
(1982) 10 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1736 of 1981

Baldev Traders

APPELLANT

Vs

State of Raj. and Another

RESPONDENT

Date of Decision : 13-10-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 158
Essential Commodities Act, 1955 — Section 12, 13, 2, 3

Citation : (1983) RLW 90 : (1982) WLN 687

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—The petitioners, M/s. Baldev Traders and a partner of the firm Baldev Kumar, have filed this writ petition under Article 226 of the Constitution of India challenging the Rajasthan Rice Procurement (Levy; Order, 1981.

2. The State of Rajasthan in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 read with the Government of India, Ministry of Agriculture (Department of Food) Order published under GSR 360, dated June 9, 1978, and with the prior concurrence of the Central Government made an order vide notification,, dated October 13, 1981, known as the Rajasthan Rice Procurement (Levy) Order, 1981 (thereinafter referred to as "the Levy Order). Under the above Levy Order every whole seller is required to sell to the State Government at the procurement price:

(a) 50% of the total quantity of the rice held in stock by him at the commencement of this Order:

(b) 50% of the total quantity of the rice got milled by him everyday out of stocks of paddy beginning with the date of commencement of this order until such time as the State Government directs.

3. Under clause 3 of the said Levy Order it has been laid down that quantity of rice for levy under clause 3(1)(b) and 3(2)(b) shall be calculated on the basis of cut-turn ratio of 69% (Sixty nine percent) rice from paddy milled by rice Mills every day. Under clause 4 the rice required to be sold to the State Government under Sub-clause (1) and (2) shall be delivered by the Miller or the whole saler to the public agency daily. Under clause 3(6) it has been laid down as under:

No miller or whole-seller shall dispose of or otherwise part with the possession of any portion of the rice produced or manufactured or got milled or held in stock by him as aforesaid until he has delivered the levy due from him under Sub-clause (1) and (2).

4. According to the petitioners the date October 13, 1981, on which the levy order came into force, the petitioners were in possession of 99 full bags and 3426 small bags (Katta) weighing 1600 quintals, 95 Kgs. and 600 Gms. of rice in their stock. The entire stock held in possession by the petitioners belonged to the persons mentioned in Schedule annexed with the writ petition. The case of the petitioners is that they were selling the rice as commission agents of the persons mentioned in the schedule. They were not the owners of the rice in stock and were merely commission agents i.e. Artiyas.

5. The petitioners have thus challenged the levy order as unconstitutional and contrary to the provisions of Section 3 of the Essential Commodities Act (hereinafter referred to as "the Act"), and also violative of Article 14 of the Constitution of India.

6. It is contended by learned Counsel for the petitioners that (he case of the petitioners is not covered under the provisions of the levy order as the petitioners are only commission agents and are not holding any stock of rice on their own behalf. The petitioners are merely acting as agents of third persons. It is argued that u/s 3 Sub-section (2) (f) of the Act reads as under:

Section 3(2)(f)--for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him.

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other persons or class of persons and in such circumstances as may be specified in the order.

It is submitted that the aforesaid provisions are not applicable to a person who holds the stock on behalf of third persons. The provisions of the levy order if they

include commission agents are ultra vires the provisions of Section 3(2)(f) of the Act. It is contended that the petitioners charge only their commission at 2% on the sale. If the petitioners are "called upon to deliver by way of levy in the purported exercise of powers flowing from the levy order, they would be liable to deliver the rice at the procurement price and On the other hand they will be liable to pay the sale-price to the real owners of the stock according to the contract between them. There is no provision in the Essential Commodities Act or in the levy order making the petitioners immune from extra liability to the real owners of the stock.

7. It has also been contended that the levy order can only apply when fresh crop arrives in the market. It cannot be applied to the goods in stock held by dealers but the State Government is enforcing the levy order for the stock held by the petitioners on the date of levy order coming into force. It is also argued that there is no levy on the goods which are bought by the dealers after the commencement of the levy order either from the business community within the State or outside. Thus it creates discrimination and offends Article 14 of the Constitution of India.

8. Learned Deputy Government Advocate, on the other hand, argued that the petitioners even in the capacity of the commission agents were holding the rice in their stock and they are fully covered under the provisions of Section 3(2)(f) of the Act and the levy order. It is contended that the petitioners are admittedly whole-salers holding a valid licence of-whole-salers under the Rajasthan Trade Articles (Licensing and Control) Order, 1980. The levy order clearly requires every whole-saler to sell to the State Government at the procurement price and as such the petitioners are fully covered under the provisions of the levy order. It is contended that holding in stock does not require the ownership by the dealer, but it also covers a dealer who is merely in possession of the stock. It is submitted that in case the petitioners in the capacity of commission agents are required to deliver the rice at the procurement price under a statute, there is no liability on them to pay the contractual price to their principles.

