

HIGH COURT OF GUJARAT (D.B.)

**MAHALAXMI PNEUMATIC ROLLER FLOUR MILLS (R) LIMITED BHAVNAGAR
V/S
STATE OF GUJARAT**

Date of Decision: 20 July 1976

Citation: 1976 LawSuit(Guj) 59

Hon'ble Judges: [S Obul Reddi](#), [P D Desai](#)

Eq. Citations: 1977 GLR 796

Case Type: Special Civil Application

Case No: 483 of 1975

Head Note:

Essential Commodities Act(X of 1955) - S.3.wheat roller flour mills (lisencing & control) O.1957 -cl.10(c) - Power given fordisposal of goods -such power includes fixation of sale price - power implicit in clause 10(c) word disposal explained. Essential Commodities Act(X of 1955) - S.3 - Directions under statutory order not necessary to be published in the official gazette - fixation of sale price not open to challenge.

Sub-clause (c) of Clause (10) of the Wheat Roller Flour Mills (Licensing and Control) Order 1957 specifically empowers the licensing authority to issue directions to licensees in regard to the disposal of wheat products. The word disposal is a word of wide amplitude. It means inter alia alienation or transfer by way of sale. The concept of sale necessarily includes sale at a price and therefore unless price is fixed no sale could be ordered by the licensing authority. The subject matter of Clause 10 covers the entire field ranging from the purchase of raw materials required for manufacturing wheat products to the final disposal of such products. Having regard to the terminology used in clause 10 its wide ambit

the provisions under which the order has been enacted and the object for which it has been brought into force it is clear that even if price fixation has not been specifically enumerated as one of the matters in respect of which the licensing authority can exercise its power the power of price fixation is necessarily conferred upon such authority as a concomitant to the exercise of its power to regulate manufacture and disposal of wheat products. Therefore the power to fix prices of the wheat products which are ordered to be disposed of under sub-clause (c) of Clause 10 of the Order is inherent and implicit in the power conferred upon the licensing authority thereunder. (Para 8) Essential Commodities Act (X of 1955) - Sec. 3 - Direction under statutory order not necessary to be published in Official Gazette - Fixation of sale price not open to challenge. When sub-sec. (5) of sec. 3 of the Essential Commodities Act 1955 speaks of an order made under this section that is meant is a statutory order issued under the said section. Therefore it is only when a statutory order of a general nature or affecting a class of persons is made under sub-sec. (1) or (2) of sec. 3 that it would be required to be notified in the Official Gazette under sub-sec. (5) of sec. 3. The argument that clause (cc) of sec. 2 defines an order to include a direction issued thereunder and that therefore every direction issued under an order must necessarily be notified in the Official Gazette if it is of a general nature or affecting a class of persons is misconceived. It must be remembered that the definition section has to be read subject to the context The context here makes it very clear that a direction issued under a statutory order is not required to be notified in the Official Gazette even if it is of a general nature or affecting a class of persons (Para 11) Having regard to the various considerations which have weighed with the licensing authority in fixing the ex-mill prices the impugned price fixation is not open to challenge on any permissible grounds. All the relevant factors have been borne in mind by the licensing authority. This Court is not a Court of appeal and it cannot sit in judgment over matters of price fixation in essential commodities like wheat products. The object of price control is to hold the price line and to make essential commodities available to the public at a large reasonable prices. Controlled prices have to be fixed in the interest of the community as a whole for just distribution of basic necessities and not for the benefit of the commercial community only. On an over-all consideration of all the factors. it could not be said that the impugned price fixation is either arbitrary or unreasonable or that it has been arrived at by ignoring the relevant factors. (Para 14)

Acts Referred:

Essential Commodities Act, 1955 Sec 3

Final Decision: Petition dismissed

Advocates: K S Nanavati, [I M Nanavati](#), [C K Takwani](#), [Ambubhai & Diwanji](#), [K G Vakharia](#)

Judgement Text:-

P D Desai, J

[1] The petitioners are engaged in the business of running flour mills at different places in the State of Gujarat. Their business is to manufacture wheat products, namely, Maida, Suji Rava, resultant Attend Wheat Bran.

