
(1977) 03 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 28 of 1977

Mahadeo Oil Mills and Others

APPELLANT

Vs

Sub-Divisional Magistrate and Others

RESPONDENT

Date of Decision : 25-03-1977

Acts Referred:

Essential Commodities Act, 1955 — Section 3(2)

Citation : AIR 1978 Patna 86 : (1977) 25 BLJR 396

Hon'ble Judges : Shambhu Prasad Singh, J;S.K. Jha, J

Bench : Division Bench

Advocate : S.B. Sanyal, S.N. Mishra and S.K. Misra, for the Appellant;
Kameshwari Nandan Singh, Standing Counsel No. 4 and Devendra Prasad Sinha,
Jr. Counsel to Standing Counsel No. 4, for the Respondent

Final Decision : Allowed

Judgement

S.K. Jha, J.—All the 16 petitioners in this application under Articles 226 and 227 of the Constitution of India are mills represented through their proprietors. They are registered licensees under the Rice Milling Industry (Regulation) Act, 1958 (hereinafter to be referred to as the Milling Regulation Act) and hold valid licences under that Act. They have challenged the legality of the notices issued to them, as contained in Annexure 1 series, by the Sub-Divisional Magistrate, Araria, respondent 1. By the impugned notices, each of the petitioners has been directed to deliver, by way of levy, 25 quintals of rice or 40 quintals of paddy at the procurement price. Each of them has further been directed to deliver the aforesaid quantity at the block godown of the State Food Corporation and has been threatened that, in the event of its failure to do so, its licence shall be cancelled and proprietor of each of such petitioners shall be liable for prosecution under the provisions of the Essential Commodities Act, 1955 (Act 10 of 1955) hereinafter to be referred to as the Act. The demand for the aforesaid levy has been purported to be made under the provisions of the Bihar Rice and Paddy Procurement Order, 1976 (hereinafter to be referred to as the 1976 Procurement

Order). The petitioners pray for the issuance of appropriate writ/direction quashing Annexures 1 series and further restraining the respondents from cancelling the petitioners' milling licences and/ or from taking any other action against the petitioners for non-delivery of such levy.

2. The facts are not in controversy. According to the uncontroverted case of the petitioners, none of the petitioners carries on its own milling operation but they dehusk paddy on customers' account for which they receive remuneration at a fixed rate of Rs. 1.80 per quintal of paddy brought to their mills by the customers. The petitioners have no stock of their own nor do they have control over the paddy of the customers which is dehusked in their mills. On this admitted position, it has to be considered as to whether the petitioners are liable for delivery of the quantity levied against them under the 1976 Procurement Order.

3. It has been contended on behalf of the petitioners that Clause 3 of the 1976 Procurement Order made on the 15th of November, 1976 conferred power upon the authorities to create levy liability against such persons who produced rice on their own account or carried on trade or business and/or held stock belonging to themselves and that it could not be interpreted as bringing within its sweep such millers as the petitioners who were merely dehusking paddy belonging to others, especially in view of the fact that, the Order does not confer any corresponding right on the petitioners to retain the rice or paddy of others brought to their mills for the purposes of dehusking. It was argued that, if, on the contrary, Clause 3 be held to mean otherwise so as to include the cases of persons like the petitioners then to that extent it would be ultra vires the provisions of Section 3(2)(f) of the Act. On the contrary, learned Standing Counsel IV appearing on behalf of respondents submitted that in view of the provisions of Section 3(2)(f) of the Act, as it now stands after its amendment in 1976, the petitioners should be held liable for delivery of the levied quantity in pursuance of the provisions of Clause 3 (c) of the 1976 Procurement Order.