9. The object of the Essential Commodities Act, 1955 is to provide for the control of the production, supply and distribution of, and trade and commerce in, certain commodities essential for human being in the interest of the general public It essentially deals as one of the subjects "control of production, supply and distribution of essential commodities". In exercise of this power Section 3 has been enacted in the Act. Under Sub-section (2) of Section 3 of the Act without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide under Clause (f) for requiring any person holding in stock, or engaged in the, production, or in the business of buying or selling, of any essential commodity, (a) to sell the whole or a specified part of the quantity held in stock or produced or received by him. Thus there can be no dispute that an order can be made under the aforesaid provision in relation to a person holding the essential commodity in stock. The levy order has been issued by the

State Government in exercise of the powers conferred by Section 3 of the Act read with the Government of India, Ministry of Agriculture (Department of Food) Order published in GSR. 800 dated June 9, 1978 and with the prior concurrence of the Central Government. Under Clause (1) of Section 2 of the levy order whole saler has been defined as under : .

Wholesaler" means a dealer carrying on business in rice and holds a valid licence of wholesaler under the Rajasthan Trade Articles (Licensing and Control) Order, 1980.

The petitioners in para 1 of the writ petition itself have admitted that petitioner No 1 is a registered partnership firm carrying on business in rice among other articles and is a wholesale licensee under the Rajasthan Trade Articles (Licensing and Control) Order, 1980. The levy order clearly requires a wholesaler to sell to the State Government at the procurement price 50% of the total quantity of rice held in stock by him at the commencement of this order. In my view the petitioners being wholesaler are clearly covered by the provisions of the Levy order to sell to the State Government at the procurement price. The petitioners are admittedly in possession of the stock and as such they would be considered as holding the same in stock. Holding the same does not necessarily mean that the person should have ownership over it. In *K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam*, it was held that the expression "holding" connotes possession and title, but it has been further added " sometimes it is used only to mean actual possession." Thus it cannot be said that the word "holds" includes invariably both possession and title of the thing held. The meaning has to be found out in a particular context used in the statute. In a legislation like the levy order made under the Essential Commodities Act, the main idea is to meet urgent public need for food grains. It works only a conversion of the commodity into its equivalent in cash and an investigation of ultimate title is neither relevant nor practical in case of a levy order.

10. A commission agent is covered by the provisions of agency contained in chapter X of the Indian Contract Act. u/s 158 of the Contract Act an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business. If the petitioners even in the capacity of commission agents are required under the levy order to sell 50% of the stock held by them, the principals are bound by such act and no liability can be castened on the commission agents to pay the contractual price to the owners or principals. In the present case the petitioners have not even mentioned the contractual price and in these circumstances the procurement price on which 50% of the stock would be sold to the State Government will be considered as contractual price and the commission agent can be legally asked to pay the procurement price only to the principals or owners.

11. Learned Counsel for the petitioners placed strong reliance on *Jadu Sah Vs.*

The District Supply Officer and Others, Mahadeo Oil Mills and Others Vs. Sub-Divisional Magistrate and Others, and Naresh Chandra Das and Another Vs. State of Assam and Others, On the other hand, learned Deputy Government Advocate placed reliance on Baijnath Prasad Gupta Vs. State of Madhya Pradesh, , The State of Kerala and Ors. v. Annam and Ors. AIR 1969 38 and Teknarayan Mahesh Prasad and Ors. v. The State of Bihar and Ors.. In *Jadu Sah v. D.S.O. Aurangabad and Ors.* (supra) it was held that the expression "any person holding in stock" in Section 3(2)(f) of the Act relates to the holding of the stock of his own by the person referred to in that section. Therefore, the commission agent holding the stock not of his own but of others is not covered by Section 3(2)(f) of the Act. The above authority placed reliance on an earlier decision of a Bench of that Court in the case of *Chandrika Prasad Mishra v. State of Bihar* CWIC No 615/68 and analogous cases decided on December 17, 1968. In the view of the Patna High Court "that a person retaining control of an essential commodity for the purpose of furthering the business of third persons who have ownership in the essential commodity concerned while the agent has none, and not holding any stock of essential commodity as his own is not sought to be covered by the provisions of Section 3(2)(f) of the Act". The reason given in the above case for taking the aforesaid opinion appears to be that in the levy order in question ultimate liability had not been thrown on the owners of the stock. In my view there is a fallacy in the aforesaid arguments. "Holding in stock" clearly covers the case of commission agent in possession of the stock and held by him under a valid licence of wholesaler. If under any valid provision of law he is required to sell such stock on procurement price, his principals would certainly be bound by it and cannot claim any other price. A commission agent can only be liable for an act not done in good faith or done in his own interest to put his principals to loss. The petitioners have not mentioned any contractual price and as such they can be bound to pay only the sale price to their principals and in the present case it would be the procurement price I need not refer to other cases relied upon by the learned Counsel for the petitioners as they are based on the view taken by the Patna High Court in *M/s Jadu Sah's case* supra) with which I respectfully disagree.

