(1975) 11 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 338 of 1975

Jadu Sah — APPELLANT

Vs

The District Supply Officer and Others — RESPONDENT

Date of Decision : 06-11-1975

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

Citation : AIR 1976 Patna 133

Hon'ble Judges : S.N.P. Singh, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : S.B. Sanyal, G.C. Bharuka, Chaudhary and S.N. Mishra, for the Appellant; B.S. Sinha, Govt. Pleader I and Vinoy Kumar Narain Singh, Jr. Counsel to Govt. Pleader I, for the Respondent

Final Decision : Allowed

Judgement

S.K. Jha, J.—In this application under Articles 226 and 227 of the Constitution the petitioner has prayed for the issuance of an appropriate writ quashing the demand notice issued against it by the District Supply Officer, Aurangabad, as contained in Annexures 1 and 2 to the application. Annexure 1 dated 9-12-1974 is a notice to the petitioner under the Bihar Rice and Paddy Procurement Order, 1974 (hereinafter referred to as the 1974 Order) demanding delivery of 750 quintals of rice as levy from the petitioner. By Annexure 1 the petitioner had been directed to deliver it in an instalment of 200 quintals out of the aforesaid quantity of 750 quintals by the 15th of December, 1974. Annexure 2 dated 31-12-1974 was a notice from the District Magistrate and Collector, Auransabad, to the petitioner intimating to it that it had failed to comply with the notice dated 9-12-1974 and that, therefore, it was again directed to deliver the quantity required under Annexure 1, failing which the petitioner would be proceeded against under Clause 22 of the 1974 Order, as also would be liable to prosecution under the Essential Commodities Act, 1955. The petitioner challenged the validity of both Annexures 1 and 2.

2. The relevant facts for the disposal of this application may be shortly stated thus. The petitioner is a licensee under the Bihar Foodgrains Dealers'' Licensing Order, 1967 (hereinafter referred to as the Licensing Order). Pursuant to the said licence, the petitioner acts as a commission agent in rice and paddy. According to the case of the petitioner which has not been controverted in any counter-affidavit, it does not hold any stock of its own. The stock of rice and paddy is brought by cultivators and other persons and kept in the Arhat of the petitioner. For assisting in the disposal of the said stock of rice and paddy of the persons to whom the stock belongs the petitioner gets a remuneration varying from Re. 1/- to Rs. 2/- per cent, cash on the sale proceeds of the commodity concerned. The petitioner does not carry on any business or trade in rice or paddy of its own. The petitioner''s Sales Tax and Income Tax assessment are also based on its earning commission simpliciter out of the transactions between third parties in his Arhat. It has been submitted in the petition as also argued at the Bar that since the petitioner had no stock of its own nor had it a right to retain other''s properties, it could not be held to be liable for delivery of any levy in respect of stocks of foodgrains belonging not to the petitioner itself but to its principal. It was contended that if it be held that a liability had been fastened on the cases of commission agents simpliciter, in which category the petitioner also came, then to that extent the 1974 Order must be held to be ultra vires the provisions of Section 3(2)(f) of the Essential Commodities Act. These being the only relevant and undisputed facts, only two questions fell for determination in this case; firstly, whether the case of commission agents can be held to be covered by the provisions of the 1974 Order, under which they are liable to deliver lew in respect of stocks held by them not of their own but only of a third person, cultivator or otherwise, for facilitating sale to others and thereby earning a commission by way of remuneration on the transaction of sale; secondly, whether, if on the plain language of the 1974 Order the case of such commission agents be held to be so covered by the 1974 Order, such a provision is ultra vires any provision of the Essential Commodities Act.

3. The first question falling for determination must, in my view, be answered in the affirmative for reasons hereinafter given. The relevant portion of Clause 14 (2) of the 1974 Order reads as follows:

"Every licensed wholesale dealer shall deliver to the State Government or its agent at procurement price, for the Kharif year 1974-75, at his business premises a minimum of ..... and a maximum of ....."

