

PETITIONER:
THE CHAMBER OF COMMERCE, HAPUR, AND THREE OTHERS

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH AND TWO OTHERS.

DATE OF JUDGMENT:
18/10/1954

BENCH:
DAS, SUDHI RANJAN
BENCH:
DAS, SUDHI RANJAN
MAHAJAN, MEHAR CHAND (CJ)
HASAN, GHULAM
BHAGWATI, NATWARLAL H.
JAGANNADHADAS, B.

CITATION:
1955 AIR 8 1955 SCR (1) 838

ACT:
Uttar Pradesh Food-grains (Futures and Options Prohibition) Order, 1951-Uttar Pradesh Food-grains (Futures and Options Prohibition) Order, 1945-Restrictions on dealings in pulses other than grams-In both orders-Order of 1951 partly declared ultra vires by Supreme Court--Not so s. 9 thereof which repealed Order of 1945-Whether Order of 1945 still in force-Proper procedure for clarification of the matter.

HEADNOTE:
Uttar Pradesh Food-grains (Futures and Options Prohibition) Order, 1951, made it illegal and a punishable offence for any person to enter into any futures in pulses other than gram, or to pay or receive or to agree to pay or receive any margin relating to such futures. By s. 9 of that Order the Order of 1945 containing similar provisions was repealed. An application under Art. 32 of

839
the Constitution presented by several persons (including the present petitioners) for the enforcement of their fundamental right under Art. 19(1)(g) of the Constitution to carry on their business and restraining the State from enforcing the Order of 1951 in so far as it related to pulses other than gram and for a declaration that s. 2(a) of the Order read with items 6, 7, 8 and 9 of the schedule thereto was illegal and ultra vires the State Government' succeeded in the Supreme Court and the State of Uttar Pradesh was directed by the Supreme Court by its judgment dated the 15th 'day, 1952, to abstain from giving effect to it.

On the 10th June, 1953, a letter (Exhibit B to the petition) was addressed by the Deputy Commissioner, Food, Uttar Pradesh, to all Regional Food Controllers and Deputy Food Controllers and all District Magistrates in Uttar Pradesh instructing them to regard all futures in foodgrains mentioned in the Schedule to the 1945 Order including pulses other than gram as punishable.

It was contended on behalf of the State (1) that section 3 of 1946 Act which reproduced s. 3 of the 1946 Ordinance

conferred on the Central Government extensive powers to control production, supply, distribution of and trade and commerce in essential commodities and this power was delegated by the Central Government to the Provincial Government by notification dated 21st October, 1946, under s. 4 of the 1946 Ordinance. The subsequent amendments made by two Notifications dated 5th March, 1947, and dated 15th November, 1947, withdrew the power so delegated only with respect to "edible oils and oil seeds and pulses other than gram" and such withdrawal was only with regard to production, supply, and distribution of those commodities but was not with regard to trade and commerce therein; (ii) that the Order of 1951 having been declared ultra vires, the Order of 1945 which was continued by s. 5 of the Ordinance of 1946 and then by s. 17 of the Act of 1946 was still in force.

Held, (repelling the contentions) (i) that as the Order of 1945 ceased to have effect with regard to the price, production, distribution and movements of those commodities, that Order could not in any way continue to regulate or control trade or commerce in those commodities and the two Notifications of 1947 quite effectively superseded the Order of 1946 so far as it purported to regulate or control the price, production, distribution and movement of or trade and commerce in edible oils and oil seeds and pulses other than gram;

(ii) that the Order of 1951 was not declared ultra vires and invalid in its entirety by the judgment of the Supreme Court dated 15th May, 1952. The Order was declared invalid in so far as it purported to restrict the dealings in edible oils and oil seeds and pulses other than gram. The rest of the Order of 1951 and in particular s. 9 thereof by which the Order of 1945 had been withdrawn, remained unaffected by the judgment of the Supreme Court.

