

CASE NO.:
Appeal (civil) 4103 of 2006

PETITIONER:
Jaipur Aloo Aaratiya Sangh and Ors.

RESPONDENT:
State of Rajasthan and Ors.

DATE OF JUDGMENT: 13/09/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No.14024-14026 of 2005]
WITH

CIVIL APPEAL NO. 4104 OF 2006
[Arising out of SLP (Civil) No.14168-14170 of 2005]

S.B. SINHA, J:

Leave granted.

The High Court of Rajasthan initiated a suo motu proceeding which was in the nature of a public interest litigation.

In the said proceeding it directed the State of Rajasthan and various authorities including Jaipur Municipal Corporation, Jaipur Development Authority, Rajasthan Housing Board to explain as to why:

"(a) filth and squalor is not being removed,
(b) trucks are being allowed to be parked on road sides,
(c) cattle and animals are allowed to roam freely on city roads,
(d) city roads are dug at several places and this state of affairs is continuing for a long period of time, and
(e) hoardings are being permitted which are hazard to the traffic."

Maladies infesting in certain areas of the Jaipur City, amongst others being, digging, cleaning of the city, shopkeepers, stray cattle, vehicles, hoarding, minding electricity, water, hospitals, etc. were brought to the notice of the High Court.

Several orders were passed by it from time to time in respect of traffic congestion in the city. In its order dated 14.8.2003, the High Court directed:

"One finds heavy vehicles parked on both sides of the roads. No truck or heavy vehicle, shall be allowed to be parked on the city roads. The Transport Department and the Police Department shall remove the trucks and the heavy vehicles,

which are parked on the roads.

The Trucks shall not be allowed to enter or ply in the city of Jaipur from 6 am to 10.30 pm. The trucks shall be permitted inside the city for loading and unloading of the goods only from 10.30 pm to 6 am. However, it will be open to the transporters to book the orders during the day-time but the entry of the heavy vehicles shall be regulated only in accordance with the aforesaid directions."

A complete ban was issued in regard to the entry of trucks in the town of Jaipur from 6 a.m. to 10.30 p.m. The same affected carriage of vegetables and fruits to the town of Jaipur. In relation to the said order Appellants herein intended to intervene. An application in that behalf was filed by them in the matter. A monitoring committee was formed by the High Court presumably to oversee implementation of its orders. Appellants also filed an application before the Monitoring Committee, details whereof are not necessary to be noticed by us herein. The Monitoring Committee which was appointed by the High Court submitted a report on 2.1.2004 drawing the attention of the High Court to various difficulties faced in the matter of traffic management in the city stating:

"However, we feel it essential to recommend that the Hon'ble Rajasthan High Court may kindly pass appropriate orders for (i) shifting the Phal-Sabzi Mandi from Lal Kothi to Village Sukia-Muhana (near Sanganer) at the earliest and, if possible within 2 (two months) and (ii) completion of the outer ring road (outside the entire Jaipur City) joining 200 ft. Express Highway/ Bye-pass (which connects Ajmer Road to Delhi Road within 2(two) years by starting the work thereof very soon or at the most within 2 (two months)."

The High Court directed the State Government to furnish various informations specified by it by way of an affidavit.

The State of Rajasthan, the Monitoring Committee and Appellants Associations agreed in principle that the trucks can be allowed to exit from Lal Kothi Sabzi Mandi to Gopalpura Bye-pass between 11.00 a.m. to 12.30 p.m. subject to the condition that they would not ply on any route other than the specified ones and the trucks would carry the exist passes issued by the competent authorities of Mandi Samiti.

A notice was issued to Shri Radhey Shyam Pathak, President, Jaipur Phal Sabzi and Aaloo Aadtiya Maha Sangh as to why proceedings for contempt of court shall not be initiated against him. On 27.8.2004, he was present in the court. He tendered apology. The High Court accepted the apology tendered by the alleged contemnor and discharged the rule. While doing so, it was directed:

"We have been told that the State Government has invested lot of money for establishing a Mandi at Mohana. It appears that there are certain difficulties which need to be ironed out. The State Government shall take effective steps for ironing out the difficulties and making it feasible for the Mandi to be shifted to Mohana within a period of eight months."

