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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

IA NO: GA /1/ 2024
IN
APOT/396/2024

UNION OF INDIA & ORS.
VS.
WEST BENGAL PERMANENT JUTE WORKERS UNION & ANR.

Mr. Rajdeep Mazumdar, Sr. Adv.,DSG
Mr. DIbashis Basu, Adv.
Mr Mayukh Mukherjee, Adv.
Mr. Arun Bandopadhyay, Adv.
…for Appellants/UoI
Mr. Jayanta Kr. Mitra, Sr. Adv.
Mr. Sarvapriay Mukherjee, Adv.
Mr. Arnab Sardar, Adv.
..for Respondent No.1
Mr. Abhrajit Mitra, Sr. Adv.
Ms.Rajshree Kajaria, Adv.
Mr. Deepan Sarkar, Adv.
Mr. Satadeep Bhattaharyya, Adv.
Mr. Smriddha Sen, Adv.
…for Proforma respondent.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

AND

The Hon'ble JUSTICE AJAY KUMAR GUPTA

Date : December 4, 2024.

The Court:- The instant appeal has been filed by the Union against the interim order dated 20th September 2024 passed in two writ petitions. WPO 818 of 2024 has been filed by the Workmen's Union called the West Bengal

Permanent Jute Workers Union (WBPJWU) against the Union of India. WPA 22062 of 2024 has been filed by the Indian Jute Mills Association. Both the writ petitions have challenged a portion of the notification dated 26th December 2023 issued by the Central Government in consultation with the Standing Advisory Committee in exercise of power under Section 3(1) and Section 16(1) of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 [in short, 'JPMA, 1987'].

2) The portion of the said order, which the petitioner is aggrieved with, contains a note on 10% which stipulates as follows:-

Initial 10% of the indent for jute bags (for food grains) are to be placed through reverse auction on the Government e-Marketplace (GeM) portal.

3) Mr. Jayanta Kumar Mitra, learned senior advocate appearing for the Workers' Union has argued that the opening up even 10% of the sale of jute bags for food grains would seriously lower the prices of jute bags. This, in turn, would affect the profitability of the jute mills and consequently the survival of his clients who are workers under the jute mills.

4) Mr. Jayanta Kumar Mitra has firstly relied upon the decision of the Hon'ble Supreme Court in the case of **Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors., reported in (1991) 1 SCC 212**, particularly paragraph 29 thereof. He has argued that there is no thumb rule that a policy decision of the State cannot be challenged at all.

5) On the scope of challenge to a policy decision of the executive, reliance is also placed by Mr. Jayanta Kumar Mitra on the decision of **Delhi Development Authority & Anr. v. Joint Action Committee, Allottee of SFS Flats & Ors., reported in (2008) 2 SCC 672**, particularly paragraphs 64, 65, 67 and 69 thereof.

6) With a view to indicate the importance of protection given to the jute industry, Mr. Jayanta Kumar Mitra next relied upon the decision of the Supreme Court in the case of **Dalmia Cement (Bharat) Ltd. & Anr. v. Union of India & Ors., reported in (1996) 10 SCC 104**, paragraphs 5, 32 and 40 thereof.

7 He submits that exposure of even 10% of the jute bags meant for packing food grains can seriously jeopardize the profitability of the jute industry and consequently the livelihood of his clients. He argues by referring to the Dalmia Cement case that in paragraph 32, the Hon'ble Supreme Court has recognized the interest of the workmen engaged in the jute industry. He, therefore, says that his client has locus standi to challenge the policy decision taken by the Union, as indicated above.

8) Mr. Abhrajit Mitra, learned senior advocate appearing for Indian Jute Mills Association [in short, 'IJMA'] has taken this Court through the provisions of Jute and Jute Textiles Control Order, 2016 issued under Section 3 of the Essential Commodities Act, 1955 by the Central Government. He has

placed the power of the Jute Commissioner and Clauses 3, 4, 7 and 11 thereof, to control and fix the prices of jute bags, distribute the fixed and existing demand of jute bags in various jute mills on a monthly basis, the power to control the quality of the jute bag production as also the power to impose penalties for shortfall in supply by the concerned jute mill and/or deficiency in the quality of the jute bags supplied. Mr. Mitra has placed the Production Control Order [PCO], now called Production Control and Supply Order [PCSO] for the month of August 2024 and for several months issued by the office of the Jute Commissioner from time to time.

9) It is argued by Mr. Mitra that there exists a full and comprehensive system for determining the price of jute bags, the distribution of the supply to various jute industries in the State. The aforesaid policy, being the larger policy, has been successfully implemented since the year 1987 and since after issuance of the aforesaid Jute and Jute Textiles Control Order under the Essential Commodities Act in the year 2016.

10) A change in the policy by forcing the jute mills to participate in a free market sale and price policy under the GeM portal could expose the jute industries to the vagaries of market forces and would thereby jeopardize the profitability of Jute mills who are all members of his client the IJMA.

11) It is, therefore, argued that the impugned order staying the sale of 10% of Jute bags through GeM portal, has been rightly passed and fairly by the Learned Single Bench and calls for no interference.

