(1997) 03 MP CK 0043

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5151 of 1996

Santosh Kumar Agrawal APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : AIR 1998 MP 20 : (1997) ILR (MP) 74

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : M.M. Agrawal, for the Appellant; V.K. Shukla, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks quashment of the notification No. 5-20/96/29/1 dated 2-11-96 issued by the State Government directing the submission of the Levy of rice with minimum 50% of Arwa Rice or in the alternative to direct the respondents to recover the rice in levy as produced by the petitioner.

2. The State of Madhya Pradesh being of the opinion that for the purpose of procuring adequate quantities of rice for public distribution and for the purpose of securing the surplus rice available in the State for meeting requirements of other deficit States in the country, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 and with the prior concurrence of the Central Government promulgated "the M. P. Rice Procurement (Levy) Order, 1970 (hereinafter referred to as the ''Levy Order'', 1970). According to Clause 2(c) of the levy order ''Rice'' means any variety of rice produced or manufactured by dehusking paddy in a rice mill worked by power; and includes rice equivalent of paddy held in stock. Under Clause-3 of the Levy Order, 1970, every licensed miller is bound to sell to the purchase officer at the price payable, in the manner referred to in Clause-4, such percentage,--

(a) of the total quantity of rice produced or manufactured by him in his rice mill every day, or

(b) of the total quantity of rice got milled by any person including a Licenced Dealer in his rice mill every day, or of such persons stock of paddy, as the case may be, as may be notified in the official Gazette by the State Government with the prior concurrence of the Central Government from time to time.

Clause 2(c) read with Clause 3 clearly shows that the quantity of rice produced or manufactured, in the rice mill by the manufacturer or producer in a particular percentage, and the rice got milled by any person is subject to levy and the rice means any variety of rice produced or manufactured in rice mill worked by power.

3. The petitioner owns a rice mill named Shivnath Rice Mill with a licence No. 21/ RJN/ 92, which was valid upto 31-12-1996 with a Grain Licence No. 211/R/92 which was also valid upto 31-12-96. According to the petitioner, he was manufacturing only par-boiled Rice in the rice mill. The petitioner under Clause 3 of the levy order was obliged to sell 50% of the total quantity of rice produced or manufactured by him. The petitioner submits that he was ready and willing to submit the levy of whatever he was manufacturing or producing but the respondents were directing him to produce Arwa Rice and meet the requirements of the levy order. Annexure-P/1 dated 2-11 -1996 directs that 50% of the levy shall be or Arwa rice. According to Annexure-P/l, 50% of the levy shall be of Arwa rice. The petitioner submits that in view of Annexure-P/I, he is being forced to produce Arwa Rice which he is not otherwise manufacturing. He submits that the petitioner manufactures par-boiled rice therefore, the demand of Arwa Rice from the petitioner is patently illegal. It is also submitted by him that manufacture of Arwa Rice requires a particular quality of paddy which is not available to the petitioner and the polishers available with the petitioner cannot be used for polishing Arwa Rice. He submits that demand of Arwa Rice from him is illegal.

4. The respondents in their return do not deny the fact that the petitioner is producing parboiled rice. According to them, the policy for 1996-97 for Kharif Marketing Year is clear when it requires 50% of the levy rice to be Raw Rice (Arwa). They submit that according to Annexure-P/I every rice miller has to sell rice in a particular quality and the demand of the Government to meet the public demand is neither illegal nor bad. According to the respondents, the petitioner has been given the licence for manufacturing rice. They submit that there is no difference in manufacturing process of par-boiled rice and Arwa Rice. The unit which can manufacture parboiled rice can also manufacture Raw Rice. The respondents submit that in the State of Madhya Pradesh there is heavy demand of raw rice which is the consumption of common people. They submit that the petitioner can easily produce Arwa Rice and the State in making the demand is not coercing the petitioner nor is doing anything contrary to the levy order. It is also submitted that vide notification dated 19-2-97 published in Gazette on 21-2-1997, the State Government in exercise of its power under Sub-clause (1)

and (2) of Clause 3 of the levy order, 1970 with the prior concurrence of the Central Government has notified that for each said sub-clause the per cenlage of levy on varieties of rice including common, fine and superfine for Kharif Marketing Season 1996-97 shall be 50%. It is also contended that in anticipation concurrence of the Government of India, it has been further notified that at least 50% rice of the levy rice shall be Arwa Rice. Placing strong reliance of Annexure R/l, the notification, it is contended that the petitioner is bound to sell 50% of rice in form of Arwa Rice."

5. The notification dated 19-2-1997, Annexure-R/1 reads as under:--

"No. F.5-20-96-xxix-1.-- In pursuance of the provision of Sub-clause (1) and (2) of Clause (3) of the Madhya Pradesh Rice Procurement (Levy) Order, 1970, the State Government with the prior concurrence of the Central Government, hereby notifies that for each of the said sub-clause, the percentage of levy on all varieties of rice including common, fine and superfine for Kharif Marketing. Season, 1996-97 shall be 50%.

2. In anticipation of concurrence of Government of India, it is also notified that at least 50 per cent (Fifty per cent) rice of the rice paid in levy will be Arwa Rice. In levy common varieties of rice may be allowed in lieu of fine and superfine varieties but fineand superfine varieties will not be allowed in lieu of common varieties of rice."