Thus, under Sub-clause (2) of Clause 14 the liability to deliver levy has been fastened on every licensed wholesale dealer. The term "licensed wholesale dealer" has been defined in Clause 2 (b) of the 1974 Order, wherein it has been laid down that " ''licensed wholesale dealer'' means a person holding a valid licence as a wholesale dealer under the Bihar Food-grains Dealers'' Licensing Order, 1967". Thus, for the definition of the term "licensed wholesale dealer" we are referred to the definition given in the Bihar Foodgrains Dealers'' Licensing

Order, 1967 (hereinafter referred to as the Licensing Order), Clause 2 (d) of the Licensing Order defines "wholesale dealer" in the following terms ;

" ''wholesale dealer'' means a person (including a rice/flour miller) engaged in the business of purchase, sale or storage for purpose other than personal consumption of one or more of the foodgrains in a quantity exceeding one hundred quintals at any one time and includes any person doing so on behalf of another as a commission agent or arahtia or otherwise."

From the definition quoted above there can be no escape from the conclusion that a commission agent or Arahtia engaged in the business on behalf of another, namely his principal, has been brought within the sweep of the term "wholesale dealer". Thus, a commission agent or Arahtia, like the present petitioner, is undoubtedly intended to be covered bv the 1974 Order and is made liable for the delivery of levy even with regard to business in which, he is engaged on behalf of his principal in pursuance of the provisions of Clause 14 (2) of the 1974 Order This being the position, it was submitted on behalf of the petitioner that in so far as the 1974 Order may be said to cover such cases of commission agents or Arahtias as the petitioner, such a provision to that extent must be held to be ultra vires the provision of Section 3(2)(f) of the Essential Commodities Act, This at once leads us to the second question posed, for consideration in this case.

4. Section 3(2)(f) of the Essential Commodities Act reads;

"3(1) .....

(2) Without prejudice to the generality of the powers conferred bv Subsection (1), an order made thereunder may provide-

... ...

(f) 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." The term "any person holding in stock" came up for consideration earlier before a Bench of this Court in the case of Chandrika Prasad Mishra v. State of Bihar, (C. W. J. C. No. 615 of 1988 and analogous cases) decided on 17-12-1968 (Pat). In that case it was held that the expression "any person holding in stock", obviously, relates to the holding of stock as his own by the person referred to in Section 3(2)(f). Thus, the Essential Commodities Act confers power to issue an order requiring any person to sell the whole or a specified part of the stock to the Central Government or the State Government or to an authorised officer or agent of Government etc. who is holding in stock as his own any essential commodity. Thus, 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). Thus, any Order in order to be sustained as valid must be in relation to the stock of any essential commodity held as his own by the person who is sought to be bound by the provisions of such an order. The Act does not contemplate to, more or less, penalise a person who does not hold any stock of foodgrain of his own and over which he cannot exercise any act of ownership even for a limited purpose. It is also pertinent in this context to refer to the procurement Orders of the previous years, A provision similar to that contained in Clause 14 (2) of the 1974 Order found place in clause 3 (2) of the Bihar Rice and Paddy Procurement Order, 1970, Clause 13 (2) of the Bihar Rice and Paddy Procurement Order, 1972, and Clause 13 (2) of the Bihar Rice and Paddy Procurement Order, 1973. But in all those three Orders of 1970, 1972 and 1973 there was a provision that even though a minimum liability for delivery of levy was fastened on a commission agent holding stock of foodgrains on behalf of another, the ultimate liability was intended to be shifted over to the owner of the Foodgrains concerned. For instance, in Clause 3 (5) of the 1970 Order and Clause 13 (5) of which 1972 and 1973 Orders it was laid down that any person on whose behalf the licensed wholesale dealer (which term also included the commission agent or Arahtia) holds any stock of Foodgrain (rice or paddy), the whole or part of which such dealer was required to sell to the State Government, shall notwithstanding any contract or instrument to the contrary, not be entitled to recover from the licensed wholesale dealer on account of the value of the stock so sold anything more than the price payable to the licensed wholesale dealer under the relevant clause. When the vires of provisions of the 1970 Order came to be decided before a Division Bench of this Court, one of the points urged on behalf of the petitioner-dealers for striking down the provisions of that Order was that under Clause 3 (2) of the 1970 Order commission agents or Arahtias had been made liable for the delivery of levy with regard to the stock of essential foodgrains which was not held by them in their own account and with regard to which they could not exercise any incident of ownership. This objection to the validity of the 1970 Order was replied, and it was held in the case of Teknarayan Mahesh Prasad and Others Vs. The State of Bihar and Others,

