

(1982) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5607 of 1982

Kishore Boiled Rice Mill

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 03-09-1982

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1983 AP 230

Hon'ble Judges : B.P. Jeevan Reddy, J

Bench : Single Bench

Advocate : K.N. Jwala and A.R.K. Murthy, for the Appellant; Government Pleader, for the Respondent

Judgement

1. The petitioner who are all rice-millers/dealers in Prakasam district, are complaining that conditions 5 and 7 of the conditions of licence revived by the Government by its Memo No. 64132/Cs. 1/81, dated 27-11-1981 are operating as unreasonable restrictions upon the fundamental right of the petitioners to carry on business guaranteed to them by art 19(1)(g) of the Constitution of India and that they are not warranted by cl. (G) of art. 19.

Clause 3 of the Andhra Pradesh Rice procurement (levy and restriction on sale order 1967 provides that every miller carrying on rice milling operations shall sell to the agent or an officer duly authorised by the Government in this behalf at the notified price and at such percentage of the total quantity of each variety at the notified price and at such percentage of the total quantity of each variety of rice produced or manufactured by him in his rice mill every day as is specified for each district in the schedule. According to the schedule as it is now in force the levy is 50% cl. 4 (1) further provides that no miller or dealer shall sell or agree to sell, or otherwise dispose of the rice recovered by milling other than the quantity specified In cl. 3 except in accordance with the permit issued by the collector or any officer authorised by the Government in this behalf sub cl. (2) of

cl. 4 provides that, save as otherwise provided in sub-cl (1) no person shall transport rice for sale from the premises of any rice mill except in accordance with the permit issued by the collector or any officer authorised by the Government in this behalf. Thus, it is clear that the entire quantity of rice, which is produced or manufactured by a miller in his rice-mill, is subject to the Government control 50% of it has to be delivered to the state towards levy and the remaining 50% can be sold and/or transported for sale, only in accordance with the permit issued by the collector or any officer authorised by the Government in that behalf. The restriction in Cl. 4 is indeed, conceived in the interest of proper enforcement and implementation of the requirement in cl. 3 similar restrictions are also to be found with respect to paddy but to which no reference is called for in this writ petition.

2. Now, conditions 5 and 7 which are impugned herein and which are revived by the Government memo aforesaid read as follows:-

"5. The quantity covered by this permit should be loaded before the assistant grain purchasing officer or grain purchasing assistant or food Inspector concerned who should make an entry in the stock-register and should certify on this permit as well as on the waybills about the time of loading the note the hour by which the lorry should reach the check-post.

xx xx xx 7. Movement of stock without endorsement of food inspector /Grain purchasing officer/grain purchasing assistant concerned on the permit will be treated as transport without a permit".

3. Thus, condition No. 5 says that, the quantity covered by a permit - the permit referred to herein is obviously the permit contemplated by cl. 4 - should be loaded before any of the specified officers who should make an entry in the stock register, and certify on the permit, as well as on the waybills about the time of loading and note the hour by which the lorry should reach the check-post while condition 7 says that any movement of stock without such endorsement will be treated as transport without a permit the petitioners complain that this restriction is excessive and disproportionate. They say that once they deliver the levy rice and obtain the permit under Cl. 4 for sale/transport of levy-free rice, they should be free to sell or transport the same in such manner as they like and that there should be no further restriction thereon. It is further complained that, procuring the presence of the prescribed officers on each occasion of loading is proving impractical and highly difficult and is resulting in a good amount of harassment to the petitioners, besides giving rise to several undesirable practices including corruption. It is also pointed out that these restrictions have been relaxed in the case of rail-transport and that there is no reason why they should be retained and continued only in respect of transport by road.

4. A counter-affidavit has been filed by the joint collector, prakasam district. He had stated that these conditions have been revived with a view to have an effective control and watch over the movement of paddy and rice within, and

outside the state, in order to help conserve the stock of paddy by controlling its movement outside the state. It is denied that the said system is causing any harassment or that it is giving rise to any undesirable practices. It is stated that the said system has been in vogue for quite some time past and that it was re-introduced by the Government for the year 1981-82 with a view to check unauthorised transportation of rice and paddy and to put an end to clandestine business in rice. It is stated further that on the representation of the secretary, prakasam district Rice millers' Association, to the district collector, the latter has empowered the U.D. Revenue Inspectors and H.Q. Deputy Tahsildar of the Revenue Department in addition to Food Inspectors, to endorse the levy-free permits to avoid delay in transportation of levy-free rice. It is explained that the said restrictions were relaxed in the case of rail movement because of the fact that in the case of transport by rail, the station Master is required and empowered to cancel both the original and duplicate levy-free permits to the concerned permit issuing authority. But since there is no corresponding check in the case of transportation by road, no such relaxation could be granted in the case of transport by road. It is also pointed out that for nine months the petitioners have abided by conditions 5 and 7 and that only now they have come forward with the present complaint. It is stated that, till the date of the filing of the counter, no complaint has been received from any miller or dealer of prakasam District that they are not able to get a loading certificate endorsed by any one of the authorised officers, whenever they require a loading certificate.