[2] In exercise of the powers conferred by sec. 3 of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') the Central Government has made an order on September 9, 1957 which is called the Wheat Roller Flour Mills (licensing and Control) Order, 1957 (hereinafter referred to as 'the said Order') and it has come into force on October 1, 1957. Under Clause 3 of the said Order no owner or person in charge of a roller mill is to manufacture, or cause to be manufactured, any wheat product except under and in accordance with terms and conditions of a licence issued under the said Order. Under Clause 10 of the said Order the licensing authority is empowered to issue directions to licensees inter alia for the disposal of wheat products. In exercise of the power conferred by Clause 10(c), the second respondent, who is the licensing authority, issued directions from time to time controlling the maximum ex-mill price at which wheat products could be sold by the roller mills situate within the State of Gujarat. The last of such price fixation took place on March 13, 1975 and thereby the earlier price fixation which was made on October 9, 1974 was partly modified and ex-mill prices of various wheat products were fixed as under with immediate effect, and the roller flour mills operating within the State of Gujarat were directed to sell the said wheat products accordingly :-

Maida . Rs. 219.00 per quintal Suji . Rs. 223.00 per quintal. Resultant Atta Rs. 143.00 per quintal Wheat Bran.... Rs. 78.00 per quintal.

The prices fixed as above were communicated to the Secretary, Roller Flour

Mills Sub-Committee of the Federation of Mills and Industries, Baroda and the copy of the said communication is at Annexure 'C' In the present petition, the petitioners challenge these revised ex-mill prices of the above named wheat products.

[3] In the petition the price fixation was challenged on several grounds. At the hearing of the petition, however, the challenge based on Article 19 of the Constitution was specifically given up in view of the proclamation of Emergency and the petitioners reserved their right to raise such a challenge at a future date as and when it might become possible for them to enforce their fundamental right under Article 19. The challenge to the impugned price fixation was confined at the hearing only to the following two grounds:

1. The impugned price fixation is without authority of law since the second respondent, who is the licensing authority, had no power, jurisdiction or authority to fix prices of wheat products
2. The impugned price fixation is ultra vires the provisions of the Act inasmuch as (a) it is not made after following the procedure prescribed under the Act and (b) it has been made without taking into consideration the relevant factors.

[4] In order to appreciate the contentions urged in support of the aforesaid challenge, it will be necessary to refer to the relevant statutory provisions and orders. The Act was enacted to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities. Sec. 2(a) defines "essential commodity" to mean any of the classes of commodities mentioned therein and sub-clause (v) thereof includes foodstuffs in the definition. It is not in dispute that wheat products are foodstuffs and, therefore, they would be an essential commodity within the meaning of the Act. Clause Cc) of sec. 2 defines "notified order" as meaning an order notified in the Official Gazette. Clause (cc) defines "order" as including a direction issued there under. Sec. 3, in so far as it is relevant, reads as under :

"3(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or

for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-sec. (1), an order made there under may provide-

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order;

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-sec. (2), there shall be paid to him the price therefore as hereinafter provided;-

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the

market rate prevailing in the locality at the date of sale.

(5) An order made under this section shall-

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual-

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighborhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made."

With the rest of the provisions of the Act we are not concerned in the present case.

[5] Reference may be made next to the various provisions of the Order. Clause 2(c) of the Order defines "licensing authority" to mean an officer appointed by the State Government to exercise the powers and perform the duties of a licensing authority under the Order. It is not in dispute that the second respondent is the licensing authority. Sub -clause (d) defines "roller mill" to mean a flour mill in which disintegration of wheat is done by grooved steel or iron rollers worked by power. It is also not in dispute that the petitioners run roller mills which are included within the meaning of this definition. Sub-clause (e) defines "wheat products" to include maida, atta, suji, rawa, resultant atta and bran. It is apparent that the products which are manufactured by the petitioners in their

roller mills and in respect of which the impugned price fixation is made are wheat products within the meaning of the aforesaid definition. Clause 3 of the Order, as earlier stated, prohibits the manufacture of wheat products except under and in accordance with terms and conditions of a licence issued under the Order. Clause 10, which is material, may be reproduced verbatim :-

"(1) The licensing authority may issue directions to licensees in regard to-

(a) the purchase of wheat for the purpose of manufacture into wheat products;

(b) the production or manufacture of different kinds of wheat products; and
Provided that no direction under item (a) shall be issued without obtaining the prior concurrence of the Central Government.