4. The 1976 Procurement Order like similar Procurement Orders for the previous years has been made by the Governor of Bihar in exercise of the powers u/s 3 of the Act. It came into force with effect from the 15th of November, 1976 in respect of the Kharif year 1976-77 which has been defined to mean the agricultural year commencing on 1st Nov. 1976, and ending on 31st Oct. 1977. Clause 2 (d) of the 1976 Procurement Order defines "licensed miller" as the owner or other person in charge of a rice-mill holding a valid licence under Milling Regulation Act. Clause 2 (G) defines "rice mill" and "milling rice" with cognate expressions and grammatical variations to have the same meaning as in the Milling Regulation Act. Clause 3 lays down that every licensed miller shall sell to the State Government or its agents for the Kharif year 1976-77 at the procurement price at his mill premises quantity of rice noted against the different types of mills as detailed in Clause 3 (a) to (d). It is not necessary to mention the different types of mills enumerated therein. Clause 3 (c) is in respect of the

single huller rice mills without having boiling or drying facilities for paddy situate within 10 Kilometres of any rice mill mentioned in items (a) and (b) of that clause. For such type of single huller rice mills the prescribed quantity of levy liability has been laid down as 25 quintals of coarse rice. We are not concerned with proviso to Clause 3 of the 1976 Procurement Order which gives an option to every licensed miller to elect to sell to the State Government or its agents at the procurement price at his mills premises 40 per cent of each of the varieties of rice produced or manufactured in the mill every day. From the language of Clause 3 it can be grammatically said that it covers the cases of every licensed miller. Learned Counsel for the parties were, therefore at logger heads with regard to the true interpretation of Clause 3 of the 1976 Procurement Order in the context of Section 3(2)(f) of the Act which is the fountainhead of the power enabling the State Government to issue such Orders. Section 3(2) of the Act, as it originally stood, read as follows :--

"3 (2) without prejudice to the generality of the powers conferred by 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...."

When the provision akin to Clause 3 of the 1976 Procurement Order came up for consideration before this Court on earlier occasions in relation to the Procurement Orders of the earlier years, the term "any person holding in stock" occurring in Section 3(2)(f) of the Act as quoted above was given a limited connotation. While construing that provision it was held by numerous Bench decisions of this Court that the Act conferred powers to issue an order in respect of any person holding in stock on his own account and not on account of some third party. It was held that Section 3(2)(f) was not sought to cover such persons who did not retain control of the essential commodity for the purpose of furthering the business of third party who retained their ownership in the essential commodity concerned. The term "holding in stock" was consistently construed to mean holding in stock as his own and on his own "behalf. Thus, under the provisions of the earlier procurement Orders millers or commission agents or Arhatias simpliciter, who were merely engaged in a business of essential commodity on account of third persons and not on their own account, were held not liable to be covered by the provisions of those Orders. There are even decisions to the effect that where the Procurement Order of a particular year expressly sought to bring within its ambit commission agents or Arhatias simpliciter, such a provision must be struck down as ultra vires Section 3(2)(f) of the Act. I may refer to only some of the Bench decisions of this Court in this regard. They are C. W. J. C. No. 615 of 1968 (Pat) and analogous cases (Chandrika Prasad Mishra v. State) decided on 17-12-1968, C. W. J. C. No. 496

of 1975 (Pat) (Firoz Mozahir Rice and Flour Mills v. Subdivisional Officer) disposed of on 14-2-1975, C. W. J. C. No. 624 of 1975, decided on 25-2-1975 (Pat), Judu Sah Vs. The District Supply Officer and Others, and Shri Mahabir Rice and Flour Mills Vs. The State of Bihar and Another, . It may usefully be noted here that so far as C. W. J. C. No. 496 of 1975 (Pat), C. W. J. C. No. 624 of 1975 (Pat) and the case of Shri Mahabir Rice and Flour Mills (supra) are concerned, they were cases of licensed millers under the Milling Regulation Act and so far as the case of Judu Sah (supra) is concerned, it was a commission agent's or Arhatia's case. In the case of Judu Sah a Bench of this Court, of which I was a member, struck down as ultra vires Clause 14 (2) of the Bihar Rice Procurement Order, 1974 in so far as it expressly covered the cases of commission agents and Arhatias simpliciter not holding any stock of essential foodgrain on their own but merely acting as agents of third persons and holding the stock of essential foodgrains on their (third person's) behalf. There fore, if the matter had stood, as it was, on the language of Section 3(2)(f) as extracted above, it would have been fruitless to detain ourselves on this question any further and the respondents' stand could have been rejected outright in view of those decisions.

