

(1971) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 161 of 1970

Panjumal Khan Chand

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-03-1971

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 3(2), 5

Citation : AIR 1971 MP 225 : (1971) JLJ 451

Hon'ble Judges : Shiv Dayal Shrivastava, J;K.K. Dube, J

Bench : Division Bench

Advocate : G.P. Patankar, for the Appellant; R.S. Bajpai, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.—The petitioner Firm challenges the validity of an order passed by the State of Madhya Pradesh fixing the minimum percentage of outturn of rice from paddy for the purposes of levy.

2. Initially by GSR No. 1405 dated November 24, 1960, the Government of India in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (Act No. 10 of 1955) made the Madhya Pradesh Rice Procurement (Levy) Order, 1960. In Clause 3 of that Order a licensed Miller was to sell to the Purchase Officer at the price payable under that Order, 25 per cent of the quantity held in stock by him at the commencement of that Order and thereafter, until such time as the Purchase Officer otherwise directs. 100 per cent of the total quantity of rice produced or manufactured by him in his Rice Mill every day. Later on, by GSR. No. 1677, dated November 6, 1967, the Government of India made the Madhya Pradesh Rice Procurement (Levy) Second Amendment Order, 1967, whereby the expression "100 per cent" (supra) was substituted to "60 per cent."

3. The petitioner Firm which is a Rice Miller (which purchase paddy and gets rice

milled and sells rice) had been, accordingly, paying 60 per cent of the rice produced by him.

4. A memorandum was issued by the Government of Madhya Pradesh, Food Department, to all Collectors fixing a minimum limit of out-turn of rice for the purposes of recovering levy as 62.50 per cent for raw rice and 66.66 per cent for parboiled rice. In accordance with this memorandum the petitioner was served with a notice dated July 20, 1970, to pay levy of rice of 1141.86 quintals upto May 31, 1970, within three days from the date of the order. It was further informed that only then the petitioner can sell his levy paid stock. He was also threatened that if he did not deliver levy as above he would be prosecuted u/s 7 of the Essential Commodities Act.

5. The petitioner Firm challenges the validity of the said memorandum (hereinafter called the "impugned order") on various grounds. It is contended that the impugned order is without authority of law. As required by the Madhya Pradesh Rice Procurement (Levy) Order, 1960, read with its Second Amendment of 1967 (supra) the petitioner had to pay 60 per cent levy on the actual production of rice. Now what has been demanded from the petitioner is 60 per cent levy on the assumed out-turn of rice from paddy. It is contended that an order could be made for requiring the petitioner to sell to the Government what he "held in stock" and not "what he should have held in stock, "the fixation of rigid percentage of production of rice from paddy is not warranted by law. The learned counsel for the petitioner illustrated his point thus. If a rice miller is able to produce 70 quintals of rice out of 100 quintals of paddy, the rice so produced will nevertheless be assumed to be 62.50 quintals and he would be required to pay 60 per cent of 62.50 quintals. But if another miller produces only 60 quintals out of 100 quintals of paddy, then in this case also the rice produced by him will be assumed to be 62.50 quintals and will have to pay the same levy. Formerly, i.e., before the impugned order each of these millers was required to pay 60 per cent of the actual stock of rice held by him irrespective of the percentage of his out-turn.

6. Clauses (f) and (i) of Section 3(2) of the Essential Commodities Act read thus:--

"Section 3--Powers to control production, supply, distribution etc. of essential commodities:--

(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 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

(j) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor." Thus the Central Government was empowered to make the provisions by an order regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. u/s 5 of the Act the Central Government delegated its powers to the State Governments. However, the State Governments could not exceed the powers conferred on the Central Government by the said Clauses (f) and (j) of Section 3(2) of the Act.

7. Shri Patankar, learned counsel for the petitioner relied on a decision of the Allahabad High Court in Misc. Writ Petn. No. 1042 of 1970 (and other connected Writ Petitions) in re: Jagannath Jiwan Prakash v. State of U.P. decided on 18-8-1970, by a learned Judge sitting singly. It is contended by Shri Patankar:--

(i) that under Clause (f) reproduced above directions can be issued only in respect of commodity in stock and not held in stock by a dealer or a licensee. A levy can be imposed on percentage basis, but only on rice held in stock and not what an efficient miller could have produced;

(ii) that Clause (1) enables the State Government to lay down how the holding in stock shall be determined, but any order so made must be correlated to the determination of the holding in stock and not what the stock would be had the miller been an efficient one;

(iii) that there is no provision in the impugned order which would have enabled an individual miller to move the State Government to reduce the percentage in his case so that to base it on actual recovery of rice. The impugned order does not merely say that the percentage fixed in it shall be presumed to be the percentage of recovery unless otherwise proved by a particular miller or dealer. There is, therefore, no opportunity for any miller to move the State Government even on the basis of his genuine and reliable accounts and records for reducing the prescribed percentage of levy in his case;

(iv) that the percentage fixed by the impugned order is arbitrary. There are several factors on which depends the out-turn, efficiency of the machinery, efficiency of the workmen and so on;

(v) that the impugned order was made by the State Government in excess of its powers inasmuch as the prior concurrence of the Central Government as required by Section 5 of the Act was not obtained.

