(1975) 12 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 284 of 1974

Himachal Rice Mills APPELLANT

Vs

State of Himachal Pradesh etc. RESPONDENT

Date of Decision : 01-12-1975

Acts Referred:
Essential Commodities Act, 1955 — Section 3, 3(1), 3(2), 3(3), 3(3A)

Citation : (1976) 5 ILR HP 1

Hon'ble Judges : R.S. Pathak, C.J;C.R. Thakur, J

Bench : Division Bench

Advocate : B.R. Tuli and Chhabil Dass, for the Appellant; B. Sita Ram, General, for the Respondent

Judgement

C.R. Thakur, J.—This is a petition by Messrs Himachal Rice Mills Thakur-dwara, Tehsil Nurpur, District Kangra through Shri Salig Ram partner of the firm. The Petitioners have challenged the validity of two notifications No. II-11/73 (F & S), dated 4-11-1974. The Governor of Himachal Pradesh with the prior concurrence of the Central Government made an order called the "H.P. Rice Procurement Price Control Order, 1974" whereby under Clause 3 the procurement price for raw and boiled rice of the varieties specified in column 1 of the schedule to be procured from any dealer by the State Government was not to exceed the prices specified in column 2 thereof with respect to each variety. By another notification of the same number and date another order called the "Himachal Pradesh Rice Procurement Levy Order, 1974" was made. Under Clause 3 of this Levy Order, every licensed miller was required to sell to the State Government or the agencies nominated by the Government at the controlled prices: (a) 85% of the quantity of rice held in stock by him at the commencement of this Order, and (b) 85% of the total quantity of rice milled produced or manufactured by him out of his own stock of paddy in his rice mill every day beginning with the date of commencement of this Order until such time as the State Government otherwise directed. Under Sub-clause (2) of Clause 3 every licensed dealer was required to sell to the State Government or the agencies nominated by the Government at the controlled prices 85% of the total quantity of rice got milled by him every day out of his stock of paddy beginning with the date of commencement of this Order until such time as the State Government otherwise directed. These orders have been challenged on various grounds. One of the grounds was that no opinion had been formed as to the conditions precedent and the jurisdictional facts by the Central Government or the State Government to the effect that it was necessary or expedient for maintaining or securing the supply of essential commodities for any purpose. Thereafter the Government amended the Rice Procurement Price Control Order, 1974, by a notification dated 30-12-1974 and thereby the prices of rice were increased. Again, by a notification dated 8-1-1975, the H.P. Rice Procurement Levy Order, 1974 was also amended so as to substitute in the earlier notification the following recital: "Whereas the Governor of Himachal Pradesh is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of rice or for securing equitable distribution and availability at fair prices". By a notification of the same date the Rice Procurement Price Control Order, 1974, was also further amended so as to make it clear that the Governor of Himachal Pradesh was of the opinion that it was necessary or expedient to make that order for maintaining or increasing supplies of rice or for securing its equitable distribution and availability at fair prices.

2. The learned Counsel for the Petitioner confined his arguments to the following three points:

1. The price fixed is not in accordance with the provisions of the Essential Commodities Act.

2. Under the Essential Commodities Act, the authorities have got no jurisdiction or power to seize the rice. The authorities can ask him only to sell against a price which is fixed in accordance with the provisions of the Act.

3. The State Government cannot make a blanket order, providing for the levy of all stocks, present and future, in the hands of the Petitioner.

Point No. 1:

3. u/s 3 of the Essential Commodities Act, 1955 (shortly called the Act) the Government has been empowered to regulate or prohibit the production, supply and distribution of essential commodities for the purpose of maintaining or increasing supplies or for securing their Equitable distribution and availability at fair prices. Under Sub-section (2)(c) the Government has been vested with power to control the price at which any essential commodity may be bought or sold. Under Sub-section (2)(f) the Government may provide for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order. Sub-section (3) declares that where any person sells any essential commodity in compliance with

an order made with reference to Clause (f) of Sub-section (2), there shall be paid to him the price therefore as therein provided

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither Clause (a) nor Clause (b) applies the price calculated at the market rate prevailing in the locality at the date of sale.

Under Sub-section (3-A) the Central Government is also authorised if it is of the opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding of any food-stuff in any locality to issue a notification in the Official Gazette directing that notwithstanding anything contained in Sub-section (3), the price at which the food-stuff shall be sold in the locality in compliance with an order made with reference to Clause (f) of Sub-section (2) shall be regulated in accordance with the provisions of this Sub-section. Clause (iii) of Sub-section (3-A) reads:

Where, after the issue of a notification under this sub-section, any person sells food-stuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to Clause (f) of Sub-section (2), there shall be paid to the seller as price therefor;

(a) where the price can, consistently with the controlled price of the food-stuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither Clause (a) nor Clause (b) applies 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.

