

(1969) 12 MAD CK 0016

In the Madras High Court

Case No : Writ Appeal No's. 443 of 1968 and 196, 307, 309 and 387 of 1969

T.P. Sundaralingam

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 05-12-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Factories Act, 1948 — Section 2

Rice Milling Industry (Regulation and Licensing) Rules, 1959 — Rule 3(1), 3(2)

Rice Milling Industry (Regulation) Act, 1958 — Section 22, 5(4), 6, 8

Tamil Nadu Essential Article Control and Requisitioning (Temporary Powers) Act, 1949 — Section 3

Citation : AIR 1971 Mad 245 : (1971) ILR (Mad) 312

Hon'ble Judges : K. Veeraswami, C.J;Maharajan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The Constitutional validity of the Rice Milling Industry (Regulation) Act 1958 is questioned in the batch of appeals

by different appellants against orders of Single Judges quashing grant by Government of permits in four of them to establish new rice mills, and

dismissal of a petition to quash a similar grant. some of the appellants are existing rice mill owners in certain rural areas who opposed the grant of

further permits, mainly on the ground of prevailing milling capacity, and inadequacy of paddy in the locality, for further permits.

In one or two cases their contention was that in making the grants, Government had been influenced irrelevant considerations like the grantee

having already incurred heavy expenditure in construction, and in the process of establishment of machinery. In one case, yet another ground was

that Government was in error in equating "locality" for the purpose of Section 5(4) to either a three mile radius, or a Panchayat area. These

grounds were upheld.

In a few cases, Government having earlier refused permits on the ground of inadequacy of paddy in the locality, subsequently on being moved

therefore, granted them notwithstanding that there had been since no change in the availability of paddy. The grants have been quashed on ground

of arbitrariness. In order to consider in the proper perspective the merits of all these matters, the true scope and effect of the Act and the Rules

framed thereunder, particularly of Section 5, should be examined.

2. The Act was passed to regulate the Rice Milling Industry in the interests of the general public, and came into operation from April 22, 1959.

There is a statutory declaration that it was expedient in the public interest that the Union should take under its control the rice milling industry. The

regulation is by prohibition of establishment of a new rice mill and carrying on rice milling operation without relative licence, or permit. Permit for

establishment of a rice mill is by application, and is granted if the Government is of opinion that it is necessary to do so for ensuing adequate supply

of rice. Grant of such a permit being made subject to the provisions of sub-section (4) of Section 5, Government, before granting it is required to

cause a full and complete investigation to be made in the prescribed manner, in respect of the application, and is enjoined to have due regard to-

- a. the number of rice mills operating in the locality;
- b. the availability of paddy in the locality;
- c. the availability of power and water supply for the rice mill in respect of which a permit is applied for;
- d. whether the rice mill in respect of which a permit is applied for will be of the huller type, sheller type or combined sheller-huller type;
- e. whether the functioning of the rice mill in respect of which a permit is applied for would cause substantial unemployment in the locality;
- f. such other particulars as may be prescribed.

In exercise of the power to prescribe the procedure in making investigation, and of the enabling rule-making power u/s 22, the Rice Milling

Industry (Regulation and Licensing) Rules 1959 have been made. Rule 3(1) requires an application for permit to be in Form I. It shows the

particulars to be filled in, including the approximate milling capacity per diem of 8 hours, the place of location sought. A new sub-rule (I-A)

introduced in 1960 says that an application should be made for a new rice mill before taking steps for its establishment, like acquisition of land,

commencement of construction, and placing order for whole or any part of the plant and machinery required for the rice mill. Sub-rule (2) explains

that the investigation u/s 5(4) should be made with a view to ascertaining whether the grant of the permit is necessary for ensuring adequate supply

of rice, and requires that such investigation should also relate to ascertainment of information regarding-

a. the effect that the operation of the new or the defunct rice mill may have on the local economy;

b. the pattern of trade and commerce in rice in the locality;

c. the reasons for the stoppage of operation in the case of a defunct rice mill;

d. the necessity or otherwise for an addition to the productive capacity of the existing rice mills in the locality;

e. whether hand-pounding industry in the locality is already well organised, and whether the establishment of a new rice mill is likely to affect

adversely that industry.

