

FOOD CORPORATION OF INDIA & ANR.

v.

M/S SEIL LTD. & ORS.

(C.A. No. 370 of 2008)

JANUARY 11, 2008

(S.B. SINHA AND J.M. PANCHAL, JJ.)

Constitution of India, 1950:

Article 226 r/w Articles 12, 14, 298 and 299 – Government contracts – Supply of levy sugar – FCI withholding payment – Writ petition by supplier – Maintainability of – Held: Contractual disputes involving public law element are amenable to writ jurisdiction – There did not exist any factual dispute – FCI, being a State within the meaning of Article 12 withheld payment without any legal justification – Single Judge rightly reviewed the judgment and directed payment of interest – Review – Interest – Essential Commodities Act, 1955 – S.3(2)(f) – Supply of levy sugar.

Article 226 – Writ petition – Judgment – Review of – Held: A writ court exercises its power of review under Article 226 itself – It not only acts as a court of law but also as a court of equity -- Equity.

Legal Maxim – Actus curiae neminem gravabit – Applicability of.

The respondents supplied levy sugar in terms of s.3(2)(f) of the Essential Commodities Act, 1955 to the appellant-Food Corporation of India as also to the UPPCF. Claims were lodged for the price of levy sugar both with the FCI as also with the Central Government. The Government sanctioned the claim in respect of the sugar supplied to the UPPCF, but the appellant withheld the payment, inter alia, on the premise of shortage in supply of sugar during the period 1983 to 1995, and demanded

- A for a no dues certificate. On writ petitions filed by the respondents, the Single Judge of the High Court classified the cases into two categories: (i) supplies made to the State Government, the Central Government and their agencies, and (ii) supplies made to the appellant. In
- B respect of (i) the Court opined that a direction for making the payment should be made, but as regards (ii), the respondents were relegated to the remedy of a civil suit for recovery of their dues. On a review petition filed by the respondents, the Single Judge directed payment of
- C interest as well. The writ appeals of the FCI having been dismissed by the Division Bench of the High Court, it filed the instant appeals.

- D It was contended for the appellants, inter alia, that transactions between the parties being contractual in nature, no writ petition was maintainable and; in any event, the direction to pay interest in review proceedings was impermissible.

Dismissing the appeals, the Court

- E HELD: 1.1 Contractual disputes involving public law element are amenable to writ jurisdiction. When supply of sugar was made in terms of a statutory order as also on the directions issued by the Central Government and in the cases there did not exist any factual dispute, there
- F is no reason as to why the writ petitions would not be maintainable. Article 14 of the Constitution of India has received a liberal interpretation over the years. Its scope has also been expanded by creative interpretation of the court. The law has developed in this filed to a great extent.
- G [Para 10,17] [669-D, E; 672-B, C]

ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors., (2004) 3 SCC 553 – relied on.

- H *M/s Burmah Construction Co. vs. The State of Orissa &*

Ors. AIR 1962 SC 1320 – held in applicable.

1.2 The High Court, in an appropriate case, may grant such relief to which the writ petitioner would be entitled to in law as well as in equity. In the instant case, no disputed question of fact is involved. The Central Government not only scrutinized the bills but also verified the claims of the respondents. A direction was issued to make payment. Appellant, which is a 'State' within the meaning of Article 12 of the Constitution of India, withheld payment without any legal justification. It could not have withheld payment on the basis of the purported shortages in supply of sugar under the contracts made by the respondents many many years back, save and except under the terms of binding contract. [Para 17, 10, 12] [669-F, H; 670-A; 672-C, D]

2. A writ court exercises its power of review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review, amongst others, on the principle of *actus curiae neminem gravabit* (An act of the courts shall prejudice none). It can, therefore, not be said that while exercising its review jurisdiction, no interest on the principal sum could have been directed to be granted by the High Court. Single Judge of the High Court rightly reviewed the judgment and granted relief to the respondents. [Para 17] [672-D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 370 of 2008.

From the final Judgment and Order dated 7.12.2005 and 24.1.2006 of the High Court of Delhi at New Delhi in L.P.A. Nos. 331-332, 451-452, 1131/2005 and C.M. No. 1252/2006 in L.P.A. No. 331/2005 respectively.

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WITH

C.A. Nos. 371 and 372 of 2008.

Amarendra Sharan, A.S.G., Ajit Pudussery, K. Vijay Kumar, Rekha Bakshi and Vivek Singh for the Appellants.