Thereafter there is Sub-section (3-B) which provides:

Where any person is required by an order made with reference to Clause (f) of Sub-clause (2) to sell any grade or variety of foodgrains, edible oilseeds or edible oils to the Central Government or a State Government or to an officer or such agent of Government and either no notification in respect of such foodgrains, edible oilseeds or edible oils has been issued under Sub-section (3-A) or any such notification having been issued has ceased to remain in force by efflux of time, then, notwithstanding anything contained in Sub-section (3), there shall be paid as the price for the foodgrains, edible oilseeds or edible oils

(i) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of goodgrains, edible oilseeds or edible oils; or

(ii) where no such price is fixed, the price for such grade or Variety of foodgrains, edible oilseeds or edible oils prevailing or likely to prevail during the post-harvest period in the area to which that order applies.

Explanation.--For the purposes 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 harvesting operations normally commence.

Therefore, what follows from the aforesaid provisions of the Act is that the Government is empowered to control the supply, distribution etc. of the essential commodities. It is also authorised under Clause (f) of Sub-section (2) of Section 3 to require any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons. The price which has got to be paid is the one in accordance with Sub-clause (a) or (b) or (c) of Clause (iii) to Sub-section (3-A) in respect of the food-stuffs to be supplied to the Central Government or the State Government or to an officer or agent of the Government as mentioned in Clause (f) of Sub-section (2) of Section 3. This Sub-section (3-A) is a general provision concerning food-stuffs whereas the relevant provision for our purposes is Sub-section (3-B) which talks about the sale of any grade or variety of foodgrains, edible oilseeds or edible oils to the Central Government or a State Government or to an officer or such agent of Government and the price to be paid thereunder for the foodgrains, edible oilseeds or edible oils is (i) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils; or (ii) where no such price is fixed, the price for such grade or variety of foodgrains, eidle oilseeds or edible oils prevailing or likely to prevail during the post-harvest period in the area to which that order applies. The post-harvest period is to be taken as the period of four months beginning from the last day of the fortnight during which harvesting operations normally commence. In the present case there is nothing on the record to establish if there was any controlled price fixed for the sale of any grade or variety of foodgrains with reference to Clause (f) of Sub-section (2) of Section 3.

4. In the case in hand the price is fixed under a notification whereby the Himachal Pradesh Rice Procurement Price Control Order, 1974 was promulgated. The very title of this order will reveal that it is not a price control order, rather it is a procurement price control order and under this order the prices for various grades or varieties of rice are as under:

Variety Price per quintal Rs. 1. Bold Group: (a) Begmi/Sela Joshi/IR-8 (raw and boiled). 117.00 (b) Cheena and Taichung (raw and boiled). 114.50 (2) Slender Group: (a) Parmal, Hansraj, Mushkin, Ramjawan and Chauhara (raw and boiled) 129.00 (b) Basmati (raw and boiled) 138.00 (c) Basmati superior grade-I (raw and boiled) 166.50 (d) Basmati superior grade-II (raw and boiled) 163.50

This procurement price has been fixed, as already stated, under Clause (3) of this order. The Rice Procurement Levy Order, 1974 promulgated by a notification of the same date as the earlier order was promulgated, provides that every licensed miller shall sell to the State Government or the agencies nominated by the Government at the controlled prices a certain percentage of quantity of rice as mentioned under Clause 3 of this order. Therefore, it can by no stretch of imagination be called the controlled price rather it is the procurement price, at which price the miller shall sell to the State Government or the agencies nominated by the Government each variety of rice mentioned in the procurement order and the price is given against each variety of rice. There is no material on the record to hold as to what was the basis on which this procurement price was arrived at. No record has been produced before the Court by the Respondents to verify the facts that were taken into consideration by the Respondents in fixing the same. It does not represent the controlled price or the agreed price or the market price. In the case of foodgrains as contemplated under Sub-section (3-B) (i) and (ii) the miller shall be paid the controlled price, if any fixed under this section or under any other law and where no price is fixed the price for such grade or variety of foodgrains prevailing or likely to prevail during the post-harvest period in the area to which that order applies. In the instant case it is not proved as to what was the controlled price, if any, fixed under this section or by any other law for the time being in force for such grade or variety of foodgrains. Hence the price must be the post-harvest price in relation to that area within the period of four months to be reckoned from the last day of the fortnight during which harvesting operations normally commence.

