

(1983) 12 AHC CK 0002
In the Allahabad High Court
Case No : Writ Petition No. 3277 of 1982

Agarwal Industries

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-12-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 5

Citation : AIR 1984 All 253

Hon'ble Judges : S.C. Mathur, J; Kamleshwar Nath, J

Bench : Division Bench

Advocate : S. Ashok Nigam, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—Messers Agarwal Industries, the petitioner, is a firm registered with the Registrar of Firms and Societies. U. P., Lucknow. The Firm has filed the instant two petitions. In the earlier petition the firm alone is the petitioner while in the latter along with the Firm its partners have also been impleaded as petitioners 2 to 7. In both the petitions the petitioner is aggrieved by the provision relating to the assumed percentage of recovery of rice from paddy contained in the U. P. Rice & Paddy (Levy) and Regulation of Trade) Order, 1981, for short Levy Order, issued under the provisions of the Essential Commodities Act, 1955 The petitioner's case is that the percentage has been fixed arbitrarily without taking relevant factors into account. It is the further case of the petitioner that since the percentage of rice recovery has been wrongly fixed, the statutory price of levy rice is also not sustainable. In consequence the petitioner has prayed in the earlier writ petition for the quashing of the relevant sub-clause of Clause 8 of the Levy Order through which the percentage of assumed recovery has been fixed as 68%, and of the notification dated 16-11-1981 through which the price of levy rice has been fixed as; 182.80 per quintal for the season 1981-82. Certain ancillary reliefs have also been claimed. In the latter writ

petition the former prayer remains the same but the latter prayer has been substituted with the prayer for quashing of the notification dated 30-11-1982. Annexure no. 4. through which statutory price of levy rice for the season 1982-83 has been fixed as Rs. 193.20 per quintal. Both the petitions have arisen in the circumstances hereinafter indicated.

2. The petitioner firm holds a licence under the Rice Milling Industry Regulation Act No. XXI of 1958. It has a milling unit at Hardoi. The petitioner purchases paddy and converts the same into rice. Paddy as well as rice have been notified as Essential Commodities under the Essential Commodities Act, 1955, for short Act. In exercise of the power conferred u/s 3 read with Section 5 of the Act, the State Government issued the Levy Order mentioned above. Sub-clause (d) of Clause 2 of this Order defines the "Licensed Miller" as the owner or other person incharge of a rice mill holding licence under the Rice Milling Industry (Regulation) Act, 1958, Sub-clause (1) of Clause 3 requires every licensed miller to sell to the State Government at the notified price the quantity of rice prescribed in this sub-clause. The quantity prescribed is 40% of every variety rice, except scented variety, produced or manufactured in his mill every day. in the case of the districts of Bahraich, Gonda. Pratapgarh, Faizabad Sultanpur and Allahabad, and in the divisions of Gorakhpur and Varanasi. for the rest of the State the percentage is 60%. This 40% and 60% has to be calculated on the basis that the recovery of rice from paddy has been as prescribed in Sub-clause (8). This sub-clause prescribes different percentage for different varieties of rice, Under the 3rd proviso to this sub-clause it is competent for the Controller to accept reduced percentage of levy. But this he cannot do arbitrarily. There are two conditions to be fulfilled. The first is that he must be satisfied that the percentage of recovery was less than the prescribed percentage and the second is that he must pass a reasoned order while accepting the reduced percentage of levy.

3. Then come the provisions regarding the price which a miller is entitled to receive for the rice which he has so sold to the State Government. Under Sub-clause (1) of Clause 3 the price is to be notified by the State Government. Clause 7 says that for the rice delivered as levy, payment shall be made at the notified price in accordance with the specifications to be notified by the State Government from time to time. Clause 8 deals with adjustment in notified price and settlement of quality disputes. According to Sub-clause (1) the notified price would be for the fair average quality and it shall be subject to the deductions specified in the notifications. Sub-clauses (2) and (3) deal with the determination of the quality of rice, settlement of disputes relating to quality and adjustment of price.

