(1998) 02 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No''s. 411 to 451, 109 to 111, 542 to 589, 525, 378, 379, 732 to 738, 1207, 1208, 1209 and 1672 of 1998

Sri Siddalingeshwar Traders, Gangavathi and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:
Essential Commodities Act, 1955 — Section 3

Citation : (1998) ILR (Kar) 2637 : (1998) 3 KarLJ 543

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri B.R. Satenhalli, Sri T. Basavaraj, Sri U. Panduranga Naik, Sri Basavaraj Kareddy, Sri Veerendra Patil and Sri K.B. Lokanath, for the Appellant; Sri N.K. Ramesh, A.G.A., for the Respondent

Judgement

1. The petitioners have in these petitions called in question the validity of a circular issued by the State Government, whereby the Deputy Commissioners of the Districts have been directed to issue release certificates to dealers, traders, millers and transporters of rice and paddy and the existing check post authorities instructed to check the transportation of rice and paddy with a view to verifying whether the stocks being taken out of the State are covered by such release certificates. The petitioners, who are rice millers and dealers in paddy and who claim to have obtained licences for carrying on their business under the Karnataka Essential Commodities Order of 1986 contend that the Circular in question is without the sanction of law and pray for a declaration that there is no legal restriction on the transportation of rice and paddy beyond the limits of the State of Karnataka. In order to correctly appreciate the contentions urged at the bar, it is necessary to briefly refer to the Karnataka Rice Procurement (Levy) Order, 1984 (Levy Order for short) issued by the Government in exercise of its power u/s 3 of the Essential Commodities Act, 1955.

2. The object underlying the Order is to prevent artificial scarcity of Rice and

Paddy by compulsorily acquiring a part of the stocks held by Millers, traders and dealers. The rice and paddy so acquired is utilised for public distribution thereby ensuring that the commodity is available for consumption by the general public at reasonable rates. Clause 3 of the Order obliges every miller to sell to the State Government or the purchase agent at the purchase price 33 1/3% of the total quantity of rice conforming to specifications obtained by milling paddy owned in his rice mill every day. Sub-clause (2) to Clause 3 requires the miller to deliver the rice to be sold, to the Government or the purchase agent or to such other person as may be authorised by the State Government. Sub-clause (3) prohibits the removal of rice stocks from the mill premises without delivery of the rice relating to such stocks in accordance with sub-clause (2) and without obtaining a release certificate under Clause 8 of the Order. In terms of sub-clause (4) of Clause 3, a miller is obliged to mill the paddy acquired or owned by him before the close of the marketing season.

3. Clause 4 of the Order creates a similar obligation for the dealers to sell to the State Government or to the purchase agent 33 1/3% of the total quantity of each variety of rice conforming to specifications got milled by him every day out of his stocks of paddy and each variety of rice conforming to specifications purchased or otherwise acquired by him for the purpose of sale from persons other than millers and dealers. Sub-clause (2) of Clause 4 forbids removal of any stock of mill got without delivery of the levy relating to such stocks in accordance with sub-clause (1)(a) and without obtaining a release certificate under Clause 8, except in cases where the rice is obtained for personal consumption by a cultivator from the stocks of paddy grown by him or by an agricultural labourer out of the stocks of paddy earned by him as wages. In terms of sub-clause (3) of Clause 4, every dealer is required to get the paddy purchased or otherwise acquired by him milled into rice before the close of the marketing season.

4. Clause 5 of the Order requires every dealer and every miller to furnish full particulars of the owner or other person from whom he has secured the possession of such stocks and to prove, when so required, to the satisfaction of the Enforcement Officer or the person authorised by him in this behalf that he has no power of disposal by sale or otherwise over such stocks of paddy or rice. Clause 6 of the Order imposed a restriction on transportation and movement of rice/paddy and inter alia provided that no person shall transport outside the State, rice, in respect of which a release certificate has not been obtained and that no person shall transport, attempt or abet the transportation of paddy or rice from any place in the border area to any place outside the State or from any place in the border area to any other place in that area, except under and in accordance with a permit issued by the State Government or any other Officer authorised by it in this behalf.

5. Clause 8, which assumes significance for the purpose of these cases, provides for the issue of a release certificate by the Deputy Commissioner for sale or/and transportation of levy-free rice inside/outside the State and may therefore be

extracted in extenso.-

"8. Release certificate.--(1) After delivery of the rice, in accordance with Clause 7, every licensed miller and licensed dealer may make an application in Form ''C'' to the Deputy Commissioner for issue of a release certificate for the purpose of sale or/and transportation of levy-free rice inside/outside the State.