5. The learned Advocate-General contends that this procurement price represents the controlled price and it has been so stated in paras 10 and 11 of the return. In the earlier para it has been stated that when any licensed dealer or miller shall sell rice to the State Government under Clause 3 of the H.P. Rice Procurement (Levy) Order, 1974, the prices fixed in the price control order shall prevail as controlled prices. In the latter tiara it is stated that the controlled prices as defined under the H.P. Rice Procurement (Levy) Order, 1974 are prices fixed under price control order. This submission of the learned Advocate-General does not appear to be correct. The controlled price and the procurement price are two different things. Procurement price is the one which is fixed by the State Government for procuring the supply of rice or sale of rice to the State Government at the rates specified thereunder. The submission made by the Respondents in their return is that the prices were fixed by the Himachal Pradesh Government for different varieties of rice on the basis of the prices fixed by the Punjab Government. The Petitioner is functioning at a place which is almost surrounded by the Punjab territory and where conditions are almost identical with those in Punjab. Further, it had been stated that a thorough examination of different factors of costs involved in the milling of the rice was carried out and even comparative figures of corresponding costs were obtained from the F.C.I., Haryana and Markfed, Punjab, to make the perspective broader. It is further

stated in para 12 of the return that the prices have to change from year to year and the Government is not expected to rigidly stick to the prices prescribed. The revision of prices is now under consideration of the Government. In para 17, it had been submitted that the Government is alive to the changes in the market and has already taken steps to revise the prices. Therefore, it would appear from the above that the prices as given in the Schedule attached to the Rice Procurement Price Control Order cannot strictly be said to be the prices which were prevailing or were likely to prevail during the post-harvest period in the area to which that order applies. No doubt these prices have been stated to be the controlled prices but the Respondents have not placed before this Court any material on the basis of which the same were worked out.

6. The learned Counsel for the Petitioner has also relied firstly, on Bhagwan Singh and Ors. v. The State of Punjab and Anr. 1975 P.L.R. 585. In this case the Petitioners were required under the Punjab Wheat Procurement (Levy) Order, 1974 issued by the Punjab Government in exercise of the powers conferred u/s 3 of the Essential Commodities Act to sell 50 per cent of the quantity of wheat to the F.C.I. or to the State or to any other person authorised by the State Government and the sale was to be made within a week from the commencement of the Levy Order. Under Clause 4 of the Levy Order the wheat so sold was to be paid at the rate of Rs. 105/- per quintal. Some of the mill-owners did not sell the wheat as directed, therefore, the District Food Controller, Ludhiana, wrote a letter to the President of the Chakki-owners'' Association to convene a meeting and to make arrangements for selling the levy wheat to the Government. The Petitioners contended that in order to comply with that letter they had to purchase the wheat at higher price and sell it to the Goverment at the rate of Rs. 105/- per quintal and thereby suffered a loss and this led to the filing of the writ petition challenging the validity of Clause 3 of the Levy Order. The Government, it appears, had taken a plea that it was competent to collect levy wheat under Sub-section (3-B)(i) of the Essential Commodities Act, 1955, and that the price of Rs. 105/- per quintal had been fixed under Clause 4 of the Levy Order. Further it had been pleaded that the Government was entitled to purchase wheat at the specified price. During the course of arguments it was also pleaded that the price had been fixed on the basis of the report of the Agricultural Prices Commission, the discussions held in the Chief Ministers'' Conference on 16th March, 1974 in New Delhi and the decision of the Government of India conveyed through a telegram and that the fixation of the price was in accordance with Sub-section (3-B)(ii) of the Act, and that Clause 4 of the Levy Order fixed the controlled price of wheat and the fixation of price was, therefore, covered by Sub-section (3-B)(i) of the Act. Repelling this contention it was held that no controlled price of wheat had been fixed u/s 3(2)(c) of the Act and that the fixation of price under Clause 4 of the Levy Order did not, therefore, fall within the ambit of Sub-section (3-B)(i) of Section 3 under which provision the price is alleged to have been fixed. Similarly there being no, data on the record to show that the price was fixed on the basis of the price

prevailing or likely to prevail during the post-harvest period, the conclusion was inevitable that Clause (ii) of Sub-section (3-B) of section 3 of the Act was also not complied with while fixing the price under Clause 4 of the Levy Order.

