

(1960) 02 CAL CK 0010
In the Calcutta High Court
Case No : Criminal Revision No. 1556 of 1959

Nandalal Kotal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 23-02-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 419
Defence of India Rules, 1962 — Rule 81
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1961) 1 ILR (Cal) 430

Hon'ble Judges : Debabrata Mookerjee, J; D.N. Das Gupta, J

Bench : Division Bench

Advocate : Ajit Kumar Dutta and Dilip Kumar Dutta, for the Appellant; Kali Mohan Chakravarti, for the Respondent

Judgement

Debabrata Mookerjee, J.—The Petitioner Nandalal Kotal has been convicted u/s 7(a)(ii) of the Essential Commodities Act and sentenced to detention till the rising of the court and to pay a fine of Rs. 10 in default to suffer rigorous imprisonment for three days. The stock of rice seized was ordered to be sold and the sale-proceeds to be deposited in the local Treasury.

2. The Petitioner took an appeal before the Sessions Judge which failed. He then moved this Court and obtained the present Rule.

3. The case for the prosecution was that on January 22, 1959 the Petitioner stored for sale 41 mounds 7 seers of Atap rice in an abandoned husking mill at a bazar. The Petitioner had no license under the West Bengal Rice and Paddy Control Order, 1957, to store for sale rice or paddy in wholesale quantities within the meaning of the Order.

4. The defense was that the Petitioner was a producer of paddy and had brought the rice to the bazaar to sell it in order to be able to pay off certain existing debts. It was not seriously challenged that he had in fact stored the rice at the bazaar for the purpose of sale.

5. The courts below held that the Petitioner had no license to engage in an undertaking which involved storage for sale in wholesale quantity of rice without a license.

6. The rice was said to have been stored at Kukrahati Bazar within Tamluk subdivision in the district of Midnapore. According to the prosecution storing of rice for sale in excess of ten naiads without a license amounted to contravention of para. 3 of the West Bengal Rice and Paddy Control Order 1957.

7. On behalf of the Petitioner it has been contended that the storage of rice having taken place in an area which is not within the specified area as defined in the Order, the Petitioner came within the proviso to para. 3 of the Order and was, therefore, not liable to be convicted for having contravened any provision of the Order. It has also been argued that a single act of storage of rice for sale by a producer of paddy did not come within the meaning of the word "undertaking" as used in para. 3 of the Order. These contentions require examination.

8. The West Bengal Rice and Paddy Control Order, 1957, was made by the Governor in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, read with the Government of India, Ministry of Food and Agriculture, Order No. S.R.O. 1477, dated April 29, 1957. The Order was made on August 30, 1957. It extends to the whole of the State of West Bengal. Sub-paragraph (3) of para. 1 of the Order provides that it shall come into force in the areas specified in the First Schedule to the Order at once and the Order or any part of it shall come into force in other areas on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas. Paragraph 2(c) defines "Specified areas" as areas specified in the First Schedule to the Order and includes any area in which the whole of the Order is brought into force by notification under sub-para. (3) of para. 1. It is thus clear that the words "specified areas" have a technical meaning given to them under the Order. The First Schedule contains a list of places, sub-division wise, within each district. That schedule does not include the district of Midnapore. That being so, the district of Midnapore is not included within the specified area.

9. We have then to examine whether the West Bengal Rice and Paddy Control Order, 1957, at all applies to the district of Midnapore. By virtue of a notification, dated September 2, 1957 certain parts of the Order were extended to certain area not included within the "specified areas". (A) The whole of the Order excluding para. 4 thereof was extended by this notification to the Asansol subdivision of the district of Burdwan, to the districts of Bankura, Birbhum and Purulia, the districts of Council Behar and West Dinajpore except the areas specified in the First Schedule to the Order. (B) the whole of the said order excluding paras. 4 and 5 thereof was extended to all other areas in. West Bengal except those specified in item A and except the areas specified in the First Schedule to the Order. It is thus clear that by virtue of this notification, dated September 2, 1957 the Order was extended to the district of Midnapore except

paras. 4 and 5 thereof. The district of Midnapore would obviously fall within category B which we have set out above since it would be included in "all other areas" in West Bengal except those specified in item A above and except the areas specified in the First Schedule to the Order.

10. It stems plain from what we have stated above that "specified areas are the areas to which the whole of the order applies; but certain parts of the Order have been made applicable by the notification of September 2, 1957 to different parts of the State as indicated above. It is clear, therefore, that the district of Midnapore is not included within the "specified area" and the Order applies to Midnapore excluding paras. 4 and 5 thereof.

