
(1976) 04 AHC CK 0012
In the Allahabad High Court
Case No : Civil Misc. Writ No. 4035 of 1975

Deep Narain Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-04-1976

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 246, 254
Essential Commodities Act, 1955 — Section 2, 3, 3(1), 3(2), 3(3A)
Uttar Pradesh Municipalities Act, 1916 — Section 298(1), 298(2)

Citation : (1976) AWC 546

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Singh, J.—The Petitioners are agriculturists who produce wheat in their holdings, they have challenged validity of the U.P. Wheat (Levy Regulation of Trade and Control of Movement) Order, 1975, by means of this petition under Article 226 of the Constitution.

2. The U.P. Wheat (Levy Regulation of Trade and Control of Movement) Order, 1975 (hereinafter referred to as the Order) was issued by the Governor of Uttar Pradesh on 7-4-1975 in exercise of his powers u/s 3 of the Essential Commodities Act," 1955 (hereinafter referred to as the Act). Clause 3 of the Order requires a wheat producer to sell wheat to the Collector at the purchase centre fixed by him for the price specified in the Order. Schedule II to the Order lays down scale for the calculation of quantity of levy as wheat. The quantity of levy varies on the basis of sown area by the agricultural producer and the aggregate area of land held by him. Clause 4 of the Order restricts right of producer to dispose of or part with the possession of any portion of his produce of wheat unless he delivers the levy due to the authority concerned in accordance with the provisions contained in the Order. Clause 2(m) defines the

specified price according to which a producer is entitled to the price of Rs. 105.00 per quintal of levy wheat. Clause 7 of the Order empowers Collector to seize such quantity of wheat from the possession of the producer as may be equivalent to the levy due from him. Contravention of the Order is punishable u/s 7 of the Act.

3. This petition came up for hearing in May 1975, at that stage learned Counsel for the Petitioners raised a number of grounds to challenge the validity of the Order, all those grounds were founded on the violation of Articles 14 and 19 of the Constitution. The hearing could not be completed as the summer vacation intervened. In June 1975 the President of India promulgated emergency under Article 359 of the Constitution, consequently Article 19 stood suspended. Further the President by a notification suspended the operation of Article 14 also. On 13-6-1975, Governor of Uttar Pradesh promulgated U.P. Ordinance No. 70 of 1975 amending Clause (f) of Sub-section (2) of Section 3 of the Act with retrospective effect. The ordinance was later on converted into U.P. Act No. 39 of 1975. In view of these developments the Petitioners filed supplementary affidavit, reply to which was filed by the Respondents. On resumption of hearing learned Counsel for the Petitioners made a statement that the Petitioners would not press any grounds raised by them on the basis of Articles 14 and 19 of the Constitution. The learned Counsel has confined his arguments to two points and no other points raised in the petition.

4. Learned Counsel for the Petitioners urged that since the State Government did not fix any controlled price of wheat it had no jurisdiction to fix price of levy wheat. In the absence of controlled price of wheat for sale to the consumers, the Petitioners are entitled to price of levy wheat at the market rate prevailing in the locality. In order to appreciate the Petitioners' contention, it is essential to refer to the relevant provisions of the Act. The impugned Order has been issued by the State Government u/s 3(2)(f) of the Act. Section 3 including the material sub-clauses of Essential Commodities Act are as under:

(His Lordship then reproduced Section 3(1), (2)(f), (3-A)(i), (3-B)(i), (ii) Explanation and proceeded on to observe;)

5. Admittedly wheat is essential commodity within the meaning of Section 2(a) of the Act. There is no dispute that the State Government u/s 3(2) of the Act is empowered to issue an order requiring any producer holding stock of wheat to sell it to the State Government. Learned Counsel for the Petitioners, however, urged that since no controlled price of wheat at which it could be sold to the consumers has been fixed, the State Government had no authority in law to specify price of levy wheat. The Petitioners are not bound to sell levy wheat to the Government at the rate of Rs. 105 per quintal, instead they are entitled to the price prevailing or likely to prevail in the post harvest period in the locality. The Petitioners contention is well supported by the decision of a Division Bench of this Court in *Sitaram Jwala Prasad and Others Vs. State of Uttar Pradesh and Others*, . The Bench after considering the various provisions of Section 3 and 3-B and various

sub clauses of section held that u/s 3-B, the State Government was bound to pay to the dealers either the controlled price as contemplated by Clause (i) of Sub-section 3-B or the price prevailing or likely to prevail in the post-harvest period in the area as contemplated by Clause (ii) of Section 3-B. The price of levy foodgrain as specified in the order was held to be illegal as that did not constitute controlled price of the foodgrain within the meaning of the Act. After the judgment of the Division Bench, Section 3 was amended by the State Legislature by the Essential Commodities (U.P. Amendment) Act, 1975, No. XVIII of 1975. Section 3(2)(f) and Section 3-B were amended with retrospective effect in the following manner:

* * * * *

6. After the amendment the position has considerably changed. The newly added Clause (i-a) to Section 3-B lays down that in a case where no controlled price of foodgrain is fixed by an order issued under Clause (c) of Sub-section (2) the price of foodgrain required to be sold to Government or its agency under an order issued in exercise of powers u/s 3(2)(f) of the Act, may be fixed by the Order itself. Thus after the amendment even if no controlled price is fixed, it is open to the State Government to fix price of foodgrain required to be sold to the Government. After the amendment the State Government filed a review application before the Division Bench. The Bench rejected the review application on 25-4-1975. But it observed that in view of the retrospective amendment of the relevant provision of Section 3, the price of foodgrain required to be sold to the Government would be the same as fixed in the Order. Further the price of foodgrain as fixed in the Order was valid eventhough no controlled price of foodgrain was fixed. In view of this observation made by the Division Bench, it is clear that even in the absence of controlled price for the sale of wheat to the consumers the order may specify the price for which the producer is required to supply the levy wheat to the Government. The impugned order does not stand vitiated on account of the absence of the controlled price of wheat. Further the producer is not entitled to the price prevailing in the locality, instead he is entitled to the price specified in the Order.

7. The Essential Commodities Act, 1955 is a Central Act but State Legislature is competent to amend the same and the amended provisions would be applicable so far as the State of Uttar Pradesh is concerned. Articles 246 and 254 read with entry 33 of List III of VIIth Schedule to the Constitution confer concurrent power on the Central as well as State Legislature to enact laws in respect of food stuffs. The State Legislature is competent to amend the Essential Commodities Act enacted by the Central Legislature. In the instant case the State Legislature amended the relevant provisions of Section 3 of the Act with retrospective effect. The newly added Explanation to Section 3(2)(f) of the Act and Clause (i-a) to Section 3(B) as amended must be deemed to have been in force even at the time the impugned order was issued. Since the amendments so made are valid which are retrospective in nature it was not necessary for the Central

Government or the State Government to fix controlled price of foodgrains before specifying price of levy wheat in the impugned Order. The price specified in the Order is the price fixed in accordance with the Act and an agricultural producer is entitled to receive that price for the wheat supplied by him to the State Government or its Agent in accordance with the provisions of the Order.

8. It was then urged that the price of levy wheat as specified in the Order, was not fixed by the Central Government in accordance with the Explanation. I find no merit in the contention. The Explanation to Section 3(2)(f) as amended by the State Legislature empowers the Central Government to specify price of the essential commodity which may be required to be sold to the Govt. under an Order framed in exercise of powers u/s 3(2)(f) of the Act. The price is required to be fixed after taking into account the recommendations of the Agricultural Prices Commission. In the affidavit filed on behalf of the State Government it is asserted that the price of levy wheat was fixed by the Central Government at the rate of Rs. 105.00 per quintal on the basis of the report of the Agricultural Price Commission an expert body specialty appointed to advise on the price policy of agricultural commodities including wheat with a view to evolve a balanced and integrated price structure in the perspective of the over all needs and the economy of the country with due regard to the interest of the producer and the consumer. The recommendations of the Commission were considered by the Central Government and thereafter the Central Government fixed the price of levy wheat at the rate of Rs. 105.00 per quintal. It is that price which is specified in the Order. The price was fixed after taking into account, the relevant dates furnished by the Agricultural Prices Commission relating to the cost of production including labour, cost of seed, manure and other incidental matters. The Petitioners have placed before the Court their own figures to show that the price specified in the Order is arbitrary, it has no relation with the expenses incurred by the Petitioners in producing the wheat. As already observed the price fixed by the Central Government is based on an overall assessment of various factors. The price so fixed cannot be questioned on the ground that it operates to the advantage of an individual producer. The law does not require that the Central Government, should consider the case of each and every individual producer before fixing the price. Whenever price is fixed on the basis of the data furnished by expert body viz. the Agricultural Prices Commission, it is bound to affect some individual producers adversely but that does not vitiate the fixation of price of levy wheat.