"It is also argued on behalf of the petitioners in some cases that requiring the miller or the wholesale dealer to sell to the Government when he is holding in stock any quantity of rice not on his own account but on account of a third person whose paddy has been dehusked by the miller or has been stocked by the miller as commission agent, is also beyond the power conferred on the State Government under Clause (f) of Sub-section (2) of Section 3 of the Act. I am not prepared to accept this argument as sound. In my opinion, the phrase ''holding in stock'' in Clause (f) is wide enough to cover such cases provided the ultimate liability to sell has been adequately thrown on such third person, which, in this case, for the reasons stated above, has been adequately thrown."

Thus, in all the Procurement Orders of 1970, 1972 and 1973 the ultimate liability to sell had been adequately thrown upon the person on whose behalf the commission agent was holding the stock, and such a principal could not claim any reimbursement or indemnity with regard to the price of the foodgrains sold to the Government greater in extent than the value which such commission agent or Arahtia was to receive from the Government on account of such sale. It is regrettable that while the previous Procurement Orders'' validity in this respect was held to be safeguarded by throwing the ultimate liability to sell on the owners of the stock, such a provision in the 1974 Procurement Order should have been conspicuously missing. The very reason given by this Court for upholding the validity of such a provision in the earlier Procurement Orders is, it seems, albeit by inadvertence, to have been completely overlooked in deleting such a provision from the 1974 Procurement Order. In the absence of any such provision corresponding to Clause 3 (5) of the 1970 Order or Clause 13 (5) of both 1972 and 1973 Orders. I am constrained to hold that Clause 14 (2) of the 1974 Procurement Order in so far as the commission agents or Arahtias not holding any stock of essential foodgrains of their own are concerned must be held to be beyond the power conferred on the Government by Section 3(2)(f) of the Essential Commodities Act, 1955, and to that extent the provisions of Clause 14 (2) must be held to be ultra vires. It is hoped that in order to save such provisions the Government will see that provisions akin to those of Clause 13 (5) of the 1973 Order are inserted in any Procurement Order so as to bind any person not holding any stock of foodgrains of his own, like the commission agent or Arahtia.

5. It goes without saying that the decision of this case must be confined and limited to only such cases where a person is carrying on trade or business of commission agent or Arahtia simpliciter. not in any way carrying on any trade or business of this own as a wholesale dealer. If, for instance, a person carrying on a business or trade of a Commission agent or Arahtia is at the same time engaged in the business of a wholesale dealer and holds in stock of his own any essential fooderains, then to that extent the wholesale dealer will not be saved from the operation of the 1974 Procurement Order. If the petitioner at any time be found by the authorities concerned to be engaged in the trade or business of a wholesale dealer other than that of a commission agent or Arahtia, it will be open to the authorities concerned to direct the petitioner for the delivery of levy in respect of such wholesale business.

6. With the aforesaid observations this application is allowed and the notices as contained in Annexures 1 and 2 to the application are quashed. There shall, however, be no order as to costs.

7. It may be mentioned here that by an order dated 30th of January, 1975 while rule was issued in this case an interim order of stay of the operation of the notices as contained in Annexure 2 was passed on the condition that the petitioner deposited 150 quintals of rice on or before 21st of February 1975. By an order dated 14th of May 1975 the Bench passing the order dated 30th of January 1975 modified the stay order and directed that the petitioner would deliver rice or paddy at the rate of 20 per cent, on the stock held by it on 19th of

February 1975 and on all future transactions from that date. If the petitioner has deposited 150 quintals of rice in pursuance of the stay order, that would be adjusted from the total liability of the petitioner accruing from 19th of February 1975 if the petitioner has been engaged in wholesale business not as a commission agent. It is also made clear that if the petitioner has, in pursuance of this Court''s orders dated 30th of January 1975 and 15th of May 1975, delivered any quantity of rice or paddy to the authorities concerned and if at any future date it be held to be liable under the Procurement Order as a wholesale dealer, then to the extent of delivery already effected by the petitioner adjustment would be made by the authorities.

S.N.P. Singh, C.J.

I agree.