11. The conviction has been made for alleged contravention of para. 3 of the Order. Paragraph 3 reads as follows:

No person shall engage in any undertaking which involves the production or manufacture of rice, or the purchase, sale or storage for sale in wholesale quantities of any rice or paddy except under and in accordance with a license issued under para. 6:

Provided that nothing in this paragraph shall apply to any person not being a person residing within the specified areas-

(a) who sells in quantities not exceeding one hundred mounds in any one transaction, or stores in quantities not exceeding one hundred mounds for the purpose of sale, paddy produced on land cultivated by himself with or without the aid of members of his family or paid laborers, or by adhiars, bargadars or bhagdars, or

(b) who purchases for bona fide consumption or charitable distribution, rice or paddy in quantities not exceeding fifty mounds in any one transaction.

Explanation 1.-In this paragraph, the expression "purchase, sale or storage for sale in wholesale quantities" means purchase or sale in quantities exceeding ten mounds in any one transaction or storage in quantities exceeding ten mounds for the purpose of sale, as the case may be, and the expression "production or manufacture of rice" means manufacture of rice by any process of removing the husk from paddy (rice in the husk) at a rice mill or with the aid of a power-driven husking machine.

Explanation 2.-Storage of rice or paddy in excess of one hundred mounds shall be presumed to be storage for the purpose of sale unless the contrary is proved.

12. The general provision contained in this paragraph which we have just read is that no one is permitted to engage in an undertaking which involves the production or manufacture of rice or the purchase, sale or storage for sale in wholesale quantities of any rice or paddy except under and in accordance with a license issued under the Order. Explanation 1 attached to para. 3 defines the expression "wholesale quantities" as meaning purchase or sale in quantities

exceeding ten mounds in any one transaction or storage in quantities exceeding ten mounds for the purpose of sale. The proviso to the paragraph is by way of an exception which we shall consider in appropriate place.

13. The learned Judge on appeal seems to have completely misdirected himself in thinking that the district of Midnapore was within the specified area. He accordingly held in effect that the whole of The order was applicable to the present case. He referred to certain amendments to the Order, dated February 3, 1958. Those amendments have since been rescinded and are, therefore, by no means relevant. As we have indicated the West Bengal Rice and Paddy Control Order applies to the district of Midnapore with the exception of paras. 4 and 5, but in this case the conviction has been made for contravention of para. 3 of the Order. We would not have noticed the mistake which the learned Judge made but for the fact that he seems to have held that the Petitioner was not entitled to the protection given by the proviso to para. 3 of the Order. According to the learned Judge the district of Midnapore being within the specified areas, the proviso had no application. The proviso exempts a person not being a person residing within the specified areas from the operation of para. 3, if he being a producer himself sells paddy not exceeding one hundred mounds. There cannot be any doubt that the Petitioner in the present case was a person not residing within the specified area; other things being equal he would have been entitled to the benefit of that proviso. The learned Judge was to that extent wrong in holding that the proviso had no application to the Petitioner since he was a person residing within the specified area.

14. What really stands in the way of the Petitioner availing himself of the benefit of the exception to para. 3 of the order, is that he stored for sale rice and not paddy. The proviso which we have set out above says that nothing in para. 3 shall apply to a person who being a person not residing within the specified areas sells or stores for sale in quantities not exceeding one hundred mounds for the purpose of sale, paddy produced on land cultivated by himself. Here the quantity involved was 41 and odd mounds of rice. It was not paddy but rice which was stored that being so, the Petitioner was not entitled to the benefit of this exception. It has been argued on behalf of the Petitioner that the word "paddy" used in Clause (a) to the proviso of para. 3 would include rice. We are unable to accept this construction. It is well known that paddy is different from rice; moreover in Clause (b) attached to the same proviso, provision has been made enabling a purchaser to acquire rice or paddy for bona fide consumption or charitable distribution. Whatever the reason may be, Clauses (a) and (b) to the proviso mention between them both, paddy and rice; Clause (a) mentions paddy only whereas Clause (b) mentions rice as well as paddy. That being so, we cannot possibly hold that rice has inadvertently been omitted to be included in Clause (a) the omission must be held to be deliberate. Nor can we agree to the construction that the word "paddy" in the context of Clause (a) would include rice. It may not be easy to reconcile the two Clauses (a) and (b) attached to the proviso to para. 3. The two clauses between them provide for the seller to sell

