

(1987) 10 KAR CK 0014

In the Karnataka High Court

Case No : W.P. Nos. 765-768/1986 & connected cases

Subhani Rice Mill, Basavapatna

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-10-1987

Acts Referred:

Citation : (1988) 1 KarLJ 147

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In these writ petitions, the petitioners who are wholesale dealers in food-grains have questioned the validity of the Karnataka Rice Procurement (Levy) (Amendment) Order 1985.

2. The facts of the case briefly stated are as follow: Periodically the State Government has been promulgating the Rice Procurement (Levy) Order under the provisions of Sec. 3 of the Essential Commodities Act, 1955. One such order was promulgated in the year 1984. The validity of the said order in particular relating to the insistence on securing release certificate for transporting levy free Rice out-side the State as well as within the State was challenged before this Court in Kharimullakhan v. State of Karnataka (ILR 1986 Kar. 1641). As far as the provisions of the Order insisting on the securing of release certificates from the Deputy Commissioner for transporting levy-free rice out-side the State of Karnataka was concerned, the validity was up-held. But as far as the requirement to secure release certificate for transportation within the State was concerned, the Court observed that the levy order of 1984 itself did not require any such certificate. The court, however, observed that the insistence on such release certificate was not reasonable, particularly, having regard to the fact that some of the columns in the release certificate provided for furnishing the name of the consignee as also the particulars of the lorry in which the levy-free rice would be transported by the concerned dealer was impossible and the condition rendered the sale and movement of levy-free rice impracticable. Finally, this Court struck down columns-6, 7 and 8 and condition Nos. 4, 5 and 7 in form No.

D which was the prescribed form for the issue of the release certificate.

3. After the above judgment, the impugned amendment was made by the State Government by Notification dated 19-12-1985. The grievance of the petitioners is though columns-6, 7 and 8 were omitted from the prescribed form in view of the decision of this court, condition No. 4 and the Certificate to be issued by the Tahsildar were retained. The relevant portion of it reads:

"The Miller or dealer shall obtain from the Tahsildar of the concerned Taluk a certificate in the following form:

CERTIFICATE BY THE TAHSILDAR (Note: If the miller/dealer is unable to give the Lorry No. at the time of despatch, the Certificate should be issued without filling up item (iv). The Lorry No. should however, be filled by the Enforcement Staff at the first check-post)

i) Name of the Consignee:

ii) Place to which permit is issued:

iii) Mode of transportation:

iv) If by Lorry, Lorry No.:

v) Quantity loaded:

vi) Variety (Hamsa, Masoori, etc.):

vii) Place of loading:

viii) Date and time of loading:

ix) Date and time by which the lorry should reach the first check-post-check-post to be specified:

x) Date and time by which the lorry should pass through the last check-post-check-post to be specified:

Office seal.

Date:

Tahsildar,

.....Taluk"

Aggrieved by the said order, the petitioners have presented these petitions.

4. Learned counsel for the petitioners pointed out that the certificate to be issued by the Tahsildar for transport of levy-free rice was made part of the release certificate once again and consequently, the movement of levy-free rice which the petitioners are at liberty to sell to any person of their choice has been rendered impracticable.

5. Elaborating this contention the learned counsel stated as follows:

According to the Levy Order, the petitioners are required to surrender 50% of the rice hulled. On producing grain vouchers for having surrendered 50% of such rice, the Deputy Commissioner is required to issue a Release Certificate enabling the dealer to dispose of equal amount of rice which is regarded as levy-free rice under the order, in open market. One of the purpose of this, is to enable each of the dealers to make up loss occasioned by surrendering 50% of rice in favour of the State Government at the rates prescribed by the Government. Once each of the petitioners surrender the rice in accordance with the Levy Order to the Government or the Agent nominated by the Government and secure the Release Certificate for the sale of the rice, in the open market, the insistence on another certificate for transportation of such rice as part of the Release Certificate renders the trade impracticable. For instance, if a dealer secures a release certificate for 500 quintals of rice from the Deputy Commissioner, as the certificate of Tahsildar for transportation is also made part of the concerned Release Certificate, the dealers would not be in a position to sell the said 500 quintals of levy-free rice to different individuals at his choice and according to this convenience. Whenever a dealer sells levy-free rice to more than one person, and the purchasers transports such rice, without the release certificate and transport permit the authorities seize both the lorry and rice on the ground that the Release Certificate and transport permit is not in their possession and as a result the purchaser are put to great hardship and Loss.

6. The learned counsel also pointed out that by the earlier order made by this court, when this Court had struck down condition No. 4 which insisted on securing the Certificate for transporting the levy-free rice, the introduction of the same condition once again amounted to violation of the orders of this Court.

