

(1972) 05 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. 342 of 1967

Bahadurmál Sethia and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-05-1972

Acts Referred:

Essential Commodities Act, 1955 — Section 3(3), 3A

Citation : AIR 1973 Cal 67

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.C. Mitra, J.—This is an application for appropriate rates and directions directing the respondents to forthwith recall, cancel and withdraw the West Bengal Rice Mills Control Order, 1967 and also for an order directing the respondents to refrain from giving effect or further effect to the provisions of the said levy order and for other incidental reliefs.

2. Petitioner No. 1 is a Director of a Rice Milling Company, the petitioner No. 2 is a partner of a firm engaged in milling rice and the petitioner No. 3 is a society registered under the Societies Registration Act. All the members of the petitioner No. 3 claim to be the licensed millers of rice. The business of rice mills consists of the purchase of paddy from the market and recovery of rice from such paddy for ultimate sale of rice to wholesalers in different parts of the State.

3. On April 18, 1967, the respondent made an order known as the West Bengal Rice Mills Control Order, 1967 in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955. On the same day, the respondent also made another order known as the West Bengal Rice Mills (Levy) Order, 1967. This order was published in the Calcutta Gazette on the same day. Under Clause 4 of this order procurement price was fixed for different grades of rice. Clause 4 of the order is as follows:

"(4) Procurement prices -- (1) For purpose of this order, the procurement prices of different varieties and grades of rice shall, subject to the provisions of subparagraphs (2) and (3) be as follows:

Variety Grade Rate per quintal Rs.

Aman Rice (i) Common 93.75

(ii) Fine 97.80

(iii) Superfine 101.80

Aus and Boro Rice All Grades 93.75"

4. Under the 1967 Levy Order whole of the rice in the possession of the rice mills was to be sold either to the Director or the Food Corporation. According to the petitioners the entire quantity of rice held by them was obtained by the respondents and the price was paid on the basis of procurement price fixed by Clause 4 of the order set out above, that is to say, at Rs. 97.80 per quintal.

5. The petitioners' contention is that the procurement price fixed by the Levy Order has been so fixed arbitrarily and in total disregard to the provisions of the Essential Commodities Act, 1955 under which the fixation of procurement price was purported to be made. According to the petitioners the provisions in that Act contain elaborate directions for fixing of the procurement price and such provisions the petitioners contend, have not been complied with. In consequence of this wrongful act on the part of the respondents, the petitioners contend, they have not been able to obtain from the respondents the price to which they are entitled for the rice which they have been compelled to sell to the Director or the Food Corporation.

6. In support of this contention Mr. Mukherjee appearing for the petitioners firstly relied upon the provisions in Section 3(iii)(c) of the Essential Commodities Act, Section 3 deals with powers to control production, supply, distribution, etc., of essential commodities. Sub-section (3) of this section provides that where any person sells any essential commodity in compliance with an order made with reference to Clause (f) of Sub-section (2) he shall be paid the price therefore as provided in Clause (a), Clause (b) and Clause (c) thereunder. Clause (a) deals With an agreement between the parties with regard to the price on the basis of the control price. This clause, it was submitted, did not apply because there was neither any control price nor any agreement between the parties. Clause (b) deals with the price which is to be calculated with reference to the control price in the absence of an agreement between the parties. This clause, according to Mr. Mukherjee, did not apply because there was no control price. Clause (c) says that Where neither Clause (a) nor (b) applied, the price is to be calculated at the market rate prevailing in the locality at the date of sale. It was submitted that Clause (c) is the material provision for fixing procurement price with regard to the rice in question. In other words, it was argued that since Clauses (a) and (b) have no application in fixing the procurement price the State Government should

have kept in view the provisions in Clause (c). Mr. Mukherjee argued that the procurement price was fixed without any reference to the market price with the result that his client had been deprived of a fair return for the price which he had been compelled to sell to the agents of the State Government.

7. Mr. Mukherjee also relied on the provisions in Section 3A (iii) (c) which also prescribes that where Clauses (a) and (b) u/s 3-A (iii) did not apply the price will be the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

8. Reliance was also placed by Mr. Mukherjee on explanation u/s 3-B of the Act which says that for the purpose of this sub-section "post harvest period" in relation to any area means a period of four months beginning from the last day of the fortnight during which harvest operations normally commence. Mr. Mukherjee also submitted that in this case there was no dispute that the post harvest period means the period from December 15 to April 15.

9. Relying on the provisions in the Essential Commodities Act, counsel for the petitioner contended that Clause (4) of the levy order which fixes the procurement price is ultra vires the Act inasmuch as the price has been fixed by that clause without any reference to the prevailing market price. In support of this contention Mr. Mukherjee also rolled upon the price of rice mentioned at page 24 of a Handbook of Procurement and Distribution published by the Government of West Bengal. In Table XVI at page 24 the minimum average wholesale price of aman rice in West Bengal during the year 1966-67 is stated to be Rs. 124.09 P. It was argued that the respondents themselves have admitted the minimum price of aman rice during the relevant period to be Rs. 124.09 P. per quintal and that being so, it was not open to the respondent to contend that the petitioners are entitled to the price only on the basis of the procurement price fixed in the levy order.