(c) the disposal of wheat products.

(2) Every licensee shall be bound to carry out the direction of the licensing authority under sub-clause (i).

[6] The order also prescribes the form of licence and condition V of the licence reads as under :-

"(V) The licensee shall abide by any directions issued by the licensing authority in regard to the purchase of wheat, extraction of maida, suji and rawa and also in regard to the distribution or disposal of wheat products."

There are other conditions of the licence to which reference is not required to be made.

[7] It is against the background of these statutory provisions and orders that the contentions advanced on behalf of the petitioners will require to be examined. We shall take up the contentions for consideration seriatim.

[8] The substance of the submission in support of the first ground of challenge was that the licensing authority having not been specifically empowered to fix ex-mill prices of wheat products was not authorized to make the impugned price fixation. It was urged that. Clause 10 of the Order was the only provision which defined the powers of the licensing authority and on a perusal thereof it was manifest that the power to fix ex-mill prices of wheat products was not specifically conferred on the licensing authority and, as such, no price fixation made by the licensing authority was valid. We are unable to agree with this submission. Sub-clause (c) of Clause 10 of the Order specifically empowers the licensing authority to issue directions to licensees in regard to "the disposal of wheat products" The word "disposal" is a word of wide amplitude. One of the meanings assigned to the word "disposal" in Webster's New Twentieth Century Dictionary is "a giving away; transfer; bestowal; a disposing of." The word "dispose" which is a grammatical variation of the word "disposal" is also defined as meaning "to part with; to alienate; to sell." In Shorter Oxford English Dictionary, the word "disposal" has been defined inter alia to mean "the action of disposing of, settling, or definitely dealing with; the action of giving or making over; bestowal, assignment." In Black's Law Dictionary, the word "disposal" in terms includes "sale" and the expression "dispose of is given the meaning "to alienate or direct the ownership of property; to alienate, relinquish, part with, or get rid of." It has been mentioned in the said Dictionary that the term is generally used in the restricted sense of "sale" only. From the aforesaid meanings of the word "disposal" "it is clear that the word disposal" in clause 10 (c) would mean inter alia alienation or transfer by way of sale. The concept of sale necessarily includes sale at price and, therefore, unless price is fixed, no sale could be ordered by the licensing authority. That apart, even having regard to the object of the Act and the Licensing Order and to their scheme, it is abundantly clear that in order to make the provisions thereof workable the power to fix prices of wheat products must be necessarily read into the powers specifically conferred upon the licensing authority. The Act has been enacted, as earlier stated, to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, essential commodities. Under sub-sec. (1) of sec. 3 thereof the Central Government, if it forms the requisite opinion, is authorised by an order to provide for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. This power is conferred in the widest terms and must necessarily include the power to fix prices of essential commodities, although such power has not been specifically conferred on the Central Government. This much even the petitioners do not dispute. Sub-sec. (2) of sec. 3 makes this abundantly clear because clause (c) of the said sub-section specifically enacts that the order made there

under may provide for controlling the price at which any essential commodity may be brought or sold. It is to enforce the purposes of the Act and to ensure that its provisions are carried out that the order in question has been made by the Central Government. Clause 10 of the Order in terms authorises the licensing authority to issue directions with regard to three matters namely (1) the purchase of wheat for the purpose of manufacture into wheat products; (2) the production or manufacture of different kinds of wheat products; and (3) the disposal of wheat products. It would appear from the subject matter of Clause 10 that it covers the entire field ranging from the purchase of raw materials required for manufacturing wheat products to the final disposal of such products. Having regard to the terminology used in clause 10, its wide ambit, the provisions under which the order has been enacted and the object for which it has been brought into force, it is clear that even if price fixation has not been specifically enumerated as one of the matters in respect of which the licensing authority can exercise its power, the power of price fixation is necessarily conferred upon such authority as a concomitant to the exercise of its power to regulate manufacture and disposal of wheat products. In our opinion, therefore, the power to fix prices of the wheat products which are ordered to be disposed of under sub-clause (c) of Clause 10 of the Order, is inherent and implicit in the power conferred upon the licensing authority there under. The first contention urged on behalf of the petitioners must, therefore, be rejected.

