

FIRM RAMDEO ONKARMAL & ANR.

v.

B STATE OF U.P. & ANR.

July 21, 1981

[R.S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

C *Forward Contracts (Regulation) Act, 1952 s. 18 (3)—Regulation and Control of non-transferable specific delivery contracts—Notification issued—Area over which regulation and control to extend—Whether to be expressly specified in notification.*

D The Forward Contracts (Regulation) Act, 1952 by sub-section (1) of section 18 declares that the provisions of Chapters III and IV shall not apply to non-transferable specific delivery contracts for the sale or purchase of any goods. Sub-section (3) of section 18 however, provides that if the Central Government is of opinion that in the interest of the trade or in the public interest, it is expedient to regulate and control such contracts in any area, it may by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

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F On July 17, 1958 the Central Government issued three notifications under the Act. The first notification S.O. 1384-B issued under section 17 read with section 16 of the Act prohibited forward contracts for the sale or purchase of certain specified goods, including Tur (Arhar). The second notification S.O. 1384-C issued under sub-section (3) of section 18 declared that section 17 would apply to non-transferable specific delivery contracts in respect of the goods specified in the notification, and these included Tur (Arhar). The third notification, S.O. 1384-D, issued under sub-section (1) of section 17 declared that no person could, save with the permission of the Central Government, enter into any non-transferable specific delivery contracts for the sale or purchase of the goods specified therein, and these included Tur (Arhar).

G The appellants were prosecuted for various offences under section 20 and section 21 of the Act on the ground that three transactions of purchase of Tur (Arhar) were entered into by them in violation of the aforesaid notifications. The appellants challenged the validity of the notifications but the Sub-Divisional Magistrate and the Sessions Judge in revision took the view that the challenge was premature.

H A Division Bench of the High Court dismissed the appellant's petition under section 561A read with section 435 Code of Criminal Procedure, upheld

the validity of the notifications, and rejected the plea of the appellants that the notifications were invalid as they did not specifically mention the area over which they were to operate. **A**

Dismissing the appeal to this Court,

HELD : 1. What sub-section (3) of section 18 requires is that before issuing a notification under that provision the Central Government must satisfy itself that the regulation and control of non-transferable specific delivery contracts in a particular area are in the interest of the trade or in the public interest. The determination of the area over which the regulation and control will extend is a vital component to which the Central Government must apply its mind when deciding to issue a notification, and when a notification is in fact issued the area must be communicated by specifying it in the notification. [18 D] **B**

2. The area specified may be comprehended from material expressed or implied in the notification. The sub-section does not require that the area must be expressly specified in the notification. If it is possible to define the area by necessary implication, that is sufficient compliance with the requirement of the sub-section. [18 E] **C**

3. A notification may operate over part only of the territory to which the Act extends, or it may be intended to operate throughout that territory. Ordinarily, whether the notification extends over part only of the territory or throughout the territory would be specified in the notification. If the notification is intended to operate over part only of the territory to which the Act extends, the notification must necessarily define that limited area. When it contains no express signification of the area, it may be implied that it is intended to operate throughout the territory covered by the Act. That is a construction by implication. It is not mandatory in such a case that the notification should specify that it operates throughout the territory to which the Act extends. [18H- 19 A] **D**

In the instant case the absence of any express reference to a specific area constituted a ground in the High Court for alleging that the Central Government did not apply its mind to the "area" ingredient when deciding on the notification. The large volume of material produced by the respondents shows that the Central Government did apply its mind to the fact that the notification should cover the entire country. [19 C-D] **E**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 552 of 1976. **F**

From the judgment and order dated the 22nd May, 1975 of the Allahabad High Court in Criminal Misc. Application No. 2138 of 1971. **G**

Pramod Swarup for the Appellants.

R.K. Bhat, for Respondent No. 1. **H**

P.A. Francis and *R.N. Podar* for Respondent No. 2.

A The Judgment of the Court was delivered by

B PATHAK, J. This appeal by certificate granted under sub-clause (c) of clause (1) of Article 134 of the Constitution by the Allahabad High Court is directed against a judgment of that Court dismissing the appellants' petition for quashing criminal proceedings against them under the Forward Contracts (Regulation) Act, 1952.

C The appellants are being prosecuted for various offences under s. 20 and s. 21 of the Forward Contracts (Regulation) Act, 1952 on the ground that three transactions of purchase of Tur (Arhar) were entered into by them in violation of Notifications Nos. 1384-B, 1384-C and 1384-D, all dated July 17, 1958 issued by the Central Government under that Act. During the proceedings before the Sub-Divisional Magistrate, the appellants challenged the validity of the three notifications. The Sub-Divisional Magistrate, and there-
D after the learned Sessions Judge in revision took the view that it was premature to decide the question. They applied to the Allahabad High Court under s. 561A read with s. 435, Code of Criminal Procedure, raising the same question and praying for the quashing of the criminal proceedings. The learned Single Judge of the High Court hearing the petition considered the question to be of substantial importance and accordingly the case was referred to a larger Bench.