9. Learned Counsel then urged that the State Government had no power to issue the impugned order as the Central Government did not authorise the State Government to exercise power u/s 3(2)(f) of the Act. The contention is without any substance. A copy of the notification dated June 20, 1972 has been filed on behalf of the State Government. On a perusal of the same I find that the Central Government in exercise of its power u/s 5 of the Act issued a notification on June 20, 1972, delegating its powers to the State Government for the exercise of powers conferred on it by Section 3 of the Act including powers to make orders

to provide for the matters specified in Clauses (a) to (h) and (j) of Sub-section (2) of Section 3 of the Act in relation to food stuffs subject to certain conditions mentioned in the notification. The conditions as enumerated therein contemplate that the powers delegated to the State Government shall be exercised subject to the direction if any as may be issued by the Central Government from time to time. Further before making an order relating to any matter specified in the Clauses (a), (e) or (f) in regard to distribution or disposal of food stuffs to places outside the State or in regard to regulation of transport of any food stuff, the State Government shall obtain prior concurrence of the Central Government. In view of the notification dated 20-6-1972 the State Government had jurisdiction to issue order requiring any person holding stock of any essential commodity to sell a specified part of the same to the State Government or to an officer appointed by it for the price specified in the Order. The preamble to the Order contains recital indicating that the order was issued by the State Government in exercise of its delegated power conferred on it by the Central Government by the notification dated June 20, 1972, and other notifications.

10. Learned Counsel then urged that the notification dated June 20, 1972, was issued prior to the amendment of the U.P. Act No. 18 of 1975. Since Section 3(2) (f) was drastically amended thereupon the notification dated 20-4-1972 became ineffective and the same could not enure to the benefit of the State Government to issue the impugned order. In the absence of any fresh notification conferring power on the State Government to exercise powers under the amended Section 3(2)(f) the State Government could have no power to issue the impugned order. Reliance was placed on the decisions in *Mani Ram Vs. State*, and also *Emperor v. Rayagouda Linganouda Patil* AIR 1944 Bom 250, and *Amar Singh Rajendra Singh Vs. State of Madhya Pradesh and Others*, . In these cases it was held that a notification conferring power on an authority could not enure to its benefit after the amendment of the Act under which the delegation was made. No doubt the principles laid down in the aforesaid cases *prima facie* support the Petitioners contention but in none of these cases the Statute under which delegation was made had been amended with retrospective effect. Once the Legislature amends a statute with retrospective effect different considerations arise. Whenever a Statute is amended with retrospective effect, the courts have to give full effect to the Legislature intent and for that purpose it is permissible to assume, existence of the facts and circumstances which are sought to be enforced with retrospective effect, unless this is done the purpose of retrospective Legislation would be defeated. In the instant case Section 3(2)(f) and Section (3-B)(i) and (i-a) have been amended with retrospective effect, with the result in the eye of law these provisions were in force when the notification dated June 20, 1972 was issued by the Central Government conferring power on the State Government to make Order in respect of matters u/s 3(2)(f) of the Act. If that be so, the notification dated June 20, 1972 would enure to the benefit of the State Government for the exercise of its powers to issue the impugned Order u/s 3(2) (f) of the Act and it was not necessary to issue any fresh notification delegating

powers to the State Government.

