

In Re: M. Malayandi thevar and ors.

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Court : Chennai

Decided On : Dec-05-1951

Reported in : AIR1952Mad576; (1952)1MLJ408

Judge : Ramaswami, J.

Acts : Madras Food Grains (Intensive Procurement) Order, 1950; ;Essential Supplies (Temporary Powers) Act, 1946 - Sections 3 and 7(1)

Appeal No. : Criminal Revn. Case Nos. 989 to 991 and 1092 of 1951 and Criminal Revn. Petn. Nos. 971 to 973 and 10

Appellant : In Re: M. Malayandi thevar and ors.

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : T.R. Srinivasa Aiyar and ;S. Krishnaswami, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

Ramaswami, J.

1. These are four criminal revision cases filed against the orders of the Sub-Divisional Magistrate, Tuticorin, in summary cases Nos. 289, 292, 290 & 176 of

1951, holding that the prosecutions launched against the criminal revision petitioners were competent and maintainable.

2. There can be no dispute on the limited records before us at this stage concerning the facts, namely, that these petitioners did not comply with Clause 3(2) of the Madras Food Grains (Intensive Procurement) Order, 1950, & the Collector's notification dated 15-7-1950 for surrender of surplus food-grains to the Government, and for which the petitioners have been charged under the Madras Food-grains (Intensive Procurement) Order, 1950, read with Section 7(1) of the Essential Supplies (Temporary Powers) Act, XXIV (24) of 1946.

3. The point taken by them in the lower Court and here is set out by the criminal revision petitioners as follows: The Collector has no power by a District Notification to call upon the accused to surrender the surplus food-grains and that the violation of such an order is not an offence. The powers of the Central Government for regulating or prohibiting the production, supply and distribution trade and commerce in essential commodities under Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, are delegated to the State Government. The State Government cannot further delegate such powers to its subordinate officers.

In support of this, the decision of our learned brothers Govinda Menon and Basheer Ahmed Sayeed JJ. in Cri M P 518 of 1950, 'Mohomed Sahib In Re', 1950 2 M.L.J. 20, (recent case) has been relied upon. Therein it was held that the fixation of prices of sugar must be done by the State Government by notified order as required under Sections 3 and 4 of Act XXIV (24) of 1946 and the order of the State Government authorising the Collector to fix the price was illegal and not operative and that therefore the price fixation and the notification in the District Gazette were invalid. It is stated that the same principle applied to this case and that the Collector's demand on the accused is not valid.

4. The learned Sub-Divisional Magistrate rejected this contention and hence these criminal revision petitions. I am also of the same opinion as the learned Sub-Divisional Magistrate and here are my reasons.

5. Section 3(1) of Act XXIV (24) of 1946 lays down that the Central Government so far as it appears to it to be necessary or expedient for maintaining of increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein. Sub-clause (2) provides that without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide.....(f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order.

Section 4 provides that the Central Government may by notified order direct that the power to make orders under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercised by (a) such officer or authority Subordinate to the Central Government, or (b) such Provincial Government as may be specified in the direction. Section 2(d) of the same Act defines a 'notified order' to mean an order notified in the official Gazette. The term 'official gazette' has been construed in relation to Madras as the Madras Fort St. George Gazette.

6. On 1-7-1950 in the Fort St. George Gazette the following Madras Food-grains (Intensive Procurement) Order, 1950 (G. O. Ms. No. 1269 Food and Agriculture, 30th June 1950) has been published. The preamble states that this notification was in exercise of the powers conferred by Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, read with the Notification of the Government of India. Department of Food, No. PY. 603 (2)-1, dated 21st October 1946 and with the concurrence of the Government of India, by his Excellency the Governor of Madras,

7. I must briefly summarize the eleven paragraphs of this notification relating to paddy (rice in the husk), rice (paddy husked), 'chulam, cumbu, ragi, korra, samai, varagu and vprigalu'. Paragraph 1 gives the title of the order and Para. 2 defines the extent and defines food-grains purchase and sale. Para. 3 defines the categories of persons to whom this Notification is applicable and the categories of

persons who can call upon the aforesaid persons to do the various things specified within the purposes set out above. Then sub-paragraph (3) of Para. 3 proceeds to meticulously set out the rules for determining the surplus which has got to be surrendered on demand.

Paragraph 4 provides for advance demands being made if it appears necessary for maintaining supplies of food-grains even before the determination of the surplus. Para. 5 provides for the mode of delivery and the payment of prices. Paragraph 6 relates to special conditions in regard to certain specified districts. Para. 7 deals with the powers invested by the government in District Collectors and persons authorised by him on this behalf for declaration of stock of food-grains in specified circumstances and areas. Para. 8 deals with inspection of stocks and confers necessary facilities for the officers for doing the same. Para. 9 deals with sequestration of stocks in certain specified events. Para. 10 is the immunity clause in regard to officers carrying out the operations under this Order and forfeiture in defined circumstances. The Order finally winds up by stating that

'all proceedings commenced or deemed to have been commenced and all action taken or deemed to have been taken and all appointments made or deemed to have been made under the Madras Food-grains (Intensive Procurement) Order, 1948 as subsequently amended, shall be deemed to have been taken or made under the corresponding provision, if any, of this order, and shall, so far as may be continued accordingly.'

This procurement order is applicable during fasli 1360 or future fasils.

8. In this case there is no dispute that the Central Government had powers To delegate its authority to the State Government and the only point in dispute is that the State Government is not entitled to delegate their powers so got in favour of its subordinate officers, namely, the District Collectors

9. This contention is undoubtedly due to a confusion of thought as has been pertinently pointed out by the learned Sub-Divisional Magistrate. In this case the State Government has not delegated its powers to the Collectors and has in fact in

exercise of its delegated powers passed various orders like the Food-grains (Intensive Procurement) Order 1948, 1950 etc., comprehensively laying down the principles on which the categories of persons to whom these Orders apply, the grounds on which the surplus should be determined, the mode of taking delivery and the payment as against delivery and providing for removal of difficulties in the way of getting at undisclosed stock etc., which have all been summarised purposely above.

In short, the Collector is not empowered to lay down the principle for regulating or controlling but only to carry out the working of the principles and find out what the surplus is. Therefore, this is not a case of a delegation of delegated powers or a case of abdication or effacement of the State Government in the matter of carrying out the powers delegated to them by the Central Government but a mode of exercising these powers through their subordinates retaining full control of the powers vested in them. Therefore, this is not a case of the State Government abandoning its functions in favour of an outside agency but only a case of employing the machinery of Government for the purpose of enabling the State Government to discharge its duties properly and effectively. The responsibility entrusted to the State Government under this delegation remains intact and there is no abdication of its own delegated powers,

10. It follows from the above considerations that the contention based upon the maxim 'delegatus non potest delegate' is not applicable to this case and that these revision cases must fail.

11. These revision cases are accordingly dismissed. The trial of the cases so unnecessarily held up should be proceeded with expeditiously. Revisions dismissed.