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Sudhir Chandra Agarwal, Praveen Kumar, Manish Bishnoi and T.V. George for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

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1. Parliament of India enacted Essential Commodities Act, 1955 (The Act). In terms of Section 3(2)(f) thereof, the Central Government is empowered to direct any manufacturer of sugar to sell the said commodity to the Central Government or a State Government or to a body owned or controlled by them for the purpose of making it available to the public at a fair price. It is commonly known as 'levy sugar'. Price of such levy sugar is fixed by the Central Government in exercise of its power under Section 3(3C) of the Act on yearly basis. 'Sugar year' commences from the month October of the year. Price of levy sugar although is required to be notified at that time, admittedly, there exists a practice to notify the previous year's price as a levy sugar on an adhoc basis price in October and final price therefor is notified later on.

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2. Pursuant to or in furtherance of a notification issued by the Central Government under the Act and the directions issued by the competent authority from time to time, levy sugar was supplied by the respondents to the agencies of Central Government as also the appellant.

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3. Respondents herein received allotment letters for supply of sugar both to FCI as also UPPCF. Claims were lodged for the price of levy sugar both with the FCI as also the Directorate of Sugar, Ministry of Food. The Central Government sanctioned the claim of the respondent in respect of the sugar supplied to UPPCF. It made similar claim in respect of the sugar supplied to the appellant. Appellant, however, demanded for a no dues

certificate. It raised other objections including weight and quality of the sugar in relation to the supplies made to the Central Government. Respondents contended that no complaint having been made by the Central Government in this connection, the action of the appellant was totally unjustified. A

We may, however, notice that withholding of payment was, inter alia, made by the appellant for the alleged shortages in supply of sugar during the period 1983 to 1995. B

4. Respondents filed writ applications before the High Court of Delhi. A learned Single Judge of the said Court classified the cases into two categories; (1) supplies made to the State Government, the Central Government; and their other agencies in respect whereof the appellant only had the authority to make payment, and (2) supplies made to the appellant. C

5. So far as the supplies made to the Central Government and other agencies are concerned, it was held that a direction for making the payment should be made but in respect of the supplies made to the appellant; any resolution setting the controversy was held to be impermissible in a writ proceeding therefor and the respondents were relegated to the remedy of a civil suit for recovery of respect of the amount claimed by them. D E

6. A review petition was filed by the respondents pointing out that no direction has been made in regard to payment of interest and by a judgment and order dated 29th April, 2005 interest was directed to be paid. F

7. Appeals preferred thereagainst by the appellant herein have been dismissed by a Division Bench of the High Court by reason of the impugned judgment.

8. Mr. Amarendra Sharan, learned Additional Solicitor General of India appearing on behalf of the appellant submitted: G

1. Transactions between the parties being contractual in nature, no writ petition was maintainable.
2. Respondents, having alleged breach of contract on H

A the part of the appellant, the writ petition should not have been entertained.

3. Several disputed questions of fact including the quality and quantity of sugar having been raised, the High Court committed a serious error in determining the said question in a writ proceeding.

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4. In any event, direction to pay interest in the review proceeding was wholly impermissible in law.

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Mr. Sudhir Chandra Agarwal, learned senior counsel appearing for the respondents, on the other hand, contended :

1. Supply of sugar having been made in terms of a statutory order, the writ petition was maintainable.

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2. Food Corporation of India could not have withheld payment in respect whereof there was no dispute.

3. Lawful payment cannot be withheld on the purported plea of non-supply of entire quantity of sugar in the earlier years.

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8. Admittedly, supplies were made to FCI and UPPCF in terms of the allotment orders received by the respondents. The Central Government verified the bills in terms of the circular letters issued by it from time to time. The claim in terms of the said circulars was to be submitted to the Directorate of Sugar directly. Appellant was merely to pay the difference in the prices of sugar for the years in question keeping in view the price notification dated 22.10.1993 and 17.1.1994. Bills were forwarded to the Food Corporation of India by the concerned authority for making payment.

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Appellant, in its counter affidavit before the High Court, inter alia, averred that as in respect of supply of sugar in earlier years, certain claims had been made by it, payment was rightly withheld, stating:

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"Since the shortages mentioned in the preceding paras

were detailed in the seal intact wagons, therefore, the petitioners were fully responsible/liable for compensating the losses caused to the Respondents on this account. However, there happened some delay in working out compiling the accurate shortages at our level and as such factual position could not be intimated to the petitioners in time. *The shortages relates for the period from 1983 to 1995 i.e. 12 years.*"

9. We have noticed that the mode in which supplies were to be made have been laid down in the circular letters issued by the Central Government. The responsibility of the mill owner was to supply at the rail head. The fact that transportations of the commodity were made only by rail is not in dispute. If any shortage was found during transit, in terms of the policy decision of the Central Government, claims were to be raised by the appellant with the Railway Authorities.

10. When supply of sugar was made in terms of a statutory order as also on the directions issued by the Central Government and in the cases there did not exist any factual dispute, we do not see any reason as to why the writ petitions would not be maintainable.

