(1989) 04 KAR CK 0021

In the Karnataka High Court

Case No : W.P. No. 795 and 796/1989

N. Ramalingaiah APPELLANT

Vs

Government of India and Others RESPONDENT

Date of Decision : 19-04-1989

Acts Referred:

Karnataka Rice Procurement (Levy) Order, 1984 — Rule 8(4)

Citation : (1989) 2 KarLJ 142

Hon'ble Judges : S. G. Doddakale Gowda, J

Judgement

Doddakale Gowda, J.-Petitioners as Rice Mill owners have challenged the validity of later portion of sub-clause (4) of Rule 8 of the Karnataka Rice Procurement (Levy) Order, 1984, as amended from time to time.

2. Clause three of Levy Order compels a rice miller to sell 33 1/3 per cent of total quantity of rice by milling paddy owned by him in his rice mill every day to the purchase agents at purchase price. No stock of rice can be removed from the mill premises without delivering the rice relating to such stock. Every miller and every dealer who comes into possession of any stock of paddy or rice not being his own required to furnish particulars to the Enforcement Officer-Vide clause 5. Clause 6 imposes a restriction not to transport to any place out-side the State rice in respect of which a Release Certificate has not been obtained. As per clause 8, after delivery of the rice, every licenced miller and a licenced dealer is required to make an application for the purpose of sale and/or transportation of levy free rice inside/outside the State in Form-C to the Deputy Commissioner for issue of a Release Certificate. On receipt of an application, the Deputy Commissioner shall issue a Release Certificate for movement and disposal of levy free rice in Form-D immediately or within ten days. Sub-clause (4) of clause 8 which reads thus:

"An application under sub-clause (1) shall be made within one month of the date of delivery of rice in accordance with clause 7 and the stock of rice in respect of which such release certificate is issued shall be disposed off by the miller or the dealer within a period of one month from the date of grant of such certificate:

Provided that the period may be relaxed by the State Government for reasons to be recorded in writing."

imposes a condition that the levy free rice should be disposed off by the miller or the dealer within the period of one month from the date of grant of such certificate. It is the validity of this clause that is challenged in these writ petitions on the ground that it imposes an unreasonable restriction on then-trade or business.

3. Sri N. Devadas, learned Government Advocate, resisted the relief contending that the issue involved is no longer res-integra and squarely covered by the decision of this Court in Khalimulla Khan v The State of Karnataka (I.L.R. 1986 Karnataka, 1641.).

4. Thus, the controversy is narrowed down to this viz., Whether the challenge made to this clause is no longer res-integra and/or having regard to the later amendments (Amendment/s subsequent to the decision). Whether the petitioners can successfully make any grievance?

5. This Court, while examining the validity of the very same clause, has stated thus:

"It is also possible from the grain vouchers to find out as to whether the levy is surrendered in respect of the paddy hulled at the mill point; but in respect of the rice in movement it will not be possible to know whether such rice has suffered levy. It is only to find out whether the rice which is in movement, in other words, which is being transported, has suffered levy or not, it is necessary that such rice must be supported by release certificate. In a way, the release certificate facilitates transporting of rice to any place outside the State. Otherwise, the enforcement authorities will have to interfere or impede movement of rice and stop its movement until it is proved that the rice which is being transported has suffered levy."

Having dealt with the object of obtaining the Release Certificate, it has proceeded to examine the vires of this clause. Relevant portion reads thus:

"For the purpose of disposal of levy-free rice within the State, there is no period fixed by the Levy Order. It is open to a dealer or a miller to dispose of the levy-free rice within the State at any time. It is only when a dealer or a miller wants to transport the levy-free rice to a place outside the State, a release certificate is required to be obtained and the levy-free rice in respect of which release certificate is obtained is required to be disposed of within a period of one month from the date of grant of release certificate. There is no compulsion on a miller or a dealer to transport levy-free rice to a place outside the State. If a miller or a dealer on obtaining a release certificate for transporting levy-free rice to a place outside the State is not able to transport the same within a period of one month, it is still open to him to sell such levy-free rice within the State. Therefore, it is not possible to hold that the provision contained in sub-clause (4) of Clause 8 of the Levy Order that the stock of rice in respect of which release certificate is issued shall be disposed of by a miller or a dealer within a period of one month from the date of grant of such certificate, is either unreasonable or imposes an unreasonable restriction on the right to trade. It is also not possible to hold that it adversely affects a miller or a dealer. Such a provision is necessary in order to ensure that there is no unreasonable hoarding of the levy-free rice. One of the objects of the Levy Order is to ensure that sufficient quantity of rice becomes available within the State for the benefit of the consumers."

(Emphasis supplied)

If things stood thus, probably, petitioners had no case.

6. The State in its notification, dated 19th December 1985 has amended sub-clause (1) of Clause 8, inserting the words "the purpose of sale or/and transportation of levy free rice inside/outside the State" for the words "disposal of levy free rice". As a result of this amendment, a licenced miller and a licenced dealer are required to dispose of levy free rice within a month, be it within the State or outside the State.