4. In exercise of the power conferred under Clause 7 (2) (j) of the Lew Order, the State Government issued notification dated Nov. 16, 1981 fixing the purchase price of different varieties of levy rice for the season 1981-82. A copy of this notification is Annexure 6 to the earlier writ petition and is the subject matter of

challenge in that petition. By this notification prices of common, fine, super fine and scented varieties of rice have been fixed as Rs. 182.80. Rs. 188.75. Rs. 199.05 and Rs. 202.50 Per quintal respectively. The notification also contains specifications of rice in respect of which the notified price would be payable and says that the rice shall be in sound mercantile condition, sweet, dry, clean, wholesome of good food value, uniform in colour and size of grains and free from moulds, weevils, smell, discolouration and admixture of deleterious substance or colouring agents and all impurities except to the extent mentioned in the table. The table is also given in the notification with the heading "Schedule of Different Refractions for Fine and Common Varieties". In the first column of the table are mentioned the constituents of admixture or impurities. In the second the percentage of tolerance limit, in the third the percentage of rejection limit and in the fourth the rate of quality cuts to be imposed for refractions exceeding tolerance limits. For the reason 1982-83 similar notification was issued on 3-11-1982 a copy of which is Annexure 4 to the latter writ petition and is the subject matter of challenge in that writ petition. In this notification the prices have been fixed for common, fine and super fine varieties and the prices for the respective varieties of rice are Rs. 193.20. Rs. 199.15 and Rs. 209.70 per quintal. Regarding the specification it has been mentioned that the same shall be as prescribed for the season 1981-82.

5. Now the petitioner's grievance proceeds thus :-- The recovery of rice from paddy depends upon a variety of factors including the quantity of paddy, its moisture contents, the area where paddy is grown, and the period when hulling is done. Due consideration has not been given to these factors as is apparent from the fact that in petitioner's own mill the recovery does not exceed 66%. Further through its earlier Law Order dated 26-11-1968 the State Government had fixed recovery percentage as 65% and the geo-physical and other circumstances have not changed and, therefore, the enhancement of recovery percentage to 68 is entirely arbitrary and is not based on any material, no scientific investigation has been made before fixing the recovery percentage as 68. In respect of custom hulling the State Government had fixed the recovery percentage as 65. The rice millers, through their association, represented against the fixing of this percentage and the State Government after considering the representation and on the basis of its own investigations conducted through a committee of technical experts reduced the recovery percentage from 65 to 64 for the district of Hardoi and other Central and eastern districts, although in respect of the other area the percentage was not disturbed. This shows that the State Government recognises the fact that recovery of rice from Paddy is not uniform through the State. Although in the case of custom hulling this principle has been recognised, it has not been recognised in the case of levy rice and uniform percentage has been fixed for the entire State. This fixation is, therefore, arbitrary and consequently illegal and is liable to be quashed. Recovery of rice from paddy is an important factor in fixing the price of rice. Since the fixation of the uniform deemed recovery percentage is illegal, the

fixation of price of the levy rice is also illegal.

6. On behalf of the State no counter-affidavit has been filed in the later petition but counter-affidavit has been filed in the earlier petition and the same has been relied upon for opposing both the petitions. The fixation of the uniform deemed recovery percentage has been justified on the ground that the same is not arbitrary but is based on data scientifically obtained by expert in agriculture. It is stated that certain varieties of paddy may give lesser rice recovery but most varieties maintain an upward trend and often the recovery exceeds 70%. It is pointed out that the cases of lesser rice recovery have been taken care of by prescribing in the third proviso to Sub-clause (8) of Clause 3 that the controller on being satisfied that the percentage of recovery in any case is less, may accept reduced percentage of levy. Of course while accepting the reduced percentage of levy he will have to record reasons in writing, it is then stated that the petitioner has been subscribing to the 60% levy on the basis of 68% recovery. It was argued by the learned standing counsel Sri H. M. Tilhari that if the rice recovery in petitioner's mill was actually less than 68 per cent the petitioner had the alternative remedy under the third proviso to Sub-clause (8) of Clause 3, and approach to this Court under Article 226 of the Constitution was misconceived.

7. Fixation of price has been sought to be justified by submitting that the price of a commodity depends upon its quality and in the impugned price fixation notifications different prices have been fixed for different varieties of rice. The notifications also prescribed the standards which the rice will have to conform to. Clause 8 itself provides that the notified price shall be for the fair average quality and the same shall be subject to the deductions specified in the notification. If a dispute arises regarding the price at which payment should be made, Sub-clause (3) of Clause 8 provides the remedy of analysis and reanalysis. Thus, the learned counsel submits, the petitioner has alternative remedy in regard to disputes relating to price also.