[9] The submissions in support of the second ground of challenge were two-fold : (1) that the impugned price fixation was an order within the meaning of sec. 3 of the Act and that since it was an order of a general nature affecting a class of persons, it was required to be notified in the Official Gazette having regard to the provisions of sub-sec. (5) of sec. 3; and (2) that the impugned price fixation was vitiated because it was not done after taking into consideration all the relevant factors. These are the two challenges which will require consideration.

[10] The argument under the first sub-head was that under clause (cc) of sec. 2, an "order" includes a direction issued there under and that as such, the impugned price fixation which was a direction under the Order in question was itself an "order" and as such, under sub-sec (5) of sec. 3, unless it was notified in the Official Gazette, it could not have been brought into force since it was an order of a general nature affecting a class of persons. We see no substance in this argument.

[11] When sub-sec. (5) of sec. 3 speaks of "an order made under this section", what is

meant is a statutory order issued under the said section. It is only when a statutory order of a general nature or affecting a class of persons is made under sub-sec. (1) or (2) of sec. 3 that it would be required to be notified in the Official Gazette. For illustration, the Order in question would be an order of that type and it has therefore, been notified in the Official Gazette. The argument that clause (cc) of sec. 2 defines an "order" to include a direction issued there under and that, therefore, every direction issued under an order must necessarily be notified in the Official Gazette if it is of a general nature or affecting a class of persons is misconceived. It must be remembered that the definition section has to be read subject to the context, The content here makes it very clear that a direction issued under a statutory order is not required to be notified in the Official Gazette even if it is of a general nature or affecting a class of persons. In the first place, the opening part of sub-sec. (5) speaks of an order made under this section." The context and collation make the extensive meaning inapplicable because the expression "made under this section," which qualifies the word "order" in terms confines the operation of the provision to statutory orders In the pace, sub-sec (6) of sec. 3 also lends support to the aforesaid view Under that sub-section, every order made under sec. 3 by the Central Government or by any officer or authority of the Central Government i required to be laid before both Houses of Parliament, as soon aster V after it is made. It is inconceivable that the legislature intended that it direction is issued under the statutory order either by the Cans Government or by any officer or authority of the Central Government such direction should also be laid before both Houses of Parliament Such procedure would be highly cumbersome and in the context of a 1 like the Essential Commodities Act, such a procedure would be who unwarranted m respect of directions issued under statutory Orders even though they may pertain to a class of persons. In the last place The provisions of sec. 6 also point in the same direction. They provide for the effect of orders inconsistent with other enactments. There also the word "order" could only have been used in the sense of a statutory order our opinion therefore the first limb of the argument in support of the second challenge is without substance and it must be rejected.

[12] That takes us to the second limb of the argument, viz that the impugned once fixation was not made by taking into consideration all the relevant factors. In this connection, our attention was invited to paragraph 11 of the petition where several factors have been set jut which to the petitioners, were ignored while fixing the prices. The grievance petitioners in this behalf is that they are required to purchase wheat the source indicated by the licensing authority and that the ours of the wheat purchased from that source, is higher than the phone market price. Besides, there has been a

continuous rise in the lines during costs. The percentage-wise rise in the various components of fracturing costs has been also enlisted in the said paragraph and it covers electricity charges, labour charges, transport charges, gunny-bags charges, etc. The overhead charges also, according to the petitioners; have incurred because there is no full utilization of the installed capacity. Accurate the petitioners, all these factors ought to have been taken into account by the licensing authority before it fixed the ex-mill or ice nuts products and since that was not done the price fixation was it could hardly have met with the manufacturing costs which flour mills had to incur losses.