If in the light of such investigation and after having due regard to the matters mentioned in Section 5(4), and the said rule, Government is satisfied

that it is necessary to grant the permit for ensuring adequate supply of rice, it will make it. A separate licence is however, required to be taken for

carrying on rice mill operation u/s 8(2). In passing, we may notice that a person aggrieved by the decision of the Officer u/s 6 is given a right of

appeal authority nominated for the purpose, violation of the restrictive provisions of the Act. The State Government, under delegation from the

Central Government, enforces the provisions of the Act and the rules made thereunder. Certain amendments were made in 1968 to Sections 5 and

6, as well as certain other sections, which, for the purpose of these appeals, do not appear to be material.

3. The Madras Rice Mills Licensing Order 1955 which has superseded the earlier order of 1954, was made in exercise of the powers conferred

by Section 3 of the Madras Essential Articles control and Requisitioning (Temporary Powers) Act 1949. The scope of the order was more limited

than the now current Rice Milling Industry (Regulation) Act 1958, Milling or hulling of paddy or subjecting rice or paddy to any processing by

power-driven machinery should not be carried on except under and in accordance with the terms and conditions of a licence issued. In granting or refusing licence, the licensing authority was to be guided by such general orders as the State Government might from time to time, issue to him in that behalf.

The present Act goes further, and provides for licences for establishment of rice mills as well as for operating them, and lays down guidelines both

as to the necessity for grant of licences, and as to considerations to which due regard must be had, in granting or refusing licences for establishment

of rice mills. Contravention of any of the provisions of the 1955 order or of the conditions of the licence issued thereunder, entailed cancellation of

the licence in addition to any other penalty. The order also contained provisions requiring licensees to maintain accounts and making returns of

stocks, receipts, production, deliveries and balance of paddy and rice for each month. The Commissioner of Civil supplies, or the District

Collector was authorised to enter and to inspect any premises in which they have reason to believe that milling, or other processing of rice was

taking place and the licensees were obliged to comply with the directions given adjustments to the machinery, or in regard to the milling, re-milling

or other processing of rice or in regard to the working hours of the rice mill.

In respect of these matters, more stringent provisions with additional powers are found in the present Act. While the Act is clearly regulatory,

inasmuch as it controls establishment and running of rice mills as an industry, the regulation takes the shape of prevention of new rice mills except to

the extent warranted by necessity to ensure adequate supply of rice, and even this exception is made subject to the other considerations specified,

not all of which directly relate to such necessity. The necessity notwithstanding, which is not confined to any area or locality, actual grant of permit

is further conditioned by the facts brought out by investigation in the prescribed manner on an application for permit, and the circumstances to

which due regard must be had. The investigation to be made will have a two-fold purpose:

1. to ascertain particulars which show that grant of permit is necessary to ensure adequate supply of rice: and

2. to gather facts relating to the consideration to which regard must be had u/s

3(4) and Rule 3(2).

Rice supply may be adequate in a locality which may be hand-pound entirely. No permit for a new rice mill can in that case normally be granted.

Even so, if necessity to ensure adequate supply of rice elsewhere is found, and there is enough paddy available in the locality to go round for a new

or an additional rice mill there, a permit therefore may well be justified. If, on the other hand although, such a necessity exists there is no paddy

available in "X" locality for which a permit is applied for, but available from a neighbouring locality "Y" from which it could conveniently for

purposes of milling, be transported to "X" locality which has power for running a rice mill unlike at "Y", there is nothing in Section 5 or the Rules

which forbids grant of permit for establishment of a rice mill at "X", The number of rice mills operating in the locality, and the availability of paddy

in such locality, should of course, receive due consideration. But we do not think that this simply means that if the paddy available in the locality is

just sufficient or insufficient, to keep going the existing rice mills in the locality, that by itself must be decisive against grant of further permits.

Availability is not the same as adequacy or surplus. The mention in Section 5(4) in juxtaposition of the number of rice mills and the availability of

paddy in a locality, does not necessarily, in our opinion, contemplate sufficiency of paddy for existing rice mills and a new one for which permit is

sought. The contingency that a new rice mill may bring down the income of the existing rice mills in a locality, or render them unremunerative, as a

ground in itself justifying refusal of a permit does not appear to us to be in the contemplation of Section 5. The purpose of the Act, or Section 5 is

not, as we are inclined to think, to protect monopolies in rice milling industry in any locality by preventing competition and rendering them

remunerative. Even Rule 3(2)(a) speaks of the effect that the operation of a new or a defunct rice mill may have on the local economy, not the