840

Strong disapproval was expressed by the Supreme Court of the wholly unwarranted attitude adopted by the officers of the State of Uttar Pradesh in circumventing the decision of the Supreme Court on a flimsy pretext.

The contentions advanced on behalf of the State Government should have been advanced before the Supreme Court on the previous occasion when it delivered its judgment dated 15th May, 1952, or the matter should have been brought before the Supreme Court by way of review if any review was competent.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 309 of 1953.

Under article 32 of the Constitution of India for the enforcement of Fundamental Rights.

K. C. Jain and B. P. Maheshwari for the petitioners.

K. B. Asthana and C. P. Lal for the respondents. 1954.

October 18. The Judgment of the Court was delivered by DAS J.-This is a petition made under article 32 of the Constitution by the Chamber of Commerce, Hapur and three individual persons praying for a writ in the nature of mandamus directing the State of Uttar Pradesh and two of its officers in the Food Department to abstain from enforcing the Uttar Pradesh Food Grains (Futures and Options Prohibition) Order, 1945, or any orders or directions contained in the letters issued by the respondents copies whereof are annexed to the petition and marked B and D. The facts and circumstances leading up to this application may be shortly stated at the outset.

The Chamber of Commerce, Hapur, is a company incorporated under the Indian Companies Act with its registered office at Hapur. There are about 200 members of this Chamber of Commerce including petitioners Nos. 2 to 4. Petitioner No. 3 is also its ?resident and Petitioner No. 2 is also a member of its Executive Committee. The members of the Chamber carry on business in foodgrains including pulses both on ready and forward basis. The Chamber acts as a clearing agent for a commission and guarantees the performance of forward contracts by its members upon payment of margin money according to the rules.

841

On or about the 1st September, 1945, the U. P. Government, in exercise of powers conferred on it by rule 81 (2) of the Defence of India Rules, issued Notification No. 8071/c.s. promulgating the United Provinces Food Grains (Futures and Options Prohibition) Order, 1945, (hereinafter called "the 1945 Order"). Section 2 (a) of that Order defined "foodgrains" as meaning any of the foodgrains mentioned in the schedule thereto. Arhar, peas, urd and moong were mentioned as items 6, 7, 8 and 9 of that schedule. Section 3 provided as follows

" 3. No person shall-

(a) enter into any futures in foodgrains or pay or receive or agree to pay or receive any margin relating to any such futures;

(b) enter into any options in foodgrains.

The Defence of India Rules expired on the 30th September, 1946, and consequently all orders made thereunder were also due to expire on the same date. On the 1st October, 1946, however, there came into force the Essential Supplies (Temporary Powers) Ordinance, 1946 (hereinafter referred to as "the 1946 Ordinance") promulgated by the Governor-General and published in the Gazette of India on the 25th September, 1946. Section 3 of that Ordinance conferred on the Central Government extensive powers to control production, supply, distribution of and trade and commerce in, essential commodities as defined in section 2(a) thereof. Section 4 authorised the Central Government to direct by notified order that the power to make orders under section 3 should, in relation to such matters and subject to such conditions as might be specified in the direction, be exercisable also by such officer subordinate to it or by such Provincial Government or such officer thereof as might be specified in the direction. Section 5 of that Ordinance ran as follows :-

" 5. Continuance in force of existing orders. Until other provisions are made under this Ordinance, any order, whether notified or not, made by whatever authority under rule 80-B, or sub-rule (2) or sub-rule (3) of rule 81 of the Defence of India Rules, in respect

842

of any matter specified in section 3, which was in force immediately before the commencement of this Ordinance shall, notwithstanding the expiration of the said rules, continue in force so far as consistent with this Ordinance and be deemed to be an order made under section 3; and all appointments made, licenses or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Ordinance. "

The 1945 Order, therefore, continued in force until other provisions were made under the 1946 Ordinance.