6. According to the notification for each of Sub-clause 1 and 2 of Clause 3, the percentage of levy on all varieties of rice including common, fine and superfine for Kharif Marketing Season, 1996-97 shall be 50%. So far as this part of notification is concerned, it is absolutely valid because Clause 3 provides that every licenced miller shall sell to the purchase officer at the price payable, in the manner referred to in Clause 4 particular per centage of the rice produced or manufactured, as may be notified in the official Gazette by the State Government with the prior concurrence of the Central Government from time to time.

7. The prior concurrence of the Central Government is a must for fixation of the percentage for the purpose of levy. Clause 3 does not authorise the State Government to issue the notification regarding submission of the rice of a particular class or nature. According to Clause 3 the licensed miller is bound to sell such percentage of the total quantity of rice produced or manufactured by him in his rice mill every day or of the total quantity of rice got milled by any person in his rice mill every day. Clause 3 does not say that the licensed miller shall produce a particular quality of rice for the purposes of levy. It simply says that the levy shall be of a particular percentage of the total quantity of rice produced or manufactured or got milled by any person. The levy order does nowhere say that while imposing the levy the State Government had any right or authority to direct the licensed miller to produce a particular quality or type of rice. Under the garb of levy, the State Government cannot compel a licensed miller to produce a particular quality or type of the rice. An anomalous situation

would be created if demand made by the Government is adhered to because if anybody comes to a licensed miller for getting the rice milled he will have to be compelled by the licensed miller to get a particular type or quality of the rice milled and would be forced to get at least 50% of the rice to be milled as Arwa Rice. When the license no where puts restrictions on a licensed miller nor does it direct that the licensed miller shall produce or manufacture or mill as a job work any particular quality or type of the rice then the State Government must be satisfied with the levy, on the goods produced or manufactured by him.

8. The second part of the notification reads that ''in anticipation of concurrence of Government of India, it is also notified that at least 50% of the rice paid in levy will be Arwa Rice''. It further reads that in levy common varieties office may be allowed in lieu of fine and superfine varieties but fine and superfine varieties will not be allowed in lieu of common varieties or rice. Clause 3 gives the powers to the Government to fix the percentage of levy with the prior concurrence of the Central Government from time to time. Clause 3 does not give the power to the State Government to issue a notification in anticipation of concurrence of Government of India nor does it empower the State to issue a notification even with the concurrence of the Central Government to claim a particularquality or type of the rice in levy. The power of the State Government in Clause 3 is only in relation to the percentage of the production which is required to be sold or paid in levy.

9. The State is required to show the source of the power. If Clause 3 does not provide the power to the State Govenmem then the second part of the notification which directs that at least 50% rice of the rice paid in levy will be Arwa Rice, would certainly be contrary to law and provisions of Clause 3 of M.P. Rice Procurement (Levy) Order, 1970.

10. The State Government cannot force or compel any licensed miller to produce or manufacture a particular quality or type of the rice under the ''Levy Order''.

11. It was next contended by the learned Government Advocate that the power to issue the orders flow from Section 3 of the Essential Commodities Act, 1955, therefore it must be held that the State Government was justified in issuing the notification dated 19-2-1997.

12. The notification dated 19-2-97 has not been issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955. It has been issued in pursuance of the provision of Sub-clause 1 and 2 of Clause 3 of M.P. Rice Procurement (Levy) Order, 1970. Though the Levy order, 1970 has been made in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, then too Section 3 would not be applicable to the present case. According to Section 3 of the Essential Commodities Act, 1955, if the Central Govt. is of opinion that it is necessary orexpedient so to do for maintaining orincreasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices........ it may, by order,

provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. According to Sub-section 1 of Section 3, the Central Government may regulate or prohibit the production, supply and distribution of any Essential Commodity and trade and commerce therein. The State Government has also been given power in relation to regulation or prohibition of the production, supply and distribution of the Essential Commodity and trade and commerce therein. The Central Government or the State Government had not issued any order u/s 3 of the Essential Commodities to regulate or prohibit the production supply and distribution of rice of a particularquality and type. The rice procurement levy order, 1970 authorises the State to purchase and obliges the licensed miller to sell a particular percentage of the rice produce or manufactured by him in his rice mill or of the total quantity of rice got milled by any person in his rice mill every day out of such persons'' stock of paddy. Clause 3 does not provide any authority to the State Government to purchase in levy a particular quality or type of the rice. The licensed miller is obliged to sell whatever he manufactures or produces. The notification Annexure-P dated 2-11 -96 when it compels the licensed miller to pay the levy in form of Arwa Rice is certainly illegal and so far as the second paragraph of the notification dated 19-2-97 is concerned it is patently illegal and is contrary to the provisions of Clause 3 of M.P. Rice Procurement (Levy) Order, 1970.

13. The petition deserves toandisaccordingly allowed. It is held that the petitioner is bound to sell and the respondents are entitled to purchase 50% of the rice produced or manufactured by the petitioner in his rice mill or 50% of the total quantity of the rice got milled by any person including a licenced dealer in his rice mill every day out of such persons stock of paddy, as the case may be, for the price to be fixed or already fixed by the Stale Government but State cannot compell a licenced miller to pay levy in particular type of rice.

14. There shall be no orders as to costs.