economy of a particular existing rice mill but economy in general in the locality having regard to the pattern of trade and commerce in rice in such

locality. The number of rice mills and the availability of paddy in a locality have a bearing on productive capacity in the context of necessity for

ensuring adequate supply of rice, not necessarily in such locality. If, therefore, after giving due regard to the fact that paddy available in a locality is

just sufficient to go round the existing mills, a permit is granted on the view that it is necessary to do so in order to secure adequate supply of rice,

we do not think that such a grant is liable to be quashed. The grant of permit in that case, is not necessarily inconsistent with the requirement,

having due regard to the number of rice mills operated in the locality, and the availability of paddy in the locality. Just as availability, as we said, is

not the same as sufficiency of paddy, availability is not necessarily related to paddy produced in the locality. All that is meant by the expression

"due regard" in Section 5(4) is that the licensing authority must pay proper attention to the several circumstances mentioned by the sub-section in

balancing the considerations for grant, or refusal of a permit, that is to say, in balancing the considerations for grant, or refusal of a permit, that is to

say, in balancing the facts and circumstances to form an opinion that I order to ensure adequate supply of rice, it is necessary to grant the permit.

Whether there has been such a balancing by the licensing authority is subject to an appeal by the aggrieved person. It will include, as held by R.

Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others, an existing rice mill operator in a locality. But it is not open to review by this Court

under Article 226 of the Constitution as such in an appeal. Weighing the circumstances in an appellate function, and what the Court under Article

226 is concerned with, is not to approach the matter as an appellate Court but to scrutinise to see whether relevant circumstances have been

ignored, or irrelevant matters have influenced the grant, or refusal of the licence, and whether the power has been exercised in a given case

arbitrarily, or mala fide.

4. In one of the petitions disposed of by Alagiriswami. J., the learned Judge, rejected the contention that the Act was really intended to protect the

hand-pounding industry, and not to protect the interests of any rice mill owners, and therefore, if the Government chose to grant permit for the

establishment of a new rice mill, notwithstanding the fact that enough paddy was not available in the locality, it cannot be said to disclose any error

apparent on the fact of the record. In doing so, he observed.

I am afraid this contention is contrary to the provision of Section 5(4) of the Act. Two of the circumstances for which due regard shall be had are

the number of rice mills operating in the locality, and the availability of paddy in

the locality. It is not merely "regard" but "due regard" that the statute enjoins. It is obvious that if due regard is had to the availability of paddy in the locality and the number of rice mills operating in the locality is more than sufficient to mill the paddy available in the locality. Otherwise, those two provisions lose all their meaning.

With respect, we are not able to concur in this view. We have already dealt with the effect of the requirement to have due regard to the number of

rice mills operating in the locality, and the availability of paddy in the locality. We may add that by the provision to have due regard to certain facts,

it does not reasonably follow from it that it necessarily implies also the conclusion to be drawn from it. Due regard does not mean that the decision

must be in one way unless circumstances suggest arbitrariness. Also the number of rice mills operating and the availability of paddy in a locality are

not the only circumstances to which due regard must be had in disposing of an application for a permit. Clause (e) of Section 5(4) mention another

circumstance as to whether the functioning of the rice mill in respect of which a permit is applied for, would cause substantial unemployment in the

locality. This circumstance does not appear to be related to the number of rice mills, and the availability of paddy in a locality. A new rice mill is

likely to create employment rather than cause unemployment, substantial or otherwise. "Unemployment" should in the context refer not to rice mill

industry, but seems to have reference to hand-pounding industry. As a matter of fact, rule 3(2)(e) directs the investigation to find whether the hand

pounding industry in the locality is already well organised, and whether the establishment of a new rice mill is likely to affect adversely that industry.

It is true, the objects and reasons of a statute are irrelevant to interpretation, or construction of its provisions. But as the Supreme Court observed

in *Sanghvi Jeevraj Ghewar Chand and Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union and Another*, they

can also be ""legitimately used for ascertaining the object which the Legislature had in mind, though not for construing the Act."" The statement of

objects and reasons for the Act is this:

It is necessary, in the general interest to regulate the working of rice mills in such a manner that while, on the one hand, the hand-pounding industry

gets reasonable facilities for development and employment is provided for the

rural population, on the other, requisite facilities, for conversion of paddy into rice are not curtailed, particularly at a time when efforts are being made to increase appreciably the production of paddy in the country.