5. Undoubtedly, the petitioners have a fundamental right to trade in foodgrains, including rice and paddy within the meaning of art. 19(1)(g) of the Constitution of India. Clause (6) of art. 19, however, empowers the state to impose reasonable restrictions in the interest of general public. It is however, well settled that these restrictions should be reasonable and should not be disproportionate. The restrictions must be warranted by public interest. In *State of Madras Vs. V.G. Row*, the Supreme Court has stated that, while judging the reasonableness of the restrictions, it is necessary to bear in mind several circumstances. It said (at P. 200):

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of

their way of thinking but for all. And that the majority of the elected representatives of the people have in authorising the imposition of the restrictions, considered them to be reasonable".

6. Applying the said test let me examine whether conditions 5 and 7 can be said to be reasonable. The only object of condition 5 is to see that a levy-free permit once issued by the appropriate authority under Cl. 4 of the levy order should not be misused in the sense that the same permit should not be used for transport of rice twice over. Putting it differently one permit should not be used for two or more different transports or consignments as the case may be. This object is achieved in the case of rail-transport by requiring the station Master to cancel both the original and duplicate levy-free permits after the consignment is loaded into wagon and to send the original permit to the concerned permit-issuing authority. But since no similar check could be conceived in the case of transportation by road, conditions 5 and 7 continue to be in force in the case of such transport. If one keeps this object in mind, it would appear that the requirement of condition 5 is excessive and unreasonable. There may be any number of millers in a town; and there may be millers in villages and also at places away from the town. If it is insisted that a lorry should be loaded in the presence of any of the specified officers, it would result, in unwarranted delays and obstruction in the matter of transport of rice by the millers. Taking for example, Ongole town, there may not be many officers of the specified category (condition 5 specified asst. Grain purchasing officer, Grain purchasing assistant or food Inspector concerned). Now while condition 5 specifies only three categories of officers, there may be any number of millers and the loading may take place at any hour of the day or night. (The specification on some other officer by the district collector, Ongole is only by way of a grace and can or may be withdrawn at any time). It cannot be insisted that the loading should take place only during the office-hours, or only during the day. It is not unreasonable to presume that if the officers are called upon to be present during night, or at odd hours of a day they would not oblige. The complaint of the petitioners that such requirement is giving rise to certain undesirable practices, cannot be lightly dismissed. It would have been sufficient for the state to devise a method by which a check corresponding to the check in the case of rail-transport is prescribed. This could be done, for example by stating that before loading a particular quantity into the lorry, the concerned miller/dealer should approach the specified officer and obtain a permit which mentions the number of the lorry, the quantity transported in it, the time at which it shall start, the route which it shall take, the route which it will take and the probable time of its travel. This permit can be different from the permit issued under Cl. 4. I am told that once the levy-rice is delivered by a miller he will be granted a permit under clause 4 for the entire quantity to which he is found entitled. On the basis of this main permit, subsidiary permits can be issued from time to time, containing the above particulars since condition no. 5 itself contemplates check posts these subsidiary permits can be checked at such check-posts. Further the subsidiary permit can be made valid only for the

duration for which they are issued, and for the consignment and the lorry specified therein. This would ensure that a permit issued under Cl. 4 is not misused.

7. I must also refer to the fact that condition No. 5 requires that the specified officer should make an entry in the permit as well as in the way-bills, about the time of loading and also note the hour by which the lorry should reach the check post. These endorsements can be made upon the subsidiary permit suggested by me. The main complaint of the petitioners - and which in my opinion. Is justified - is the requirement in condition No. 5 that the loading should also take place in the presence of the specified officer and that, such officer should make the sforesaid entries only after witnessing the loading. This requirement, in all the facts and circumstances of the case is oppressive and unreasonable, and is likely to unduly interfere with the fundamental right of the petitioners to carry on trade. As I have said earlier, the loading may take place at any hour of the day and night and it is not unreasonable to presume that the officers may well refuse to come to the place of loading as and when called. Probably they may be justified in refusing to come during the night hours, or at any odd hour they are called or for the matter on a holiday such a requirement on a holiday. Such a requirement virtually places the trade at the mercy of the specified officers. Moreover, there may not be as many officers as required on a given day or at a given hour to witness the loading of all the lorries. In the circumstances condition 5 must be held to be an unreasonable restriction on the petitioners' fundamental right to carry on trade and is accordingly. Declared to be void. Since condition No. 5 goes, condition No. 7 must also go It is made clear that it shall be open to the state to impose fresh conditions of licence or make other provision in the levy order for proper implementation of Cl. 4 of the Levy order. Consistent with the requirement of the Constitution, and law it is also made clear that pending the making of such provision it may equally be open to the Government the commissioner of civil supplies. Or the collector, as the case may be, to issue appropriate directions for proper implementation of cl. 4, in exercise of their power to give directions under cl. 10 of the levy order. The directions can be issued in terms suggested in this judgment, or can be such other direction as are found necessary for a proper implementation of Cl. 4 but which do not amount to unreasonable restriction upon the fundamental right of the petitioners to carry on trade.

8. The petition is, accordingly, allowed, and conditions 5 and 7 of the licence, complained of herein are struck down as being violative of Article 19(1)(g) of the Constitution of India. There shall be no order as to costs.

9. Petition allowed.