(1975) 11 AP CK 0014

In the Andhra Pradesh High Court

K.S. Nageswara Rao — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 25-11-1975

Acts Referred:
Essential Commodities Act, 1955 — Section 6A, 6B, 6C, 7

Citation : (1976) CriLJ 1488

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Judgement

Muktadar, J.—The Assistant Grain Purchasing Officer, Machilipatnam inspected the mill and the godown of the petitioner on 23-7-1973 and was of the opinion that the petitioner had contravened the provisions of Clauses 3 (1), 4 and 7 of the Andhra Pradesh Rice (Procurement Levy and Restriction on Sale) Order, 1967, hereinafter referred to as the Levy Order. He also found that the petitioner had contravened the provisions of Clauses 7-A and 7-D of the Andhra Pradesh Foodgrains Dealers'' Licensing Order 1964, hereinafter referred to as the Grain Dealers Order. He seized in all Q. 1408-68 of paddy, Q. 501-74 of rice and Q. 82-50 of broken rice, and reported the matter to the District Revenue Officer. A notice u/s 6-B of the Essential Commodities Act was issued calling for the explanation of the petitioner. In his explanation, the petitioner denied the charges levelled against him. He stated that the had delivered the required quantity of levy and as such, he was under no obligation to deliver any more quantity of rice or paddy. He contended that the notice dated 6-6-1973 directing him to convert the paddy into rice was not valid and is not in conformity with the provisions of the Levy Order. He also denied the charge regarding the incorrect and improper maintenance of accounts. With reference to the charge of occupying unauthorised godowns, the petitioner pleaded that he had sent several applications to the licensing authority, notably his application dated 1-6-1972 giving intimation to the authorities that he had occupied godown bearing door No. 4/198 and his intimation dated 9-3-1973 Informing the licensing authority that he had also occupied godown bearing door No. 4/199 within 48 hours of occupying the godowns and as such, he had not contravened the provisions of Clause 7-D of the Grain Dealers Order. The District Revenue Officer did not accept the explanation put forth by the petitioner. He, therefore, passed orders confiscating the entire stock seized from his possession. Aggrieved by the order of the District Revenue Officer, the petitioner preferred an appeal before the appellate authority u/s 6-C of the Essential Commodities Act.

2. The appellate authority found that the petitioner had not contravened the provisions of Clause 3 (1) and Clause 4 of the Levy Order. It also found that the petitioner had not contravened the provisions of Clause 7-A of the Grain Dealers Order. However, the appellate authority confirmed the finding of the District Revenue Officer with regard to the contravention of Clause 7-D of the Grain Dealers Order and Clause 7 of the Levy Order as well as the confiscation of the entire stock. Hence this revision.

3. In this revision, the only points that arise for consideration are, (1) Whether the petitioner had contravened the provisions of Clause 7-D of the Grain Dealers Order, and (2) whether the petitioner had contravened the provisions of Clause 7 of the Levy Order, Mr. Shiv Shankar, the learned advocate for the petitioner contends with regard to the contravention of Clause 7-D of the Grain Dealers Order that condition No. 2 (b) contained in the licence given to the petitioner under the Grain Dealers Order provides that the foodgrains in which the aforesaid business is to be carried on should not be stored at any place other than any of the godowns mentioned in the licence. A note was attached to this condition to the effect that if the licensee intended storing his foodgrains in places other than those specified in the licence he should give intimation thereof within forty-eight hours of the actual occupation of the godowns and should produce the licence for requisite changes by the licensing authority. It is the contention of Mr. Shiv Shanker that in furtherance of this note to condition No. 2 (b) in the licence, the petitioner had informed the licensing authority on 1-6-72 that he had occupied godown bearing door No. 4/198, and by his letter dated 9-3-1973 he had intimated the licensing authority that he had occupied godown bearing door No. 4/199. There is no dispute that these two letters had been received by the authorities, but as usual the authorities slept over the matter and did not carry out the necessary changes. He, therefore, submits that the petitioner had not at all contravened the provisions of Clause 7-D of the Grain Dealers Order.

4. In order to appreciate the contention advanced by the learned advocate for the petitioner, it is necessary to refer to the relevant provisions of the Grain Dealers Order. Clause 7-D of the Grain Dealers Order provides:

Every person who holds a licence under this order, or his agent or servant or any other person acting on his behalf shall not store foodgrains at any place other than the one he is permitted by the licensing authority to store.

This clause was inserted in the Grain Dealers Order by G. O. Ms. 771 (F & A.)