5. The position has slightly changed as Section 3(2)(f) of the Act has undergone a change by way of an amendment in the Act itself. The Act was amended by the Essential Commodities (Amendment) Act, 1976 (Act 92 of 1976) which came into effect from the 2nd of September, 1976. By Section 3 of the amending Act, Section 3(2)(f) of the Act, as it originally stood, was substituted. Section 3(2)(f), as it now stands, reads as follows:--

"3 (2). Without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide-

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,--

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1:-- An order made under this clause in relation to foodgrains, edible oil-seeds or edible oils, may, having regard to the estimated production, in the concerned area, of such food-grains, edible oilseeds and edible oils, fix the quantity to be sold by the producers -in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2 :-- For the purpose of this clause, "production with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar." (underlining is mine). On the basis of this amendment, it was argued by learned Counsel for the respondents that the ratio decidendi of the cases referred to above ought not to be pressed into service for the purpose of construing the provisions of Clause 3 of the 1976 Procurement Order. It was submitted that the term underlined by me, namely "engaged in the production" did not find place in Section 3(2)(f) of the Act before its amendment. It was contended that, therefore, the millers dehusking paddy entirely on account of others and although not holding any stock of their own should also be held to be covered by the term underlined, for, even such persons fell within the mischief of that term. This argument seems in the first instance to be attractive, but on a closer scrutiny of the provisions of the Act and considering the matter in all its ramifications, I am of the view that the construction sought to be put by the learned Counsel for the respondents on the amended provision in the light of the term underlined in the amended Section 3(2)(f) of the Act cannot be held to be tenable in law. There are various aspects from which this question can be considered. Without doing any violence to the express language of the statute, if it can be shown that the construction sought to be put by learned Counsel for the respondents would result not only in palpable injustice, inconvenience and absolute hardship but also in absurdity, such a construction, if possible, should be avoided. I am aware of the well settled rule of construction that the argument from inconvenience and hardship is a dangerous one and is only admissible in construction of statutory provisions where there are alternative methods of construction. But another principle which has to be borne in mind is that if too literal an adherence to the words of an enactment appears to produce an absurdity and injustice, it will be the duty of the Court of construction to avoid such a result in case the enactment is capable of any other fair interpretation. As Maxwell on the Interpretation of Statutes, Twelfth Edition, points out at p. 43,

"It was stated in this way by Parke B. : "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further." "If," said Brett L. J. "the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning."

On this point there is consensus of judicial opinion both in this country as well as in England. Let us test the argument of learned Counsel for the respondents keeping these well settled principles in mind. If the term "engaged in the production" be held to cover the cases of persons like the petitioners then the result

