(1970) 08 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1042 of 1970 connected with Civil Miscellaneous Writ No''s. 91, 447, 588, 878, 1082, 1189, 1209, 1389, 1442, 1443, 1444, 1445, 1446, 1602, 1690 and 1694 of 1970

Jagannath Jiwan Prakash and Others — APPELLANT

Vs

State of UP and Others — RESPONDENT

Date of Decision : 18-08-1970

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Uttar Pradesh Rice and Paddy (Levy) Order, 1968 — Clause 3(8)

Citation : (1970) 40 AWR 759

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; A.N. Sinha, H.S. Nigam and S.C. for Opposite Parties, for the Respondent

Final Decision : Allowed

Judgement

D.S. Mathur, J.—A common question as to the validity of the UP Rice and Paddy (Levy)(Third Amendment) Order, 1969 (to be referred hereinafter as the Third Amendment Order) is involved in these seventeen Writ Petitions by the various licensed millers and licensed dealers. It is on account of the alleged higher percentage of recovery of rice from paddy prescribed in the Third Amendment Order that the licensed millers have to contribute more towards the 60% levy of rice. Similarly, licensed leaders who give paddy to rice mills and get rice after milling shall have to pay a higher levy in case the recovery is deemed to be more than the actual one. Both the licensed millers and the licensed dealers are, therefore, affected by the Third Amendment Order in the same manner.

2. The Third Amendment Order added Sub-clause (8) to Clause 3 of the UP Rice and Paddy (Levy) Order, 1968 (to be referred hereinafter as the Rice Levy Order) and Schedules II and II thereto were substituted by fresh Schedules. Sub-clause (8) runs as below:

(8) The percentages of rice recovered from milling of corresponding variety of paddy shall be deemed to be as follows and the levy due under this clause shall be calculated accordingly:

Arwa Sela

per cent per cent

Basmati Superior 62 62

(export quality)

Basmati 64 65

Other varieties of 66 67

rice

Provided that the State Government may, in public interest, reduce the percentage of recovery in respect of any area or in relation to any variety or grade of paddy.

3. Prior to the incorporation of Sub-clause (8) 60% levy on rice was paid on the actual recovery of rice and not on any percentage basis, but since after the enforcement of the Third Amendment Order the 60% levy is demanded on the recovery as laid down in the above sub-clause. The Petitioners'' case is that the recovery of rice in their mills is much less than the prescribed ones and hence they are being unnecessarily encumbered with a higher levy. They have challenged the validity of this sub-clause.

4. The Rice Levy Order was made with the prior concurrence of the Central Government in exercise of the delegated powers u/s 3 of the Essential Commodities Act, 1955. It was mentioned before the Court that the Rice Levy Order was made Under Clauses (f) and (j) of Section 3(2) of the Essential Commodities Act.

These clauses are as below:

(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;

* * * *

(j) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft and the seizure by a person authorized to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed.

5. u/s 3 of the Essential Commodities Act power was given to the Central Government to make a provision, by order, for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. The power of the Central Government has been delegated to the State Government. Consequently, any order made by the State Government cannot go beyond the powers conferred on the Central Government, i.e. beyond Clauses (f) and (j) of Section 3(2) of the Essential Commodities Act.

6. A perusal of Clause (f) shall make it clear that thereunder an order can be made requiring any person holding in stock any essential commodity to sell the whole or specified part of the stock to the Central Government, State Government or to an officer or agent of such Government. The words ''holding in stock'' and ''sell'' make it evident that directions can be issued only in respect of the commodities in stock and not what maybe stocked by the dealer or the licensee. In other words, therefore, the State Government can impose a levy on percentage basis but such levy must be on the holding in stock and not what an efficient mill could have produced or a dealer could obtain and have in stock with him.

7. Clause (j) of Section 3(2) of the Essential Commodities Act empowers the State Government to make a provision, by order, for any incidental and supplementary matters. This clause can enable the State Government to lay down, by order, how the holding in stock shall be determined. It is, however, necessary that any rule contained therein must be co related to the determination of the holding in stock and not what the stock would be had the mill been an efficient one.

8. Clause 3(1) of the Rice Levy Order applies to licensed millers while Clause 3(2) to licensed dealers. A licensed miller has to sell to the State Government at the scheduled price 60% of any variety of rice given in Schedule II, produced or manufactured in his rice mill. Rice "produced or manufactured" is the rice which can be said to be in stock with the miller and hence this clause is valid and within the competence of the State Government. Similarly, Under Clause 3(2) every licensed dealer has to deliver to the State Government at the scheduled price at its purchasing centre 60% of any variety of rice produced or got milled from paddy in stock or coming into his custody or possession for sale or disposal. A licensed dealer invariably purchases paddy and the stock is, after milling, converted into rice, which is available for sale or disposal. The rice so "produced or manufactured" is the rice in stock on which 60% levy can be imposed. Clause 3(2) is, therefore, also valid and within the competence of the State Government.

9. However, Sub-clause (8) as drafted and introduced be the Third Amendment Order lays down the assumed percentage of recovery, i.e., the percentage of rice which shall be deemed to have been recovered from milling of corresponding variety of paddy and not the mode of determination of actual recovery of rice in the mill.