(C.S.I.) dated 7-6-1971. From a reading of this clause, it is manifest that there is a prohibition to store foodgrains in any place other than the one specified in the licence. The reason for the insertion of this clause is not far to seek. It is to give effect to the objects and purposes of the Essential Commodities Act so that there should be no malpractices by the licensee. Condition No, 2 in the licence is also to the same effect viz., that the licensee should carry on the business only at the place noted in the licence. Condition No. 2 (b) provides that the foodgrains should not be stored by the licensee at any place other than any of godowns mentioned in the licence. However, a Note was appended to Condition No. 2 (b) in the licence which was to the effect that in case the licensee intended to store his foodgrains in any place other than the one specified in the licence, he had only to intimate the licensing authorities within 48 hours of the actual occupation of the godown and cause the necessary amendment in the licence to be made. A perusal of Condition No. 2 (b) would show that the duty cast upon the licensee was only to give intimation to the licensing authority within 48 hours of his actual occupation, and to produce the licence for the necessary amendment. It cannot be said that Condition No. 2 (b) was completely contradictory to Clause 7-D of the Grain Dealers Order. It only gave permission to the licensee to change the godown whenever he felt it necessary to do so, but he had to inform the licensing authority within 48 hours of actual occupation. The licence under the Grain Dealers Order given to the petitioner would be in force from the date of issue upto 31st March next year as per the provisions of Clause 5 of the Grain Dealers Order. The note to Condition No. 2 (b) was omitted from the Condition as per G. O. Ms. 1561 (F. & A.) (C.S.I.) dated 2-11-72. Thug at the time when the intimation dated 1-6-72 was given to the licensing authority intimating them of the occupation of godown bearing door No. 4/198 the Note to Condition No. 2 (b) of the Grain Dealers Order was in force and had not been deleted from the licence. In these circumstances, I am of the opinion that the licensee cannot be considered to have contravened the provisions of Clause 7-D of the Grain Dealers Order so far as godown bearing door No. 4/198 is concerned because having regard to the provisions of Clause 5, the licence issued to the petitioner would be in force upto 31-3-1973 and since by 1-6-72 even the Note to Condition No. 2 (b) of the licence was not omitted, it follows that the petitioner had fulfilled the obligation envisaged in the Note. Therefore, to my mind, the petitioner cannot be said to have contravened the provisions of Clause 7-D of the Grain Dealers Order with regard to the occupation of godown bearing door No. 4/198.

5. But with regard to the occupation of the godown bearing door No. 4/199, the position is rather different. It has already been noted that Clause 7-D of the Grain Dealers Order was introduced on 7-6-1971, and the Note to Condition No. 2 (b) In the licence was omitted on 2-11-1972. Thus at the time when the second intimation dated 9-3-1973 was given to the licensing authority with regard to the occupation of godown bearing door No. 4/199, the petitioner would be deemed to have contravened the provisions of Clause 7-D of the Grain Dealers Order because both Clause 7-D and Condition No. 2 (b) of the licence

provide that the licensee under this order should not store foodgrains at any place other than the one which is permitted by the licensing authority to store, and the Note to Condition No. 2 (b) was deleted by then. When such is the position the mere fact of intimating the authorities by letter dated 9-3-1973 would not absolve the petitioner of the contravention of the relevant provisions stated above. It is true that the authorities have been lethargic and did not note, in the licence with regard to the occupation of godown bearing door No. 4/199 not cancelled condition No. 2 (b) therein, but that, to my mind, does not relieve the petitioner of his liability. I am, therefore, of the opinion that the petitioner had contravened the provisions of Clause 7-D of the Grain Dealers Order so far as godown bearing door No. 4/199 is concerned.

6. Mr. Shiv Shanker next con-tended with regard to Clause 7 of the Levy Order in the following manner:

7. According to him, Clause 3 (1) of the Levy Order provides for the levy of rice at the notified price at such percentage of the total quantity of each variety produced in his rice mill every day as specified in the Schedule to the Levy Order. Schedule I to the Levy Order prescribes 75% for the districts of Krishna and West Godavari. The petitioner had given the entire levy upto the day of inspection as envisaged in Clause 3 (1) and the appellate authority had found so in favour of the petitioner and absolved him of contravening Clause 3 (1) of the Levy Order, Clause 4 of the Levy Order deals with the balance of rice remaining with the miller after giving the levy. It restricts the sale or movement of levy free rice. No miller can sell or transport the rice without the permission of the Collector. It is open to the Collector to make an order to reserve even the levy free rice under Clause 4 of the Levy Order. The appellate authority has also found that the petitioner has not contravened Clause 4 of the Levy Order which means that the petitioner has not sold or transported the levy free rice without the permission of the Collector. Clause 7 of the Levy Order empowers the Enforcement Officer to give directions to convert the whole or any specified part of the paddy held by him in stock into rice. In other words, under Clause 7 of the Levy Order the Enforcement Officer can direct conversion of the whole of the paddy or any specified part held by the licensee in stock, but he cannot fix a quota of rice that should be given as levy for that is provided for in Clause 3 of the Levy Order; nor can he specify any quantity of paddy to be converted into rice according to his whim and fancy. He could only direct the whole of the paddy or any specified part of the paddy which is held by the miller in stock. If the Enforcement Officer gives any directions contrary to the provisions of Clauses 7 and 3 (1) of the Levy Order, the petitioner is free to ignore such directions and as such, cannot be considered to have contravened Cl 7 of the Levy Order.

