

Jai Bharat Dairy Farm Delhi and another *v.* State of Haryana  
(P. C. Jain J.)

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20. It seems to follow inevitably from the aforesaid discussion that there is nothing on the present record to sustain the bald and the belated plea now sought to be raised on behalf of Jagmal appellant that he was at the material time a child within the meaning of the Act. We take the view that the appeal is wholly without merit and the same is hereby dismissed.

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*H.S.B.*

*Before P. C. Jain and D. S. Tewatia, JJ.*

JAI BHARAT DAIRY FARM Delhi and another,—*Petitioners.*

*versus*

STATE OF HARYANA —*Respondent.*

*Letters Patent Appeal No. 306 of 1978.*

July 19, 1979

*Haryana Milk and Milk Products Control Orders of 1978 and 1979 —Clause 3 Second proviso sub-clauses (i) and (ii) of the 1978 Order and sub-clauses (i) & (iii) of the 1979 Order—Constitution of India 1950—Article 14—Exemption granted to certain Dairies from the provisions of clause 3—Whether discriminatory and ultra vires Article 14.*

*Held*, that from a bare reading of exceptions contained in Second proviso to clause 3 of the Haryana Milk and Milk Products Control Orders of 1978 and 1979, it is evident that export of milk is permitted by the two Dairies of Delhi in any quantity and by the vendor in the quantity of one quintal. In regard to the vendor carrying one quintal of milk, sub-clause (ii) of 1978 Order and sub-clause (iii) of 1979 Order are very vague as they nowhere define that the quantity of one quintal to be exported by one vendor to Delhi is the total quantity to be exported by him at one time of an hour or one time a day. If an individual vendor can take milk in a quantity upto one quintal in one turn to Delhi, then in a given case a clever vendor can multiply by his skill the turns to Delhi and earn profits by charging any rate on the milk which he would export. This being the effect of the two exceptions, permission to the two dairies to export milk in any quantity from Haryana to Delhi and also the

other vendors to export milk in quantity upto one quintal, the object sought to be achieved through the Control Orders would be nullified. On the export of milk by the two dairies there is absolutely no control. Sale of milk by two Dairies at subsidized rates is of no consolation to the people of the State of Haryana in case by export of milk by these two Dairies and also the petty vendors, milk becomes scarce in the State. If the two Dairies can be allowed to export milk in any quantity then there does not seem to be any justification for the State for making an exception in the case of the other persons similarly situated by putting a ban on them to carry on their business of export of milk. Thus, the classification of Dairies into two categories and exempting one of them from the prohibition and restrictions contained in clause 3 of the Control Order and imposing such prohibitions and restrictions on the other category of Dairies has no nexus to the object sought to be achieved by the Control Order. The classification offends equality of treatment guaranteed by Article 14 of the Constitution of India 1950 with the result that sub-clause (i) & (ii) of second proviso to clause 3 of the Control Order 1978 and sub-clauses (i) & (iii) of the second proviso to clause 3 of the Control Order 1979 suffer from the vice of discrimination prohibited by Article 14.

(Paras 10 and 11)

*Letters Patent Appeal against the judgment and order dated 7th June, 1978, passed by Hon'ble Mr. Justice J. M. Tandon in Civil Writ Petition No. 2396 of 1978.*

R. K. Garg, Advocate, M. M. Punchhi, Advocate and K. L. Dua  
for the Appellants.

Naubat Singh, Senior Dy. Advocate General, Haryana,  
S. K. Lamba, A. A. G. (H), for the Respondent.

#### JUDGMENT

*Prem Chand Jain, J.—*

(1) This judgment of ours would dispose of L.P.A. No. 306 of 1978 and Civil Writ Petitions Nos. 3065 of 1978, 1816, 1897, 1904, 1911 and 1918 of 1979, as common question of law arises in all these cases.

