

CASE NO.:
Appeal (civil) 6880-6883 of 2003

PETITIONER:
Union of India & Others

RESPONDENT:
Indian Jute Mills Associations & Others

DATE OF JUDGMENT: 05/05/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPAL NO.7894 OF 2004

BHAN, J.

This order shall dispose of C.A. No.6880-83 of 2003 arising from the Division Bench Judgment of the High Court of Calcutta dated 27.06.2003 in G.A. No.3567 of 2002, A.P.O.T. No.664 of 2002, A.P.O.T. No. 705 of 2002, G.A. No.3758 of 2002, W.P. No.1059 of 2002, G.A. No.3568 of 2002, A.P.O.T. No.665 of 2002, W.P. No.1059 of 2002, A.P.O.T. No.707 of 2002, G.A. No.3761 of 2002, W.P. No.1207 of 2002 and Civil Appeal No.7894 of 2004 arising from another Division Bench Judgment of the same High Court dated 6.7.2004 in G.A. No.2229 of 2004, A.P.O.T. No.314 of 2004 and W.P. No.870 of 2004.

Before advertng to the facts, it may be stated that the orders passed by the High Court have worked out with the lapse of time. We shall take up the two sets of appeals separately.

CIVIL APPEAL NO. 6880-6883 OF 2003

The Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (hereinafter referred to as "the Act") was enacted by the Parliament to provide for compulsory use of jute packaging material in supplying and distribution of certain commodities in the interests of production of raw jute and jute packing material and of persons engaged in the production thereof and for matters connected therewith.

Section 3 (1) of the said Act empowers the Central Government, notwithstanding anything contained in any other law for the time being in force and being satisfied, after considering the recommendations made to it by

the Standing Advisory Committee, that it is necessary so to do in the interests of production of raw jute packaging material and of persons engaged in the production thereof, direct from time to time, by order published in the official Gazette that such commodity or class of commodities or such percentage thereof, shall be packed for the purposes of its supply or distribution in such jute packaging material as may be specified in the order.

Under Section 4(1) of the Act it is incumbent upon the Central Government to constitute a Standing Advisory Committee with a view to determining the commodity or class of commodities or percentages thereof in respect of which jute packing material shall be used in their packaging. Under sub-Section (2) of Section 4 the Standing Advisory Committee is required to indicate its recommendation to the Central Government after considering the matters as indicated in sub-clause (a) to (g) including the protection of interest of persons engaged in the jute industry and in the production of raw jute.

It is not in dispute that such Standing Advisory Committee was formed and thereafter from time to time on recommendations of the said Standing Advisory Committee the Central Government passed orders for packaging specified commodities to the extent indicated in such notification.

Constitutional validity of this Act was upheld by this Court in the case of Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India and Others reported in (1996) 10 SCC 104. It was held that the enactment of the Act was necessary for agro-based economy of India and the agricultural crops cultivated in India. That the Act was enacted to provide economic security and justice to producers of raw jute and the workers engaged in the manufacturing of jute packaging material and the Central Government had taken a balanced view in directing the use of jute packaging material for compulsory package of certain specified commodities or percentage thereof which was subject to Parliamentary control. One of the challenges put to the constitutional validity of the Act was that the constitution of the Standing Advisory Committee under Section 4 (1), consisting of only the Secretaries representing various departments without associating the jute industry was arbitrary, unjust and therefore bad in law. This contention was rejected. However, while doing so, this Court observed that it would be desirable that the industry or industries representing through recognised office-bearers may be nominated or given notice before the Advisory Committee meets to place their views and material in support

thereof to evaluate the need for regulation and extent of regulation thereof. Para 51 of this judgment reads:-

"Yet another contention that requires consideration is that in the Committee constituted under Section 4(1) only Secretaries representing various departments alone are represented and no one represents the petitioners in the Committee and that, therefore, the Act is void. This contention also cannot be accepted as a sound principle of law. However, as seen from the record, the Committee consists of the Secretaries representing various departments. It would be desirable that the industry or industries through recognised office-bearers of the associations may be nominated or given notice before the Advisory Committee meets to place their views and material in support thereof to evaluate the need for regulation and extent of regulation thereof. The persons representing the particular industry would assist the Committee to properly advise the Government before issuing directions/orders under Section 3. The provisions of the Act contain guidelines as is self-evident. Socio-economic justice is the public policy. It is subject to parliamentary control. They bear reasonable nexus to the object sought to be achieved by the Act."