7. The further authority is Sitaram Jwala Prasad and Others Vs. State of Uttar Pradesh and Others, In this case the Petitioner had challenged the validity of the Uttar Pradesh Coarse Foodgrains (Levy) Order, 1974. Para 3(1) of that order required every licensed dealer to sell to the State Government at the scheduled price at a purchasing centre 50 per cent of coarse foodgrains in stock on the date of commencement of the order or coming into his custody or possession after the commencement of the order. It was further provided that they were not entitled to recover from the licensed dealer on account of the value of the stock so sold anything more than the price received by the licensed dealer under the said Clause. The said prices referred to in Clause 3 were for the fair average quality of coarse foodgrains conforming to the specifications prescribed in Schedule II. In Schedule I the maximum price which had been fixed in regard to the foodgrains was Rs. 74/- per quintal. The ground on which the validity of the impugned order had been challenged was that the price of Rs. 74/- per quintal as fixed under the Order for the 50 per cent of coarse foodgrains which was required to be sold to the State Government was arbitrary and beyond the powers conferred by Section 3 of the Essential Commodities Act. In this case also the reply of the State was that Rs. 74/- per quintal as mentioned in Schedule I was the controlled price fixed by the Government in exercise of the powers conferred on it by Section 3(1) in general and Section 3(2) in particular. Repelling this contention of the State it was held that u/s (3-B) the State Government is bound to pay to the dealer either the controlled price as contemplated by Clause (i) of Section 3B or the price prevailing or likely to prevail during to post-harvest period in the area as contemplated by Clause (ii) of Section 3-B. The controlled price contemplated by Clause (i) therefore has to be with reference to the foodgrains or its variety. If the Government issues a direction that 50 per cent of the foodgrains was to be sold to it, it was to pay to the seller a price as contemplated either by Clause {i) or Clause (ii) of Section 3-B. It cannot say that whatever price it chooses to mention in the order as price payable in respect of the stock requisitioned by it would automatically become the controlled price of the grade or variety of the concerned foodgrains, as contemplated by Clause (i).

8. The next authority referred is Bahadurmal Sethia and Others Vs. State of West Bengal, . In this case also the Petitioner challenged the West Bengal Rice Mills Control Order made under the provisions of Section 3 of the Act, where-under the Petitioner, who was the owner of a rice mill was required to sell to the Government the whole of the rice in his possession to the Director or the Food Corporation at the prices fixed under Clause 4 of the West Bengal Rice Mills (Levy) Order, 1967. The price of the common grade of rice was fixed at Rs. 93.75 and of the grade of superfine rice was fixed at Rs. 101.80. The price for all grades of Aman and Aus and Boro quality of rice was fixed at Rs. 93.75. The contention of the Petitioner was that the price fixed by the Levy Order had been

so fixed arbitrarily and in total disregard of the provisions of the Act. Further it had been contended that Clause 4 of the Levy Order which fixed the procurement price was ultra vires the Act inasmuch as the price had been fixed by that clause without any reference to the prevailing market price. The Court upheld the contention of the Petitioner that Clause 4 of the Order was ultra vires the provisions of the Act as in fixing the procurement price the Government had completely ignored the prevailing market price during the post-harvest period.

9. Next is K.B. Jinaraja Hegde and Ors. v. The State of Mysore and Ors. AIR 1971 Mys 12. In this case also the Petitioners had challenged the validity of Mysore Paddy Procurement (Levy) Order, 1966, and prayed for quashing of notice of demand issued against them by the Enforcement Officer of the concerned Taluk. One of the points on which arguments were addressed by the learned Counsel for the Petitioners was whether the purchase price fixed under the Order as per Schedule II was valid. The counsel for the Petitioners had submitted that the State Government had not fixed any controlled prices either under the Act or under any other law in force in the State of Mysore. The Government Advocate replied that the price fixed in the Schedule II of the Order was itself the controlled price as is the plea taken up by the Advocate-General in the case in hand. Repelling this argument the Court held that the controlled price had necessarily reference to the object of the State fixing up a maximum price beyond which sale cannot be legally made by the grower or the dealer. The price fixed under Schedule II is not such price. It is common knowledge that paddy was sold at much higher price in the open market both by the grower and the dealer than the price mentioned in the Schedule. Therefore, the Court further held that the price fixed by the State Government under the Paddy Procurement (Levy) Order was not the controlled price as contemplated by Clause (1) of Sub-section (3-B) of Section 3 of the Act and that the price fixed in Schedule-II was the purchase price and not the controlled price. Further Clause (ii) of Sub-section (3-B) had clear reference to two factors, viz., (a) the point of time and (b) the area. So far as the point of time is concerned it refers to the price prevailing during the post-harvest period. Further, it was held that the price fixed by the State Government had no reference to the prices prevailing or likely to prevail at the post-harvest period in the area to which the order relates.