12) This Court has carefully considered the arguments advanced by the respondents, learned senior counsel Mr. Jayanta Kumar Mitra and Mr. Abhrajit Mitra as also learned Senior counsel Mr. Rajdeep Majumdar, Deputy Solicitor General appearing on behalf of the Appellant Union of India.

13) The jute industry is one of the most protected industries in India. It is surviving on the basis of protection granted under the aforesaid JPMA of 1987 and more comprehensively the Control Order of 2016 issued under the Essential Commodities Act, 1955. Indeed, under the Jute Control Order issued by the Government under the Jute Commissioner is required to bear in mind the provisions of the JPMA, 1987, abide by the directions of the Standing Advisory Committee and also the orders passed under Sections 3, 16 and other provisions of the aforesaid JPMA, 1987. The importance of protection for the jute industry has been succinctly explained by the Hon'ble Supreme Court in several paragraphs, particularly paragraphs 5, 30, 31 and 32 of the **Dalmia Cement's decision (supra)**.

14) There is now growing awareness of the dangers of the use of plastic and its long term lethal impact on the environment and ecology. Both humans and animals are facing an existential crisis with micro plastic particle entering all food chains. The need and demand for promoting jute or an alternative eco-friendly packaging material cannot be overstated.

15) The opening up of the jute bag and yarn markets to some open market prices and competition is one way of assessing the demand for jute products within India and Global Markets.

16) Orders issued by the Jute Commissioner particularly through the PCOS are governed both under the JPMA of 1987 and Essential Commodities Act, 1955. Such protection has enured to the benefit of the jute mills till date and particularly the cultivators, the workmen and definitely the mill owners.

17) This Court however finds certain terms from the deviation from the practice and procedure for fixing price of twill jute bags by the Jute Commissioner, being adopted till date, that only 10% of the already reserved 90% of jute bags for storage of food grains is only being sought to be opened up for free market trade under the GeM portal.

18) It, therefore, essentially implies that a miniscule portion of the existing larger policy is sought to be changed by the Government as a new policy. This would also imply that the deviation is aimed as a test. The test, according to this Court, would bring about the following amongst other benefits:-

a) The jute mills would not be bound by the limit of supply allocated by the Jute Commissioner.

b) Some jute mills may have sufficient stock and production capacity to generate more jute bags, to sell at a lesser rate than as prescribed by the Jute Commissioner.

c) The actual demand for jute bags in the market may actually come to light in addition to the one determined by the Jute Commissioner. There may be jute mills who are willing to sell jute bags at a lesser rate thereby increasing production and sales, that would enure to the larger interest in the jute industry.

d) The cultivators of jute would consequently also have an incentive to cultivate more jute on his lands.

e) Certain existing and hidden unseen monopolies in the jute bags trade could also be dealt with in the process.

19) Government procurement and/or distribution of state largesse through the GeM auction portal and platform would also promote greater transparency in the jute bag trade and throw new light before the Jute Commissioner and the authorities under both the Essential Commodities Act as also the JPMA.

20) Given the aforesaid benefits and exposing only 10% of the jute bags for carrying food grains cannot by any stretch of imagination be deemed as endangering the larger policy of the State to protect the jute industries.

21) The impugned portion of the order has admittedly been passed by the Central Government/Executive in exercise of powers conferred under Sections 3 and 16 of the JPMA, 1987. It, therefore, cannot be said that the policy contained in the impugned order is de hors the statutory authority. This Court does not find any violation of the rights under Article 19(1)(g) of IJMA or under Article 21 of the Workmen's Union being affected, at this stage. In any event, writ petitions challenging the impugned portion of the order are completely premature, since the real time effects of sale through the GeM portal has not even happened.

22) The prejudice or extinction of any existing rights has not and cannot be demonstrated by the petitioners for a writ Court to entertain a challenge the instant policy decision of the Central Government. A policy decision of the State cannot normally be challenged on a mere apprehension. The **Kumari Shrilekha Vidyarthi & Ors.** and **Delhi Development Authority & Anr.** decisions (supra) are distinguishable on facts as the policy decision of the Government challenged therein had a demonstrable direct effect of the petitioners therein. The cases are thus distinguishable in the facts of the case.

23) In those circumstances, this Court is of the view that the writ petitions are premature. There is no illegality demonstrated in issuance of the impugned order. The question of entertaining the writ petitions could not have arisen. The single Bench, in the opinion of this Court, far from passing any interim order, should have dismissed the writ petitions as premature.

24) This Court, therefore, dismisses the two writ petitions being WPA 22062 of 2024 and WPO 818 of 2024. The impugned order also stands set aside.

26) It is, however, made clear that in the event of any actual demonstrable prejudice after implementation of the impugned order through GeM portal, the dismissal of the present writ petitions shall not prevent IJMA from challenging the policy decision of the Central Government afresh with appropriate grounds and due cause of action.

27) The appeal is allowed and disposed of.

28) There will be no order as to costs.

Urgent certified copy of this order be made available to the parties, if applied for, upon compliance with all requisite formalities.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA, J.)

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