10. What is deemed to be the recovery may not be the actual recovery. Hence, the assumed recovery is not necessarily the "holding in stock". In case the presumption was a rebuttable one, it could be said that the presumption would stand rebutted if the accounts and records of the miller were found to be genuine and reliable and therefore, a miller acting honestly would not suffer any loss and he shall have to give the levy on the quantity of rice actually produced or manufactured. But neither in Sub-clause (8) as introduced by the Third Amendment Order, nor in the Rice Levy Order, is there any provision under which the percentage of recovery of rice can, in the case of an individual miller, be reduced. The proviso to Sub-clause (8) empowers the State Government to reduce the percentage of recovery in respect of any area or in relation to any variety or grade of paddy. This provision cannot enable a miller to move the State Government to reduce the percentage in his case so that the percentage so fixed be based on actual recovery. It is not necessary that all the rice mills in an area have similar and similarly efficient machines. Some of the mills may have modern machines and other older ones. Consequently, if the percentage of recovery is reduced for an area or for any variety or grade of paddy, it shall still not be the actual recovery in every mill in that area, the actual recovery in some mills may be higher and in others lower.

11. Similarly, in the Rice Levy Order there is no provision for reducing the percentage of levy in the case of or at the instance of an individual miller. Under Clause 8 of the Rice Levy Order the State Government can, in the public interest, exempt any area or any variety of paddy or rice from levy or reduce percentage of levy. Therefore, in the case of an individual there can be no reduction of percentage of levy to make the levy of rice correspond to 60% of the actual recovery of rice.

12. To put it differently, by virtue of Sub-clause (8) levy of rice on a miller or dealer shall be not on the actual recovery but on the assumption that the percentage of recovery is as detailed in the sub-clause.

13. It is strongly contended by the learned Standing Counsel that the percentage of recovery as specified in Sub-clause (8) is based upon a modest opinion of experts and in actual practice the percentage of recovery is invariably more. The suggestion thus made is that the actual recovery is much more than what shall be deemed to be Under Sub-clause (8) and therefore, no injustice shall be done to any of the licensed millers and dealers if this rule is made applicable to them.

14. The date contained in the annexures to the counter affidavit, by themselves, indicates that the recorded recovery of a few millers is less than the percentage prescribed in Sub-clause (8). It cannot, therefore, be said that the actual recovery shall in no case be less than the prescribed one.

15. In para 10 of the counter affidavit it is admitted by the Respondent, namely, the State of UP, "that the recovery of rice depends upon the quality of paddy, percentage of moisture in paddy, method of processing and efficiency of the

performance of such mills and hullers amongst other factors." The method of processing can vary from mill to mill. Similarly, the efficiency of performance of all the mills shall not be the same. Consequently, to lay down a rigid rule for determination of the recovery of rice after milling shall not be proper, as it can never give the actual recovery of rice but shall merely suggest recovery of rice from an average mill.

16. Considering that the State Government can impose a levy on the "holding in stock" i.e. the actual recovery, any order or direction imposing the levy on supposed recovery shall be invalid. The Courts of law could give a liberal construction to the provisions and lean towards their validity only if it appeared that under one provision or the other an individual miller or dealer had the right to move the State Government, or the competent authority, to fix, in his case, a lower recovery rate and the lower recovery rate shall be accepted provided that his accounts and the records maintained by him are genuine and reliable. In other words, if Sub-clause (8) merely laid down what shall be presumed to be the percentage of recovery, if not proved to the contrary by a particular miller or dealer, it could be regarded as a valid piece of legislation. But, as already indicated above, there is nothing "in the third Amendment Order, nor in the Rice Levy Order whereunder a lower levy or lower percentage of recovery can be fixed in the case of an individual miller. Consequently, Sub-clause (8) must be interpreted as it is, i.e. it does not lay down any useful rule for determination of actual recovery of rice, in the word of the Essential Commodities Act, the holding in stock. What it prescribes is the percentage of recovery expected from a miller; but the expectations need not always be fulfilled. Clause 2 of the Third Amendment Order whereunder Sub-clause (8) was incorporated in Clause 3 of the Rice Levy Order must, therefore, be held to be beyond the competence of the State Government and hence invalid. A similar view was expressed by a Division Bench of this Court in Ratan Lal v. State 1953 AWR 377.

17. To sum up, the levy of rice shall be on the "holding in stock" which shall in the case of a miller, mean rice produced or manufactured by him; and the State Government can, by order, lay down directions for determination of "holding in stock". It cannot, however, prescribe an inflexible rule to be applicable to all the licensed millers and dealers in the area, a rule laying down not the actual recovery of rice but the percentage of rice he shall be deemed to have recovered from the milling of the paddy. On the other-hand, Sub-clause (8) prescribes the assumed percentage of recovery of rice; and not the actual recovery. It is, therefore, invalid, being in excess of the powers conferred on the State Government u/s 3 of the Essential Commodities Act.

18. In the end the learned Standing Counsel made a request that Sub-clause (8) be not declared invalid though a writ of Mandamus be granted to the Petitioners in the form desired by them. This prayer cannot be allowed in full: what can be done is not to refer to the invalidity of the Third Amendment Order in the operative part of the judgment while granting the relief for the issue of a writ of

Mandamus. This is being done for the benefit of those millers who are able to give a better performance, i.e. whose percentage of recovery of rice is in excess of the prescribed percentages.

19. All the seventeen Writ Petitions are hereby allowed and it is ordered that a Writ of Mandamus shall be issued directing the Respondents not to implement Clause 2 of the UP Rice and Paddy (Levy) (Third Amendment) Order, 1969, i.e. Clause 3(8) of the UP Rice and Paddy (Levy) Order 1968, against the Petitioners. Costs easy. Stay orders are vacated.