and the purchaser to acquire rice and paddy. Both must be persons not being persons residing within the specified area. In the case of the seller he has to be a producer of paddy himself, and in the case of the purchaser the purchase must be either for bona fide consumption or for charitable distribution. While the seller is given the right to sell paddy which he himself produced up to a limit of one hundred mounds, the purchaser is not given the corresponding right to purchase any quantity above fifty mounds. In the case of the seller the immunity extends to the sale of paddy only; in the case of the purchaser the immunity extends not only to paddy but to rice as well. Thus the two clauses when worked together do not appear to give a right to the producer of paddy to sell more than fifty mounds. Surely, sale can never be a unilateral act; to a transaction of sale there must be one to sell and another to buy. These appear to us to be some of the incongruities in the proviso attached to para. 3. They may not have any direct relevance on the facts of the present case but they acquire some importance incidentally, in view of the claim made on behalf of the Petitioner that the word "paddy" as used in Clause (a) to the proviso includes rice as well. We have indicated that when the words "paddy and rice" are used in the same context in the proviso itself, it would not be right to extend the meaning of the word "paddy" occurring in Clause (a) by holding that it includes rice as well. If it was possible for us to hold that the word "paddy" used in Clause (a) included "rice" then clearly the Petitioner being a person not residing within the specified area, would not have been liable to be punished for contravention of para. 3 of the Order. We cannot, however, take "paddy" as including "rice" and that being so, we are constrained to hold that the Petitioner is not entitled to the benefit of the exception to para. 3. It is this circumstance which really disentitles the Petitioner to the benefit of the proviso and not the other circumstance referred to by the learned Judge on appeal, namely, that the Petitioner was a person residing within the specified area. We have indicated that Midnapore is not within the specified area. Therefore in an appropriate case the proviso to para. 3 will have full play in that district if of course the conditions mentioned therein are fulfilled.

15. We are accordingly left with the explanation 1 to para. 3 of the Order which provides that storage for sale in wholesale quantities means storage in quantities exceeding ten maunds. The main provision of para. 3 prohibits storage of rice for sale in wholesale quantities. We have seen wholesale quantity in explanation 1 means quantity in excess of ten mounds. That being the position, the Petitioner comes within the mischief of para. 3 of the Order and we must negative the contention that he is entitled to the benefit of the proviso attached to the paragraph.

16. The other contention raised on behalf of the Petitioner is that being a producer of paddy himself, he brought the fruit of his own labor to the market for the purpose of sale and such single act of storage for sale was not intended to be punished under the provisions of para. 3 of the Order. As we have seen that paragraph forbids storage for sale in wholesale quantities of rice and paddy except under a license issued under para. 6. The question then arises as to the

exact import of the word "undertaking". Does the word mean business or trade? Or does it also include a single act of sale? It is nobody's case that the Petitioner habitually sold or stored for sale in wholesale quantities rice or paddy. The case definitely made was that he stored for sale 41 and odd mounds of rice on the date in question. The Petitioner's case was that he had stored the rice for sale in order to pay off existing debts. There is thus no dispute about the fact that the prosecution relied upon a fugitive act of storage for sale for the purpose of inducing the court to hold that the Petitioner engaged himself in an undertaking within the meaning of para. 3 of the Order. The word "undertaking" has not been defined in the Essential Commodities Act; nor has it been defined in the Order itself. We are, therefore, left to collect the meaning of the word from the text of the Order itself with reference to accredited canons of construction.

17. Ordinarily the word "undertaking" means a project of an enterprise. This meaning is in consonance with its usually accepted connotation of trade or business. If para. 3 forbids business or trade which involves sale or storage for sale, then the Petitioner cannot possibly be held liable for contravention of the Order. There is no question in this case of the Petitioner having been engaged in a continuous course of conduct which might be compressed within the term trade or business. That was not the prosecution allegation either. The case was that the Petitioner had stored for sale on the particular occasion, rice in wholesale quantities, that is, in quantities exceeding the limit of ten mounds.

18. Paragraph 3 of the Order says that no one is permitted to engage in any undertaking which involves storage for sale in wholesale quantities except under and in accordance with a license issued under para. 6. Paragraph 6 says that the State Government or any officer authorized by the State Government in this behalf may, on application made to it in Form A or in Form A(1) or in a Form as similar to Form A or Form A(1) as possible grant license to any person authorizing him to engage in any undertaking which involves among other things storage for sale in wholesale quantities of rice or paddy. Sub-paragraph (3) of para, 6 provides that every license shall specify the place or places at which and the area in which the licensee may engage in any undertaking as specified under para. 3. Paragraph 9 gives power to the Director or any officer authorized in writing by him requiring any person holding a license under the Order to produce for inspection his books, accounts and records relating to his undertaking in rice or paddy or both and to furnish any information in his possession relating to such undertaking. Form A(1) which is the relevant form in which the application for license for storage for sale in wholesale quantities has to be made, requires the applicant to supply information on several heads. The applicant is required to state the situation of his business premises with reference to the village, police-station and district, and the area of business for which, license is wanted; he has to state how long he has been trading in rice or paddy. He has to formally ask for a license under para. 6 for carrying on the business at the place he mentions in the application form. Form B(1) which is the form of license to be issued for storage for sale in wholesale quantities of rife and paddy, is framed in such a way