7. Submission of Sri A.J. Sadashiva, learned Counsel for petitioner, was transportation to out-side the State depends upon the various factors such as transportation facilities, fluctuation in prices, rainy season and variety of other factors. He contended that insistance to sell within a month after surrender of ? of the rice hulled at purchase price jeoparadise their right to carry on then trade and impossible to make up the loss sustained by selling rice at purchase price. He also distinguished Khalimulla''s case stating that there was no limitation for disposal of levy-free rice within the State and under those circumstances, this Court took the view that partial restriction was valid.

8. Supreme Court, in Oudh Sugar Mills Ltd. v Union Of India (A.I.R. 1970 S.C. 1070), while dealing with the similar situation re: disposal of levy free sugar has held thus:

"Right to trade is a guaranteed freedom. That right can be restricted only by law, considered by the Courts as reasonable in the circumstances. Not only the law restricting the freedom should be reasonable; the orders made on the basis of that law should also be reasonable. It is clear that the sugar released for sale in the open market will have to be ordinarily sent out of the States in which they are produced. For doing so, the concerned producers will have to enter into contracts with dealers at far off places. Thereafter, the sugar will have to be transported to places of disposal mainly through railways. Taking all the circumstances into consideration, we do not think that the period of 30 days given for disposal of the sugar is in any manner generous".

(emphasis supplied)

9. Fixation of period for disposal of levy free-rice depends upon large number of

im- ponderable factors such as availability of a buyer, fluctuation in prices, seasons, availability of transport facilities etc. Supreme Court, after referring to the salient factors required to be taken into consideration stated that period of 30 days fixed for disposal is not in any manner generous. Impugned clause in the levy order issued under Section-5 of the Essential Commodities Act does not enjoy the same protection as the Act itself as provided under Article 31(B) of the Constitution of India-Vide Prag Rice & Oil Mills v Union of India (AIR. 1978 SC 1296). The validity of the impugned provisions will have to be examined with reference to the well established principles. The expression ''reasonable restriction'' seeks to strike a balance between the freedom guaranteed under Article 19(1)(g) of the Constitution of India and the social control intended to be achieved. It should not be arbitrary or excessive in nature. The court has to take into consideration the nature of right alleged to have been infringed; purpose or object of the provision, the extent and urgency of evil sought to be remedied, prevailing conditions etc. This clause having created countervailing advantages viz., to sell levy free-rice within or outside the State to make up the loss suffered by surrender of levy at purchase price, stipulates that it shall be so done within a particular period, whatever may be circumstances, which in otherwords means deprivation of benefit. The earlier distinction which existed between a sale within the State and outside the State has been removed and an uniform period is fixed for disposal of free-rice treating unequals as equals and that itself is arbitrary. Impugned provision fixing 30 days only for disposal of levy-free rice is not merely unreasonable, but also operates harshly. When a miller is permitted to take levy-free rice out-side the State, there is no merit in the submission of the Government Advocate that the impugned provision intends prevention of hoarding and to secure equitable distribution and availability at fairprices within the State.

10. For the reasons stated above, these writ petitions succeed. Impugned provision to the extent stipulating disposal of levy free-rice within 30 days from the date of release certificate is declared to be arbitrary and illegal and the same is hereby quashed. Respondents 2 and 3 are hereby directed to consider the request of petitioners for issue of release certificates without stipulating the period within which they are required to be dispose of levy free-rice. To comply within four weeks from to-day. Rule made absolute.

1989(2)kar.l.j. 148

(A) KARNATAKA DEBT RELIEF ACT, 1976, Ss. 4(f) & 5 - S. 13 of 1980 Act - Sub-divisional Magistrate or Taluk Executive Magistrate not empowered/competent to determine as to whether a transaction of sale is in reality a mortgage - S. 13 of 1980 Act empowers Assistant Commissioner to declare a transfer purporting to be a sale to be in the nature of a mortgage clarifies the doubt and helps to put proper construction and to remove the ambiguity, if any, in the 1976 Act - Scope, ambit and intendment of the provisions - Explained.

(B) STATUTES - Interpretation - Jurisdiction confered on Statutory Authorities -

Authority not entitled to go beyond the provision conferring Jurisdiction Statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made - Explained.

(C) STATUTES - Interpretation - Applicability of Rule of liberal construction - Whenever language adopted in a Statute is susceptible of two constructions, Rule of Liberal Construction to prefer one which accomplishes legislative purpose - Where Statutory language permits only one meaning, no room for application of Rule of Liberal Construction.

The following question was referred to a larger Bench:

Whether the Taluka Executive Magistrate under the Karnataka Debt Relief Act, 1976 has competence to go beyond the tenor of the Deed evidencing the transaction of sale and declare the transaction as one of mortgage?

OPINION OF FULL BENCH: The Sub-Divisional Magistrate or the Taluka Executive Magistrate, as the case may be, under the Karnataka Debt Relief Act, 1976 has no competence to go beyond or behind the tenor of the deed evidencing the transaction of sale and declare the transaction as one of mortgage.

NOTE: Decision in W.A. No. 1212 of 1979 Dt: 21-1-1980 held to be NOT GOOD LAW.