It is now no longer *res integra* that contractual disputes involving public law element are amenable to writ jurisdiction. In these cases, the Central Government not only scrutinized the bills but also verified the claims of the respondents. A direction was issued to make payment. Appellant, which is a 'State' within the meaning of Article 12 of the Constitution of India, withheld payment without any legal justification.

11. The High Court referred to several letters issued by the Central Government to arrive at the conclusion that where sugar had been lifted by a third party without any complaint, protest or demur of shortages, there was no reason as to why payment therefor could not be made.

12. Appellant could not have withheld payment on the basis

A of the purported shortages in supply of sugar under the contracts made by the respondents many many years back, save and except under the terms of binding contract.

B 13. We have noticed hereinbefore that the High Court had divided the cases in two categories. In regard to the supplies made by the respondents to the Central Government and/or its agencies wherewith appellants had no concern, it could not have denied payment on the pretext of shortage or quality of the sugar supplied, particularly, when the recipient did not raise such a question.

C 14. The Central Government, issued a letter dated 17th November, 1972 on which reliance has been placed by the appellant itself before the High Court; clause (vii) whereof reads as under :

D "On receipt of dispatch instructions, the District Manager at dispatching and will arrange full payment including excise duty to the mills for road movement. As regards, movement by rail full payment may be made in two installments; first being @ Rs.15/- per quintal. After making initial payment inspection of the stocks should be arranged and mills should be asked and perused to place indents for wagons immediately. Balance amount will be paid to the Mills as soon as wagons are placed. To save time lag, cheques/ demand drafts should be kept ready and handed over the mills as soon as wagons are made available, as the mills may hesitate loading wagons unless full payment is made particularly when the consignees will be FCI and ownership of the Cargo will be changed as soon as stocks are loaded. Excise duty will also be paid along with the final payment for stocks RRs will be freight to pay and in favour of FCI as consignee. Payment shall be made through cheques and in case of any objection from the mill regarding acceptance of the cheques, payments may be made either by demand draft or cheques certified as good for payment. Funds shall be arranged by the District Managers directly

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from the Head Office as is being done in the case of food grain purchase. A

Posting of additional staff at the mill point is under consideration and after decision is taken follow up action should be taken by the Regional Managers. The staff at the mill would be responsible to undertake inspection of quality, check weighment, indent of wagons and look to other general arrangements about transport and dispatch.... These transport charges will be incorporated by the mills in the bills and will be paid by FCI. Wagons will be booked against clear RRs in the name of receiving District Managers and would be sent to the letter promptly. B C

Stocks by rail shall move against clear RRs and it shall therefore be the responsibility of the receiving District Managers to account for the weight of sugar properly. In case of any shortage/damages of sugar in transit, the claims for the same should be lodged promptly with the railways, in accordance with the standing instructions on the subject." D

15. Jurisdiction of the High Court to entertain a writ application involving contractual matter was considered by a Bench of this Court in *ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors.* [(2004) 3 SCC553] wherein upon referring to a large number of decisions, it was held : E F

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions H

A of the first respondent.”

16. Reliance placed by Mr. Sharan on *M/s. Burmah Construction Company v. The State of Orissa & Ors.* [AIR 1962 SC 1320] is not apposite. Claim made therein was a pure money claim. It was in that situation observed that the High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract to pay an amount of money due to the claimant.

17. Article 14 of the Constitution of India has received a liberal interpretation over the years. Its scope has also been expanded by creative interpretation of the court. The law has developed in this field to a great extent. In this case, no disputed question of fact is involved.

The High Court, in an appropriate case, may grant such relief to which the writ petitioner would be entitled to in law as well as in equity.

We do not, thus, find any substance in the contention of Mr. Sharan that while exercising its review jurisdiction, no interest on the principal sum could have been directed to be granted by the High Court. A writ court exercises its power of Review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of *actus curiae neminem gravabit* (An act of the courts shall prejudice none). We appreciate the manner in which the learned Judge accepted his mistake and granted relief to the respondents.

18. We, however, although agree with the opinion of the Division Bench of the High Court on the legal principle in regard to payment of interest, as has been enunciated by it, having regard to the fact that the respondents did not prefer any appeal, are of the opinion that increase in the rate of interest, as has been directed by the Division Bench, cannot be upheld.

19. We, therefore, in modification of the order passed by the Division Bench, direct that the appellant would pay the amount in question with interest as awarded by the learned Single Judge of the High Court. A

20. Subject to above, the appeals are dismissed. Respondents are also entitled to costs quantified at Rs.1,00,000/- (Rupees one lakh only) in each case. B

R.P.

Appeals dismissed.