as to lead to the inference that the licensee is treated on the footing of a businessman or a trader. The trade name is to be mentioned in the license; the licensee is required under the terms of the license to maintain for each place or godown a register of daily accounts for rice and/or paddy showing correctly the opening and closing stock on each day. The licensee is required to submit to the officer issuing the license a true return of his stocks, receipts and deliveries. The licensee is obliged under the terms of the license to give all facilities at all reasonable times to any officer authorized in this behalf by the State Government for the inspection of his stock and accounts at any shop, godown or other place used by him for the storage or sale of commodities for which the license has been taken out. He is also required to comply with the directions issued to him by the State Government in regard to sale or storage for sale of the commodities for which the license was issued and in regard to the manner in which the registers and returns shall have to be written.

19. From the foregoing it seems reasonably plain that the license referred to in para. 3 for which elaborates provisions have been made in para. 6 of the Order, is a license which authorizes trading or business involving sale, purchase or storage for sale in wholesale quantities of rice or paddy. It is to be recalled that the form of application for license and the form in which the license has to be issued are statutory forms. Paragraph 2(b) of the Order defines a "Form" and it says that it means a form as set forth in the second schedule to the Order. We have referred to the forms as they appear in the second schedule.

20. In our view the forms cannot be divorced from the context of the Order. They are an integral part of it. Indeed para. 3 prohibits any kind of undertaking in paddy or rice in wholesale quantities except under a license issued under para. 6. The application for license has to be made and the license granted in accordance with the forms prescribed under para. 6 of the Order. Paragraph 3 says that a license in terms of para. 6 is an essential prerequisite for a person who engages in an undertaking which involves purchase, sale or storage for sale of rice and paddy in wholesale quantities.

21. It seems to us that what is forbidden by para. 3 of the Order-is trading or business as understood in common parlance as distinguished from a casual or fugitive act of sale or purchase or storage for sale of rice or paddy in excess of ten mounds.

22. On behalf of the State it has been contended that although the word "undertaking has not been defined either in the Essential Commodities Act or in the West Bengal Rice and Paddy Control Order, we have to take into account the situation in the country as it prevailed at the time when this Order was made. Reliance was placed upon a decision of the Supreme Court in the case of D.V. Banerji, Administrator of the Budge Budge Municipality v. P.R. Mukherjee, Chairman, Industrial Tribunal and Ors. (1953) S.C.A. 303, 310 In that case it was observed:

It is no doubt true that the meaning should be ascertained only from the words employed in the definitions, but the set-up and context are also relevant for ascertaining what exactly was meant to be conveyed by the terminology employed. As observed by Lord Atkinson in *Keats v. Lewis Merthy and Consolidated Collieries* (1911) A.C. 8, "In the construction of a statute it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time this statute was passed and to the evils, which as appear from its provisions, it was designed to remedy." If the words are capable of one meaning alone, then it must be adopted ; but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislation had in view. Though the definition may be more or less the same in two different statutes still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context.

23. In this case the Supreme Court was considering the true effect of the definition of the words "industry", "Industrial dispute" and "workman" appearing in the Industrial Disputes Act. After an elaborate consideration, it was held that in certain circumstances dispute between the Municipality and its employees did come within the definition of industrial dispute under the Industrial Disputes Act, 1947. It is to be observed that the words "Industry" and "Industrial dispute" were defined in the Act itself. What was done in that case was that these definitions were examined with reference to the set-up and context in which the legislation was passed in order that the true meaning of the words might be ascertained. In the present case the word "undertaking" has not been defined at all. We are accordingly left to gather its meaning mainly from the different provisions of the Order itself. We are not unmindful of the purpose which this Order was designed to serve. Quite obviously the State Government was trying to make rice and paddy available to the members of the public by adopting suitable legislative devices but then we are not prepared to say that the word "undertaking" in the context of the Order can be given the extended meaning contended for on behalf of the State so as to include a single act of sale or storage for sale of rice and paddy in quantities exceeding ten mounds.

24. Reference was then made on behalf of the State to another decision of the Supreme Court in the case of *State of Uttar Pradesh v. C. Tobit and Ors.* (1958) S.C.A. 1122. In that case the true meaning of the word "copy" as occurring in Section 419 of the Code of Criminal Procedure fell to be decided. The question was whether the word "copy" meant a plain copy or a certified copy. Das, C.J., referred to Maxwell's Interpretation of Statutes, 10th Edition, page 52 and relied upon these observations therein".