8. The case for the State Government is that the order of the levy was passed by the Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, and it was amended by the Central Government vide

its order No. GSR No. 1677 dated November, 1967. Under the amended order which was extended to the whole of Madhya Pradesh levy was reduced from 100 per cent to 60 per cent of the out-turn. The question of fixing the out-turn from paddy was considered by the State Government on the receipt of a letter dated June 16, 1968, from the Food Corporation of India making a reference in this behalf to the State Government. In that letter it was stated that on a report having been received that some Rice Mills licensees were showing 50 per cent out-turn of rice from paddy on a plea of poor quality of paddy milled by them, and experience for about 8 years in Chhatisgarh area showed that percentage of extract of rice was not below 62 per cent in raw rice and 65 per cent in par-boiled rice, and it was also mentioned that an Experts Committee of the Food Corporation of India had undertaken survey of rice mills in India during the year 1966-67 and according to their report they suggested 67 per cent minimum out-turn taking into consideration various factors like weather, quality of paddy and efficiency of machinery etc. The State Government considered the questions of fixing out-turn of rice from paddy on the basis of experiments carried out by the Food Corporation and other various factors. Consequently, the outturn of rice was fixed as stated in the order dated February 28, 1968.

9. Shri Bajpai, learned Additional Government Advocate emphatically argued that the State Government has power under Clause (j) of Section 3 to make an order to provide for any incidental and supplementary matters. The fixation of minimum out-turn of rice from paddy which a miller must be deemed to hold in stock is a matter within the purview of this Clause. He further urged that the order is directly correlated to the determination of the holding in stock of rice. The percentage of outturn is neither arbitrary nor unreasonable. It is based on experience of experts on the basis of a survey of Rice Mills. It was, further argued that the fixation of minimum out-turn avoids certain evils attending the assessment of rice held in stock.

10. It appears to us prima facie that what is authorised u/s 3(2)(f) of the Essential Commodities Act read with M. P. Rice Procurement (Levy) Order is to provide for levy on "rice" which is "held in stock". This section of the Procurement Order does not authorise levy on "paddy". The word "rice" is defined in the Rice Procurement (Levy) Order. It also seems difficult to stretch the language of the law to hold the impugned order as one within the expression "regulating or prohibiting production" or within the expression "incidental and supplementary matters". It may also be mentioned that what was challenged before us is not the propriety of the order but the power of the State Government to issue that order, within the statutory authority. However, it is clear to us that we need not decide these questions finally in the present case because the impugned order was made by the State Government without prior concurrence of the Central Government.

11. In the first place, the Government did not make any order expressly as one having been made in exercise of its powers u/s 3 as delegated to it u/s 5 of the

Act by the Central Government. The State Government merely issued a memorandum evidently for the guidance of its officers who are charged with the duty to assess the quantity of rice held in stock. The memorandum is addressed to all the Collectors by the Under Secretary to Government of Madhya Pradesh in the Food Department (Annexure R-3). The memorandum is absolutely silent under which powers it was issued. A public order to have the legal effect must disclose the authority under which it is made, as the public or the persons concerned are entitled to know such authority. In the Commissioner of Police, Bombay Vs. Gordhandas Bhanji, their Lordships observed as follows:--

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public order made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those whom they are addressed and must be construed objectively with reference to the language used in the order itself."

12. Furthermore even if the memorandum be read as an "order" within the meaning of Section 3(2)(f), read with Section 5 of the Act, it is still ultra vires Section 5. That Section enacts as follows :--

"5. Delegation of powers.-- The Central Government may, by notified order, direct that the power to make order u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government.

as may be specified in the direction."

In exercise of the powers conferred by Section 5 the Central Government made G.S.R. No. 1111, dated July 24, 1967, published in the Gazette of India (Extraordinary) Part II, Section 3(1) No. 137, dated July 24, 1967 directing as follows:--

"G.S.R. 1111--In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the Order of the Government of India in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) No. G.S.R. 906, dated the 9th June, 1966 (as subsequently amended), the Central Government hereby directs that the powers conferred on it by Sub-section (1) of Section 3 of the said Act to make orders to provide for the matters specified in Clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of Sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions-

(1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf; and

(2) that before making an order relating to any matter specified in the said Clauses (a) and (c) or in regard to regulation of transport of any foodstuffs under the said Clause (d), the State Government shall also obtain the prior concurrence of the Central Government.

(No. 203 (GEN) (6)/956/66-PY.II).

R. Balasubramanian, Jt. Secy."

Then by G.S.R. 1508, dated September 30, 1967 (published in the Gazette of India, (Extraordinary), Part II, Section 3(1), dated September 30, 1967) it was said as follows:--

"G.S.R. 1508--In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following amendment to the Order of the Government of India in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food), No. G.S.R. 1111, dated the 24th July 1967, namely:--

In the said Order, for condition (2), the following condition shall be substituted, namely:--

"(2) that before making an Order relating to any matter specified in the said Clauses (a), (c) or (f), or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said Clause (d), the State Government shall also obtain the prior concurrence of the Central Government."

No. 203 (Genl) (9)/970/67-PY. II)"

In the present case the impugned memorandum was issued without any concurrence of the Central Government. This memorandum was, therefore, without authority of law. It is bad.

13. It appears that the above directions issued by the Central Government escaped attention of the State Government. We did not find these notifications even in a latest commentary on Essential Commodities Act (1969. Edition).

14. The petition is allowed on the short ground that the impugned memorandum dated February 28, 1968, having been issued without prior concurrence of the Central Government as required u/s 5 of the Essential Commodities Act, 1955, read with G.S.R. 1111, dated July 24, 1967, and G.S.R. 1508, dated September 30, 1967, of the Central Government is without authority of law. A mandamus shall issue to the respondents directing them not to give effect to that memorandum nor to the notice and other proceedings based on that memorandum, in particular Order No. 3438, dated July 20, 1970 (Annexure 3) and to release the, freezed stock for free sale if it was in excess of 60 per cent of

rice held in stock. In the circumstance of the case we leave the parties to bear their own costs. Security amount deposited by the petitioner shall be refunded to him.