8. The petitioner's learned counsel has countered the plea of alternative remedy by submitting that the same is illusory because no objection can be raised in regard to moisture contents which is a relevant factor for fixing the recovery percentage and the price. Reliance is placed on the proviso to Sub-clause (3)(ii) of Clause 8 of the Levy Order which says "provided further that no objection shall lie in respect of moisture content." According to the learned counsel there is intimate relation between recovery of rice from paddy and the price of such rice, if the recovery is less, the price goes up and vice versa. Therefore, moisture content of paddy is relevant not only in determining the recovery percentage but also in fixing the price of the recovered commodity, namely, the rice. Since under the proviso objection based on moisture content is not permissible, the alternative remedy provided under Clause 8 of the Levy Order is not an effective alternative remedy.

9. We will first take up the fixation of uniform, assumed recovery percentage of rice and then the fixation of price.

10. Sub-clause (8) of Clause 3 of the Levy Order reads as follows:--

"(8) The percentage of rice recovered from corresponding variety of paddy shall be deemed to be as follows, unless, proved to the contrary and the levy due under the clause shall be calculated accordingly:

Common variety 65 per cent

Fine and Super Fine.....66.5 per cent

Scented Variety 66 per cent

Provided that the State Government may, in public interest, reduce the percentage of recovery in respect of any area or in relation to any variety or grade of paddy:

Provided further that if the actual recovery in a mill is higher than the deemed recovery percentage, levy shall be taken only on the basis of deemed recovery percentage and not an actual recovery:

Provided also that the Controller on being satisfied that the percentage of recovery in any case is less than that specified in this sub-clause, may accept such reduced percentage of levy as he for reasons to be recorded in writing, thinks fit."

The percentage of recovery" prescribed above is not final and inflexible. It is subject to proof to the contrary as is apparent from the use of the words "unless proved to the contrary." But unless the contrary is proved, the levy shall be charged on the basis of the recovery percentage prescribed by this sub-clause. The intention of the State is not to charge levy on the basis of an imaginary recovery percentage and this is apparent from the provision contained in the third proviso. Under this proviso it is permissible for the Collector to accept reduced percentage of levy if the percentage of actual recovery is less than the prescribed percentage. The fact that the recovery percentage in a particular case is less is within the special knowledge of the miller and, therefore, in view of the assumption made in the sub-clause the burden of proving that the percentage of recovery is less shall be on the miller. Thus, the sub-clause only prescribes a mode of proving a fact. It lays down a rule of evidence. It is competent for the State to enact a law relating to evidence. It is also competent for it to amend, alter or change it. The utmost that may be said with regard to the assumed percentage is that by fixing the assumed percentage the normal rule of evidence has been changed. But there is no bar to it. So far as the right to prescribe assumptions is concerned, in law the same is available. (See (1) A.S. Krishna Vs. State of Madras, : (2) C.I. Emden Vs. State of Uttar Pradesh, and (3) Kallu Ram Vs. The State of Uttar Pradesh,)

10-A. The petitioner's grievance is that it is being compelled to subscribe to the levy on the basis of higher assumed recovery percentage when in fact the recovery of rice in its mill is less. The grievance is entirely misconceived. There is

no such compulsion. If the actual recovery of rice from paddy in petitioner's mill is less than the prescribed assumed percentage, the petitioner has only to avail of the remedy provided in the Order itself, and prove the fact before the Collector. Sub-clause (8) does not debar it from proving the lower recovery even on the basis of moisture content. The approach to this Court is, therefore, entirely misconceived.

11. The learned counsel for the petitioner, however, argued that proof to the contrary is already there on the record and there is no question of the petitioner furnishing further proof and, therefore, the State Government cannot insist on enforcing levy on the basis of the assumed recovery percentage of 68%. In support of this argument reliance is placed on reduction on the assumed percentage of recovery of rice from 65% to 64% in the case of custom hulling. The fixation of a lower assumed recovery percentage in the case of custom hulling has been explained by the State by stating in the counter-affidavit that the Scheme of custom hulling was aimed at providing maximum support price to the cultivators and under that Scheme all types of paddy were purchased i.e. paddy of inferior quality as well as of superior quality. It was on this consideration that the assumed recovery percentage was fixed at a lower figure. So far as levy rice is concerned, the same is recovered from paddy purchased by the miller himself. A miller is normally expected not to go in for inferior quality of paddy: The explanation offered by the State is plausible.

