

Naresh Chandra Das and anr. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Apr-10-1981

Judge : B.L. Hansaria, J.

Acts : Assam Paddy and Rice Procurement (Licencing and Levy) Order, 1980;
[Essential Commodities Act, 1955](#) - Sections 3(2)

Appeal No. : Civil Rule No. 25 of 1981

Appellant : Naresh Chandra Das and anr.

Respondent : State of Assam and ors.

Advocate for Def. : Govt. Adv., Assam

Advocate for Pet/Ap. : B.K. Das and P.K. Musahary, Adv.

Disposition : Petition allowed

Prior history : B.L. Hansaria, J. 1. What is under challenge in this application under Article 226 of the Constitution is certain provisions of the Assam, Paddy and Rice Procurement (Licensing and Levy) Order, 1980 (hereinafter called the Levy Order). Memo No. KPS/70 dated 5th December, 1980, issued by the Sub-Divisional Officer, Kokrajhar (Annex.-D to the petition) has also been assailed, 2. The petitioners are the Kokrajhar Sub-Divisional Small Scale Rice, Oil and Atta Chaki Mills Association, and its Secre

Judgement :

B.L. Hansaria, J.

1. What is under challenge in this application under Article 226 of the Constitution is certain provisions of the Assam, Paddy and Rice Procurement (Licensing and Levy) Order, 1980 (hereinafter called the Levy Order). Memo No. KPS/70 dated 5th December, 1980, issued by the Sub-Divisional Officer, Kokrajhar (Annex.-D to the petition) has also been assailed,

2. The petitioners are the Kokrajhar Sub-Divisional Small Scale Rice, Oil and Atta Chaki Mills Association, and its Secretary. The Association represents basically the huller rice mills of the Sub-Division. They have felt aggrieved at the demand of levy from them and on being asked to obtain the dealing licence under the Levy Order. According to the Association, its members who are the owners of the mills have been carrying on the business known as 'custom milling', which connotes the idea that they husk the Paddy brought by the customers on payment of certain service charge. The petitioners state that the owners do not stock any Paddy of their own. These factual averments have been controverted in a way by the respondents. I am not inclined for the present case to go into the correctness or otherwise of the facts alleged in the petition. I would confine myself to the legal question as to whether the husking mill owners can be called upon to deliver levy as required by Clause 11 of the Levy Order, or to obtain permit visualised by Clause 16, assuming that the facts stated by the petitioners are correct.

3. Before advertng to the submissions relating to the levy order, the objection relating to the memo of the Sub-Divisional Officer referred above may be disposed of. By this memo, which is addressed to all rice mills of Kokrajhar Sub-Division, it was staged that the millers also shall have to obtain dealing licence and without obtaining such a licence they could not convert into rice any paddy. Shri Das has urged that this direction is ultra vires inasmuch as though it has been issued in the wake of the Levy Order and under the provisions of the said Order, it has gone beyond the Order itself. Reference to the Levy Order would show that by its Clause 3 prohibition has been imposed on the dealers inter alia from converting

into rice any paddy except in accordance with the terms and conditions of a licence. The definition of dealer given in Clause 2 (b) makes it clear that all rice millers may not be dealers. As such, the Levy Order wanted a dealing licence from a dealer only, and not from millers. That the Levy Order has made a distinction between the terms millers and dealers is also apparent from Clauses 10 and 11. It however can be that some millers are dealers as well; but then some may not be. So the Sub-Divisional Officer could not have called upon all the millers to obtain dealing licence. The expression millers used in this memo has therefore to be read down to mean only those millers who come within the category of dealers. So read, this order need not be struck down. It is however made clear that though Annexure D is addressed to all rice millers, the same shall apply only to those millers who come within the definition of dealer.

