea Board has ample jurisdiction to regulate the manufacture of tea and to control the quality of the same.

Learned Counsel argues that the impugned order dated June 15, 2020 gave sufficient reason for the refusal to grant no objection to the petitioner, since there is a saturation of green leaf available for production and manufacture in the Rajganj area. As such, the Tea Board was within its authority to refuse the no objection requested by the petitioner. That apart, Rule 13 of the Control Order empowers the licensing authority, that is, the Board, to issue directions for improving the efficiency of the public e-auction system and related matters. Thus, it cannot be said that the Circular was bad in law.

Over and above the aforesaid submissions, learned Counsel for the Tea Board contends that the writ petition is not maintainable in view of the availability of alternative remedy in the form of appeal under Rule 24 of the 2003 Control Order.

However, since the petitioner has also challenged the Circular dated June 7, 2019 and the jurisdiction of the Tea Board to issue such Circular, it cannot be said that the questions raised herein are limited to the scope of an appeal under Section 24 of the

2003 Control Order. As such, there is no bar for the writ court to assume jurisdiction in deciding the matter.

As far as the merits of the case are concerned, Section 10 of the Tea Act, 1953, which is the parent legislation in this regard, enumerates the functions of the Tea Board, which include regulating the production and extent of cultivation of tea, improving the quality of tea and related matters. The function of improving marketing of tea is also included within such functions, apart from the registration and licensing of manufactures, brokers, tea waste dealers and persons engaged in the business of blending tea. Section 10 of the 1953 Act is set out hereinbelow :

*“10. **Functions of the Board.**- (1) It shall be the duty of the Board to promote, by such measures as it thinks fit, the development under the control of the Central Government of the tea industry.*

(2) Without prejudice to the generality of the provisions of sub-section(1), the measures referred to herein may provide for –

- (a) regulating the production and extent of cultivation of tea;*
- (b) improving the quality of tea;*
- (c) promoting co-operative efforts among growers and manufacturers of tea;*
- (d) undertaking, assisting or encouraging scientific, technological and economic research and maintaining or assisting in the maintenance of demonstration farms and manufacturing stations;*
- (e) assisting in the control of insects and other pests and diseases affecting tea;*
- (f) regulating the sale and export of tea;*
- (g) training in tea testing and fixing grade standards of tea;*
- (h) increasing the consumption in India and elsewhere of tea and carrying on propaganda for that purpose;*
- (i) registering and licensing of manufacturers, brokers, tea waste dealers and persons engaged in the business of blending tea;*
- (j) improving the marketing of tea in India and elsewhere;*

- (ij) subscribing to the share capital of, or entering into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with, anybody corporate for the purpose of promoting the development of tea industry or for promotion and marketing of tea, in India or elsewhere;*
- (k) collecting statistics from growers, manufacturers, dealers and such other persons as may be prescribed on any matter relating to the tea industry; the publication of statistics so collected or portions thereof or extracts therefrom;*
- (l) securing better working conditions and the provisions and improvement of amenities and incentives for workers;*
- (m) such other matters as may be prescribed.*
- (3) The Board shall perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government.”*

As far as the contention that the Circular dated June 7, 2019 is invalid due to absence of any reference/memorandum number, the same is belied by the fact that, admittedly, the Circular was uploaded in the official portal of the Tea Board, from where the petitioner downloaded the same. Notification in the official website is sufficient to lend credence and validity to an official Circular.

That apart, Section 10 of the 1953 Act, read with Rule 3 of the 2003 Control Order, confers sufficient power on the Tea Board to grant or refuse ‘no objection’ to entities intending to set up new manufacturing units.

Although Rule 3A provides that no objection certificate would be necessary for a mini tea factory, it does not appear from the petitioner’s request for grant of no objection certificate that the petitioner’s intention was to set up a ‘mini’ tea factory.

In any event, the petitioner itself having submitted a request for a ‘no objection’ certificate, it does not now lie in the mouth of the petitioner to contend that no such certificate is necessary for setting up the petitioner’s new unit.

Both the Circular dated June 7, 2019 and the impugned order dated June 15, 2020 provide sufficient basis and elaborate reasons for refusal of 'no objection' certificate to the petitioner.

The impugned order specifically mentions that as per the block-wise green leaf availability data, the total production of green leaf in Rajganj is 119.20 mkg., out of which 26.49 mkg. 'made tea' can be manufactured. The installed capacity of the factories (31 Nos.) in Rajganj block, including those factories (6 no.) to which NOCs/registrations have already been issued, is 47.08 mkg. As such, there is hardly any scope of adding a new factory, in view of the current dearth of availability of green leaf. Such a consideration comes well within the powers of the Tea Board as conferred under the 1953 Act and the Control Order of 2003. Hence, there is no scope for interference with the impugned order of refusal of 'no objection' certificate to the petitioner.

Accordingly, WPO No.336 of 2020 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