With this object in view, it is considered that the working of rice mills be regulated by the issue of licences, and the setting up of new rice mills, or the expansion of the existing rice mills, be prohibited without the specific permission of the Government. The bill aims at the achievement of these objectives as also to provide for certain other matters connected with the functioning of the rice mills.

The two-fold object of the regulation is to encourage hand-pounding industry, and provide employment for rural population, and at the same time to see that requisite facilities for conversion of paddy into rice are not curtailed. The unemployment the Legislature had in mind, in enacting Section

5(4) is, therefore, the unemployment of the rural population with reference to hand-pounding industry, and on this matter bears the number of rice

mills operating and the availability of paddy in a locality. It is this interrelation and bearing which also underlies Rule 3(2)(e) as to whether hand-

pounding industry in the locality is already well organised, and whether the establishment of a new rice mill is likely to affect adversely that industry.

The effect of a new rice mill on the existing rice mill, as a ground for refusal of a permit is not to be found in Section 5(4). not only due regard must

be had to the availability of paddy in the locality, but also to the other considerations mentioned in clauses (a) to (e) of Rule 3(2). It is one thing to

say that due regard must be had to the number of rice mills operating in a locality, and availability of paddy in the locality. But it is quite another,

that if there is only just sufficient paddy to go round the existing mills operating. If the licensing authority has applied its mills operating in the locality,

and the availability of paddy in the locality along with other circumstances if any, mentioned in Section 5(4) and Rule 3(2) and brought out by the

investigation, and decides to grant a permit, it does not call for quashing on the ground that the paddy is just sufficiency, or insufficient for the

existing rice mills.

5. There has been controversy before us as to what is meant by locality mentioned in Section 5(4). The Board of Revenue had issued departmental

instructions in 1961 to the following effect:

An arithmetical or geometrical three miles radius till now taken for the purpose of assessing the need for a rice mill in the area gives scope for

confusion and arbitrariness. The locality taken into account should in future include all whole revenue villages any portion of which is within three

miles (as the crow flies) from the natham, where it is proposed to set up the rice mill.

This was revised by G. O. Ms. No. 184 (Food and Agriculture) dated November 8, 1965, which directed that:

In future for the assessment of paddy production in a particular locality, the cultivation statistics from the village account for the normal year

immediately preceding the year in which the proposal on the application is to be submitted should be adopted and that the Panchayat area where

the new rice mill is proposed to be established be treated as locality for this purpose.

Sadasivam J., in W. P. No. 4464 of 1968 was of the view:

Hence the fact that there is no rice mill in Mela Tiruchendur Panchayat is no ground for granting a permit to the first respondent as the word

"locality" used in the several clause of Section 5(4) of the Act cannot be equated to a Panchayat area Clause (b) of Section 5(4) of the Act

referring to the availability of paddy in the locality clearly gives an indication that the word locality should be so construed as to include the area

which is sought to be served by the proposed rice mill.

We are in agreement with this view.

5 A. In one or two petitions out of which the respective appeals arise, it has been held that grant of permits solely in consideration of the fact that

the applicant had before or after his application incurred expenditure in construction and purchase of machinery for establishment of rice mill,

though permit therefore was yet to be issued, was irrelevant to the consideration to grant or refuse a permit, and on that ground, the orders of grant

have been quashed. Wee think that this view is correct. Section 8(1) is clear that no person shall, after the commencement of this Act, establish

any new rice mill except under and in accordance with a permit granted under S. 5. Sub-section (2) of Section 8, in contrast with sub-section (1)

speaks of a licence to carry on rice milling operation. The establishment of a rice mill consists of various steps of construction, and purchase and

installation in whole or part of the machinery for setting up the rice mill. The prohibition u/s 8(1) covers such steps. Apart from that, Rule 3(1)(a)

also says that an application for a permit shall be made before taking any of the steps, namely, acquiring land for setting up the rice mill,

commencing construction of any part of the building wherein the rice mill is intended to be installed, and placing order for the whole or any part of

the plant and machinery required for the rice mill. Clearly, therefore, that expenditure has been incurred will not in itself be a ground relevant to the

grant of permit.

