
(1998) 10 MP CK 0002
In the Madhya Pradesh High Court
Case No : L.P.A. No. 184 of 1997

State of M.P. and Another	Vs	APPELLANT
Santosh Kumar Agrawal and Another		RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:

Citation : (1999) ILR (MP) 1034 : (1999) 1 MPLJ 97

Hon'ble Judges : A.K. Mathur, C.J; Dipak Misra, J

Bench : Division Bench

Advocate : R.S. Jha, Dy. A.G, for the Appellant; M.M. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

In this appeal preferred under Clause 10 of the Letters Patent the State of Madhya Pradesh and its functionaries have called in question the soundness of judgment passed by a learned Single Judge of this Court in Writ Petition No. 5151/96.

In order to procure adequate quantity of rice for public distribution and for the purpose of securing the surplus rice available in the State for meeting requirement of the deficit in other States of the country, the State of M.P. in exercise of the powers conferred on it by Sections 3 and 5 of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") and with prior concurrence of the Central Government promulgated "the M.P. Rice Procurement (Levy) Order, 1970 (hereinafter referred to as "the Levy Order"). 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 of the total quantity of rice produced or

manufactured by him in his rice mill every day, or of the total quantity of rice get milled by any person including a Licensed Dealer in his rice mill every day, or of such person's 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.

The respondent No. 1, the writ petitioner, owns a rice mill, namely, Shivnath Rice Mill having a Licence No. 21/RJN/92 which was valid upto 31-12-1996 with a grain Licence No. 211/R/92. According to the petitioner he was required only to produce Par boiled rice in the rice mill. As per the stipulation in the Levy Order, he was under obligation to sell 50% of the total quantity of rice produced or manufactured by him. The petitioner had no grievance and he was ready and willing to submit the levy of whatever, he was manufacturing or producing but the State authority asked him to submit 50% of the Levy as Arwa Rice and meet the requirement of the Levy Order, vide Annexure-P-1 dated 2-11-1996. By such a direction the petitioner was compelled to produce Arwa" Rice which is not otherwise manufactured by him. It was also putforth by the writ petitioner that manufacture of Arwa Rice requires a particular quantity of paddy which is not available to the petitioner and the polishers which are available with the petitioner could not be used for polishing Arwa Rice and, therefore the demand made by the State was unjustified.

The present appellants(answering respondents) filed their return contending, inter alia, that the policy for 1996-97 Kharif Marketing Year requires the mill owner to submit 50% of the Levy Rice as Arwa Rice and the policy was evolved keeping in view the public demand. According to the respondents the petitioner had been given a licence for manufacturing of rice and there was no difference in manufacturing process of Par-boiled Rice and Arwa Rice. The Respondents further pleaded that in the State of Madhya Pradesh there is heavy demand of raw rice which is required for consumption of poor people. It is also putforth by the State that vide notification dated 19-2-1997 published in Gazette on 21-2-1997 the State of M.P. in exercise of its power in sub-clauses (1) and (2) of Clause 3 of the Levy Order, 1970 with the prior concurrence of the Central Government has notified that the percentage of levy on varieties of rice including common, fine and superfine for Kharif Marketing Season 1996-1997 would be 50%. It has also been notified that 50% of the rice shall be Arwa Rice. In the second part of the notification it is mentioned that the said provision has been made in anticipation of concurrence of the Government of India.