(2) The application referred to in sub-clause (1), shall be accompanied by the receipt in original issued by the purchase officer in respect of delivery of rice under levy.

(3) On receipt of an application under sub-clause (1), the Deputy Commissioner shall immediately or within ten days issue a release certificate for movement and disposal of the levy-free rice. The release certificate shall be in Form ''D'' and as per the directions issued by the Government in this regard.

(4) 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".

6. Clause 9 requires maintenance of accounts by the miller and the dealer indicating the details of stocks of paddy and rice, whereas Clause 10 empowers the Enforcement Officer to issue general or special orders for compliance with the provisions of the order.

7. By a notification dated 26th of February, 1997 issued by the State Government, u/s 3 of the Essential Commodities Act, the Levy Order was amended and a new Clause 6 to the same introduced, which contained a prohibition against transportation of rice or paddy outside the State of Karnataka except on the basis of a release certificate issued for the purpose. Although the notification inserted the new Clause 6 after Clause 5 of the Order, it is not very clear whether Clause 6 as it existed was deleted from the said order. Since however the newly added Clause 6 was in pari materia with Clause 6 as it originally stood except in so far as the life of the restriction was concerned, it is safe to assume that the insertion of the said Clause was by corresponding deletion of Clause 6 as it originally stood. What was significant in the newly added provision was that the same was to remain in force only till April 1997, in terms of sub-clause (3) thereof. In other words, the restriction imposed by Clause 6 against transportation of rice or paddy, in respect of which a release certificate had not been obtained was limited in its application only till that date. By yet another notification issued by the State Government on 10th of December, 1997, the Government promulgated Karnataka Rice Procurement (Levy) (Amendment) Order, 1997, whereby it substituted sub-clause (g) to

Clause 2 of the order by a new clause and defined the term Miller as a person, who engaged himself in rice milling including a person or the authority, who has the ultimate control over the affairs of such mill and when the said affairs are entrusted to a Manager, a Managing Director or Managing Agent, such Manager/ Managing Director/Managing Agent. The amendment Order also inserted after Clause 4 a new Clause 4-A, which may be extracted at this Stage:--

"4-A. Levy on paddy.--Every miller or dealer, who purchases paddy and sells the same without getting it milled into rice shall sell to the Government or to the purchase agent at the purchased price, (25%) twenty five per cent of the total quantity of each variety of paddy or 17 kgs. of rice per quintal of each variety at the choice of the miller or dealer held and purchased by him every day conforming to Fair Average Quality".

8. Clauses 7 and 8 of the order too were amended to enlarge their scope and make them applicable to paddy also.

9. Consequent upon the issue of the amendment order aforementioned, the Government by a circular dated 26th of December, 1997 issued directions to the Deputy Commissioners of the Districts to issue release certificates to millers, dealers, traders, who produce grain vouchers showing surrender of levy by them and instructed the existing checkpost and other Checkposts, or any other infrastructure at the State border to check whether the despatch of rice and paddy outside the State was accompanied by validly issued release certificates. The Circular, it is seen from a plain reading thereof proceeds on the basis that in terms of the provisions of the Rice Procurement (Levy) Order as amended by the amendment order mentioned earlier, every miller is under an obligation to surrender 33 1/3% of paddy hulled by him on his own account as levy and that every miller, dealer, trader or transporter is obliged to surrender 25% in the form of paddy for every quintal of paddy purchased and transported. Aggrieved by the said directions, the petitioners have filed the present writ petitions as already stated earlier.

10. Counsel appearing for the petitioners contended that the restriction on the movement of paddy and rice beyond the State of Karnataka was relatable to Clause 6 of the Order only, which as noticed earlier was effective only till 8th of April, 1997. It was strenuously urged that Clause 6 having lapsed with passage of time and the same not having been reintroduced by the Government, the transportation of paddy and rice beyond the State of Karnataka must be deemed to be free from any restrictive or regulatory control of the State Government. Heavy reliance was placed by the learned Counsel upon the decisions of this Court in (1) M/s. K.G. Kallappa and Company v State of Karnataka and Another , (2) Sri Holebasaveswara Trading Company, Merchants and Commission Agents v Union of India and Others , (3) K.G.N. Enterprises and Others v Union of India and Others and (4) Brindavan Traders and Others v Union of India and Others. A reading of these decisions no doubt supports the contention urged by the learned Counsel for the petitioners, that Clause 6 of the Rice Procurement (Levy) Order,

