(1973) 05 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurdn. Cases No''s. 293 and 297of 1973

Hanant Lal Agrawal and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 17-05-1973

Acts Referred:
General Clauses Act, 1897 — Section 21

Citation : AIR 1973 Patna 419

Hon'ble Judges : Shambhu Prasad Singh, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : J.C. Sinha and G.C. Bharuka, for the Appellant; Tara Kant Jha, Standing Counsel No. II, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh. J.

1. These two writ applications have been filed by the petitioners for quashing the notification dated the 15th January, 1973, being G.S.R. No. 7. issued by the Department of Supply and Commerce. State of Bihar. purporting to amend the Bihar Rice and Paddy Procurement Order, 1972. (hereinafter to be referred to as ''the said Order''), as also for quashing the demand notices which are Annexures 1 to 1/10 in C.W.J.C. No. 293 of 1973, and Annexures 1 to 1/9 in C.W.J.C. No. 297 of 1973, whereby the petitioners have been called upon to deliver certain quantities of paddy to the Manager of the Government godowns of the places mentioned therein within the period prescribed in those notices. It has been stated in those notices that the price, to be Paid to the petitioner, would be fixed by the Block Development Officers concerned and further that if they do not comply with the said demand notices, they would be liable for prosecution under the Bihar Foodgrains Dealers'' Licensing Order.

2. The grievance of the petitioners is that in exercise of the powers conferred u/s 3 of the Essential Commodities Act. 1955 (hereinafter to be referred to as ''the

Act'') read with the Government of India Ministry of Food. Agriculture. Community Development and Co-operation (Department of Food) Order No. G.S.R. 316 (E) dated the 20th June, 1972, and with prior concurrence of the Central Government, the Bihar Rice and Paddy Procurement Order. 1972 was made by the Governor of Bihar, which is dated the 5th December, 1972. Clause 13 (1) of the said Order makes a provision that every licensed miller shall sell to the State Government at the procurement price at his mill premises forty per cent of each of the varieties of rice produced or manufactured in his rice-mill every day, beginning with the date of commencement of the said Order and until such time as the State Government otherwise direct. The said Clause 13 (1) has a proviso, which reads as follows:--

"Provided that licensed miller shall not be liable to sell rice to the State Government on the stock of rice produced on account of a licensed wholesale dealer from the paddy purchased by the licensed wholesale dealer, if the licensed miller produces a certificate from the concerned Sub-divisional Officer to the effect that the licensed wholesale dealer has already sold to the State Government the quantity of rice or paddy liable to be sold by him on that stock under this Order."

Sub-clause (2) of the said Clause 13 of the said Order further provides that every licensed wholesale dealer shall deliver to the State Government at the procurement price at his business premises such quantity of paddy and rice as shall be equal in weight to forty per cent of the total quantity of paddy and rice of each of the varieties held in his stock on the date of commencement of the said Order and forty per cent of the total quantity of each of the varieties of paddy and rice purchased by him or coming into his custody or possession for sale or disposal through him on commission basis or in any other manner every day, beginning with the date of commencement of the said Order and until time as the State Government otherwise direct. This sub-clause of Clause 13 has also two provisos which are relevant for the purpose of the case and they are as follows:--

"Provided that a licensed wholesale dealer shall not be liable to sell paddy to the State Government on such stock of paddy as may be purchased from him by a licensed miller for conversion into rice, and the said rice-miller shall be liable to sell rice to the Government on the stock of rice converted from such paddy, as provided under Sub-clause (1):

Provided that a licensed wholesale dealer shall not be liable to sell rice and/or paddy to the State Government on the stock of rice purchased by him from a licensed miller or paddy and/or rice purchased from another licensed wholesale dealer, if he produces a certificate from the concerned Subdivisional Officer to the effect that the licensed miller or the other licensed wholesale dealer has already delivered the quantity of rice or paddy, as the case may be, liable to be sold by him on that stock."

The effect of the proviso to the said Sub-clause (2) is that a licensed wholesale dealer was not liable to sell paddy to the State Government on such stock of paddy as may be purchased from him by a licensed miller for conversion into rice. Similarly, under the Second Proviso a licensed wholesale dealer was not liable to sell rice or paddy to the State Government on the stock of rice purchased by him from a licensed miller or paddy or rice purchased from another licensed wholesale dealer, if he had produced a certificate from the concerned Sub-divisional Officer to the effect that the licensed miller or the other licensed wholesale dealer has already delivered the quantity of rice or paddy, as the case may be.

3. It appears that the State Government by a notification dated the 15th January, 1973, published in the extraordinary issue of the Bihar Gazette have deleted the first proviso to Sub-clause (1) of Clause 13, as well as the first and second provisos to Sub-clause (2) of Clause 13 quoted above.

4. According to the petitioners, the effect of the said deletion by the aforesaid notification is that now the levy has to be paid at every stage of the transaction from one miller to the other wholesale dealer or from the said wholesale dealer to the other dealer, which is per se arbitrary and amounts to putting restriction on their freedom of trade. Apart from that, another grievance of the petitioners is that the said deletion by the aforesaid notification dated the 15th January, 1973 is ultra vires inasmuch as no prior concurrence of the Central Government has been taken before amending the said three provisos of Clause 13 of the said Order. The said Order has been framed in exercise of the power conferred u/s 3 of the Essential Commodities Act, 1955 read with the aforesaid Order No. G.S.R. 316 (E) dated the 20th June, 1972, which required that before making an order the State Government shall obtain prior concurrence of the Central Government. The relevant portion of the aforesaid Order No. G.S.R. 316 (E) dated the 20th June, 1972 provides as follows:--

"In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955) the Central Government hereby directs that the powers conferred on it by Sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of Sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions--

XX XX XX (2) that before making an Order relating to any matter specified in the said Clauses (a), (e) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under the said Clause (d), the State Government shall also obtain the prior concurrence of the Central Government:

XX XX XX"

The order itself shows that that order had been made with the prior concurrence of the Central Government as required by the said Act and the aforesaid Order.

5. The petitioners have asserted that the State Government by the aforesaid notification dated the 15th January, 1973. have purported to amend the said Order and to delete the three provisos to Clause 13 but before issuing the said notification no prior concurrence of the Central Government was taken and as such the said deletion by way of amendment is without jurisdiction and ultra vires. In this connection reference was made to Section 21 of the General Clauses Act. 1897. which provides that where by any Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to amend, vary or rescind any notification, orders, rules or bye-laws so issued.

6. The learned Standing Counsel No. II could not challenge that the aforesaid notification amending Clause 13 had been issued without prior concurrence of the Central Government

7. In my opinion, the contentions of the petitioners are well founded. If the said Order could have been made with the prior concurrence of the Central Government, as required by the provisions of the Act and the Order of the Central Government then any provision thereof cannot be amended, rescinded, or varied by the State Government without the prior concurrence of the Central Government. In view of the fact that it is an admitted position that no such prior concurrence has been taken, the purported amendment by the notification dated the 15th January, 1973, is ultra vires and is of no effect. The effect of the same is that the demand notices issued to the petitioners in the two writ petitions are without authority in law and the petitioners are not liable to deliver the paddy as demanded by the respondents.

8. The result is that the two writ applications are allowed and the demand notices namely. Annexures I to 1/10 in C.W.J.C. No. 293 of 1973 and Annexures 1 to 1/9 in C.W.J.C. No. 297 of 1973. are quashed but in the circumstances of the case, however, there will be no order as to costs.

Shambhu Prasad Singh, J.

I agree.

