
Akhil Bharatiya Dhan Utpadak Kisan Bachao Samity and Others Vs State of Maharashtra and Others

Writ Petition No"s. 367 and 997 of 1991

Court: Bombay High Court (Nagpur Bench)

Date of Decision: May 3, 1991

Acts Referred:

Constitution of India, 1950 – Article 255#Essential Commodities Act, 1955 – Section 3, 5#General Clauses Act, 1897 – Section 21

Citation: (1992) 94 BOMLR 1010

Hon'ble Judges: S.M. Daud, J; B.U. Wahane, J

Bench: Division Bench

Judgement

S.M. Daud, J.

The two questions arising in these cross-petitioners are whether the State Government can suspend the operation of the

Maharashtra Rice Levy on Rice-Millers Order, 1989 without the prior concurrence of the Government of India, and, if not, the effect on

transactions entered into by traders and/or rice-millers acting on the representation of such suspension?

2. The Essential Commodities Act, 1955 (Act) is a legislative measure to provide for the control of the production, supply and distribution of

commodities deemed essential in the interests of general public. Section 3 of the Act empowers the Central Government and/or its delegate vide

Section 5 to issue Orders to regulate or prohibit the production, supply and distribution of such essential commodities. The Central Government by

G.S.R. 800 dated 9th June, 1978 has delegated some of its powers u/s 3 to State Governments. The limitations placed on the delegates are that:

(1) the powers to be exercised by a State Government shall be subject to such directions as may be issued by the Central Government;

(2) making of orders under certain clauses of Sub-section (2) of Section 3 will require the prior concurrence of the Central Government:

(3) that authorisation vide Clause (j) of Sub-section (2) of Section 3 shall be only upon an Officer of the State Government.

Acting in pursuance of the delegation and after obtaining the prior concurrence of the Government of India (G.O.I.), the Government of

Maharashtra (G.O.M.) on 5th October, 1989 enacted the Maharashtra Rice (Levy on Rice-Millers) Order, 1989 - hereinafter to be referred to as

the "Order". This Order was amended vide the Maharashtra Rice (Levy on Rice-Millers)(Amendment) Order, 1990. The Amendment Order had

the prior concurrence of the G.O.I. and did away with a clause limiting the Order's duration to the period earlier specified therein and also reduced

the quantity recoverable as levy rice.

3. Certain provisions of the Order require to be noticed. Clause 3(1) specifies the quantity of rice compulsorily saleable by a licensed miller to a

Purchasing Agent at the levy price. To give teeth to this clause, the other sub-clauses provide for measures to check evasion. Sale and disposal of

rice left after levy has been exacted, is regulated by Clauses 7 and 8. Clause 12 empowers the G.O.M. with the G.O.I.'s prior concurrence in the

public interest to exempt (a) any area, (b) any class of millers from levy and (c) reduce the quantum of levy in any area. The power of reduction

was exercised under the Amendment Order of 1990. To repeat, the preconditions for the exercise of power under Clause 12 are (i) prior

concurrence of the G.O.I. and (ii) public interest.

4. The G.O.M. by orders issued on 30.11.1989, 1.10.1990 and 12.12.1990, suspended the implementation of the Order. The first two

suspensions were followed by re-impositions. No such order of re-imposition was made in relation to the third suspension. Writ Petition No. 367

of 1991 was filed on 6.2.1991. The petitioners hereinafter to be referred to as the Samiti-complained of the suspension being illegal inasmuch as

the same was not with the prior concurrence of the G.O.I. According to the Samiti the suspension was a specimen of the havoc that could be

caused by crony capitalism when political interests prevailed over those of the masses from whom came the paddy growers and the consumers.

The Rice Mill Owners' Association (Association) which had been impleaded as a respondent was enjoined from sending rice outside the State

vide an order passed on 6.3.1991. This order was expanded on 11.3.1991 by a direction that the G.O.M. collect levy imposed under the Order

and from all traders whether or not registered with the Association. Pursuant to these orders the Tahsildar, Gondia issued letters dated 7.3.1991

and 8.3.1991 prohibiting despatch of rice of traders or mill owners outside Maharashtra.

5. Communications aforementioned having been addressed to the railway authorities, interested traders and millers instituted Writ Petition No. 997

of 1991. They contend that levy on rice is impossible only on rice-millers, and that, within the four corners of the Order. Traders are not within the

ambit of the Order. No restraint can be placed on them contrary to the Order. The suspension of the Order had been acted upon by them by

entering into export contracts with parties outside the State. Breach of such contracts would entail consequences to their detriment. The holdup of

their rice at various railway sheds was illegal.

