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STATE OF U.P. AND ORS.

v

M/S. CHHABRA BRICKS AND TILES MFG. CO.

DECEMBER 8, 1999

B

[S.P. BHARUCHA, D.P. WADHWA AND N. SANTOSH HEGDE, JJ.]

U.P. Coal Control Order, 1977 :

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Paragraphs 5(b), 8(i) (B), 8(iv), 12, Form-D—Validity of—Applicability of the Coal Control Order to brick kilns using slack coal—Held, coal being an essential commodity, the State Government is entitled to regulate its use—To that extent it is entitled to regulate its use in brick kilns and require those who run brick kilns using coal to obtain licences under the Order—That power, however, does not extend to the control in any manner of the bricks so produced—Provisions of the Order which control not the coal but the bricks are to be struck down—Sub-para (iv) of Paragraph 8 and the Note thereto deals, except in clause (a) thereof, entirely with the bricks and to that extent it is struck down—Paragraph 12 in so far as it applies to the export of bricks is also quashed—In regard to para 5(b) and para 8(i) (B) it is made clear that no condition may be specified or direction issued that relates to the sales and distribution of bricks—In so far as licence in Form-D is concerned, the condition that requires a licensee to comply with general or special directions issued in regard to the disposal or sale of any stock of bricks is quashed—Essential Commodities Act. 1955-S.3.

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F *State of U.P. & Ors. v. Janta In. Udyog & Ors., [1991] Supp. 2 SCC 506, disapproved.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 173 of 1989.

G From the Judgment and Order dated 9.2.1988 of High Court of Allahabad in Civil Misc. Writ Petition No. 2886 of 1985.

A.K. Goel, Addl. Adv. General U.P., Saurabh Samsher, Kamalendru Misra R.B. Misra, Lakshmi Raman Singh and Amitesh Kumar for the appearing parties.

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The following Order of the Court was delivered :

The appeal has been referred to a Bench of three Judges because the two learned Judges who earlier heard it were of the opinion that the decision of this Court in *State of U.P. and Ors. v. Janta In. Udyog and Ors.*, [1991], Supp 2 SCC 506, required reconsideration.

Under appeal is the order of a Division of the High Court at Allahabad which, following an earlier judgment of the High Court, quashed the provisions of the U.P. Coal Control Order, 1977 insofar as it applied to persons manufacturing bricks with the aid of slack coal and to brick kilns run by them for such manufacture of bricks. The order was passed on writ petitions filed by the manufacturers of bricks who used slack coal in their brick kilns.

The U.P. Coal Control Order ("the said Order") was issued in exercise of powers conferred by section 3 of the Essential Commodities Act, 1955. It defined 'bricks' to mean bricks or tiles produced with the aid of slack coal but did not include firebricks or refractory bricks and tiles. A 'brick kiln' meant any kiln in which bricks were manufactured with the aid of coal and the premises appurtenant thereto. Paragraph 4 of the said Order dealt with licensing thereunder; it said that no person could import coal or carry on business as a coal agent or coal depot-holder or run a brick kiln with coal except under and in accordance with the terms and conditions of a licence issued under the said Order. Paragraph 5 dealt with the issue of licences and sub-paragraph (b) thereof said that every licence granted or renewed under the said Order, inter alia, in Form D for running a brick kiln with slack coal would be subject to the conditions specified therein and such other conditions as the State Coal Controller or District Magistrate might prescribe from time to time. Paragraph 8 of the said Order dealt with directions regarding import, purchase, sale, storage and distributions; it required the licensee of a brick kiln under the said Order to comply with any direction that might be issued to him from time to time by the State Coal Controller or the District Magistrate, inter alia in respect of the sale and distribution of bricks. Sub-para (iv) of paragraph 8 and the Note thereunder read thus :

"(iv) A licensee in Form 'D' or a person running a brick kiln with coal-

- (a) shall not utilise or cause to be utilised coal allotted to him or in stock with him for a purpose other than burning bricks and shall not divert or transfer any such coal to any other person or any other brick kiln, even though owned by him, except under a