12. In the view taken by me I find support from a full Bench decision of Kerala High Court in the *State of Kerala and Ors. v. Annam and Ors.* (supra). The Kerala High Court in the above case has clearly taken the view that "holding in stock" does not connote both possession and title. What it means in a particular context must necessarily depend upon a context itself. In a legislation designed to meet urgent public need for foodgrains, the title to property in the paddy, which is a matter of individual concern between the rival claimants there to, cannot enter seriously for consideration. Procurement for price paid involves little deprivation of property, it works only a conversion of the commodity into its equivalent in cash. In the circumstances of the levy Order an investigation on ultimate title is neither relevant nor practical. In my view the petitioners cannot raise any grievance that they cannot be required to sell 50% of the stock held by them on

procurement price, taking a shelter of title vesting in third person. I have already held that the petitioners would only be liable to pay the procurement price to their principals and as such they are not deprived of any property. The Supreme Court in *K.K. Handique v. The Member, Board of Agricultural Income Tax Assam* (supra) while determining the question whether managing trustees can be assessed for agricultural Income Tax on the total income from the Trust properties u/s 12 or 13 of the Act observed as under:

The expression "holds" includes a two-fold idea of the actual possession of a thing and also of being invested with a legal title. Sometimes it is used only to mean actual possession. But u/s 12 the expression is used in the wider sense, or under that section the person mentioned there in holds land partly for his benefit or partly for the benefit of the beneficiary or wholly for the benefit of the beneficiary. In its wide phraseology the section takes in the trustees in whom property vests and also managers and the like who manage the properties on behalf of others. But, if the case falls u/s 13, to that extent it is taken out of Section 12. As the same expression "holds" is used in Section 13, it must be given the same meaning as it bears in Section 12 that is to say, it takes in both title and possession. That section deals with persons who hold land on behalf of persons jointly interested in the land or in the agricultural income derived therefrom. It does not, therefore, apply to a person who holds land on his own behalf as well as on behalf of others.

In my view the above authority does not lend any assistance to the petitioners as the meaning of expression "holds" was considered in particular context of Section 12 and 13 of the Assam Agricultural Income tax Act, 1939. Their Lordships have themselves observed that "sometimes it is used only to mean actual possession." In this view of the matter I am clearly of the opinion that the context in which the words "holding in stock" have been used u/s 3(2)(f) of the Act clearly includes the case of a person who is in possession of the stock as a commission agent to sell it on behalf of its principal.

13. The argument made by learned Counsel for the petitioners that the levy order can only apply to the rice received by the petitioners after passing of the levy order and it cannot apply to such stock of rice which was in hand at the time of the coming into force of the levy order, is fully covered by a decision of their Lordships of the Supreme Court in *New India Sugar Works Vs. State of Uttar Pradesh and others*, . With regard to a similar argument raised in respect of imposing a levy on the Khandsari, it was held that it was not a question of retrospectivity of the statute but its actual working. Once the notification imposing the levy was made it will obviously apply to stock of Khandsari produced by the petitioners either before or after the order. In these circumstances once the notification for imposing the levy was made it will naturally apply to the stock of rice in hand with the petitioners. It was also observed in the above Supreme Court case:

It was next strongly contended that in fixation of the price of levy sugar the

Government has not taken into consideration the fact that the petitioners would undergo a serious loss because the price would not be sufficient even to cover their manufacturing cost. We are, however, unable to agree with the argument. The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price so as to benefit the consumers. It is manifest that individual interests, however, precious they may be must yield to the larger interest of the community, namely, in the instant case, the large body of the consumers of sugar. In fact, even if the petitioners have to bear some loss there can be no question of the restrictions imposed on the petitioners being unreasonable.

14. In the result, I find no substance in this writ petition and the same is dismissed with no order as to costs.