1994 as introduced by notification dated 26th of February, 1997 having lapsed with passage of time, the said provision is no longer effective nor can the same be referred to or relied upon for purposes of justifying any restriction on the transportation of rice and paddy stocks outside the State of Karnataka. The question however is whether independent of Clause 6 as it stood till 8th of April, 1997, the levy order creates any obligation on the millers, dealers, traders and transporters to obtain a release certificate from the Deputy Commissioner for disposal of the levy-free rice or paddy. A careful reading of Clauses 3, 4 and 4-A of the Order, in my opinion, provides the answer. As noticed above, the said provisions in no uncertain terms create an obligation upon the millers, dealers and the traders to surrender to the State Government or to the purchase agent at the prescribed purchase price the prescribed percentage of total quantity of rice or paddy in the manner stipulated by the Order. Sub-clause (3) of Clause 3 and sub-clause (2) of Clause 4 of the Order further provide that no stock of rice covered by the said two provisions shall be removed from the mill premises without obtaining a release certificate in regard thereto under Clause 8. Similarly Clause 8 also creates an unequivocal obligation for every licensed miller and dealer to make an application in the prescribed form to the Deputy Commissioner for the issue of a release certificate for the purpose of sale or/and for transportation of levy-free rice and paddy inside/outside the State. A conjoint reading of these provisions would therefore leave no manner of doubt that not only is there an obligation to surrender the prescribed percentage of paddy and rice cast upon the millers and dealers but there is a simultaneous prohibition against the removal of such stocks from the mill premises till such time the said levy is surrendered and a release certificate for the removal and disposal of the levy-free rice or paddy obtained from the competent authority. It is noteworthy that the obligation created by Clauses 3, 4 and 4-A or for that matter the obligation created by Clause 8 of the Order for surrender of the levy rice and paddy and securing release certificates has not been questioned by the, petitioners. The vires of the said provisions is also not under challenge in these petitions, which implies that the petitioners do not dispute their obligation either to surrender the levy or to suffer the disability of not being able to remove the stocks from the mills except after obtaining a release certificate from the authority concerned. The constitutional aspect of the provisions contained in the order was in fact examined by this Court in Khalimulla Khan Vs. State of Karnataka, . Swami, J, as his lordship then was, while upholding the challenge to the vires of some of the provisions of the Order and rejecting the same in regard to the rest held that while no release certificate was necessary for disposal of levy-free rice within the State, the same was essential for disposal, transportation or movement of levy-free rice to places outside the State boundaries. The requirement of obtaining a release certificate was held to be no restriction muchless an unreasonable one and was upheld as a measure necessary to regulate compliance with the provisions of the Levy Order. The Court also repelled the challenge to the price fixed for the rice and paddy surrendered by way of levy and declared that the restriction contained in subclauses (3) and (2) of Clauses 3 and 4 of the Levy Order prohibiting removal of stocks from the mill premises without the delivery of levy relating to such stocks and without obtaining a release certificate under Clause 8 was a reasonable restriction. It was held that in the absence of such a restriction, it was not possible to achieve the object underlying the Levy Order, the object being to procure a part of the rice obtained by milling paddy grown in the State during the marketing season. The Court observed that if the miller is free to mill the paddy belonging to him or acquired by him any time or to remove the same without surrendering the levy, it would be difficult to achieve the object underlying the order. Similarly the Court also upheld the restriction placed upon dealers against removal of the stocks from the mill premises without delivery of the levy and without obtaining a release certificate under Clause 8. While dealing with the question of release certificate for transportation outside the State, the Court made the following pertinent observations.-

"After all what it says is that a licensed dealer or a licensed miller, who has surrendered levy, has to apply for a release certificate within a period of one month and on such application being filed, the Deputy Commissioner has to issue the release certificate. Thereafter, the miller or the dealer is free to transport the rice mentioned in the release certificate to any place either within or outside the State. Such a condition, which is only regulatory, cannot be held to be imposing a restriction muchless an unreasonable restriction. It is also not possible to hold that the requirement of obtaining a release certificate has no nexus with the object of the Levy Order. The object of the Levy Order, as it is already pointed out, is to secure or procure 50 per cent of the rice obtained by a miller or a dealer from milling the paddy grown in the State. Whether a dealer or a miller has surrendered 50 per cent of the rice can be verified from the release certificate also. 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 facilitating 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. On the contrary, if the release certificate which has to accompany the rice which is being transported outside the State, is obtained and shown to the enforcement authorities, immediately the enforcement authorities have to allow the movement or transporting of rice to continue without any obstruction. Therefore, requirement of obtaining of release certificate far from acting as a restriction, facilitates free movement of rice within and outside the State".