7. Sri M.R. Achar, learned Government Advocate, however, explained that the Release Certificate and the permission to transport the rice purchased, serve two separate requirements. The Release Certificate is only in respect of the total amount of rice which each of the dealers is entitled to sell in the open market and the quantity contemplated to be mentioned in the Release Certificate depends upon the evidence adduced by the dealers for having surrendered certain quantity of rice as levy under the order to the Government or Agent of the Government. Each of the dealer is free to sell the levy-free rice to any one of his choice. But, in order to ensure that the provisions of the Levy Order are effectively enforced, a transport permit was absolutely essential, for without it. It is impossible for the authorities to check or prevent the violation of the provisions of the Levy Order. It is for these reasons he maintained that the permit for transport was being insisted.

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 contravention of the orders of this Court made in Kalimullakhan's case.

9. Therefore, it appears to me that the petitioners are entitled to an order to the effect that the transport certificate required to be obtained by each of the dealers, must not form part of the release certificate, but should be an independent certificate to be secured from the Tahsildar of the taluk concerned at the time of actual transport of the levy-free rice when the same is sold to different individuals or the dealer himself transports on his own account. Therefore, if a direction is issued to the effect that in respect of each release certificate, the Tahsildar must issue a separate transport certificate in the form which is incorporated in the amended rules and that he should issue as many transport certificates as are requested for, by the concerned dealers, until the total quantity in respect of which the release certificate was issued is exhausted, would remove the difficulty which is being caused to the petitioners and at the same time would also ensure the fulfilment of the object with which the transport permit is being insisted upon by the Government.

10. The learned counsel for the petitioners also submitted that even taking a transport permit from the Tahsildar on each occasion creates considerable difficulty to each of the dealers. They submitted that the rice mill owners and dealers have their places of business at different places in the taluk and they cannot be expected to go to taluk head-quarters and wait on the Tahsildar for the issue of a transport permit on each occasion and therefore, the insistence on such transport permit imposes unreasonable condition even in respect of the sale of levy-free rice to which they are entitled to for the release certificate.

11. I see considerable force in the above submission but it appears to me that in the first instance the State Government should take this submission into account and to find out an alternative. The Government should have the transport permits printed separately and authorise the Revenue Inspector of the Hobli to issue, on the basis of the release Certificate issued by the Deputy Commissioner. It would be better, if printed forms are supplied to each of the dealers and to incorporate a condition in the licence to the effect that whenever a dealer disposes of levy-free rice in favour of any individual, he should issue a transport permit mentioning therein the particulars of the release certificate including the quantity of rice in respect of which it was issued and the balance of the quantity

of rice if any covered by the concerned release certificate, in his possessions and specifically stating that the rice sold in respect of which the transport permit was being issued, was covered by the release certificate and that issue of any transport certificate without a release certificate would entail cancellation of dealers licence. Until such an alternative is provided for, it appears to me that a direction by the Government to the Tahsildars to issue a separate certificate Would meet the ends of justice though it causes sound inconvenience, because striking down of the insistence of such permit would be injurious to the public interest.

12. The learned counsel for the petitioners submitted that the observations made in paragraph-23.3, of the Judgment in Kalimullakhan's case would indicate that the insistence on transport certificate would itself unreasonable. It is true that there are observations in the said paragraph to the effect that the insistence on transport certificate in addition to release certificate was unreasonable. But, as can be seen from the judgment, what was in issue in that case was, whether the insistence on release certificate for transport of levy-free rice outside the State was valid and whether 1984 regulations provided for insistence of release certificate for the movement of levy-free rice within the State. As far as the first question was concerned, the Court up-held the insistence on the release certificate for transportation of rice out side the State. As far as the Second question was concerned, the Court interpreted the then existing order and was of the view that according to the Order, there was no requirement to have such certificate for internal movement of levy-free rice. The observations therefore do not constitute a binding precedent, for, the question as to whether the insistence on release certificate and transport permit for internal movement was valid or not, was not directly in issue in the said case. In fact, the reasons given by the court for upholding the insistence on release certificate for movement of rice outside the State equally holds good for movement of levy-free rice within the State also. Further under the earlier order the government had made the transport permit a part of the release certificate and it is this which made the condition unreasonable. The release certificate and transport certificate serves different purposes. One relates to the granting of certificate regarding entitlement of dealer for sale of levy-free rice in the open market and another relates to the taking of permit for transporting such rice after it is sold by the dealer. The latter is necessary to ensure that it is covered by the former. In the result, I make the following:

ORDER

(i) A direction shall issue to the respondents not to treat the permit required for transportation of levy-free rice as part of the release certificate.

(ii) A direction shall issue to the respondents to issue as many transport permits as requested for by the concerned dealer with reference to a particular release certificate until the total quantity in respect of which such release certificate was issued is exhausted.

(iii) A further direction shall issue, that such permit for transportation of levy-free rice shall be issued by the Tahsildar of the concerned taluks and that arrangements shall be made for the issue of such transport permits without any delay, by authorising a senior officer available in the taluk office to issue permits in the absense of the Tahsildar, until appropriate arrangement is made as indicated in paragraph 10 of this order and also to issue appropriate instructions for the issue of such transport permits even during holidays and non-office hours.

Prepare a carbon copy of this order and furnish it to the learned counsel for the State.