The learned Single Judge accepted the first part of the notification as it was brought as per law. As far as second part is concerned, it has been observed by the learned Single Judge that Clause 3 does not authorise the State Government to issue such a notification requiring imposition of levy rice of one particular class or nature. He has taken the view that Clause 3 of the Levy Order does not stipulate that the licensed miller shall produce a particular quality of rice for the purpose of levy. He has also concluded that the Levy Order does not anywhere

stipulate while imposing the Levy the State Government has any right or authority to direct the licensed miller to produce a particular quality or type of rice and under the garb of levy the State Government cannot do so. The learned Single Judge has also referred to the licensee which no-where puts any restriction on licensed miller nor does it direct the licensed miller to produce or manufacture any particular quality or type of rice. After referring to Clause 3 and the second part of the notification it has been held by the learned Single Judge that Clause 3 empowers the State Government to fix the percentage of levy with the prior concurrence of the Central Government from time to time and does not confer the power to issue a notification in anticipation of concurrence of the Government of India nor does it empower the State to issue a notification for production of a particular quality or type of rice to be given by way of levy. Being of this view the learned Single Judge has concluded that the State Government lacks the authority to make a demand of this nature. Being of this view he declared the second part of the notification as illegal and held, the writ petitioner is not bound to sell Arwa Rice as a part of the Levy Rice.

Assailing the aforesaid order Mr. R. S. Jha, learned Deputy Advocate General for the appellants has contended 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 States in the country in exercise of power conferred u/s 3 of the Act, the Levy Order was issued. It is his contention that a manufacturer of rice is registered as manufacturer and there is nothing like manufacturer of Par-boiled rice and Arwa Rice. It is also canvassed by him that in the State of Madhya Pradesh there is heavy demand of raw rice (Arwa Rice) which is consumed by the poor and, therefore, for the purpose of public distribution the State Government had introduced the said condition and, this power flows from a conjoint reading of Section 3 of the Act along with the various clauses of the Levy Order. It is also contended by him that the second part of the notification which has been quashed by the learned Single Judge was not challenged in the writ petition as the notification was issued during the pendency of the writ petition and there was no amendment in the writ application challenging the same. Mr. Jha has also canvassed that the learned Single Judge has fallen into error by concluding that the petitioner is only a manufacturer of Par-boiled Rice and not of Arwa Rice. It was further urged by the learned counsel for the State that though it was mentioned in the notification that in anticipation of the concurrence of the Central Government the directions were issued, yet the State Government has the power in view of the language used under various clauses of the Levy Order.

Mr. M. M. Agrawal, learned counsel for the respondent No. 1 has contended that the learned Single Judge has rightly declared the notification to be invalid in view of the fact that the State Government has no authority to issue such a notification inasmuch as the prior concurrence of the Central Government was not obtained. He fairly admits that there was no challenge to the notification but it is his submission that there is enormous difference between the manufacturing

of Par-boiled Rice and Arwa Rice and, therefore, a manufacturing unit which is engaged in manufacturing of Par-boiled Rice cannot be compelled to produce the Arwa Rice and the learned Single Judge by so holding has rightly appreciated the entire scenario, and hence his order does not require to be rectified in this appeal.

Before we proceed to deal with the authority of the State Government to impose a levy of this nature, we would like to advert with regard to distinction between the Par-boiled rice and Arwa Rice. Both parties have filed affidavits in this regard. On a close scrutiny of the facts which have been brought on record it becomes crystal clear that both the varieties of rice can be manufactured by same mill or from the same production unit. When a Par-boiled rice is manufactured paddy is boiled then dried and milled when Arwa/Raw Rice is manufactured there is no boiling. It is only dried for certain hours and thereafter it is milled. The only change in the process is when Arwa Rice is to be milled the polishing stone/emery is required to be changed. A particular unit may be engaged in milling or manufacturing of Par-boiled rice but it does not necessarily mean that the units are to be bifurcated as par-boiled rice mill and a mill engaged in milling of Arwa Rice. A manufacturing unit by change of polishing Stone/emery can engage itself in production of both the types of rice. The appellant/State while filing an affidavit replied to the affidavit by the respondents in the Letters Patent Appeal has brought to the notice of this Court that in case of production of Arwa Rice the gain is 62.5% and in case of Krishna/Par-boiled Rice gain is 66.5% which has been later minimised as indicated in an expert report. Thus, the stand of the State is that the manufacturing units engaged in Par-boiled Rice get more benefit in terms of production of rice which is marginally less in case of Arwa Rice and, therefore, the controversy. The respondent has submitted that the polishing Stone or emery costs more than 2 lacs and that is why it would be difficult to supply the Arwa Rice. Controverting the same the State has put in an affidavit indicating that the price would be Rs. 4,000/- to Rs. 6,000/-. It is common experience that in every rice mill both categories of rice are milled. Of course, there is some advantage in the milling of par-boiled rice. But no rice mill can be considered as a unit solely engaged in producing par-boiled rice.