10. Mr. P. K. Sengupta sought to repel the contention of the counsel for the appellant by arguing that although Rs. 124.09 P. is the price mentioned in the Handbook, the petitioners as millers are not entitled to price at the wholesale rate but are entitled only to the ex-mill price which is lower than the wholesale rate. On this point he relied on paragraph 8 of the affidavit in opposition affirmed by Bimal Chandra Mukherjee on July 11, 1967, in which it is stated that to the cost price of one-half quintal of paddy is to be added, a total incidental charge of Rs. 9.35 P. including a milling charge of Rs. 5.35 p. Rs. 2.25 p. for gunny container and the lest for covering the millers' margin and other incidentals. But even if Rs. 9.35 p. is deducted, the price mentioned in the Handbook of Procurement and Distribution, is much higher than the procurement price fixed by Clause (4) of the levy order.

11. It seems to me that in fixing the procurement price in Clause (4) of the levy order the respondent has completely ignored the prevailing market price during

the post harvest period as they were required to do under the provisions of the Essential Commodities Act mentioned above. It is true that in the levy order for the previous year the price was lower than the price fixed by the levy order of 1967 and it is also true that the levy order of 1966 has not been challenged by the petitioners, but on the facts in this case there can hardly be any doubt that the market price was much higher than the procurement price fixed by the levy order and that in fixing the procurement price by the levy order the respondent did not comply with the provisions of the Essential Commodities Act in fixing the price of rice and paddy.

12. There is one other matter to Which I must refer in dealing with the question of price. When this Rule came up for hearing before me on 9th September, 1971, I made an order with consent of parties whereby a Special Referee was appointed to enquire into and make a report on the prices of both rice and paddy in all the districts of West Bengal for the period between January 1, 1967, and April 30, 1967. This order of reference was made because there was a prior order directing that, the matter should be tried on evidence and it was felt that instead of taking evidence in Court a Special Referee should be appointed to go into the question of price as mentioned above. This order was made on the basis that the respondent would accept the finding of the Special Referee on the question of price of rice during the relevant period. The Special Referee in his report has found that the average wholesale price of rice in all the districts of West Bengal during the period under enquiry was Rs. 124.09 p. per quintal and the average retail price of rice in all the districts of West Bengal during the period under enquiry was Rs. 126.75 p. per quintal. As no exception has been taken to this report the finding of the Special Referee on the question of price has become binding upon the parties. But when the matter came up before me for final disposal today, learned counsel for the respondent was not prepared to concede that the petitioners should be paid for rice at the rate found by the Special Referee. Although no exception having been taken to the report of the Special Referee, the finding regarding price of rice at the relevant period has become binding of the respondent.

13. In support of his contention mentioned above Mr. Sengupta relied on a decision in the case of State of Gujarat Vs. Shantilal Mangaldas and Others, , for the proposition that the principle for determination of compensation cannot be said to be irrelevant, nor can the compensation determined be regarded as illusory and that being a principle relating to compensation, it was not liable to be challenged. This decision to my mind is of no assistance to the respondent because what the petitioners are challenging is not the quantum of compensation but they are challenging the fixation of price in violation of the provisions in the Essential Commodities Act. The main contention of the petitioners is, as I have noted above, that the procurement price has not been fixed in compliance with the provisions of the Essential Commodities Act and, therefore, the price so fixed cannot be enforced and Clause (4) of the levy order by which the price was fixed must be struck down. Mr. Mukherjee appearing for the petitioners argued that if

after the procurement price was fixed in compliance with the statutory provisions, it was found that the compensation was insufficient or inadequate or illusory, his client might be debarred from challenging the quantum of compensation but his case is based not on the quantum of price but on the ground that in fixing the procurement price no regard has been paid to the provisions of the Essential Commodities Act

14. In my view, the contention of counsel for the petitioners must be upheld. It is plain to me that procurement price in the levy order for 1967 has not been fixed in compliance with the provisions of the Essential Commodities Act. It is also clear to me that according to the State Government the price of aman rice during the relevant period is much higher than the price fixed by the levy order. In these facts, I cannot but conclude that the respondents failed to apply their mind to the question of fixing the procurement price and that if the relevant factors in fixing the procurement price were taken into consideration the rates fixed by Clause (4) of the levy order could not have been fixed as they have been done.

15. Turning now to the question of report of the Special Referee, I must hold that the price fixed by the Special Referee in his report binds all the parties to this application. But this Court in dealing with Writ petition cannot give any relief to the petitioners on the basis of the price fixed by the Special Referee as any direction for payment of price on the basis of the report will be beyond the scope of the Writ petition on which the Rule Nisi was issued. I was somewhat surprised that although the respondents agreed to the order of reference, without prejudice to their rights and contentions, they did not agree to accept the price found by the Special Referee as fair and reasonable price of rice for the relevant period.

16. For the reasons mentioned above, this rule is made absolute. Let a Writ in the nature of Mandamus issue directing the respondents to cancel and withdraw and not to give effect to Clause (4) of the West Bengal Rice Mills (Levy) Order, 1967. Let a Writ in the nature of prohibition also issue directing the respondents not to give effect to the procurement price fixed by Clause (4) of the said order. There will be no order as to costs.

17. Operation of the order is stayed for four weeks.

18. Leave is granted to the petitioner to reverify the petition in compliance with the rules under Article 226 of the Constitution and Code of Civil Procedure.

19. Leave is also granted to reverify the petition by a competent officer of the petitioner No. 3.