In exercise of powers conferred on it by section 4 of the

1946 Ordinance the Government of India, on the 21st October, 1946, made the notified order No. C.G.603(2)-III(1) directing that the powers conferred on it by section 3(1) of that Ordinance should, in relation to foodstuffs, be exercisable also by any Provincial Government, subject to certain conditions therein set out.

In November, 1946, was passed the Essential Supplies (Temporary Powers) Act, 1946 (hereinafter called "the Act"). Section 3 of the Act reproduced section 3 of the 1946 Ordinance with certain modifications not material for our present purpose. Section 4 of the Act corresponds to section 4 of the 1946 Ordinance. The relevant portions of section 17 of the Act provide as follows : ---

" 17. Repeal and savings.- (1) The Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946), is hereby repealed.

(2) Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act.

843

(3).....

(4)....."

In exercise of powers conferred on it by section 4 of the Act the Central Government, by Notification No. C. G. 603(2)-III(1), dated the 5th March, 1947, amended the abovementioned notified order No. PY 603(2)-I, dated the 21st October, 1946, by inserting after the word "foodstuff" the words "including cocoanut oil but excluding other edible oils and oilseeds." The net result of this notification was that "edible oils and oilseeds" were excluded from the scope or operation of the delegated power. In other words, the power delegated to the Provincial Government was withdrawn in respect of "edible oils and oilseeds" so that the Provincial Government could not thenceforth make any order controlling the production, supply and distribution of or trade and commerce in "edible oils and oilseeds". On the same day another Notification, being Notification No. C. G. 603(2)-III(2), was issued by the Central Government in exercise of powers conferred on it under section 3 of the Act directing that no order made or deemed to be made by a Provincial Government under the Act should have effect from that date so as to prohibit or restrict the movement of edible oilseeds or oils other than cocoanut oil from any place in a Province to any other place within or outside the Province, or so as to regulate or control the price, production or distribution thereof in any way. Therefore, the 1945 Order ceased to have effect so as to prohibit or restrict the movement of edible oilseeds or oils other than cocoanut oil or so to regulate or control the price, production or distribution thereof in any way.

On the 15th November, 1947, two Notifications were issued by the Central Government. By Notification No. PY. 603(2)-VI(1) made under section 4 of the Act the Central Government made a further amendment in Notification No. PY. 603(2)-1 dated the 21st October, 1946. by inserting after the word "oil-seeds" the words "and pulses other than gram". The effect of this amendment was that "pulses other than gram" were

844

also excluded from the operation of the power delegated to

the Provincial Governments. In other words, the power delegated to the Provincial Governments was withdrawn in respect also of "pulses other than gram", so that the Provincial Governments could not thenceforth make any order controlling the production, supply and distribution of or trade or commerce in edible oils and oilseeds and pulses other than gram. Simultaneously by Notification No. PY. 603 (2)-VI(2) made on the 15th November, 1947, under section 3 of the Act the Central Government directed that no order made or deemed to be made under the Act by a Provincial Government should have effect from that date so as to prohibit or restrict the movement of pulses other than gram from any place in a Province to any other place within or outside the Province or so as to regulate or control the price, production or distribution thereof in any way. As a result of this Notification the 1945 Order also ceased to have effect so as to prohibit or restrict the movement of pulses other than gram or so as to regulate or control the price, production or distribution thereof in any way. Then came the Uttar Pradesh Foodgrains (Futures and Options Prohibition) Order, 1951. It was promulgated by the State of Uttar Pradesh on the 20th September, 1951. By section 2(a) this Order defined "foodgrains" as meaning any of the foodgrains specified in the schedule thereto. Arhar, peas, urd and moong were items Nos. 6, 7, 8 and 9 of that schedule. Section 3 of the Order ran as follows

" No person shall--

(a) enter into any "futures in foodgrains" or pay or receive any margin relating to any such futures;

(b) enter into any options in foodgrains."