After stating so at the threshold, we shall now proceed to examine whether the State Government has the authority to make such a demand of levy. As has been brought to the notice of this Court more than 90% of the rice which is consumed by the people residing in the State of Madhya Pradesh is raw rice and not par-boiled rice. The State has the duty to distribute the same through fair price shops. It is the obligation of the State, as pleaded by the appellants herein, to supply to the residents who reside in undeveloped and under-developed areas of the State. Therefore for a proper distribution of rice this demand was made. Initially a demand was made by the State which was later on brought within the ambit of the notification dated 19-2-1997.

In search of power, Mr. Jha has referred us to Section 3 of the Act. Sub-section (1) of Section 3 of the Essential Commodities Act, 1955 reads as under :-

"3(1). If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

On a scrutiny of the anatomy of the aforesaid provision it is graphically clear that it contemplates a regulatory or prohibitory exercise of power. The power vests with the Central Government. Section 5 deals with the delegation of powers. It is apposite to reproduce the aforesaid provision :-

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

Thus, the powers inhered in Section 3 to make orders and issue notification can be delegated by the Central Government to the State Government. The Levy order has been issued in exercise of the powers conferred by Section 3 of the Act read with the Order of the Government of India in the Ministry of Food, Agriculture, Community, Development and Corporation (Department of Food) GSR 1111 dated 24th July, 1967 and with the prior concurrence of the Central Government. To appreciate the obtaining factual scenario it is essential to refer to the definition of "Rice" and "Rice Mill" which occur in Clause 2 of the Order.

"2(c) "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;

2(d) "Rice Mill" means the plant and machinery with which, and the premises including precincts there in which, or in any part of which, rice milling operation is carried on;"

Clause 3 of the Order deals with the Levy on rice. The relevant portion of the said clause is reproduced below:--

"3. Levy on rice. - (1) Every licensed miller shall sell to the Purchase officer at the price payable under this order referred to in Clause 4, such percentage as may be notified by the State Government from time to time of the total quantity of rice produced or manufactured by him in his rice mill every day;

(2) Every licensed dealer shall sell to the Purchase Officer at the price payable

under this Order referred to in Clause 4, such percentage as may be notified by the State Government from time to time - (a) of the total quantity of rice got milled by him every day out of his stocks of paddy and (b) of the total quantity of rice purchase or otherwise acquired by him for the purpose of sale from persons other than licensed millers or licensed dealers:"

Clause 10 deals with the duty of a dealer to comply with the orders and directions. The said clause reads as under :-

"10. Duty to comply with Orders and Directions :- Every licensed miller or licensed dealer or other person to whom any order or direction is issued under any powers conferred by or under this Order shall comply with such order or direction."