6. That takes us to the question of the alleged invalidity of the Act. The contention is that the Act is incompetent for the Parliament to make it, as it

is not within the ambit of Entry 52 of List 1 of the Seventh Schedule to the Constitution. It is said that rice milling is by no means manufacture, and

is, therefore, not an industry, the control of which can by declaration be assumed by Parliament as being expedient in the public interest. If the

assumption, that rice milling is not manufacture, and is, therefore, not an industry, is well-founded, the declaration to the contrary by the Parliament

in Section 2 of the Act that it is expedient in the public interest that the Union should take under its control the rice milling industry cannot be

conclusive and the truth and validity of such a declaration forming the foundation for the Parliament's competence to assume control of the rice

milling industry can be examined by this Court. The declaration is not the subjective opinion of the Parliament, not open to scrutiny by court. As held

by *Chastleton Corporation v. Sinclair*, (1924) 68 Law Ed 841. "A court is not at liberty to shut its eyes to an obvious mistake when the validity of

a law to control rents depends upon the truth of what is declared in it." We shall, therefore, proceed to consider whether the declaration in Section

2 of the Act can be supported.

7. Entry 24 of List II is "Industries" subject to the provisions of Entries 7 and 52. Entry 52 of List I covers industries, the control of which by the

Union is declared by Parliament by law to be expedient in the public interest. trade and commerce within the State subject to the provisions of

Entry 33 of List III is in Entry 26 of List II. Entry 33 of List III relates to trade and commerce, in, and the production, supply and distribution of-

a. the products of any industry where the control of such industry by the Union is

declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

b. foodstuffs, including edible oil-seeds and oils; and

certain other articles. The interrelation to these articles is obvious. All industries fall within Entry 24 of List II. The State Legislature is exclusively competent to make laws in respect of industries. But inasmuch as the entry is subject to Entry 52 of List I, where Parliament by law declares that it is expedient in the public interest for the Union to control any specified industry, the Parliament will have the entire power to make any law in respect of such controlled industry, and correspondingly the State Legislature under Entry 24 will cease to have competence to make laws in respect of the controlled industry. Where trade and commerce are within the exclusive sphere of State Legislature under Entry 26 and where it relates to products of any controlled industry both Parliament and the State Legislature will have concurrent power to legislate in respect of it. If rice milling is not an industry, in the sense that no manufacturing is involved in it, then notwithstanding the declaration in Section 2 of the Act it will be ultra vires the powers of the Parliament, unless it can be supported, as it is sought to be, in the alternative as a law relating to trade and commerce in, and the production, supply and distribution of foodstuffs under Entry 33(b) of List III. We do not think that this alternative, on the view we take, is necessary. What is an industry? It is too wide a term, and will include a variety of things. *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, observes:

Industry in the wide sense of the term would be capable of comprising three different aspects:

1. raw materials which are an integral part of the industrial process,
2. the process of manufacture or production, and
3. the distribution of the products of the industry.

The raw materials would be goods which would be comprised in Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24 of List II, except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they

were the products of the controlled industries when they would fall within Entry 33 of List 3.

So, the process of manufacture or production will be within Entry 24 of List II unless it is a case of controlled industries within the ambit of Entry

52 of List I; and it will not be within the ambit of Entry 52 of List I. if what is declared by the Parliament as controlled industry, does not involve a process of manufacture or production.

The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance "and does not mean merely"

to produce some change in a substance, however minor in consequence the change may be

and proceeded to quote the following passage from the Permanent Edition of Words and Phrases, vol. 26, from an American Judgment:

Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and

manipulation. But something more is necessary and there must be transformation, a new and different article must emerge having a distinctive name,

character or use.

South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, which was concerned with the Central Excises and Salt Act, adopted the

meaning of "manufacture" just quoted.

9. State of Bihar Vs. Chrestain Mica Industries Ltd., in construing the word "manufacture" in Section 2(g), (c) and (d), observed:

To "manufacture" in this contest must mean "to bring into being something in a form in which it will be capable of being sold or supplied in the

course of business". The essential point is that something is brought into existence which is different from that originally existing, in the sense that the

thing produced is by itself a commercial commodity and is capable as such of being sold or supplied.

10. State Vs. Madhogaria, with reference to the Factories Act decided that cutting and drying arecanut and garbing of pepper was a manufacturing

process. The definition of manufacturing process in Section 2(k) of that Act is that any process for making, altering, repairing, ornamenting,

finishing, packing, oiling, washing, cleaning, breaking up, demolishing or

otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. "" The Magistrate who had initially dealt with the matter was of opinion that to constitute a manufacture, there must be a transformation, and that mere labour bestowed on an article, even if the labour is applied through machinery would not make it a manufacture unless it had progressed so far that transformation ensued and the article became commercially known as another and different article from that from which it gained its existence. The Kerala High Court was not prepared to accept that in the context of the statutory provisions, any such transformation was necessary in order to constitute manufacturing process.