- A** written authority from the District Magistrate;
- (b) shall sell the whole or a specified part of his stock of bricks produced with the aid of slack coal to a person as may be specified in a permit issued in that behalf of the District Magistrate and addressed to him;
- B** (c) shall manufacture with the aid of slack coal bricks of such sizes as may be fixed by the District Magistrate and shall further sell them at such prices as may be fixed by the District Magistrate for different sizes and classes of bricks.
- C** Note.---For the purpose of this sub-clause, the District Magistrate may, subject to any direction of the State Government by general or special order fix--
- (a) the sizes of which bricks with the aid of slack coal are to be manufactured; and
- D** (b) the maximum price at which different classes of such bricks may be sold to the public in general and in bulk to construction agencies in the public section particular by any person, such price, being based on the estimated cost of, manufacture of such bricks plus reasonable margin of profit thereon :
- E** Provided that different prices may be fixed in respect of different classes and sizes of such bricks for different localities in the district having regard to different circumstances pertaining thereto.”

F Para 12 of the said Order dealt with the export of coal and bricks and stated that no person could export, cause to be exported or offer for export coal or bricks produced with the aid of slack coal from within the State without obtaining the prior written permission of the State Coal Controller. Form D in the said Order prescribed the form of the licence for running a brick kiln. Clause (4) of the conditions thereof required the licensee to comply with general or special directions issued by the State Coal Controller or the licensing authority from time to time with regard to, inter alia, the disposal and sale of any stock of bricks.

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H In the case of *Janta In. Udyog* this Court considered whether the State of U.P. was competent to insist that brick manufacturers should take out a licence for using coal for the purposes of manufacturing bricks. In a short order this Court held that the State Government could not impose a licence

on the manufacturers of bricks for the purposes of using coal for firing bricks. A

The High Court, in a judgment delivered on 22nd December, 1983 in the case of *M/s. Soni Bricks Trading Company v. State of U.P.*, dealt with the provisions of the said Order in some detail and came to the conclusion that the said Order had to be quashed to the extent it applied to persons manufacturing bricks with the aid of slack coal and to brick kilns being run by them for the manufacture of bricks in that manner. It said that there was no doubt that coal being an essential commodity, the State Government was within its powers to ensure that it was not misused or its availability at a fair price was not put in jeopardy. Since brick kiln owners were only consumers of coal and not dealers, all the provisions that were applicable to dealers, particularly those with respect to movement, sale, price, etc. could not be made applicable to brick kiln owners as bricks were not an essential commodity. It was, however, open to the State Government to make adequate provisions for ensuring that the coal issued for the purpose either under a permit or otherwise was not misused, but those provisions had to be made separately with this sole objective in view. The said Order insofar as it regulated the distribution, import, export and price, etc. of coal was severable as regards its application to brick kiln owners who manufactured bricks with the aid of slack coal. That being so, the said Order was not struck down in its entirety but was allowed to continue to apply to coal dealers and to regulate other matters relating to the supply and availability of coal. B
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The order that is presently impugned followed the earlier High Court judgment just referred to.

Coal being an essential commodity, the State Government is certainly entitled to regulate its use. To that extent it is entitled to regulate its use in brick kilns and require those who run brick kilns using coal to obtain licences under the said Order. The earlier order of this Court in the case of *Janta In. Udyog* does not, therefore, lay down the law correctly. That power, however, does not extend to the control in any manner of the bricks so produced. All that is requisite for the purposes of control of coal is that there should be no misuse of coal in the production of bricks. The bricks themselves can be freely disposed of. F
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With this in mind, it is necessary to identify and strike down those provisions of the said Order which control not the coal but the bricks. In regard to para 5(b) and in para 8(i)(b), it is necessary to make it clear that no condition may be specified or direction issued that relates to the sale and H

- A** distribution of bricks. Sub-para (iv) of para 8 and the Note thereto, which we have extracted above deals, except in clause (a) thereof, entirely with bricks and to that extent, paragraph 8 must be quashed. Paragraph 12, insofar as it applies to the export of bricks, must also be quashed. Insofar as the licence in Form D is concerned, the condition that requires a licensee to comply with general or special directions issued in regard to the disposal or sale of any stock of bricks is quashed.
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The appeal is allowed to the extent aforesaid. No order as to costs.

R.P.

Appeal allowed.