[13] The licensing authority has filed an affidavit-in-reply and the case of the respondents as set out therein as regards this challenge filed by the petitioners may be summarized as follows :

(A) The roller flour mills in Gujarat were being supplied wheat by the Government of India at Rs. 125/- per quintal upto May 31, 1974. The said mills were subsequently allowed to purchase 1650 tonnes of wheat from outside the State and an equal quantity from within the State from June, 1974. However, the flour mills were not able to purchase the requisite quantity of wheat from outside the State during the month of June, July and August 1974. The State Government, therefore, supplied them wheat at a reasonable price from out of its own stock in the month of August 1974. The prices of wheat showed an upward trend from August 1974 and, therefore, the mills could not buy practically any quantity of wheat from within or outside the State even from September 1974 onwards. The Government of India, therefore, started supplying wheat from the Central Pool to the mills at the request of the State Government through the Food Corporation of India at the rate of 2000 tonnes per month at Rs. 170/- per quintal from September 1974. The State Government supplemented the aforesaid supply by providing 8695 tonnes of wheat to the various mills at the same rate from September 1974 to March 1975. The prevailing market prices of wheat in Gujarat from October 1974 to March 1975 were higher than the rate at which the mills were supplied wheat by the Central and State Governments. There was no substance in the grievance of the petitioners, therefore, that they were not allowed to purchase wheat which was available in the open market at competitive prices.

(B) The prices of wheat products were fixed in such a manner that a mill ing

margin of Rs. 91- per quintal was being allowed to such mills upto May, 1974. The milling margin has since been increased to Rs. 9. 92 per quintal and the prices of wheat products have accordingly been fixed by the impugned order after a full discussion with the Mills' representatives on February 28, 1975. The milling margin in most of the other States is almost the same with a slight variation on account of local factors and conditions and, therefore, the impugned price fixation is in line with the almost uniform all-India pattern and has been made keeping in view the varying local factors. Besi des, the prices have been fixed with a view to ensuring equitable supply of commodities at the current price level. There was an overall declining trend in the consumer price index which stood at 375 in September 1974 and which came down to 359 in December 1974. The mills had been working with the margin of Rs. 91- per quintal right upto May 31, 1974 and no mill was closed down on account of inadequacy of milling margin. Under the impugned order, in fact, the milling margin has been increased by 92 p. per quintal, which means an increase of about 10%, and this has been done keeping in view the increase in the general price index which has been of the order of 4% as compared to May 1974. During the discussion which was held on February 28, 1975 by the licensing authority with the representatives of the mills, they were explained the entire position and the impugned order was issued only after fully consulting them and they had assured the licensing authority that they would abide by the decision of the Government even if it meant inevitable deduction in the milling margin. .

(C) The figures of increase in various items of manufacturing costs given by the petitioners were highly exaggerated. For example, the cost of transporting food grains stored by the Government at Kandla has actually gone down from January, 1975. The prices of gunny-bags etc. have also not increased to the extent alleged by the petitioners. There was no question of the mills not being allowed to work to their full capacity. The millers had themselves complained to the licensing authority frequently that there was excess milling capacity in the State and that it was neither necessary nor desirable to supply them wheat equal to their milling capacity. Even with reduced supply of wheat, the petitioners had complained in the petition about accumulation of stock of wheat products with them.

(D) Having regard to the facts and circumstances aforesaid, the grievance of the petitioners that the ex-mill prices were fixed without bearing in mind the relevant factors was wholly misconceived,

[14] We are of the opinion, having regard to the various considerations which have weighed with the licensing authority in fixing the ex-mill prices, that the impugned price fixation is not open to challenge on any permissible ground and that it appears, in fact, to be more advantageous to the petitioners than the earlier price fixation and that their grievance is more imaginary than real. All the relevant factors have been borne in mind by the licensing authority. This Court is not a Court of appeal and it cannot sit in judgment over matters of price fixations in essential commodities like wheat products. The object of price control is to hold the price line and to make essential commodities available to the public at large at reasonable prices. Controlled prices have to be fixed in the interest of the community as a whole for just distribution of basic necessities and not for the benefit of the commercial community only. In our opinion, on an over-all consideration of all the factors, it could not be said that the impugned price fixation is either arbitrary or unreasonable or that it has been arrived at by ignoring the relevant factors.

[15] These were the only contentions which were urged at the hearing of the petition and since there is no merit in any of them, the petition fails and is rejected.

[16] Before parting with this case, we might observe that certain interim orders were made by this Court during the dependency of the petition in the light of the arrangement arrived at between the parties. It would be open to the respondents to move this Court for appropriate directions, if any, for properly enforcing the obligations which the petitioners might have incurred as a result of the interim orders made by this Court. Suitable orders in this behalf will be made if and when this Court is approached at a subsequent stage.

[17] Rule discharged with costs.

Petition dismissed.