The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment and the object which the legislature has in view. Their meaning is

found not so much in a strictly grammatical or etymological propriety of language nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.

25. The learned Judge then referred to the various provisions of the Code of Criminal Procedure and came to the conclusion that the word "copy" used in Section 419 of the Code meant a "certified copy". There can be no question that it would be wholly an unrealistic approach to shut our eyes to the exigencies of the situation which necessitated the promulgation of the Order. It would be equally unwise to insist upon a technical or entirely literal interpretation of the word "undertaking". We have accordingly considered the different provisions of the Order itself for the purpose of collecting the true meaning of the word "undertaking". There cannot be any doubt about the necessity of control of rice and paddy. Obviously the Order was made to ensure supply of foodstuffs to the people of the State: Keeping the legislative purpose in view, we have to find what in the context of the Order the true meaning of the word "undertaking" can be. It can never be right to ignore the text of the Order altogether in the search for a clue to the true legislative intent. One need not travel beyond the text of the Order to find overwhelming evidence of that intent which is that the word "undertaking" as used in para. 3 could only mean a business undertaking or undertaking by way of trade. Paragraph 6 which prescribes the form of application for license as well as the form of license to be issued, contains a clear indication as to what is meant by the word "undertaking". To us it seems impossible to read the prescribed forms as meaning anything but an application form for carrying on a business or trade, and a license form for conducting such business or trade. They are referable only to a continuous course of conduct implied in trade or business.

26. We may perhaps in this context recall the provision contained in Rule 81 of the Defense of India Rules. Those rules were promulgated under the Defense of India Act at a time when the country was passing through a great crisis. Rule 81 occurs in part XII which deals with essential supplies. That rule defines an undertaking as meaning "any undertaking by way of trade or "business." It is arguable that it would not be proper to import the definition of undertaking as given in Rule 81 of the Defense of India Rules into the West Bengal Rice and Paddy Control Order. 19-37. But there cannot be any doubt that these are pieces of legislation in pari material. It may be an extraneous aid to construction, but nonetheless a permissible aid. We think it would not be wrong in view of the context of the situation in which the Defense of India Rules and the West Bengal Rice and Paddy Control Order were each promulgated to look for aid in one cognate piece of legislation to appreciate the import of the word "undertaking" used in the other. Maxwell in his Interpretation of Statutes (Ninth Edition, page 314) observes:

When the legislature puts a construction on an Act, a subsequent cognate enactment in the same terms would, prima facie, be understood in the same

sense * * * Where it is gathered from a latter Act that the legislature attached a particular meaning to certain words in an earlier cognate one, this would be taken as a legislative declaration of its meaning there. * * * It may be taken for granted that the Legislature is acquainted with the actual state of the law. Therefore, when the words of an old statute either incorporated in, or by reference made part of, a new statute, this is understood to be done with the object of adopting any legal interpretation which has been put on them by the courts. So, the same words appearing in a subsequent Act in pari material, the presumption arises that they are used in the meaning which has been judicially put on them and that, unless there be something to rebut that presumption, the new statute is to be construed as the old one was * * * Even where the Acts are not in pari material, the meaning notoriously given to expressions in the earlier may be taken to be that in which they are used in the later Act.

27. This is not a case of the word "undertaking" having been judicially interpreted in a particular way. The word was defined in an earlier cognate statute; and in the words of Maxwell the meaning of business or trade was notoriously given to the expression "undertaking" as it occurred in the earlier legislation, namely, the Defense of India Rules which has been retained in the West Bengal Rice and Paddy Control Order, 1947. In these circumstances it seems to us that the position is inescapably that the true intent of the legislative Authority was not to punish a casual act of sale or storage for sale of rice and paddy in quantities exceeding ten mounds.

28. It is needless to add that it would have been desirable if the Authority concerned thought fit to define the word "undertaking". The word having been left undefined we were compelled to collect its meaning with reference to the Order itself and to the well-known rules of construction. It is not for the courts to make good the omission by a kind of judicial amendment of the law; but the proper course is to declare the defect and to leave it to the Authority concerned to amend the law, if it will.

29. We accordingly hold that the conviction has been wrongly made. We therefore set aside the conviction and sentence passed on the Petitioner. The fine, if paid, will be refunded and the seized paddy or its equivalent price will be returned to the Petitioner.

30. The Rule is made absolute.

D.N. Das Gupta, J.

31. I agree.