The heart of the matter is whether the State Government could have issued a direction to the petitioners that 50% of the Levied Rice has to be Raw Rice or Arwa Rice. Clause 3(1) authorises the State Government to notify the percentage which has to be demanded towards levy from the miller. Sub-clause (2) of Clause 3 empowers the State Government to fix the percentage from time to time of the total quantity of rice got milled by him everyday out of his stock paddy and of the total quantity of rice purchased or otherwise acquired by him for the purpose of sell from the persons other than licensed millers and licensed dealers. Thus, in exercise of the powers conferred on the State Government notification has been issued fixing the percentage 50%. There is no quarrel with regard to the fixing of the said percentage. The controversy arises as the State Government had asked the petitioners to sell 50% of the Levied Rice as Arwa Rice. The total percentage remains as it is, but the State Government has desired the petitioners to produce and sell Arwa Rice to the extent of 50% of the Levied Rice. The learned Single Judge has taken exception to this on the basis that the power is not with the State Government to make such a demand, and in fact, it has been so exposed as the notification has been issued in anticipation of concurrence/approval of the Central Government. Mr. Jha, learned Dy. A. G. has pyramided his argument by contending that by way of abundant caution seeking of approval has been mentioned in the notification but as an actual fact, the power flows from the Levy order which has come into existence in exercise of power u/s 3 of the Act which has been delegated to the State Government u/s 5 of the Act. We have already referred to Clause 3 of the Order that the State Government has authority to fix the levy and it has fixed at 50% of the production. We may usefully refer to the object and purpose behind the Levy Order. It reads as under :-

"Whereas the Governor of Madhya Pradesh is 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 the requirements of other deficit States in the country, it is necessary and expedient to make procurement of rice within the State of Madhya Pradesh."

Keeping in view the aforesaid purpose, the fixation of percentage under Clause 3

the definition of "Rice" and "Rice Mill" we find the essential purpose is to regulate the distribution and the order does not make any distinction between the various types of Rice and Rice Mills. Rice as is defined engulfs any variety of rice and it is an inclusive definition. Rice Mill also covers a broader spectrum. At this juncture we may hasten to add that "Licensed Miller" has been defined under Clause 2(b) which means the owner or other person in charge of Rice Mill holding a valid licence under the Rice Mill Industries (Regulation) Act, 1958 (21 of 1958). On perusal of the aforesaid Act we do not find that there is any distinction between licensee for par-boiled rice or Raw Rice. To elaborate no licence, is given to produce a specific variety of paddy. To clear our doubts we had asked Mr. Agrawal to take instruction from the writ petitioners. Learned counsel after obtaining instructions has filed a memo indicating as follows :-

"That there is no mention of manufacture of Raw Rice or Par boiled Rice under the abovesaid licence."

Reading the aforesaid provisions in a purposive manner we are of the considered view that there is no stipulation in the licence for production of Par boiled Rice or Raw (Arwa) Rice. We have already indicated earlier that the process involved in the manner of production is not very distinctive. It really does not require a great deal of expertise and not much of experience is involved. It does cause some loss of profit to the miller as the ultimate production in par-boiled rice is more whereas in the raw rice is slightly less. But in the return it has been stated by the State there is need for the State. Public Distribution has to have paramount consideration. No miller can claim that he has the licence for manufacturing of par boiled rice and not for Arwa rice. The learned Single Judge has held that when there is no restriction on a Rice Miller, the levy would amount to putting restrictions on him by requiring him to produce a particular type of rice, and the State Government cannot force or compel a licensed miller to produce or manufacture a particular quantity or type of the rice. It is to be borne in mind that the definition of rice is of wide amplitude. Licence is given to produce rice. Levy is on the rice. The public distribution is the main objective of the Levy Order. When percentage of levy remains intact and various categories of rice is demanded as the part of the levy, there is justification for the same due to public need. No right is conferred on a person to produce a particular type of rice. We are unable to persuade ourselves to accept reasonings of the learned Single Judge. On a careful scrutiny of the provisions and after hearing the learned counsel for the parties at length with regard to the process involved in the production of par-boiled rice and Arwa rice we are of the considered view that the State Government may have issued the notification in anticipation of the Central Government, but it is not devoid of power/jurisdiction/authority to issue a direction to a miller to sell Arwa rice as 50% of the Levy Rice.

In view of our preceding analysis we are unable to concur with the decision taken by the learned Single Judge. Consequently, the appeal is allowed, the judgment is set aside and the writ petition filed by the respondents stands dismissed.

However, in the peculiar facts and circumstances of the case there shall be no order as to costs.