(2) M/s. Jai Bharat Dairy Farm, Sohna and another filed a petition (C.W.P. No. 2396 of 1978) challenging the legality of a notification No. GSR 57/C.A. 10/55/ S. 8/78, dated 24th May, 1978, by which the Haryana Milk and Milk Products Control Order, 1978

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(hereinafter referred to as the Control Order, 1978) was made. Under clause 3 of that Order, use of milk for the manufacture of cream etc., as also its export from the State of Haryana, as detailed in clause 3 thereof, for the period 24th May, 1978 to 14th July, 1978, was prohibited. A learned Single Judge of this Court dismissed the writ petition on June 7, 1978. Dissatisfied from the judgment of the learned Single Judge this appeal under clause 10 of the Letters Patent has been filed.

(3) Ram Avtar Gupta has filed C.W.P. No. 3065 of 1978 calling in question the legality of the said Control Order. This petition was ordered by the Bench to be heard along with L.P.A. No. 306 of 1978.

(4) The Control Order issued through the aforesaid notification was operative only from 24th May, 1978 to 14th July, 1978. In the ordinary course, the appeal and the said writ petition would have become infructuous, but the same deserve to be decided as again in the year 1979 the Haryana Milk and Milk Products Control Order, 1979 (hereinafter referred to as the Control Order, 1979) has been promulgated, the provisions of which are almost identical with the earlier Control Order. The vires of the Control Order, 1979, have also been challenged through Civil Writ Petitions Nos. 1816, 1897, 1904, 1911 and 1918 of 1979.

(5) The main ground urged before us by Mr. R. K. Garg, learned Senior Advocate, was that under the provisions of sub-clauses (i) and (ii) of second proviso to clause 3 of the Control Order, 1978, and sub-clause (i) and (iii) of the second proviso to clause 3 of the Control Order, 1979, the Delhi Milk Scheme, Mother Dairy Delhi and the vendors, who are carrying one quintal of milk at one time, have been given exemption from the applicability of the crucial provision, i.e., clause 3 of the Order; that the classification made by the Government is not based on any intelligible differentia which distinguishes the Delhi Milk Scheme, Mother Dairy Delhi and the vendors who carry one quintal of milk, from the others, i.e., the petitioners who have been left out and that the classification envisaged under the aforesaid sub-clauses has no rational nexus with the object of the Order sought to be achieved. On the basis of this contention, it was submitted by the learned counsel that the impugned provisions were violative of Article 14 being discriminatory in nature.

(6) On the other hand, Mr. Naubat Singh, Senior Deputy Advocate-General, contended that the impugned Control Orders have been promulgated in order to ensure the maintenance and increase of supplies and distribution in the State of Haryana of Milk in fluid form, a commodity essential to the life of the community; that the petitioners are not on equal footing with the two Dairies which supply milk to the people of Delhi at subsidized rates; that the petitioners who are private persons export milk for their pecuniary gain, and that the impugned provisions are not violative of the provisions of Article 14 of the Constitution.

(7) After hearing the learned counsel for the parties, we are of the view that there is considerable force in the contention of the learned counsel for the appellants/petitioners.

(8) The object for the promulgation of the Control Order, 1978, is given in the notification and reads as under :—

“Whereas the Governor of Haryana is of the opinion that it is necessary so to do for the maintenance and increase of supplies and distribution in the State of Haryana of milk in fluid form, a commodity essential to the life of community.”

Clause 3, which prohibits the manufacture, sale, service, supply and export of milk and milk products, is in the following terms:—

“3. No person shall—

- (a) use milk of any kind for the manufacture of cream, casein, skimmed milk, khoa, rubree or any kind of sweets, in the preparation of which milk or any of its products except ghee is an ingredient; or
- (b) sell, serve, supply or export or cause to be sold, served, supplied or exported any cream, casein, skimmed milk, khoa, rubree or any kind of sweets in the preparation of which milk or any of its products, except ghee is an ingredient;
- (c) export milk from the State of Haryana to any other State or Union Territory; and

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- (d) export Paneer from the State of Haryana to any other State or Union Territory:

Provided that nothing in this clause shall apply to the use of milk:

- (i) for the manufacture, sale, service or supply of ice cream, kulfi, kulfa or paneer in the preparation of which no khoa, rubree or cream is used;
- (ii) for the manufacture, sale, service or supply of such milk and milk products as the State Government may, having regard to the needs of the Defence Forces, by an order permit;
- (iii) by such milk factories engaged in the processing of milk for consumption in fluid form or factories registered or licensed under the Industries (Development and Regulation) Act, 1951, for the manufacture of condensed milk, milk powder, baby food or any other such products;
- (iv) by the National Dairy Research Institute, Karnal, for the manufacture and sale of any milk products for the purposes of training and research:

Provided further that nothing in this clause shall apply to the export of milk—

- (i) in any quantity by Delhi Milk Scheme, Mother Dairy Delhi through their well identified tankers and officers;
- (ii) in a quantity upto one quintal by any one vendor to Delhi;
- (iii) to Himachal Pradesh on permit issued by the Milk Commissioner, Haryana.”

(9) From the preamble of the Order, which has been reproduced above, it is evident that in order to ensure the maintenance and

increase of supplies and distribution of milk in fluid from the Control Order is promulgated, as it is a matter of common knowledge that the yield of the milch cattle stands reduced considerably due to hot and dry weather and the export of milk from the State during the period for which the Control Order is operative would naturally cause hardship to the people of the State. What has now to be seen is whether the impugned exceptions are in any way negating or destroying the object which is sought to be achieved through the Control Order.

(10) From the bare reading of the exceptions, it is evident that export of milk is permitted by the two Dairies of Delhi in any quantity and by the vendor in the quantity of one quintal. It may be observed at this stage that with respect to the vendor carrying one quintal of milk, sub-clause (ii) of 1978 Order and sub-clause (iii) of 1979 Order are very vague, as they nowhere define that the quantity of one quintal to be exported by one vendor to Delhi is the total quantity to be exported by him at one time an hour or one time a day. If an individual vendor can take milk in a quantity upto one quintal in one turn to Delhi, then in a given case a clever vendor can multiply by his skill the turns to Delhi and earn profits by charging any rate on the milk which he would export. If this is the effect of the two exceptions, then we find it very difficult to hold that by permitting the two Dairies to export the milk in any quantity from Haryana to Delhi and also the other vendors to export milk in quantity upto one quintal, the object sought to be achieved through the Order would not be nullified. On the export of milk by the two Dairies there is absolutely no control. In case of scarcity in Delhi, the two Dairies may export more milk out of Haryana. So also the petty vendors may make many trips from the border villages of Haryana and export milk to Delhi. Merely this fact that the two Dairies of Delhi sell the milk at subsidized rate is not enough to hold that the object of the Control Order is being achieved. Sale of milk by these two Dairies at subsidized rate is of no consolation to the people of the State of Haryana in case by export of milk by these two Dairies and also the petty vendors, milk becomes scarce in the State. If the two Dairies can be allowed to export milk in any quantity, then there does not seem to be any justification for the State for making an exception in the case of the petitioners or other persons similarly situated by putting a ban on them to carry on their business of the export of milk.

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(11) In this view of the matter, we hold that the classification of Dairies into two categories and exempting one of them from the prohibition and restrictions contained in clause 3 of the Control Order and imposing such prohibition and restrictions on the other category of Dairies, i.e., the appellants/petitioners, has no nexus to the object sought to be achieved by the Control Order. Thus such classification offends equality of treatment guaranteed by Article 14 of the Constitution, with the result that sub-clauses (i) and (ii) of second proviso to clause 3 of the Control Order, 1978 and sub-clauses (i) and (iii) of the second proviso to clause 3 of the Control Order, 1979 suffer from vice of discrimination prohibited by Article 14.