Appellants are, thus, before us.

The matter was heard by this Court at some length on 11.08.2006. The following order was passed:

"We have heard the learned counsel for the parties at some length. The core issue appears to be the shifting of wholesale fruit and vegetable market from the existing market yard situated at Lal Kothi to Village Mohana. From the records, it does not appear that the Rajasthan Agriculture Produce Market Board has issued any notification in terms of Section 3 or any other provisions of the Rajasthan Agriculture Produce Market Act, 1961. It is accepted that the wholesale dealers may be asked to shift their business to a new market yard which is declared as such. Mr. Aruneshwar Gupta, Addl. Advocate General stated that keeping in view the issue raised by the petitioner, an affidavit shall be filed before us within two weeks, annexing therewith all the requisite notifications. Let such affidavit be filed stating other relevant facts, apart from those stated in I.A. 14 of 2006. Reply to the said affidavit, if any, be filed within one week thereafter."

Mr. Aruneshwar Gupta, learned Additional Advocate General for the State of Rajasthan at the outset pointed out that the notifications had been issued by the State under various provisions of the Rajasthan Agricultural Produce Markets Act, 1961. A notification under Section 5(2) of the said Act was also issued on 6th September, 1983. Our attention was further drawn to a notification which the Government of Rajasthan proposes to issue, relevant portion whereof reads as under:

"The Government of Rajasthan established the Agriculture Produce Market Committee (Fruit & Vegetable), Jaipur vide Notification No. F.10 (68) Agri-5/ 65 Dated: 6 July, 1966 which was published in Rajasthan Gazette Dated: 14 July, 1966. Now, since the Agriculture Produce Market Committee (Fruit & Vegetable), Jaipur has established New Market Complex Sukhiyan, Muhana Road (Terminal Market) as the Principal Market Yard, therefore, as per the provisions under sub-section (2) of Section 5 of the Rajasthan Agriculture Produce Marketing Act, 1961, State Government while denotifying the earlier declared Lal Kothi Principal Market Yard, hereby declares the New Market Complex Sukhiyan, Muhana Road (Terminal Market) as the Principal Market Yard for the business of Fruit and Vegetable, in place of Lal Kothi Principal Market Yard, which shall be bounded as under\005

Again, in exercise of powers conferred under Sub-section (3) of Section 4 of the aforesaid Act, the Government of Rajasthan hereby notifies that from the boundaries of the said Principal Market Yard up to the present boundaries of Jaipur Municipal Corporation, any local officer, even if he is competent/ authorized under any law or any other person, from the date of publication of this Notification or thereafter, shall not grant permission either for establishment/ to continue any place for the sale- purchase of any of the agricultural produce notified for the said Mandi Area.

The Government of Rajasthan further declares that under Sub-section (3) of Section 4 of the above mentioned area from the boundaries of the said Principal Market yard to the boundaries of Jaipur Municipal Corporation shall be (Market Property) Principal Market Area, as has been defined in Part \026 10 of Sub-section (1) of Section \026 2 of the Rajasthan Agriculture Produce Marketing Act, 1961."

The learned counsel submitted that in view of the fact that the State is required to comply with the statutory provisions of the Act, it should be permitted to issue the proposed notification.

Dr. Rajeev Dhawan, Dr. A.M. Singhvi, learned senior counsel and Mr. A. Mariaputham, learned counsel appearing on behalf of Appellants, however, would urge that the proposed notification does not fulfill the statutory requirements laid down under the said Act. The learned counsel argued that for issuance of such a notification due application of mind on the part of the authorities of the State was imperative and not on the premise that the High Court had passed an order in that behalf. It was pointed out that the proposed market-yard at Mohana was to be an additional principal market-yard, i.e., an additional market yard to the principal market-yard existing at Lal Kothi and not a substitute thereof.

Although we have been taken through the various provisions of the said Act and the notifications issued thereunder, we are of the view that this Court should not express its opinion thereupon one way or the other at this stage.