Section 8 made a contravention of any provision of the Order or any order issued thereunder punishable under sections 7 and 7-A of the Act of 1946. By section 9 of this Order the 1945 Order was withdrawn.

As the Uttar Pradesh Foodgrains (Futures and Options Prohibition) Order, 1951 directly made it illegal and a punishable offence for any person to enter into

any futures in, amongst others, arhar, peas, urd and moong or to pay or receive or to agree to pay or receive any margin relating to any such futures. 10 members of the

Chamber of Commerce, Hapur, including the present petitioners Nos. 2 to 4, on the 29th October, 1951, made an application to this Court under article 32 of the Constitution for- enforcement of their fundamental right under article 19(1)(g) to carry on their business and prayed for the issue of a mandamus restraining the State of Uttar Pradesh from enforcing the Uttar Pradesh Foodgrains (Futures and Options Prohibition) Order, 1951, in so far as it related to pulses other than gram and from exercising any power there. under and for a declaration that section 2(a) read 'with items 6, 7, 8 and 9 of the schedule thereto was illegal and ultra vires the powers of the State Government.

That application succeeded and the offending Notification to the extent it dealt with arhar, peas, urd and moong was declared invalid and the State of Uttar Pradesh was directed to abstain from giving effect to it. As will appear from the judgment pronounced by this Court on the 15th May, 1952, on that application, it was not seriously disputed that the effect of the amendments referred to above was that the power to control and regulate trade originally delegated to the Provincial Government by Notification No. PY. 603(1)-I, dated the 21st October, 1946, was modified so as to exclude from the scope of such delegation pulses other-than gram".

On the 10th June, 1953, a letter (Ex. B to the petition) was addressed by the Deputy Commissioner, Food, Uttar

Pradesh, to all Regional Food Controllers and Deputy Regional Food Controllers and all District Magistrates in Uttar Pradesh instructing them to regard all futures in foodgrains mentioned in the schedule to the 1945 Order including pulses other than gram as punishable. The reasoning advanced was that the Uttar Pradesh Foodgrains (Futures and Options Prohibition) Order, 1951, having been declared ultra vires by the judgment pronounced by this Court on the 15th May, 1952, that Order became unenforceable and

108

846

consequently the 1945 Order continued in force. A copy of this letter was forwarded, amongst others, to the Chamber of Commerce, Hapur, for information and guidance. By its letter dated the 25th June, 1953, the Chamber pointed out that the earlier Order of 1945 had been withdrawn by section 9 of the Order of 1951 and as the last mentioned section had not been declared ultra vires by the Supreme Court the 1945 Order could not be regarded as continuing in force. On the 17th September, 1953, the Regional Food Controller of Uttar Pradesh wrote a letter (Ex. D to the petition) to the President, Chamber of Commerce, Hapur, asking the latter to immediately stop all future transactions pertaining to the foodgrains mentioned in the schedule to the 1945 Order in which delivery was contemplated within the State of Uttar Pradesh and threatening action to be taken against the Chamber. This threat of action necessitated the present petition for the reliefs mentioned above.

Learned advocate appearing for the State seeks to justify the attitude of the State on two grounds. It is urged that section 3 of the 1946 Act which reproduced with certain modifications section 3 of the 1946 Ordinance, conferred on the Central Government extensive powers to control production, supply, distribution of and trade and commerce in essential commodities. This power was delegated by the Central Government to the Provincial Governments by Notification No. PY. 603(2)-1 issued on the 21st October, 1946, under section 4 of the 1946 Ordinance. The subsequent amendments made by Notification No. C.G. 603(2)-III(1) dated the 5th March, 1947, and Notification No. PY. 603(2)-VI(1) dated the 15th November, 1947, withdrew the power so delegated only with respect to "edible oils and oilseeds and pulses other than gram" and such withdrawal was only with regard to the production, supply and distribution of those commodities but not with regard to trade and commerce therein. The second ground advanced is that the Order of 1951 having been declared ultra vires the Order of 1945, which was continued first by section 5 of the 1946 Ordinance and then by section 17 of the Act, remained

847

in full force. In our judgment there is no substance in either of the two arguments.

