

(1984) 07 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No. 8060 of 1984

T.S. Mahadevaiah

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 09-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Rice Milling Industry (Regulation) Act, 1958 — Section 11, 7

Citation : AIR 1986 Kar 185

Hon'ble Judges : K.A. Swaml, J

Bench : Single Bench

Advocate : B.M. Gangadharaiah, for the Appellant; S. Udayashanker, HC. Govt. Pleader, for the Respondent

Judgement

1. Through this petition is posted for orders, having regard to the fact that it can be disposed of on a short point it is taken up for final disposal.

2. In this petition under Arts. 226 and 227 of the Constitution the petitioner had sought for quashing the order dt. 29-3-1984 passed by the second respondent, bearing No. FSD. PRO. 75/83-84 (Annexure C) suspending for a period of six months from the date of the order the licence issued to the petitioner for running the Rice Mill known as Manjunatha Rice Mill, B, G. Palya Tumkur, in No. RML 4/76 dt. 16-7-1976.

3. It is contended on behalf of the petitioner that the show cause notice was issued to the petitioner as per Annexure A, alleging that the petitioner had not surrendered 50% of the total quantity of rice obtained by milling paddy in the mill, and that amounted to misrepresentation to the licencing authority under S. 7 of the Rice Milling Industry (Regulation) Act, 1958 (hereinafter referred to as the "Act"). The petitioner had filed the objections to the same. But the order of suspension is passed on two grounds, that the levy has not been surrendered and the fortnightly returns in Form "ff have not been furnished as per S. 11 of the Act. It is contended on behalf of the petitioner that as far as the ground

relating to failure to surrender the levy is concerned, it is not, relevant for the purpose of taking action under the provisions of the Act. Regarding the second ground it is submitted that that is not the ground alleged in the show cause notice. Therefore, it is submitted that it amounts to suspending the licence without affording an opportunity to the petitioner.

4. On behalf of the respondents Sri Udayashankar, learned High Court Government Pleader, has submitted that the petitioner, has not entitled to any relief under Art. 226 or 227 of the Constitution as the petitioner have an alternative. And efficacious remedy under S. 12 of the Act, this also further submitted that it is not a case in which it can be said that the order is passed without issuing a show cause notice or affording an opportunity to the petitioner.

5. Of" course, if the order suspending the licence was passed on the grounds alleged in the show cause notice, there was no difficulty whatsoever in accepting the contention of learned High Court Government Pleader. Out of the two grounds one is not relevant, and another was not at all put to the petitioner. This Court has held in W.P. No. 3728/84 decided on 2nd March 1984 and W.P. No. 3214/84, decided on 10-2-1984 that the grounds for suspending the licence must have, a nexus either to the contravention of the provisions of the Act or the Rules framed thereunder or the conditions of the licence. In this connec6on, it may also be noticed that S. 7 of the Act, which is the provision under which the impugned order is passed, provides for two grounds to suspend the licence.

(i) A licence granted" under S. 6 has been obtained by misrepresentation as to an essential fact.

(ii) The holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of the Act or the Rules made thereunder.

Thus, it is clear that it is only on any one of the aforesaid grounds the power of suspension can be exercised and not otherwise. In the instant case the ground based on the alleged violation of the provisions of the Karnataka Rice" and Paddy Procurement (Levy) Order, 1983 cannot be said to be relevant for exercising the power under S. 7 of the Act to suspend the licence. No doubt, the other ground namely failure to furnish fortnightly returns in Form "13" as required by S. 11 of the Act is quite relevant, but that is not the ground which is stated in the show cause notice. Therefore, what emerges or what it amounts to is that the order of suspension of the licence has been passed without issuing show cause notice and without affording an opportunity to the petitioner. That being so, it is not necessary to drive the petitioner out to resort to an appeal. Therefore, the contentions raised by the learned Government Pleader cannot be accepted, consequently, it follows that the petition is entitled to succeed.

6. Accordingly, this, writ petition is allowed. The order dt. 23-3-1984, passed by the second respondent, bearing No. FSD.RPC.75/83-84, produced as Annexure-C is hereby quashed. However, it is made clear that it is open to the second

respondent to proceed in the matter in accordance with law after serving an appropriate show cause notice and affording an opportunity of hearing to the petitioner.

7. Sri S. Udayashankar learned High Court Government Pleader is permitted to file his memo of appearance for respondents, in 6 weeks.

8. Petition allowed.