4. Coming to the Levy Order, the two provisions assailed are Clauses 11 and 16. So far as levy is concerned, it is really Clause 11 which hits the petitioners or the members of the Association, but Clause 16 has also put a fetter on their power. The submission of Shri Das relating to Clause 16 is that it is prohibitory in character and is hit by Article 19 as well as Article 14, having conferred unguided and arbitrary powers. According to the learned Government Advocate, this clause is regulatory in character and a guidance can be read from the purpose which had led to the promulgation of the Levy Order. The requirement of permit may be either regulatory or prohibitory. All would depend upon the conditions which have to be satisfied for obtaining a permit. In the case at hand it is not necessary, according to me, to go into this aspect as I am satisfied that Clause 16 does not contain any guidance as to when a permit can be granted or, for that matter, refused by the Deputy Commissioner. A perusal of the Levy Order would show that as for obtaining dealing licence care had been taken to say as to what matters are to be taken into considerations, what would be the period of validity, when can such a licence be suspended or cancelled, etc., but nothing had been said about the permit visualised by Clause 16. Learned Government Advocate has referred to *Chandra Kanta Saha v. Union of India*, (1979) 1 SCC 285 : (AIR 1979 SC 314). In that case, Section 6 of the Rice Milling Industry (Regulation) Act, 1958, was attacked on the ground that it did not contain any guidance as to when a licence would be granted or refused inasmuch as nothing had been stated in the section

about this. This contention was repelled inter alia because it was found on the reading of Sub-section (3) that the Licensing Officer had no discretion in the matter, but had a mandatory duty to grant a licence. I do not think if the same can be said about Clause 16 as it exists, though that was the submission of the learned Government Advocate. The purpose of asking for a permit may be good, which according to the learned Government Advocate is to know as to who are the persons who are undertaking custom milling, but as it has sought to prohibit altogether custom milling without having a permit, it was incumbent on the part of the authority issuing the Levy Order to have spelt out as to under what conditions a permit would be granted and when it can be rightly refused, The fact that the petitioners have not said that anybody had been refused a permit cannot by itself be a ground to sustain the validity. Reference was made in this connection by learned Government Advocate to Hari Shankar Bagla, AIR 1954 SC 465. There in paragraph 8 it was observed that the appellants had never applied for permits and made no efforts to obtain one, but it had been observed later on in the same para that the appellants were transporting essential goods by rail without a permit and only when they could get any relief is by attacking the section which obliges them to take a permit. This is precisely what has been done in the present case. On the language of Clause 16 I would not entertain any doubt that a wide, uncontrolled power has been given. Even if one were to read a policy behind the Levy Order, it is apparent that while trying to implement the policy untrammelled and uncanalised power cannot be conferred. This is what has been stated in Hari Chand Sarda v. Mizo District Council, AIR 1967 SC 829, to which my attention has been invited by Shri Das.

5. This being the position. Clause 16 has to be struck down. This takes us to Clause 11. She grievance relating to this clause is that all the rice millers as defined in the Levy Order could not have been called upon to deliver the required quantity of paddy and/or rice, as stated in this clause. According to Shri Das, this was beyond the competence of the Governor of Assam, in whose name the Levy Order has been issued under Section 3 of the [Essential Commodities Act, 1955](#) (for short, the Act), on being authorised to do so by the Central Government, whose delegation order is at Annexure B. Though in that delegation order. Clause (f) of Section 3(3) of the Act has been specifically mentioned, the contention of

Shri Das is that this clause, even as amended in 1976, would not take within its fold the huskers.

6. I have been first referred to certain decisions, namely, AIR 1972 All 401 and AIR 1976 Orissa 138, which have held that the delegation order cannot be read to have conferred the general power of Section 3(1) of the Act also. So, we have to confine to the powers which have been specifically conferred, which of course include power under Clause (f) of Section 3(2). Now, Clause (f) is attracted in case of persons holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity. As to the holding in stock, it is submitted by Shri Das by referring to AIR 1978 Pat 86 that the holding has to be on one's own behalf, and not on behalf of somebody else. As against this decision, my attention is invited by the learned Govt. Advocate to AIR 1969 Ker 38, wherein the expression 'holding' had come up for examination in the context of Levy Order itself. It was stated in para 24 that this expression does not necessarily connote both, possession and title, and sometimes it is used only to mean actual possession. Even, then, I do not think if a person can be said to hold in stock even if he possesses the same momentarily. In case of the husking mill owners, the possession of the rice, or for that matter of paddy, may be with them for a very short time, which may in some cases be even an hour or so. It would be difficult to say that because they possessed the commodity for this period, they hold that commodity in stock.