11. There is yet another ground to reject the Petitioners' contention. The Central Government by its notification dated 20-6-1972 delegated all its powers exercisable by it u/s 3(1) and various clauses of Sub-section (2) of Section 3 including Clause (f). The notification thus delegated all the powers which the Central Government itself could exercise under the general provision of Sub-section (1) as well as the specific powers conferred on it by the various clauses of Sub-section (2) of Section 3 of the Act. In considering the extent of power delegated to the State Government by the Notification, it is necessary to keep in mind the nature of the power conferred by Sub-section (1) and (2) of Section 3 of the Act. Sub-section (1) confers a general power on the Central Government to issue orders providing for regulation or prohibiting the production, supply and distribution thereof and trade and commerce in respect of an essential commodity, if it forms opinion that it is necessary or expedient so to do for maintaining or increasing supplies of essential commodity or for securing their equitable distribution and availability at a fair price or for securing essential commodity for the Defence of India or the efficient conduct of military operations. The power so conferred on the Central Government under Sub-section (1) is general in nature which is wide enough to include matters specified in various Sub-clauses of Sub-section (2). While Sub-section (1) confers general power, Sub-section (2) and various sub-clauses thereof are illustrative for the guidance of the Central Government. The opening words of Sub-section (2) "without prejudice to the generality of the powers conferred by Sub-section (1) if read along with its parent Sub-section (1) of Section 3, would show that the Central Government is empowered to make order in respect of matters specified in various sub-clauses of Sub-section (2) but the exercise of that power is not restricted as the powers under Sub-section (2) are conferred on the Central Government without prejudice to the general power conferred on it by Sub-section (1) of Section 3 of the Act. In construing Sub-section (1) and (2) of Section 3, it is clear that whatever power is conferred on the Central Government under Sub-section (2) is already conferred on the Central Government by Sub-section (1) of Section 3 of the Act. It is well accepted legislative practice that while conferring general power on the State Government or any subordinate authority the Legislature generally specified matters in relation to which the rules, bye-laws or orders may be framed. This is done for the guidance of the authority to whom is delegated by the legislature.

12. In interpreting similar provision the courts have consistently held that the general power conferred on an authority to frame Rules, regulations or order is not restricted by the clauses which are illustrative in nature. In AIR 1945 156 (Privy Council) , the validity of Defence of India Rules was upheld on the ground that the general power conferred by the Act was wide enough to sustain the exercise of power even though the rules did not fall within any of the illustrative clauses. In Afzal Ullah Vs. The State of Uttar Pradesh, Supreme Court considered the validity of a bye-law framed by the Municipal Board. The bye-law did not fall

within any of sub-clauses of Sub-section (2) of Section 298 of the U.P. Municipalities Act. The Supreme Court held that the bye-law was justified by the general power conferred on Municipal Board by Section 298(1). The Supreme Court observed that the specific provision as contained in the several clauses of Section 298(2) were merely illustrative and they could not be read as restrictive of the generality of power conferred by Section 298(1) of the Act. The principles so laid down by the Supreme Court leave no manner of doubt that the powers specified by Section 3(1) of the Essential Commodities Act are general in nature and in exercise of that power the Central Government is empowered to make orders in respect of the matters which may not be covered by the various clauses of Sub-section (2) provided the matter in respect of which the order so framed is sustainable u/s 3(1) of the Act. The various clauses of Sub-section (2) of Section 3 merely illustrate and those do not exhaust the powers conferred on the Central Government under Sub-section (1) of Section 3 of the Act. Therefore any matter even if not falling within; the powers specified by Sub-section (2) will be protected by Sub-section (1) of Section 3 of the Act. There is hardly any scope for the argument that the impugned order could not validly be framed by the Central Government in exercise of its general powers u/s 3(1) of the Act as the procurement of wheat from producers is essential for maintaining supplies of essential commodity and for securing the equitable distribution and availability of the same at fair price. In this view of the matter when the Central Government delegated its general power conferred on it under Sub-section (1) of Section 3 of the Act to the State Government to make orders, the State Government stood empowered to exercise the general powers under Sub-section (1) of Section 3 of the Act subject to the restrictions and conditions specified in the notification dated 20-6-1972. The State Government was thus empowered by the Central Government to make the impugned order and no fresh delegation of power was necessary to be made after the amendment of Section 3(2)(f) of the Act.

13. In *State of Andhra Pradesh and Another Vs. Potta Sanyasi Rao and Others*, , the validity of Tyres Tubes Dealers Licensing Order was challenged on the ground that the delegation of power by the Central Government u/s 5 enabling the State Government to make orders or issue notifications u/s 3 did not empower the State Government to promulgate orders with regard to commodities which were declared essential commodities by the Central Government subsequent to the order of delegation. The Supreme Court repelled the contention and held that the delegation of power to the State Government to exercise powers u/s 3 of the Act was wide enough to issue orders in respect of a commodity declared essential commodity later on by the Central Government. The Supreme Court further observed that the delegation of power u/s 3 of the Act should not be construed in a narrow or pedantic manner.

14. In view of the above discussion I am of the opinion that the notification dated June 20, 1972, which conferred general power on the State Government would ensure to the benefit of the State Government to issue the impugned order. I find no illegality in the impugned order; The Petitioners are, therefore,

not entitled to any relief.

15. In the result the petition fails and is accordingly dismissed, but there will be no order as to costs.