(12) The view which we are taking finds full support from the Full Bench judgment of the Allahabad High Court in *Suresh Chandra and others v. State of U.P. and another* (1), to which our attention was drawn by Mr. Garg, learned counsel for the appellants/petitioners. In that case, vires of the U.P. Milk and Milk Products Control Order, 1977 was challenged. Clause 2 of that Control Order is more or less identical with clause 3 of the Control Orders in this case, and under that clause certain categories of dairies were exempted from the operation of clause 2. One of the contentions, raised before the Full Bench was that clause 2 of the Control Order suffered from the vice of discrimination. While upholding the said contention, Chandrashekhar, C.J., observed thus:—

“It is well settled that Article 14 of the Constitution permits classification and treating different classes differently; but such classification should be based upon intelligible differentia and should have a rational relation to the objects sought to be achieved by the Statute in question. In other words, there should be a nexus between the basis of classification and the object of the statutory provision under consideration.

The object of the Control Order is maintaining and increasing supplies of fluid milk and securing equitably distribution and availability thereof at fair prices in the State of U.P. We shall now examine whether the reasons given by the

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(1) A.I.R. 1977 Allahabad 515.

State Government for classification of the dairies registered under the Industries (Development and Regulation) Act, and the dairies run by Co-operative Societies, the Government and State owned Corporations on the one hand and other dairies and traders in milk and milk products on the other hand, can be said to have any rational relation to the aforesaid object of the Control Order. The mere fact that the former category of dairies pasturise milk and supply it in any hygienic condition to hospitals and to the public, cannot be a ground for exempting such dairies from the prohibition to export fluid milk from any region to another region of this State or to any other State or from the prohibition to extract cream from milk and to make butter. If such dairies export milk to other States or use milk for extracting cream and making butter therefrom, such export or manufacture would diminish the quantity of fluid milk available to the consumers in this State in the same manner as export of fluid milk and extracting of cream and making of butter by other dairies or other persons.

Thus, the aforesaid classification of dairies into two categories and exempting one of them from the prohibition and restrictions contained in Clause 2 of the Control Order and imposing such prohibition and restrictions on the other category of dairies, has no nexus to the object sought to be achieved by the Control Order. Hence such classification offends equality of treatment guaranteed by Article 14 of the Constitution. Thus, Clause 2 of the Control Order suffers from the vice of discrimination prohibited by Article 14 of the Constitution."

(13) It may be made clear that the learned counsel challenged before us only the vires of sub-clauses (i) and (ii) of the second proviso to clause 3 of the Control Order, 1978 and sub-clauses (i) and (iii) of the second proviso to clause 3 of the Control Order, 1979, and not the vires of the entire clause 3 of the Control Orders.

(14) In the view we have taken on the first contention of the learned counsel for the appellants/petitioners, we do not propose to go into the other contentions of the learned counsel as the letters



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patent appeal and the writ petitions can straightaway be allowed on the basis of the finding recorded on the first contention.

(15) Consequently, we allow L.P.A. No. 306 of 1978 and Civil Writ Petitions Nos. 3065 of 1978 and 1816, 1897, 1904, 1911 and 1918 of 1979, and strike down sub-clauses (i) and (ii) of second proviso to clause 3 of the Control Order, 1978 and sub-clauses (i) and (ii) of second proviso to clause 3 of the Control Order, 1979, being *ultra vires* of Article 14 of the Constitution. It may be made clear that the judgment of the learned Single Judge in L.P.A. No. 306 of 1978 has been set aside only with respect to the contention raised before us. On other matters, on which the learned Single Judge has given his findings, we do not propose to express any opinion as it is not necessary to do so. In the circumstances of the case, we make no order as to costs.

D. S. Tewatia, J.—I agree.

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S.C.K.

Before Surinder Singh, J.

SHAMSHER SINGH,—Appellant.

*versus*

THE STATE (UNION TERRITORY OF CHANDIGARH),—Respondent.

Criminal Appeal No. 490 of 1976

July 31, 1979.

*Explosive Substances Act (VI of 1908)—Section 7—Consent of Central Government for prosecution of an accused—Objective assessment before grant of such consent—Whether necessary—‘Consent’ under the Act—Whether to be equated with ‘sanction’ under the Prevention of Corruption Act.*

*Held*, that section 7 of the Explosive Substances Act 1908 provides that the trial of a person for an offence punishable under the Act shall not proceed except with the consent of the Government.