6. Railways impleaded to the second petition plead immunity from liability on the ground that they have no authority to contravene directions given

by the Tahsildar, Gondia.

7. The G.O.M. and its Officers plead public interest or compliance with orders of the Court passed in the first petition as a defence. The Order

was a measure taken recourse to for the purpose of ensuring production, supply and distribution of a basic food grain like rice. Its suspension was

due to representations received from paddy growers. Agricultural seasons 1989-90 and 1990-91 had experienced erratic rainfall and this had

affected the crop. So bad was the position in the rice producing areas that the majority of farmers far from having a saleable surplus, did not have

enough for home-consumption. The shortage had seriously impeded the flow of paddy to rice-mills. In a situation of this nature, the G.O.I. had

been approached for exempting the entire area of the State from levy. The suspension orders were in anticipation of the expected concurrence.

They were good in law until the required concurrence was declined. As to actions taken in furtherance of the Court's orders dated 6.3.1991 and

11.3.1991, these had been given effect to as required by the law.

8. The first issue revolves around the validity of the suspension of the levy exactions. The Samiti has alleged that the suspension was the result of a

trader-miller-politic combine out to make money by compelling free enterprise in the rice trade. Reliance is placed upon the timing of certain

decisions and the "on again and off-again" moves of the G.O.M. Assuming the worst, what the argument boils down to, is, that clamour of the

vested interests influenced the Government's attitude. We fail to see how that proves mala fides. The beneficiaries of the suspension could not be

restricted to rice-millers or a section of them. Free trade in rice could benefit rice growers-certainly those with a surplus to sell-the labourers

working for them and a whole lot of intermediaries including traders. Consumers could suffer, though not necessarily. The Government's being

swayed by representations received from different interests is nothing unusual. That is a normal and frequent happening in the implementation of

every legislation dealing with economic activity. The G.O.M. relies on the statistical data collected by its Officers to show that the erratic of the

rainfall had seriously affected the crop and availability of rice for consumption. This version cannot be disbelieved on the mere say-so of the Samiti.

9. Coming to the legality of the suspension, the self-evident proposition is that every existing law has to be enforced. In fact its being in existence is

predicated on the assumption that it will be given effect to. The G.O.M. pleads compulsion for taking recourse to the device of suspension. This is

no defence in law. Clause 12 permits grant of exemptions from levy to areas and a class of millers but only with the prior concurrence of the G.O.I.

The G.O.M. is said to have applied for such concurrence. This, it is said saves the suspension from invalidation until of course the request is turned

down. Reliance is placed on Article 255 of the Constitution to support this plea. To appreciate this argument it will be necessary to set out the

Article and it reads thus:

255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only -No Act of Parliament or of the

Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by

this Constitution was not given, if assent to that Act was given-

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President.

A careful reading of the Article shows that the status of an Act or part thereof is conferred on legislation introduced without the constitutionally

required recommendation or previous sanction if and only if the said legislation receives the assent of the (i) President in all cases and (ii)

Rajpramukhs and Governor in certain cases. It is only after the receipt of the assent that the legislation attains the status of an Act of Parliament or

the Legislature of a State. In other words, legislation contravening the constitutional requirement of a recommendation or previous sanction

becomes immune from invalidation on that ground, but only after it receives the subsequent assent of the prescribed dignitary. The receipt of the

assent and not until then, confers on the legislation the character of enforceable law, to wit, an Act of Parliament or the State Legislature. This

position was made clear in *Jawaharlal Vs. State of Rajasthan and Others*, where it was said:

In the case of laws to which Article 255 applies, the assent of the President given even after the Act is passed, serves to cure the infirmity arising

from the initial non-compliance with its provisions. In other words an Act passed without obtaining the previous assent of the President does not

become void by reason of the said infirmity; it may be said to be unenforceable until the assent is secured. Assuming that such a law is otherwise

valid, its validity cannot be challenged only on the ground that the assent of the President was not obtained earlier as required by the other relevant

provisions of the Constitution. The said infirmity is cured by the subsequent assent and the law becomes enforceable.

10. The requirement of prior concurrence to vary, modify or suspend the collection of levy is too obvious to require the support of authorities.

Even so a look into a few of these authorities will bear out the mandatory nature of the legislative intent inherent in the words ""with prior

concurrence"". In *Hanant Lal Agrawal and Others Vs. State of Bihar and Others*, the deletion of three Provisos of a certain clause appearing in a

G.S.R. of 1972 was declared to be ultra vires the provisions of Section 3 of the Act. The Judge speaking for the Bench said:

In my opinion, the contentions of the petitioner are well-founded. If the said Order could have been made with the prior concurrence of the Central

Government as required by the provisions of the Act and the Order of the Central Government then any provision thereof cannot be amended,

rescinded or varied by the State Government without the prior concurrence of the Central Government.