11. I respectfully agree with the observations extracted above. All that I need to add is that the requirement of obtaining a release certificate is relatable not only

to Clause 6, which no longer exists on the statute book, but also Clauses 3, 4, 4-A and 8. The obligation to surrender the levy rice and paddy coupled with the prohibition against the removal of rice and paddy stocks from the mills without the issue of release certificates under Clause 8 makes it obvious that not only does the Levy Order create obligations, but provides for a machinery by which compliance with such obligations can be enforced. If the obligation to surrender the levy is not questioned, the power to enforce that obligation by making an appropriate provision for regulating matters relating to the performance of such obligations can also not be assailed. The prohibition contained in Clauses 3 and 4 when seen in the light of the procedure prescribed by Clause 8 would, in my opinion, be sufficient to demonstrate that the requirement of a release certificate is no more than a machinery provision intended to regulate and achieve the purpose underlying the Levy Order.

12. Mr. Satenhalli, learned Counsel for some of the petitioners, however, argued that the respondents have the power to check the stocks by reference to the particulars furnished to them and the accounts maintained by the millers and traders, so that in case there is any disobedience on the part of any such dealer or miller in the surrender of levy, the authorities can initiate proper action on the basis of their inspections or the verification from the relevant record. It was urged that if the disobedience or non-compliance with the provisions of the Levy Order could be checked by reference to other modes prescribed or permissible under the said order, it was unnecessary to subject the process of transportation of rice and paddy outside the State to any restriction in the absence of any specific provision to that effect. Now it is true that the Levy Order provides for furnishing of particulars and maintenance of accounts by the millers and dealers and issue of directions by the Enforcement Officer for securing compliance with the provisions of the Levy Order. It is also true that disobedience with the requirements of the order may be detected or verified from inspections to be made in the premises of the millers and the dealers concerned or the scrutiny of the accounts and the particulars furnished by them. But the very fact that an alternate mode of detection is available can be no reason for denying to the Legislature or its delegate the power to prescribe a machinery provision by which such violations may be more easily or conveniently discovered, detected or plugged by other modes. The issue of a release certificate in respect of levy-free rice is one of such machinery provisions, which is aimed at regulating the disposal of rice that is free from the charge of levy in any manner deemed fit by the owner thereof. The issue of a release certificate cannot even be considered to be a restriction, for all that is required is to secure a certificate from the Deputy Commissioner to the effect that the petitioner has complied with the provisions of the Levy Order. If the dealers and the millers do not question their obligation to surrender levy, they cannot possibly be heard to complain against obtaining a certificate, by which all that is certified is that they have complied with the requirement of the order. The process of securing the certificate from the Deputy Commissioner is also not so cumbersome or dilatory as to make it a restriction in

the garb of a regulatory provision. The instructions issued by the State Government under the impugned Circular are in fact aimed at facilitating and expediting the issue of such release certificates to all those, who apply for them after surrender of the levy. To that extent, there was, and could be no challenge to the Circular, which commands the Deputy Commissioners to issue release orders wherever surrender of levy is evidenced by proper vouchers obtained by the dealer or miller from the agent appointed for the purpose. Such being the position, it is difficult to see how the petitioners can complain against the direction issued by the Government asking the checkpost authorities on the borders to verify whether the stocks of paddy and rice being transported outside the State are covered by validly issued release certificates. That is so particularly when it is not the case of the petitioners that they are transporting rice and paddy across the State borders without surrendering the requisite levy. Their case on the other hand is that they have no objection to the surrender of the levy in the prescribed manner and at the prescribed percentage. If that be so, there is no reason why the direction issued by the Government asking the Deputy Commissioner to issue certificates wherever surrender of levy is proved and asking the authorities to check whether the consignments leaving the State are properly supported by such certificates can be said to be illegal or even improper. This is especially so when it is not denied that the petitioners cannot transport the rice and paddy stocks across the border if they have not surrendered the requisite levy as per the terms of the Levy Order. The authorities would therefore be entitled to verify whether the levy in respect of a given stock of rice or paddy has been surrendered. This verification may in turn involve a long process if the same were to be carried out by reference to the stocks held by the dealer or miller, to whom the paddy or rice belongs creating more problems and resulting in greater inconvenience to the transporters, the dealers or the millers. The procedure prescribed by the Levy Order therefore is intended to make any such process of verification neat. It envisages the issue of a release certificate, which the petitioners can and ought to conveniently obtain before entrusting the stocks for transportation. This Court has in fact in Subhani Rice Mill, Basavapatna v State of Karnataka and Others, held that insistence upon the issue of a transport certificate was also essential because it is the transport certificate, which would evidence whether the rice being transported is covered by a release certificate. Such a certificate was held to be an independent certificate to be secured from the Tahsildar of the Taluk concerned at the time of actual transportation of the levy-free rice. Rama Jois, J., as his Lordship then was, made the following observations.-