11. In *In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, Ramaswami J. dealing with the same definition I*

the Factories Act, was inclined to think:

To sum up, to constitute a manufacture there must be a transformation. "" The learned Judge would seem to accept the view of the Magistrate

whose order went up before the Kerala High court in *State Vs. Madhogaria*, . It may be seen from these decided cases that "manufacture" is a

term which has to be understood for its scope in the particular context. But they, suggest by and large, that "manufacture" means such

transformation that brings about a new and different article with a distinctive name and character for use. The contention for invalidating the Act

here is that in the process of rice milling, there is no such transformation, as paddy is rice with husk, and that removing of the husk does not bring

about such a change or transformation as to make it a manufacturing process. We are unable to accept this contention. *K.C. Pazhanimala and*

Others Vs. State of Kerala and Others, specifically dealt with this question, though in a different context, and held:

To constitute manufacture there must be a transformation of that article into another article which is commercially different from the one which was

converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. In market rice is a different

commodity from paddy and therefore when there is a conversion of paddy into rice through rice mills there is either production of rice or

manufacture of rice from paddy. "" We share this view, apart from this, we are not construing the word "industry" as occurring in any statute, but in

the legislative Entries of Power, and as such, the word must be construed in any statute, but in the legislative Entries of Power, and as such, the

word must be construed in as wide a sense as may be possible. We have no doubt, that Entry 24 of List II would undoubtedly include Rice Milling

Industry, and it follows that such Rice Milling Industry can well be the subject of legislation under Entry 52 of List I. We can find no force in the

contention that the Rice Milling Industry (Regulation) Act is beyond the competence of Parliament under Entry 52 of List I.

12. On our view expressed above, Writ Appeals Nos. 307 and 309 of 1969, should fail. The grant of permits in these cases were expressly on the

ground that the grantees had incurred expenditure in construction and machinery for establishment of rice mills. That, as we said, is not a relevant

ground, and the grants were rightly quashed. The appeals are dismissed with costs.

13. In Writ Appeal No. 196 of 1969, the grant was quashed on the ground that "locality" in Section 5(4) could not be equated to a panchayat.

We have accept this view. accordingly this appeal is also dismissed with costs.

14. In Writ Appeal No. 445 of 1968 one of the grounds for dismissing the Writ Petition in limine was that the petitioner who was an existing rice

mill owner had no locus standi to challenge a fresh permit. That ground cannot be a fresh permit. That ground cannot be sustained in view of R.

Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others, . The other ground for dismissal was that the learned Judge accepted the statement

of the Deputy Secretary that there was sufficient paddy to run two rice mills. Although that by itself is not determinative of the validity of the grant,

we do not think that the order of dismissal of the Writ Petition calls for interference. When an order has been made by Government rejecting an

application for permit for a new rice mill, but later it changes its mind on a further application, and grants the permit without mentioning fresh

justifying ground, this Court in such a case will have to issue a rule nisi to satisfy itself that the grant was in accordance with law. The counter-

affidavit sworn to by the Deputy Secretary to Government shows that Government had due regard to the number of rice mills operating, and the

availability of paddy in the locality as well as the position of hand-pounding industry in the area. That the grant was mala fide has also been denied

by the Deputy Secretary, as well as the Minister concerned who too has filed his counter-affidavit. There is no reason for not accepting their

statement. But in considering the question of availability of paddy in the locality, the Deputy Secretary says in his affidavit that ""a Panchayat area

alone has to be reckoned as "locality" for the purpose of paddy calculation. We have not accepted this view as to "locality" in Section 5(4) of the

Act. On this limited ground, the grant has to be quashed and the Writ Appeal is allowed with costs.

15. In Writ Appeal No. 387 of 1969 which is directed against the quashing of the grant, the learned Judge proceeded on the view that no fresh

permit could be granted if the number of rice mills operating in the locality was more than sufficient to mill the paddy available in the locality. This

view of Section 5(4)(a) and (b) does not, as we have said earlier, commend itself to us for the reasons indicated by us.

16. The appeal is, therefore, allowed with costs, and the result of this would be that the writ petition would stand dismissed, but with no costs.

Counsel's fee Rs. 100/- in each of these cases.

17. Appeal allowed.