

PETITIONER:
STATE OF UTTAR PRADESH & ANR.

Vs.

RESPONDENT:
M/S.GULSHAN SUGAR & CHEMICALS LTD.

DATE OF JUDGMENT 05/05/1995

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1996 AIR 62 1995 SCC (4) 529
JT 1995 (7) 382 1995 SCALE (3) 600

ACT:

HEADNOTE:

JUDGMENT:
THE 5TH DAY OF MAY, 1995

Present :
Hon'ble Mr. Justice Kuldip Singh
Hon'ble Mr. Justice B.L. Hansaria
Mr. R.C. Verma, Adv. for Mr. R.B. Misra, Adv. for the Appellant.

J U D G M E N T

The following Judgment of the Court was delivered:
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5330 OF 1995
(Arising out of SLP(C) No. 12786 of 1987)
State of Uttar Pradesh ...Appellant
& Anr.

Versus

M/S. Gulshan Sugar & Chemicals Ltd. ...Respondents

J U D G M E N T

HANSARIA. J.

The respondent, M/s. Gulshan Sugar & Chemicals Limited, is a company carrying on the business of manufacturing of chemicals. For undertaking the manufacturing work, it has to consume coal, which is an essential commodity and attracts the provisions of the Uttar Pradesh Coal Control Order, 1977 (the 'Control Order'), which has been issued under Section 3 of the Essential Commodities Act, 1955. The Government of Uttar Pradesh vide its Memo dated 6.6.1985 required the District Magistrate, Bulandshahar, to see if any industrial unit was selling unused coal or coal dust improperly; and if so, to take action, inter alia, under clause 15 of the Control Order. By Memo of 19.9.1985 all District Magistrates of the State were required to take action against the industrial units if they sell or transfer unused coal/coal dust without obtaining licence under the provisions of the Control Order.

2. The respondent challenged the validity of these two Government Orders by filing a petition under Article 226 of

the Constitution before the Allahabad High Court. A Division Bench of the High Court by its judgment, which has been impugned in this appeal, held that the aforesaid Orders could not have been issued and it was further held that the respondent was not required to obtain licence for the transfer of the surplus or rejected coal or coal dust. The legality of the judgment has been assailed by the State of Uttar Pradesh in this appeal.

3. There is no dispute on facts. The same are that the respondent consumes coal for running its factory. Sometimes quality of coal supplied is not of the kind required by the respondent. The same is therefore, rejected. Further, a huge quantity of coal dust is collected during the storage, loading and unloading of coal. Coal dust is also produced when coal is broken into pieces of required sizes. The rejected coal and the coal dust being of no use to respondents it disposes of the same without obtaining any licence under the Control Order.

4. On the aforesaid facts the question for determination is whether licence as mentioned in the aforesaid G.Os. is necessary. The High Court has answered this question in negative for two reasons. First, the respondent cannot be said to be "dealer" as defined in clause 2(d) of the Control Order; secondly, the case of the respondent is squarely covered by clause 3(B) of the Control Order. The High Court did not accept the contention of the State that because of what has been provided in clause 3(A) the respondent is required to obtain licence in question.

5. The learned counsel for the parties have reiterated the stand which had been taken by the contestants before the High Court.

6. We may first note the relevant provisions of the Control Order, which are as below:

2. Definitions: In this Order unless there is anything repugnant in the subject or context-

xxx xxx xxx
xxx xxx xxx

(c) "Coal" means coal, coke and other derivatives and includes slack coal, steam coal, soft coke, hard coke or dust coal of various grades but does not include cinder and ashes and products and by products of coal;

(d) "Dealer" means a person carrying on as a principal or agent, whether separately or in conjunction with some other business, the business of import, purchase or storage for sale and sale of coal, in wholesale and granted a licence in Form 'B' and commonly known and herein referred to as 'Coal Agent' or in retail and granted a licence in Form 'C' and commonly called and referred to herein as 'Coal Depot Holder', but does not include a consumer who imports, purchases or stores coal for his own use."

3A. "Nothing in this Order shall apply to-

(a) movement of coal under the authority of the Coal Commissioner, Government of India or any other officer acting on his behalf;

(b) coal moved on Railway account;

(c) movement of coal under and in accordance with a Military Credit Note on Defence Account;

(d) movement of coal meant for the use of any Central Government Department or Corporation or under Central Government quota or under sponsoring by any authority not under the administrative control of the State Government;

Provided that such coal is consumed entirely by the Industry, Railway, Central Government Department or Corporation or any other person for whom it is moved; as the case may be, for its own use;

Provided further that except in so far as transfer or sale of coal to any other consumer of the same category, affected with the permission of the sponsoring authority or competent departmental authority, is concerned, if any of the above consumers wishes to sell any part of the coal, surplus to his requirement, to other users thereof in Uttar Pradesh he shall do so only after obtaining the permission from the District Magistrate of the District where coal is stored and if the users or any user, to whom this coal is proposed to be sold, is working in another district the District Magistrate of that district and further shall intimate full particulars of such sale to the or both the District Magistrates concerned immediately after, such sale.

(B) The provisions of clauses 4 to 10, 14 and 16 hereof, shall not apply to steam coal and hard coke for industrial consumption.

(Emphasis supplied)

7. The High Court held the respondent not to be dealer for two reasons: (i) it does not carry on the business of sale or storage for sale; and (ii) it being a consumer of coal, it would not be a dealer because of what has been mentioned in the last part of the definition of dealer. The contention of the appellant before the High court that carrying on business of sale etc. is not necessary to be regarded as a dealer because of the expression "in conjunction with" finding place in the definition, was rejected by the High Court. According to us, this expression as placed in the definition clause cannot mean that to become dealer one need not carry on business, because mention has been made about "in conjunction with" to make it clear that carrying on of business may be either separately or along with some other business; but business it has to be.

8. The High Court, in taking the view it did, has referred to the decision of this Court in *Manipur Administration v. Nila Chandra*, AIR 1964 SC 1533, in which, while interpreting the meaning of the word business as finding place in Manipur Foodgrains Dealer Licencing Order, it was held that mere selling of articles or storing of the same would not make it a business, as this concept postulates continuity of transaction. It was stated that a casual solitary transaction would not make a person a dealer. There being nothing on record to show if there was continuity in

transactions of sale of coal dust or rejected coal by the respondent, we agree with the High Court that the respondent was not in the business of sale or storage for sale of coal. What has been stated in the concluding part of the definition of "dealer" also lends assurance to the view taken by the High Court.

9. Having been satisfied that there is nothing on record to show if the respondent was in the business of sale or storage for sale of coal, it is not necessary to express our views on the second reason of the High Court in accepting the case of the respondent. We dismiss the appeal on the limited ground that the respondent could not be proved to be in the aforesaid business. We leave open the legal question covered by the second reason.

10. In the facts and circumstances of the case, we make no order as to costs.