E A Division Bench of the High Court by its judgment dated May 22, 1975 upheld the validity of the notifications and dismissed the petition. It saw no substance in the plea of the appellants that the notifications did not specifically mention the area over which they were to operate and, therefore, were invalid. On application
F by the appellants the High Court granted a certificate under sub-clause (c) of clause (1) of Article 134 of the Constitution that the case was fit for appeal to this Court.

G The point on which the certificate has been granted is whether the only method of specifying the area in a notification issued under sub-s. (3) of s. 18 of the Forward Contracts (Regulation) Act, 1952 is to expressly describe it in the notification itself or whether such a specification can be inferred from other circumstances as well as notifications issued simultaneously. That is the only point on which
H this appeal is pressed, and we need consider no other aspect of the case.

It is desirable to appreciate first the statutory matrix within which the controversy is embedded. Sub-s. (1) of s. 18 declares that the provisions of Chapters III and IV (Chapter IV includes s. 17) shall not apply to non-transferable specific delivery contracts for the sale or purchase of any goods. But by virtue of sub-s. (3) of s. 18 if the Central Government is of opinion that in the interest of the trade or in the public interest, it is expedient to regulate and control such contracts in any area, it may by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

In other words, by a notification under sub-s. (3) of s. 18 the Central Government may make the provisions of s. 17 applicable to a class or classes of non-transferable specific delivery contracts in an area and in respect of specified goods or class of goods. By itself, s. 17 deals with forward contracts for the sale or purchase of any goods or class of goods. On a notification under sub-clause (3) of s. 18 it is made applicable to non-transferable specific delivery contracts. On making s. 17 thus applicable, a notification can follow in exercise of the powers under sub-s. (1) of s. 17, prohibiting such contracts save with the permission of the Central Government; and the issue of such a notification, by reason of sub-s. (3) of s. 17, brings into play the provisions of s. 16.

Now on July 17, 1958, the Central Government in the Ministry of Commerce and Industry issued three notifications under the Forward Contracts (Regulation) Act, 1952. The first notification, S.O. 1384-B was issued under s. 17 read with s. 16 of the Act, and prohibited forward contracts for the sale or purchase of certain specified goods, including Tur (Arhar). The second notification, S.O. 1384-C was issued under sub-s. (3) of s. 18 and declared that s. 17 would apply to non-transferable specific delivery contracts in respect of the goods specified in the notification, and these included Tur (Arhar). In consequence, the third notification, S.O. 1384-D, was issued under sub-s. (1) of s. 17, declaring that no person could, save with the permission of the Central Government, enter into any non-transferable specific delivery contracts for the sale or purchase of the goods specified therein, and predictably these included Tur (Arhar).

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A As a result of the three notifications, there was an integrated scheme, prohibiting forward contracts as well as non-transferable specific delivery contracts for the sale or purchase of Tur (Arhar).

B The contention of the appellants is that the powers conferred by sub-s. (3) of s. 18 to apply the provisions of Chapters III and IV to non-transferable specific delivery contracts must necessarily be exercised in terms of a specific area, and the area must be specified in the notification. They urge that is what sub-s. (3) of s. 18 mandates. And they say as the Notification S.O. 1384-C does not expressly specify any area, it is not in accordance with sub-s. (3) of s. 18 and is incomplete and therefore invalid. In consequence, they submit, the Notification S.O. 1384-D must also fail.

C It seems to us that what sub-s. (3) of s. 18 requires is that before issuing a notification under that provision the Central Government must satisfy itself that the regulation and control of non-transferable specific delivery contracts in a particular area are in the interest of the trade or in the public interest. The determination of the area over which the regulation and control will extend is a vital component to which the Central Government must apply its mind when deciding to issue a notification. And when a notification is in fact issued the area must be communicated by specifying it in the notification. The area specified may be comprehended from material expressed or implied in the notification. The sub-section does not require that the area must be expressly specified in the notification. If it is possible to define the area by necessary implication, that is sufficient compliance with the requirement of the sub-section. In the present context, when the notification does not expressly specify the area, one of two conclusions is possible. Either the notification is intended to operate throughout the territory over which the Act extends, or the omission indicates that the authority required to apply its mind to the "area" ingredient did not do so. These are two distinct, separate and alternative possibilities.

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G A notification may operate over part only of the territory to which the Act extends, or it may be intended to operate throughout that territory. Ordinarily, whether the notification extends over part only of the territory or throughout the territory would be specified in the notification. If the notification is intended to operate over part only of the territory to which the Act extends, the noti-

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fication must unnecessarily define that limited area. When it contains no express signification of the area, it may be implied that it is intended to operate throughout the territory covered by the Act. That is a construction by implication. It is not mandatory in such a case that the notification should specify that it operates throughout the territory to which the Act extends.

The alternative possibility is that the authority required to determine the "area" ingredient did not do so when issuing the notification. If such a contention is raised, and we point out that it was not raised before us, it is open to the authority to show that it did in fact apply its mind to the matter. In the present case, the absence of any express reference to a specific area constituted a ground in the High Court for alleging that the Central Government did not apply its mind to the "area", ingredient when deciding on the notification. But a large volume of material was produced by the respondents before the High Court to show that the Central Government did apply its mind to that fact and it was intended that the notification should cover the entire country.

In the result, the appeal fails and is dismissed.

N.V.K.

Appeal dismissed.