By an order dated 01.03.2002 the Central Government issued an order reducing the extent of protection in respect of sugar from 100% to 90%. Subsequently, the Standing Advisory Committee in its meeting held on 12.04.2002 after hearing the Indian Jute Mills Association and others made the recommendations for formation of inter-Ministerial Committee consisting of Ministers of Textiles, Agriculture and Consumer Affairs, Food and Public Distribution for the purpose of formulating a road map for the progressive dilution of compulsory packaging norms for food grains and sugar under the Act to facilitate its repeal.

Writ petitions were filed against the aforesaid order. The Court passed an interim order on 25.04.2002 directing the Union of India not to proceed in respect of such recommendations made by the Standing Advisory Committee. By an order dated 15.05.2002, although the interim order was extended, the Union of India was given liberty to hold

meeting and take decision, but not to give effect to the same without the leave of the Court.

Pursuant to the liberty given, the Central Government ultimately took the decision on the recommendation of the inter-Ministerial Committee to dilute the recommendations in respect of sugar by 25% and food grains by 20% for the year July, 2002 to June, 2003 and by 50% and 40% for the year July, 2003 to June, 2004. Second writ petition was filed challenging the aforesaid order of the Central Government. Both the sets of writ petitions were taken up together. The writ petitions came up for hearing before a Single Judge who dismissed the same primarily on the ground that the decision taken by the Central Government was a policy decision and therefore beyond the judicial review. Aggrieved against the aforesaid order of the Single Judge the Indian Jute Mills Association and another filed the appeals which have been disposed of by the impugned order along with other connected cases.

The Division Bench formulated the following four questions arising in the appeals for its determination:-

"1. Whether the Standing Advisory Committee which is a creature of the said Act and is statutorily obliged to act within the frame work of the said Act can make recommendations contrary to the object and purpose of the Act;

2. Whether the impugned recommendations made by the Standing Advisory Committee for creation of a road map for gradual dilution of the protection under the Act for ultimate repeal of the Act and for formation of an inter-Ministerial committee for the aforesaid purpose are dehors the provision of the Act and without jurisdiction;

3. Whether the impugned recommendations made by the Advisory Committee and the ultimate order passed by the Central Government as per the recommendation of the inter-Ministerial Committee is in consonance with object and purpose of the Act or ultra vires the same;

4. Whether in absence of specific recommendation by the Standing Advisory Committee the Central

Government has power to make the impugned order as to the extent of protection for future year for which no recommendation was made by the Standing Advisory Committee."

Aggrieved against the judgment of the Division Bench the Union of India has filed these appeals. As the duration of the notification was for a period of one year which has already lapsed the order of the High Court has worked itself out. The Division Bench in the course of its judgment observed:-

"The legislative policy as contained in the Act is clear and unambiguous namely, protection of jute industry and the interest of million of farmers and workers connected therewith and the jute industry itself. The Central Government therefore cannot act contrary to such legislative policy and resort to progressive dilution of the protection of jute packaging materials for the purpose of ultimate repeal of the Act."

Shri A. Sharan, learned Additional Solicitor General of India does not press the appeals on any point other than the setting aside of the above quoted observations of the High Court. It is contended by him that the observations made by the Division Bench quoted above are obiter in nature as the same did not arise either from the pleadings of the parties or the contentions raised before the Division Bench. The challenge in the writ petition was regarding the extent of power or jurisdiction of the Advisory Committee to make its recommendation to the Central Government. There was no challenge to the power of the Central Government regarding the progressive dilution of the protection of the jute packaging material for the purpose of ultimate repeal of the Act.