would be this: A receives paddy from B for dehusking in his mill at a fixed remuneration. In legal parlance, A enters into a contractual relationship with B with express stipulation that for the fixed remuneration that he shall get he shall deliver to B rice after dehusking the paddy with all its broken pieces, shells, etc. A has no stock of his own and all that he earns is, say, Rs. 1.80 per quintal for dehusking the paddy. If A is called upon to deliver by way of levy in the purported exercise of powers flowing from the term underlined his (A's) existence in business will not only be extremely precarious for him but such compliance with the order will also make him extinct from business, In such a case, on the one hand A will be liable to deliver the quantity of rice or paddy levied against him to the State agency at the procurement price and, on the other, he will be liable to deliver the quantity stipulated between him and the other contracting party B. Since no provision is there either in the Act or in the 1976 Procurement Order making A immune from any extra liability to B, he would be a defaulting contracting party liable to indemnify B to the measure of damages sustained by B be it on the principle of quantum meruit which is in the nature of a quasi-contract or on the basis of any express stipulation or agreement. This would reduce the position of A not only to the position of palpable injustice and grave hardship but also to a position of absurdity, And, yet the question that then remains to be answered is: after all, what was the intention of the legislature in inserting the term underlined, namely, "engaged in the production". The answer to my mind is simple. In the absence of such a term, a person who produces paddy and as soon as it is dried up sells it away from his barn he then does not hold any stock of his own and, in spite of the fact that he is the producer of an essential food-grain, would yet be in a position to escape the rigour of law. That may have been one of the lacunae in the original language of Section 3(2)(f) of the Act and that, in my view, is the main reason for persuading the legislature, for the purpose of avoiding the mischief, to amend the statute by bringing within its ambit an unscrupulous or extra ingenious producer who did not choose to hold his own produce in his own stock. This was the mischief for which the old law did not provide and the remedy provided by the statutory amendment cures that mischief. After the amendment a cultivator, who produces an essential foodgrain or is engaged in the business of essential foodgrain on his own account and yet does not hold any stock of his own at any given point of time is sought to be covered by the amended provision. If the term "engaged in the production" be construed as engaged in production on his own behalf and on his own account and not on any third party's account, such a construction would, on the one hand, cure the mischief which was intended to be cured and, on the other, would avoid absolute inconvenience and palpable injustice if not absurdity. After the amendment, therefore, any person engaged in production of essential commodity on his own account and yet not holding it in stock will not be spared from the net of the beneficial legislation. This construction also finds support from the language of Explanation 1 which lays down that an order made under this clause in relation to foodgrains, etc., having regard to the estimated production in the concerned

area of such food grains, may fix the quantity to be sold by the producers in such area and may also provide for the fixation of such quantity on a graded basis, having regard to the aggregate area held by, or under the cultivation of, the producers. It is the area held by a producer or a cultivator and the estimated production in that area which have been given as a guideline for the fixation of the quantity to be sold by those engaged in the production of the foodgrain. There is yet another reason why such a construction must be put upon Section 3(2)(f) of the Act as amended. If such a construction is adopted, there will be no danger of attracting the infraction of Article 19 of the Constitution and thereby rendering the statute ultra vires. I must, therefore, hold that this is the only possible true construction of the term "engaged in the production" having regard both to the express language as well as the intent of the legislature which can be gathered from the mischief which was there before the amendment and which has been sought to be remedied thereafter.

6. That being the position, it follows as a necessary corollary that there has been no change in the Act for the purpose of persons like the present petitioners or like simple commission agents or Arhatias acting as agents on behalf of their principals. Therefore the ratio of the cases aforementioned will apply with full force and can well be pressed into service by the petitioners.

7. Having held that the source of power for the making of such orders as the 1976 Procurement Order remaining the same, can it be said that that Order would still cover the cases of the petitioners holding no stock of their own nor doing any business of producing on their own account ? To hold in the affirmative would render Clause 3 of the 1976 Procurement Order invalid as being ultra vires Section 3(2)(f) of the Act in so far as persons not holding any stock of their own nor engaged in the production on their own account are concerned. I would, therefore, hold that Clause 3 read with Clause 2 (d) of the 1976 Procurement Order must be limited to the cases of such licensed millers who are engaged in the production or business of essential foodgrains on their own behalf and hold a stock on their own account.

8. In the result, therefore, this application must be allowed, the orders and directions contained in Annexures 1 series are quashed and the respondents are hereby directed to forbear from giving effect to the notices (Annexures 1 series) issued to the petitioners. In the circumstances of the case, however, I shall make no order as to costs.

Shambhu Pd. Singh, J.

9. I agree.