12. Coming to the challenge regarding fixation of price, it may be mentioned that under Clause 7 the price is fixed by the State Government and is notified from time to time and payment has to be made at the notified price in accordance with the specifications mentioned in the notification. Clause 8 (1) provides that the notified price shall be for the fair average quality and if the quality of the rice supplied falls below that standard, deductions shall be made in accordance with the specifications prescribed in the notification. Specifications have been prescribed in the notification dt. Nov. 16, 1981 referred to here-inabove and price for the seasons 1981-82 and 1982-83 has been notified through the notifications dt. Nov. 16, 1981 and 3-11-1982 respectively. Sub-clauses (2) and (3) deal with the manner of ascertaining the standard or quality of the rice supplied and with making deductions from the notified price. Sub-clause (3) provides as follows :--

"(3) (i) Four samples of rice or paddy delivered in levy shall be drawn, sealed and signed by the licensed dealer/miller or his representative and the Controller or his representative. One sample shall be handed over to the licensed dealer/miller or his representative and two samples shall be forwarded to the Regional Check Laboratory. The Controller or his representative shall make analysis of the remaining sample in presence of licensed dealer/miller or his representative and make payment at the notified price accordingly.

(ii) If the licensed dealer/miller is not satisfied with the results of analysis done he shall, within three days file an objection in writing to person who made the

analysis for its re-analysis:

Provided, however, that no objection shall lie in respect of moisture content,

(iii) The objection referred to in Sub-clause (ii) above shall be forwarded to the in charge. Regional Check Laboratory within three days. The in charge Regional Check Laboratory shall fix a date for analysis not later than fifteen days of the receipt of such objection and intimate the concerned licensed dealer/miller to be present at the time of analysis on the fixed date. Analysis of the sample shall be done at Regional Check Laboratory by the Regional Marketing Officer.

(iv) If the licensed dealer/miller is not satisfied with the result of analysis done at Regional Check Laboratory, he may within three days of such analysis represent to the Regional Food Controller for analysis at the Central Check Laboratory. The Regional Food Controller shall forward such representation to the Chief Marketing Officer. The Chief Marketing Officer shall fix a date for analysis of the sample not later than fifteen days of receipt of representation from Regional Food Controller and direct concerned licensed dealer/miller to be present at the time of analysis along with the sealed sample given to him. On the fixed date analysis of such sample in possession of licensed dealer/miller shall be done at the Central Check Laboratory by the Chief Marketing Officer whose finding shall be final.

(v) Necessary adjustment in price shall be made according to the results of final analysis at the Regional/Central Check Laboratory as the case may be."

From the above it would be seen that the basis of deduction from price is the quality of the rice. If a dispute is raised regarding the quality, the same will have to be settled in accordance with the provisions of Sub-clause (3). But under the proviso no objection can be raised in respect of moisture content. This is so because moisture content may be relevant for determining the recovery of rice from paddy but it has no relevance in the fixation of price. The price of a commodity depends upon its quality and its demand and supply position in the market. It is for this reason that while in Clause 8, which deals with price of rice, objection based on moisture contents has been excluded from being raised, it has not been so excluded under Clause (3) which deals with recovery of rice from paddy. Under the third proviso to Sub-clause (8) of Clause 3 every type of objection can be raised. There is no restriction as regards the nature of the objection, including the objection relating to moisture content.

13. The argument of the learned counsel, however, is that production is a relevant factor in price fixation. If the production is more the price shall be less and vice versa. According to the learned counsel since the production of rice in petitioner's mill is less than the assumed percentage fixed by the State, the petitioner is entitled to higher price but under the notification a uniform price has been fixed throughout the State. In this connection it is also argued that fixation of different percentage of levy for two distinct areas also shows that recovery of rice from paddy is not uniform throughout the State, but since uniform percentage of rice recovery has been fixed for the entire State, it is

apparent that the price fixation has been done on the basis that rice recovery throughout the State is uniform although factually it is not, as observed hereinabove, price of a commodity depends upon its quality and the demand and supply position. We are, therefore, not impressed by the arguments of the learned counsel.

14. In view of the above the petitions are without merit and are hereby dismissed with costs to the opposite parties. Interim order, if any, shall stand discharged.