Shri R.F. Nariman, learned senior counsel appearing for the respondent submitted that since the Central Government had acted in its capacity as a creature under the Act, the High Court was justified in holding that the Central Government could not act contrary to the legislative policy spelt out by the legislature in the Jute Packaging Materials (Compulsory Use in Packing commodities) Act, 1987. Shri Nariman, with reference to the objects and reasons for the enactment of the aforesaid Act contended that the purpose of the Act was to provide for the compulsory use

of jute packaging material in the supply and distribution of certain commodities in the interests of production of raw jute and jute packing material and of persons engaged in the production thereof, and for matters connected therewith and not for the ultimate repeal of the Act.

After considering the respective submissions put forth by the learned senior counsels on behalf of the parties we are of the opinion that the contention raised by the learned Additional Solicitor General deserves to be accepted. On perusal of the writ petition, the prayers made therein, the contentions raised by the respective counsels for the parties before the Division Bench and the points formulated by the Division Bench for its consideration we are of the opinion that the question regarding power of the Central Government to pass any order regarding the progressive dilution or protection of the jute packaging material for its ultimate repeal was not under challenge. This point did not arise from the pleadings of the parties. The observations made are without there being any foundation of facts laid in the pleadings and the points formulated by the Division Bench for its consideration. We are not even sure as to whether the learned counsels appearing for the parties before the High Court had addressed arguments on this point. We do not agree with the submissions made by Shri Nariman that the Central Government was acting in its capacity as a creature under the Act. The Standing Advisory Committee is constituted under the Act and not the Central Government. The observations made by the High Court being contrary to the pleadings and obiter in nature are set aside. The same would not be either binding or taken as a precedent for any future reference.

The appeals filed by the Union of India are dismissed except to the extent indicated above.

CIVIL APPEAL NO.7894 OF 2004

In this appeal, the challenge before the High Court was to the notification dated 16.4.2004 issued by the Central Government under The Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 for the period ending 30.06.2004. In spite of the interim stay granted by the High Court another notification was issued on 01.07.2004 for a period of one month. Both these notifications have been quashed by the judgment under appeal.

One of the grounds for challenge to the notifications was that the Central Government

had issued the notifications on the recommendations made by the Standing Advisory Committee, constituted under Section 4(1) of the Act without associating or hearing the workers engaged in the jute industry and the agricultural producers of the jute for whose benefit the Act had been enacted.

The writ petition was dismissed by the Single Judge on 19.05.2004 holding that there was no provision in the Act either to associate the workers engaged in the industry and the agricultural producers of the jute or for giving of hearing to them by the Standing Advisory Committee before making its recommendations to the Central Government.

Aggrieved against the order passed by the Single Judge, appeals were filed before the Division Bench. One of the grounds taken in the appeal was that the representatives of the growers and the workers engaged in the production of raw jute and jute packaging material ought to have been heard by the Standing Advisory Committee before making its recommendation to the Central Government for the purpose of Section 3(1) of the Act. That in their absence no meaningful recommendation which would serve the purpose of the Act could be made. The High Court relying upon the observations made by this Court in para 51 [reproduced in the earlier part of this order] in *Dalmia Cement (Bharat) Ltd. (supra)* held that though there was no specific provision for associating or giving a hearing to the representatives of the growers and the workers engaged in the production of raw jute and jute packaging material it would be proper for the Standing Advisory Committee to give them hearing to make a meaningful recommendation to the Central Government for the purpose of Section 3(1) of the Act, subject however to such modification as may be advised by the Parliament. The appeal was accepted, order of Single Judge was set aside, notifications dated 16.4.2004 and 01.07.2004 were quashed and a direction was issued to the Central Government to maintain the status quo with regard to the use of jute packaging material as was existing prior to the issuance of the notification dated 16.4.2004 till a fresh recommendation was made by the Standing Advisory Committee. Following directions were given to the Standing Advisory Committee:-

"The Standing Advisory Committee shall fix a fresh date of hearing and give notice to the appellants herein and such other persons as it may consider necessary and after considering the submissions made on their behalf, proceed to make fresh recommendations to the Central Government keeping in mind the provisions of Section 4(2) and

in particular clause (d) thereof and the Central Government shall, thereafter, proceed to act in accordance with Section 3 of the Act."