10. The last authority is Shree Meenakshi Mills Ltd. v. Union of India AIR 1974 S.G. 366. In this case the Supreme Court was dealing with the notifications issued by the Textile Commissioner under Clause 22 of the Cotton Textile (Control) Order, 1948 and it was held that the power to fix controlled price is in Section 3(2)(c) read with Section 3(1) and not in Section 3(3) of the Essential Commodities Act, 1955. In this case in para 74 of the judgment it has been observed as:

The differences between Sub-sections (3) and (3A) on the one hand and Sub-section (3B) and (3C) on the other are these. Sub-sections (3) and (3A) speak of fixing price by agreement consistent with or with reference to controlled price or failing both market rate prevailing in the locality during three months preceding the date of the notification. Sub-section (3B) speaks neither of controlled price or where no such price is fixed the price prevailing or likely to prevail during the post-harvest period in the area to which the order applies. In Sub-section (3C) which relates to sugar price is to be calculated with reference to minimum price of sugar-cane, manufacturing cost of sugar, duty or tax, and a reasonable return and different prices may be provided for different areas or factories or different kinds of sugar.

Therefore, it was held that the controlled price fixed u/s 3(1) read with Section 3(2)(c) is different from price under Sub-sections (3A), (3B) and (3C).

11. Therefore, from the provisions of the Act and the various authorities relied on behalf of the Petitioner it is manifest that the controlled price has not been fixed. The procurement Order in the instant case does not show how the purchase price mentioned in the Schedule to that Order has been fixed nor the Respondents have fixed the price as contemplated under Sub-section (3B)(ii) of Section 3 of the Act. In the circumstances, the Schedule to the Himachal Pradesh Rice Procurement Order, 1975, specifying the procurement price in relation to the foodgrains under consideration is invalid.

Point No. 2:

12. It has been contended that the Government has frozen the entire stock and what the Government could do is to ask the Petitioner to make a sale against a fixed price of the percentage of the foodgrains to be sold to it, but here neither the State Government nor any other person to whom the rice is required to be sold has lifted the stock and that it has ruined their business and the Petitioner is thus put to great loss as he has to pay interest to the bank from which he had to take loan for the purchase of the rice and reference in this behalf has been invited to Annexures PD and PH. Annexure PD is the representation made by the Petitioner to the Director of Civil Supplies. I think this representation is not very material because by this he has raised the same pleas as have been raised by him in the writ petition. In Annexure PH he has given the details of the expenses that he had to incur and which cost amounts to Rs. 1,19,162.15. The contention of the Petitioner appears to be correct that the State Government or its nominee or any other person to whom it is required under the Levy Order to sell the same must lift the rice which is a commodity which cannot last for over a year and is liable to spoil. This submission of the Petitioner appears to be reasonable that the Respondents could not freeze the entire stock so as to ruin his business. Therefore, the submission appears to be correct that the State Government has to lift the stock.

13. The price at which the stock will be lifted by the State Government must be determined by the terms of the order dated December 2, 1974, in which an undertaking given by the learned Advocate-General on behalf of the Respondents was recorded.

The undertaking was that in case the writ petition was allowed the entire amount representing the difference between the price claimed in paragraph 12 of the writ petition and the price at which the rice was procured by the State Government would be paid to the Petitioner within two months from the writ petition being allowed. The Petitioner is, therefore, entitled to that difference in addition to the price at which the rice has been procured by the State Government. This relief must be granted in the interest of justice.

Point No. 3:

14. It is urged that according to the Levy Order even future stocks which have yet to come in the possession of the manufacturer will have to be sold at the controlled price. This, the Petitioner contends, is highly unreasonable because the price will vary with every harvest. It is pointed out that the price must relate to a definite period and there cannot be a blanket order in respect of it. It is not necessary to express any opinion on this point, as the present petition must be considered in relation to the existing stocks of the Petitioner.

15. The net result is that the Schedule to the Himachal Pradesh Rice Procurement (Price Control) Order, 1975, fixing the procurement price is quashed so far as it affects the varieties of foodgrains held in stock by the Petitioner. The State Government is liable to lift the stock levied from the Petitioner and is liable to pay within two months from the date of decision of this writ petition not only the procurement price fixed in respect of it but also the difference between the price claimed in paragraph 12 of the writ petition and the procurement price. In the circumstances there is no order as to costs.

R.S. Pathak, C.J.:

16. I agree.

