
(1997) 11 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33534 of 1988

Janta Rice and Dal Mills

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Citation : (1997) 11 AHC CK 0075

Hon'ble Judges : R.R.K.Trivedi, J and M.Katju, J

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition and connected writ petitions have been filed praying for writ of mandamus directing the respondents not to recover rice from the petitioner at the recovery rate of 68% but at the recovery rate of 65%.

2. We have heard lejrned counsel for the petitioners and learned Standing counsel.

3. The petitioner purchased paddy and converted it into rice in its mill. Part of this rice had to be sold to the State Government as levy rice, while the rest was free for sale in the open market. The State Government had fixed the recovery rate of rice at 68% out of paddy purchased by the petitioner, but by means of this petition the petitioner has prayed that the recovery rate should be fixed at 65%. By means of interim order dated 5121988 passed in this writ petition, the respondents were directed not to recover rice from the petitioner at a recovery rate exceeding 65%.

4. In writ Petition No. 3277 of 1982 Mis. Agarwal Industries, Hardoi v. State of U.P. and another decided on 13121983 by a Division Bench of this Court (Lucknow Bench) reported in 1984 E.F.R. 378, it was held that the assumed percentage of recovery of rice is not final but is flexible and subject to proof to the contrary.

5. Relevant paragraph 10 of the aforesaid judgment is being reproduced below:

"10. Subclause (8) of Clause 3 of the Levy Order reads as follows

"(8) The percentage of rice recovered from corresponding variety of paddy shall be deemed to be as follows, unless proved to the contrary and the levy due under the clause shall be calculated accordingly:

Common variety 65 percent Fine and Super Fine 66.5 percent Scented Variety 66 per cent 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;

Provided further that if the actual recovery in a mill is higher than the deemed recovery percentage, levy shall be taken only on the basis of deemed recovery, percentage and not an actual recovery:

Provided also that the Controller on being satisfied that the percentage of recovery in any case is less than that specified in this subclause, may accept such reduced percentage of levy as he, for reasons to be recorded in writing, thinks fit." The percentage of recovery prescribed above is not final and inflexible. It is subject to proof to the contrary as is apparent from the use of the words "unless proved to the contrary". But unless the contrary is proved, the levy shall be charged on the basis of the recovery percentage on the basis of an imaginary recovery percentage and this is apparent from the provision contained in this third proviso. Under this proviso it is permissible for the Collector to accept reduced percentage of levy if the percentage of actual recovery is less than the prescribed percentage. The fact that the recovery percentage in a particular case is less is within the special knowledge of the miller and, therefore, in view of the assumption made in the sub clause the burden of proving that the percentage of recovery is less shall be on the miller. Thus, subclause only prescribes a mode of proving a fact. It lays down a rule of evidence. It is competent for the State to enact a law relating to evidence. It is also competent for it to amend, alter or change it. The utmost that may be said with regard to the assumed percentage is that by fixing the assumed percentage the normal rule of evidence has been changed. But there is no bar to it. So far as the right to prescribe assumptions is concerned, in law the same is available See/4. S. Krishna v. Madras State, AIR 1957 SC 297, C.I. Endeian \\. State of U.P., AIR 1960 SC 548 and Kally Ram v. The State of U.P., 1975 Cr. L.J. 160."

6. In view of the judgment of the Division Bench, the petitioner is not entitled for any relief in this petition.

7. However, the learned counsel for the petitioner submitted that if the writ petition is dismissed, the respondents may demand the balance 3% as levy rice for the year in question. In our opinion, the aforesaid submission" does not appear to be correct. This Court while admitting the writ petition for hearing on 5121988 passed the following interim order:

"Issue notice.

Till further orders of Court opposite parties shall not recover rice from petitioner at a recovery rate exceeding 65 per cent. The order shall be subject to orders that may be passed by opposite party on representation made, which is already pending."

8. The representation referred to in the above interim order has been mentioned in para. 13 of the writ petition, copy whereof has been filed as Annexure3 to the writ petition. Para 13 of the writ petition has been replied in para 14 of the* counteraffidavit filed by the respondents. In para 14 it has been stated that the representation filed by the petitioner was decided on 1851989. A copy of the order has been filed as Annexure3 to the counteraffidavit. From a perusal of the order it appears that the contentions raised on behalf of the petitioner were considered and were not found correct and the representation was rejected with the direction to lake levy from the petitioner at the rate of 68%. The interim order dated 5121988 was subject to the order passed on the representation. Thus, the petitioner became liable to give levy share at the production rate of 68%. The parties were aware about the interim order as well as the fact of rejection of the representation from the very beginning and we can safely assume that the parties must have acted on the basis of the aforesaid orders. The difference could have been during the period 5121988 to 1851989 which roughly comes to six months. For this period, in our opinion, the petitioner should not be compelled to give levy share beyond 65%.

9. Subject to the aforesaid, the writ petition is rejected. There will be no order as to costs.

10. By this order the entire bunch of connected writ petitions shall stand disposed of. Petition rejected.