The total duration of the two notifications was three and a half months which has lapsed due to efflux of time. The order of the High Court to that extent has already worked out. Mr. A. Sharan, learned Additional Solicitor General of India contends that although the duration of the notification has already lapsed and the order of the High Court has already worked out but the directions issued by the High Court that the Standing Advisory Committee is required to give notice or afford a hearing to the representatives of the growers and the workers engaged in the production of raw jute and jute packaging material, being of far reaching consequences which would be operative for all times to come, being contrary to the provisions of the Act and the observations made by this Court in Dalmia Cement (Bharat) Ltd. (supra) deserve to be set aside.

As against this the learned senior counsel for the respondents contended that to carry out the objects and purposes for which the Act was enacted, it was incumbent upon the Standing Advisory Committee to associate and hear the representatives of the growers and the workers engaged in the production of raw jute and jute packaging material for whose benefit the Act was enacted, before it could make any meaningful recommendation to the Central Government.

Subject matter of the appeal in this Court today is not regarding the validity of the notifications dated 16.4.2004 and 01.07.2004 the duration of which has already lapsed due to efflux of time. The question of law which is being raised is as to whether the High Court contrary to the provisions of the Act and the observations made by this Court in Dalmia Cement (Bharat) Ltd. (supra) could direct the Standing Advisory Committee to afford a hearing to the representatives of the growers and the workers engaged in the production of raw jute and jute packaging material. The challenge to the constitution of Standing Advisory Committee consisting of only the Secretaries representing various departments without associating the jute industry or its representative being void was rejected by this Court in Dalmia Cement (Bharat) Ltd. (supra). The Court did not accept the plea of the appellant that the representatives of the jute industries should either be nominated to the Standing Advisory Committee or that they should be heard by the Standing Advisory Committee before making its

recommendations to the Central Government for the purpose of Section 3(1) of the Act. While rejecting the contention this Court further did observe that, "It would be desirable that the industry or industries through recognised office-bearers of the associations may be nominated or given notice before the Advisory Committee meets to place their views and material in support thereof to evaluate the need for regulation and extent of regulation thereof. The persons representing the particular industry would assist the Committee to properly advise the Government before issuing directions/orders under Section 3."

It would be seen that this Court was careful not to give a positive direction to the Central Government either to nominate a representative of the industry on the Advisory Board or of affording an opportunity by the Standing Advisory Committee to hear them before making its recommendation to the Central Government. The only desire expressed by the Court was that the Standing Advisory Committee should give a notice to the jute industry to enable it to place its point of view before the Advisory Committee for its evaluation before making the recommendations to the Central Government. It is not disputed before us that the observations made by the Court are being carried out meticulously. There is no provision in the Act requiring the Standing Advisory Committee to afford a hearing to any person associated with either the production of the raw jute or engaged in the production of the jute packaging material before making its recommendations to the Central Government. The directions issued by the Division Bench run counter to the provisions of the Act as well as the observations made by this Court in *Dalmia Cement (Bharat) Ltd. (supra)*. The same deserves to be set aside and are hereby set aside.

For the reasons stated above, Civil Appeal Nos. 6880-6883 of 2003 and Civil Appeal No. 7894 of 2004 are allowed to the extent indicated above. Regarding the other points as the duration of the notification is already over and the order of the High Court has worked itself out, the appeals are dismissed as infructuous. There shall be no order as to costs.