In *Sohan Lal Loonkaran Vs. State of Rajasthan and Others*, an amendment was effected to an Order issued by the Government of Rajasthan

without the prior concurrence of the Central Government. The original Order was framed u/s 3 of an instrument like G.S.R. 800 figuring in the

present case with the prior concurrence of the Central Government. The amendment not having the prior concurrence of the Central Government

was held to be void-the law being-

The State Government has no doubt power to add to, amend or vary the order but that power must be exercised in the like manner and subject to

the like sanction and conditions. It was, therefore, obligatory for the State Government to have obtained the prior concurrence of the Central

Government before adding new Clause 5A to the Order. Since it was not done, Section 50A, so far as it relates to cement, is liable to be struck

down.

In *the District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders Association and Others*, the State Government issued

directions placing restriction on the movement of oil seeds and edible oil to outside States and imposing compulsory levy and requiring millers and

traders to sell oil seeds and oil at a price fixed by it. This was done without the prior concurrence of the Central Government. The Court held the

directions to be ultra vires the powers of the State Government. A somewhat different view may appear to have been taken by Nain, J. in

Deviprasad Khandelwal and Sons Vs. Union of India, . But that was on the basis of Section 21 of the General Clauses Act, 1897. The true import

of that provisions need not detain us for here the Order itself requires the prior concurrence of the G.O.I. in case the G.O.M. wants to exempt any

area or class of millers from levy. By suspending levy in the entire State, the State Government has exempted the entire State from the operation of

the Order. For this it did not obtain the prior concurrence of the Central Government. That was a condition precedent to the exercise of the power

to exempt which it has assumed by the issue of the suspension orders impugned in the petition of the Samiti. The said suspension is bad in law. The

State has therefore rendered itself amenable to the mandate of this Court that it do enforce the Order.

11. This brings us to the second question. The said question is whether petitioners of Writ Petition No. 997 of 1991 can be prevented from

honouring commitments entered into by them which commitments they entered into on the basis of suspension orders issued by the G.O.M. So far

as these petitioners are concerned, it is submitted that they have done no wrong by acting upon the suspension orders by entering into contracts

with outside agencies for sale and export of rice. Counsel representing the Association relies upon the doctrine of prospective overruling which has

received the imprimatur of the Apex Court in several decided case. The latest decision on subject is that given in Orient Paper and industries Ltd.

v. State of Orissa (1991) II S.V.L.R. 24. Their Lordships took a complete review of the different decisions on the subject and observed:

The declaration regarding the invalidity of a provisions and the determination of the relief that should be granted in consequence thereof are two

different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is a well-settled proposition that

it is open to the Court to grant, could or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the

interests of justice. It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding. Once the

principle that the Court has a discretion to grant or decline refund is recognised, the ground on which such discretion should be exercised is a

matter of consideration for the Court having regard to all the circumstances of the case.

Applying the above to the facts of the present case we find that the G.O.M. suspended levy for reason of inadequacy of production of rice. With

this suspension loudly proclaimed millers and traders entered into various commitments with outside parties. Petitioners in the Association case are

those who have booked wagons for despatch of rice to outside buyers. In a case of this nature to direct the forfeiture of rice or to exact the levy

from the quantity sought to be exported is neither possible nor practicable. The declaration of invalidity vis-a-vis the suspension should thus be

given effect to as from 12.3.1991. The said date is chosen because it was on 11.3.1991 that the earlier Bench issued the expanded injunction.

Commitments entered into prior to that date will thus have to be permitted to be honoured.

12. The Association and the Samiti differ in regard to the applicability of the Order to traders. That question need not detain us for it is not

necessary to the determination of the two questions around which revolves that fate of the petitions. To sum up, the commitments entered into by

traders and licensed rice-millers pursuant to the suspension order shall be allowed to be given effect to with the then prevalent priorities in railway

bookings. The cancellation of priorities is quashed and the priorities as prevailing prior to the stay orders of 6.3.1991 and 11.3.1991 are restored.

The instrumentalities of the Central and State Government including the Railways shall not come in the way of the petitioners in Writ Petition No.

997 of 1991 to complete the transactions entered into by them. Further, there shall be no exaction of levy in regard to stocks held prior to

12.3.1991. The State shall however enforce the Order as it stands in all its rigour as for the period commencing from 12.3.1991.

Rules in the above two petitions made partially absolute in the above terms, with parties being left to bear their own costs.