The public interest involved in the matter pending before the High Court is apparent. The High Court intended to deal with some of the maladies which are existing in the town of Jaipur.

Although the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India was entitled to pass appropriate orders in the said proceedings in public interest but where the requirements of law are to be complied with, the court ordinarily should not dispense therewith. The Act is a regulatory one. While regulating the trade in agricultural produces, the State can issue notification as a result whereof the trade by the dealers in vegetables or fruits may have to be carried within the premises notified therefor. The Act contemplates steps to be taken at various stages. When such a step is taken indisputably the validity of the action of the State will have to be judged keeping in view the nature of restraint and other relevant factors including the public interest involved.

In Jan Mohammad Noor Mohammad Begban v. State of Gujarat and Another [1966] 1 SCR 505, this Court opined:

"\005Reasonable restrictions on the right of a citizen to carry on trade \027 retail as well as wholesale \027 may be placed by legislation. The test of the validity of the restrictions lies in the nature of the restrictions and not in the nature of trade. If regulation of trade in agricultural produce by the declaration of market area and imposition of restrictions may be regarded as reasonable when operating on the wholesale trade, it would be difficult to hold that the identical restrictions when operating on retail trade may be deemed unreasonable. We do not think that the observations made by this Court in Mohammad Hussain case justify the argument urged by the petitioner. Challenge to the validity of Sections 5

and 6 must therefore fail."

Having regard to the fact that the State was required to take certain steps under the Act, we are of the opinion that it should be permitted to carry out its statutory functions.

We, therefore, permit the State to issue appropriate notification (s) as is/ are necessary for enforcement of its policy/ scheme in accordance with law.

We are not oblivious of the fact that the State at one point of time intended to declare the specified area at village Mohana as a terminal point. The State has sought to explain the same stating:

"It is respectfully submitted that Terminal Market is only the name of the main Mandi Yard, Mohana. The Scheme is divided in three phases, involving total area of 223 hectares. In first phase mandi yard has been developed in total area of 78 hectares as against only 2.78 hectares at Lal Kothi. Out of 78 hectares 63 hectares have been dedicated to the shops and traders and 15 hectares have been utilized for common facilities i.e. office etc. It is respectfully submitted that the Mandi Yard at Mohana is situated at 17 Kms. from the zero mile, Jaipur. It is respectfully submitted that an amount of Rs. 25 crores has been spent on the development of infrastructural facilities at Mandi Yard Mohana and Rs. 15 crores has been spent for acquisition of land for the establishment of Mandi Yard at Mohana, Jaipur. The facilities of street light, electricity, lighting, block connection, internal roads, auction complexes, boundaries, farmers facilitation center, post office building, two bank buildings, Sulabh complex, labour sheds, development of truck stand, drinking water facility, sewage system, drinking water system, internal road (II phase), park fountain and plantation, signboard at National Highway etc. have been developed\005"

Our attention was further drawn to the fact that the members of Appellants Associations also agreed to shift their business to the shops allotted by the Market Committee in Block D.

We need not go into the said question at this stage.

We, as at present advised, permit the State of Rajasthan to issue notifications leaving the question of the validity thereof, if raised by Appellants or others, by the appropriate Bench of the High Court.

We would, however, like to make an unusual request. The State appears to have spent crores of rupees in developing the specified place at the proposed site of the market-yard/ terminal point at village Mohana. Whether it was meant to be a terminal point or principal market-yard is one question but another is as to how soon the shops constructed therein and other utilities provided for, should be put to use.

While giving opportunity to the State to take requisite steps for implementation of the provisions of the said Act, in the event, the legality or validity of the said notifications is challenged before the High Court, the same may be disposed of by the High Court as quickly as possible. This order shall, however, not mean that the High Court in the existing public interest litigations would not be entitled to pass appropriate order (s) in

regard to vehicular traffic and/ or other questions pending before it.

The appeals are allowed to the extent mentioned hereinbefore. In the facts and circumstances of this case, there shall, however, be no order as to costs.

JUDIS