7. It has therefore to be seen whether other expressions used in Clause (f) are attracted and cover the case of imposition of levy on all the rice millers. The one which could apply is the expression 'engaged in the production', because the third requirement is related to the business of buying or selling. In the present case, that requirement would not apply if the contention at the petitioners be correct that they are only engaged in custom milling. Let us examine as to what is meant by 'production' in the aforesaid expression. Shri Das has referred in this connection to AIR 1978 Pat 86 again. This is a Division Bench case and has examined the ambit of Clause (f) after its amendment in 1976. I would with respect agree with the ratio of this decision which is that the amendment was sought to bring within its fold those producers who did not choose to hold their own produce in stock. This was

the mischief for which the old law did not provide and which the amendment sought to cure. It would cause absolute hardship if it were to be held that persons engaged in purely custom milling of de-husking operation without engaging themselves in buying or selling the commodity were meant to be covered by the expression. It was stated in the aforesaid decision that if such persons were called upon to deliver levy, the same may cause even extinction of their business. Reference to the Explanation 1 to Clause (f) shows that the word 'production' refers to the producers of the essential commodities from the soil, as it speaks of the quantity being relatable to the area held by, or under the cultivation of, the producers.

8. Learned Government Advocate has referred me to *Deputy Commissioner v. P. Plantations*, AIR 1969 SC 930, wherein the word 'produce' was examined, as it appeared in the definition of 'dealer' given in Section 2 (viii) of the Kerala General Sales Tax Act, 1963. Therein it was stated that the intention in employing the word 'produce' was obviously to introduce an element of volition and effort involving the employment of some process for bringing into existence the goods. It is contended that the conversion of paddy into rice also involves some process and some element of volition. But everything would depend on the context in which a word is used, which was recognised in the aforesaid decision also. And the context would militate against a wide meaning for reasons alluded. I was also referred to the dictionary meaning of 'manufacture', as appearing in the *Universal Dictionary*, 3rd Edn.. Vol. I, which has defined it to mean to 'produce by labour'. The idea behind referring to this definition is that as the husking mill owners can well be said to manufacture rice, it has to be said that they are producing rice. Apart from what has just been stated about contextual meaning, as Clause (f) has used the expression 'production'. I do not think it would be proper and really permissible to see if the millers in question can be called manufacturers also, and as such producers. Reference to Clause (a) of Section 3(2) of the Act would show that the expressions production and manufacture have been used not in one and same sense, but to convey distinct notions.

9. Because of all these, I would hold that a rice mill owner who carries on custom milling only and does not engage in the business of purchase, sale, or storage for

sale of any paddy or rice would not fall within the ambit of Clause (f), as he is neither a person holding any stock, nor engaged in the production (as explained above) or in the business of buying or selling of any essential commodity. Clause 11 of the Levy Order having called upon every rice miller to deliver as levy the quantity prescribed therein is therefore not fully within the competence of the State Government. Instead of striking down this clause. I would again read it down to exclude those rice millers who are engaged only in custom milling. Let it be said that merely because a rice miller is engaged in the working of conversion of paddy into rice by way of custom milling, he would not be a dealer within the meaning of the Levy Order.

10. The petition stands allowed as aforesaid. It is however made clear that if any of the members of the Association has not confined his operation only to custom milling, but is engaged in dealing of the commodity also, he would not get any benefit of this order and what has been stated above would not apply to his case.

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