8. The learned Advocate finally submitted that if the notice dated 6-6-1973 under Clause 7 of the Levy Order is perused, it would clearly be seen that it is not in conformity with Clause 7 or Clause 3 (1) of the Levy Order. To my mind, the contention advanced by Mr. Shiv Shanker has great force. Clause 3 (1) of the

Levy Order provides as follows:

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 of rice produced or manufactured by him in his rice mill every day as is specified for each district in the Schedule.

Cl. 4 of the Levy Order provides:

(1) 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 clause 3 except in accordance with the permit issued by the Collector or any officer authorised by the Government in this behalf:

(2) Save as otherwise provided in Sub-clause (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, (sic) referred to in Sub-clauses (1) and (2) above shall however, be subject to such directions as the Government may give in this behalf.

Cl. 7 of the Levy Order reads;

The Enforcement Officer may, if he considers it necessary, direct that a miller shall convert into rice the whole or any specified part of the paddy held by him in stock in such manner and under such circumstances as may be specified in the direction.

Cl. 3 (1) of the Levy Order fixes the levy which a miller has to give to Government or its agent at the notified price and at such percentage of the total quantity of rice milled by him every day as specified in the Schedule. The Schedule prescribes 75% of the rice milled every day for the districts of Krishna and West Godavari, The miller has to give only 75% of the rice milled every day. Therefore, no other authority is empowered to increase or decrease the specified quantity. If the miller gives less than 75% provisions are made to recover the shortage. Clause 4 of the Levy Order deals with levy free rice. If the authority is in need of more rice, it can do so by reserving a certain quantity of rice under Clause 4 of the Levy Order, and give permission to sell or transport the balance of the levy free rice. Under Clause 7 of the Levy Order, the powers of the Enforcement Officer are limited to directing the conversion of the whole or specified part of the paddy held by the miller in his stock into rice. When such directions are issued and the miller converts the paddy as directed, provisions of Clause 3 (1) of the Levy Order are attracted, and 75% of the converted rice milled every day would have to be given as levy. The Enforcement Officer is empowered to direct the whole stock of paddy or any specified part of the stock held by him to be converted into rice and this he could easily do by inspecting the relevant register. But under Clause 7 of the Levy Order, the Enforcement Officer has no power whatsoever to fix the quota of rice that should be given as levy every week or fortnight or every month, or for that matter even every day. That is the position of law as understand it. If the notice dated 6-6-73 is perused in the light of what is stated above, then it can safely be held that the said notice not being in conformity with the relevant provisions, need not be complied with. The notice dated 6-6-73 is as follows:

A target of 440 tonnes has been fixed for your mill towards mill-levy to be delivered to F.C.I. But only a quantity of 157 tonnes has been delivered by you by the end of May 1973. Your performance in this regard is not satisfactory. You are, therefore, directed under Clause 7 of the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale) Order, 1967, to mill sufficient quantity of paddy available with you and deliver to F.C.I. 71 tonnes during the first week of June, 1973, 71 tonnes during the second week of June, 1973, 71 tonnes during the third week of June 1973 and 70 tonnes during the fourth week of June, 1973. Failure to comply with this direction, will make you liable for action under Sections 6-A and 7 of the E. C. Act for violation of the provisions of clauses 7 and 3(1) of the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale) Order, 1967.

A plain reading of the notice would show that it is not in conformity with the provisions of the Levy Order. The Enforcement Officer had fixed the quota of rice which the petitioner was directed to give every week, and such a fixation of quota is not in conformity with Clause 3 (1) or Clause 7 of the Levy Order. He has not directed any specified part of the paddy that was in stock to be milled as envisaged in Clause 7 of the Levy Order. The act of the petitioner in not complying with the above notice cannot be held to be a contravention of Clause 7 of the Levy Order.

9. In the ultimate analysis, the petitioner is held guilty of contravening Clause 7-D of the Grain Dealers Order only to the extent of storing his foodgrains in unauthorised godown bearing door No. 4/199. With regard to the confiscation of the seized stock, since the petitioner has not been found to have indulged in any malpractices, and except for contravention of Clause 7-D to the extent of storing the foodgrains in godown bearing door No. 4/199, all the charges against the petitioner have not been proved, hence, I am of the opinion that the ends of justice would be met if confiscation is ordered to the extent of 50 bags of rice or its notified equivalent price for contravening Clause 7-D of the Grain Dealers Order by storing the stock in an unauthorised godown bearing door No. 4/199.

10. The revision is partly allowed accordingly,