"8. I am convinced by the submission made by the learned Counsel for the State that an insistence on transport permit is absolutely essential to ensure the compliance with the Levy Order, even after securing the release certificate, for the reason the release certificate would mention only the total quantity of rice which a particular dealer is entitled to sell in the open market, but when he sells it to more than one person unless a provision is made for the possession of transport certificate in the lorry or the carrier in which it is being transported, it would be difficult to find out as to whether the rice which is being transported is covered by a release certificate or not. Therefore the transport certificate has to be insisted to evidence that the rice which is being transported is covered by a release certificate. But, what the Government has done is, even under 1985 Order, they have made the transport certificate a part of the release certificate. It is because of this, the learned Counsel for the petitioners are contending that the rule is arbitrary and impracticable and further, it is also in contravention of the orders of this Court made in Kalimul-lakhan''s case, supra".

13. To the same effect is the decision of this Court in K.M.S. Rice and Flour Mills Vs. State of Karnataka, , where the Court held that whenever a dealer/miller wants to transport levy-free rice, he has to obtain a transport certificate apart from a release certificate and the concerned authority ought to issue a transfer certificate or certificates without loss of time to avoid inconvenience to the miller or the dealer on account of fluctuation of prices.

14. Suffice it to say that the provisions of Rules 3, 4, 4-A and 8 make a complete Code in themselves not only creating an obligation to surrender the levy but also creating a prohibition against the removal of the stocks from the mill premises or their transportation outside the State without the issue of a release certificate by the competent authority. The deletion of Clause 6 or its absence from the Statute book beyond April 1997 would not therefore be of any consequence in so far as the requirement of obtaining a release certificate for the disposal of levy-free rice outside the State is concerned, nor would it affect the authority of the State Government to direct the verification of the stocks by reference to such certificates on the borders of the State. The decisions of this Court relied upon by the learned Counsel for the petitioners do not, in my opinion, lend any assistance to them. Those decisions with utmost respect to the Hon''ble Judges, who delivered the same have examined the question only from the angle of existence or otherwise of Clause 6 of the Levy Order. The decisions proceed on the basis that since Clause 6 of the Order no longer remains in force after April 1997, there is no restriction on the transportation of levy-free rice and paddy outside the State. The decisions have not examined whether independent of Clause 6, there is any requirement of obtaining release certificates and if so what is the nature of the requirement and whether the same can be validly enforced by the State. Besides, the said decisions do not take note of the pronouncement of this Court in Khaleemulla Khan''s case, supra, or in the subsequent two decisions referred to above, where the requirement of obtaining a release certificate and a transport permit has been accepted as essential for transportation of rice across the borders of the State of Karnataka. It is therefore unnecessary to extend the sweep of the decisions relied upon by the petitioners to issues that were never adverted to in the same. In my view, the production of a release certificate from the Competent Authority is a regulatory measure not tantamount to imposition of a restriction upon movement of rice or paddy and duly sanctioned by the provisions of Clauses 3, 4, 4-A and 8 of the Levy Order. The impugned Circular

directing compliance with the provisions of Clause 8 by the Deputy Commissioners and instructing the checkpost authorities to verify whether the stock in the process of movement for a destination outside the State are covered by release certificates cannot therefore be found fault with.

15. In the result, there is no merit in these petitions, which fail and are hereby dismissed, but without any orders as to costs.