As we have already pointed out, two Notifications were published on the 5th March, 1947, and two Notifications were issued on the 15th November 1947. By Notification No. C. G. 603(2)-III(1) dated the 5th March, 1947, and Notification No. PY. 603 (2)-VI (1), dated the 15th November, 1947, the earlier Notification No. 603(2)-I, dated the 21st October, 1946, was amended by inserting therein the words "edible oils and oilseeds" and "pulses other than gram" and thereby excluding those commodities from the scope of the delegation. As a result of these amendments the Provincial Governments could not, from and after the respective dates of those amending Notifications, make any order controlling

production, supply, distribution of or trade and commerce in those commodities. These Notifications did not purport to affect Notifications that had been previously made. But simultaneously with these amending Notifications two more Notifications were issued, namely, Notification No. C.G. 603(2)-III(2), dated the 5th March, 1947, and Notification No. PY. 603(2)-VI(2), dated the 15th November, 1947. By these Notifications the Central Government directed that no order made or deemed to be made under the Act by a Provincial Government should have effect so as to prohibit or restrict the movement of edible oils and oilseeds and pulses other than gram or to regulate or control the price, production or distribution of those commodities in any way. As a result of the joint operation of these Notifications the 1945 Order ceased to have effect so as to prohibit or restrict the movement of edible oils and oilseeds and pulses other than gram or to regulate or control the price, production or distribution of those commodities. As that Order of 1945 ceased to have effect with regard to the price, production, distribution and movement of those commodities, it is not easy to comprehend how that Order could continue to regulate or control trade or commerce in those commodities. Trade or commerce in any commodity cannot be controlled unless the price, production, distribution and movement of that commodity can also be controlled.

848

It follows, therefore, contrary to the contentions of the State, that these two Notifications of 1947 quite effectively superseded the 1945 Order so far as it purported to regulate or control the price, production, distribution and movement of or trade and commerce in edible oils and oilseeds and pulses other than gram.

The second branch of the argument is equally fallacious. It is wholly incorrect to say that the judgment pronounced by this Court on the 15th May, 1952, declared the Uttar Pradesh Foodgrains (Futures and Options Prohibition) Order, 1951, ultra vires and invalid in its entirety. That judgment only declared it invalid to the extent of the restrictions complained of by the then petitioners, namely, in so far as it purported to restrict dealings in edible oils and oilseeds and pulses other than gram. The rest of that Order of 1951 and in particular section 9 by which the 1945 Order had been withdrawn remained unaffected by that judgment of this Court. It is quite difficult to appreciate how, in the circumstances, the Order of 1945 can be regarded as having been revived by the judgment in respect of edible oils and oilseeds and pulses other than gram in spite of the express withdrawal of that Order by section 9 of the Order of 1951 which otherwise remains operative.

In our judgment there is no substance whatever in either of the two branches of argument advanced before us and this application must succeed. Accordingly we grant prayers (a), (b), (c) and (d) of the petition.

Before concluding we desire to express our strong disapproval of the wholly unwarranted attitude adopted by the officers of the State of Uttar Pradesh. Assuming there was any substance in their contentions, the same should have been advanced before this Court on the previous occasion, for the contentions, if wellfounded, would have been a complete answer to that application. If the contentions were subsequently discovered, then the same should have been brought before the Court by way of review, if any review lay.

849

Instead of adopting that straightforward course the officers of the State have sought to circumvent the decision of this Court on a flimsy pretext and covertly, to challenge its correctness on an obviously untenable plea which has not even the merit of -a seeming plausibility. This conduct verges dangerously on a contempt of this Court. We desire to make it quite clear that we view with great disfavour such unworthy attempt to get round the decision of this Court.

JUDIS