

Haryana Rice Mills and others *v.* State of Haryana and others
(M. M. Punchhi, J.)

(10) The law is thus well-settled that if counsel, by his acts or omissions causes the interest of the party engaging him, in any legal proceedings to be prejudicially affected, he does so at his peril.

S.C.K.

Before M. M. Punchhi and Ujagar Singh, JJ.

HARYANA RICE MILLS AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 8811 of 1988

October 6, 1988

Constitution of India, 1950—Arts. 14 and 19(1)(g)—Haryana Rice Procurement (Levy) Third Amendment Order, 1988—Clause 3(c)—Rice millers required to give levy rice to the government to the extent of 75 per cent out of the total quantity of rice purchased or acquired—Choice of variety of rice left with dealers/millers—Such order—Whether violative of Arts. 14 and 19(1)(g).

Held, that there is no immediate compulsion to the petitioners selling the rice held in stock by them to the Department, for sub-clause (c) is the release valve making it abundantly clear that out of the total quantity of rice, conforming to the specifications, purchased or otherwise acquired by them, 75 per cent is to be given in levy whatsoever be the kind. In other words, out of the total quantity of rice purchased or acquired by them, irrespective of the varieties of the rice, they are required to give levy rice to the extent of 75 per cent to the Government and the choice in the offer is entirely left with the dealers/millers. All what the dealer is supposed to do is to acquire his stock and give 75 per cent of rice conforming to the specifications. There is an inbuilt safeguard in the provisions of the Control order for adjustment.

(Para 5).

Held, that there is no violation of any fundamental rights of the petitioners nor is the impugned order unfair or arbitrary. It requires a few adjustments here and there and the trade is expected to be discreet in that regard.

(Para 7).

Petition Under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue:—

- (i) *a writ of mandamus declaring the Haryana Rice Procurement (Levy) Order, 1985 as amended up-to-date as void, invalid, unconstitutional, ultravires the Essential Commodities Act and Act No. 92 of 1976 amending Section 3(3B) as unconstitutional of Article 14, 19(1)(g), 31 and 301 of the Constitution of India.*
- (ii) *a writ of mandamus/certiorari quashing the clause 3(a) of the Haryana Rice Procurement (Levy) Third Amendment order, 1988.*
- (iii) *any other writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case for natural justice.*
- (iv) *Costs of this petition be awarded in favour of the petitioners.*
- (v) *Dispense with the service of notice of motion and certified copies of the Annexures.*

It is further prayed that this Hon'ble Court may be pleased to stay the operation of the impugned Third Amendment Order, 1988 dated 22nd September, 1988 passed by the Haryana Government and permit the petitioners to sell their stocks in the market at any price available to them throughout the country on any terms and conditions as this Hon'ble Court may deem fit in the interest of natural justice.

B. S. Malik, Advocate, for the Petitioners.

S. C. Mohunta, A.G. Haryana assisted by S. S. Ahlawat, Deputy A.G., Haryana, for the Respondents.

JUDGMENT

M. M. Punchhi, J. (oral)

(1) This is a petition at the instance of a few registered dealers/ricemillers, carrying on their business in the State of Haryana, challenging the Haryana Rice Procurement (Levy), Third Amendment Order, 1988. The provision under challenge is as follows:

- "3. Levy on licensed millers.—Every licensed miller shall deliver to the Purchase Officer or such agency as may be

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appointed by the Government in this behalf, at the procurement price in any variety, seventy-five per cent of rice conforming to the specifications, or such percentage, as may be specified by the Government from time to time with prior concurrence of the Central Government, of:—

- (a) the total quantity of rice conforming to the specification owned by him which is held in stock on the date of commencement of this Order;
- (b) the total quantity of rice conforming to the specification milled by him every day out of his stocks of paddy owned or acquired by him; and
- (c) the total quantity of rice conforming to the specification purchased or otherwise acquired by him except the levy free rice covered by release certificate granted to him in accordance with clause 9 of the Order:

Provided that the quantity of Basmati rice exported from the country would be exempt from the levy in accordance with the procedure to be laid down by the Director.

- (2) (a) No miller shall sell or in any manner transfer any quantity of paddy held by him in stocks to any dealer.
- (b) No miller shall sell or in any manner transfer any quantity of paddy held by him in stock to any miller without prior intimation in writing to the concerned District Food and Supplies Controller. —”

The attack is also on the price schedule given in SCHEDULE III which is reproduced below in its entirety:

“[See Clause 2 (1)]

Procurement price of Rice

Serial No.	Classification	Price per quintal
1	2	3
1.	Common (IR 8, Jaya)	Rs 270.85
2.	Fine [Begmi, HM 95, PR 107 (Sita)]	295.60
3.	Superfine [Parmal, Ratna, RP 5-3- (Sona) PR 106, Basmati (Terricot) Pusa 150, Pusa-33, Punjab No. 1]	314.50
4.	Basmati — — —	331.15

Note.—(i) The above prices of rice are for net weight of naked grains inclusive of purchase tax and mandi charges on

paddy and depreciation of gunny bags used for packing paddy but exclusive of cost of gunny bags and taxes, if any, after ex-mill stage of rice.

- (ii) The above prices are applicable to 1988-89 crop of rice with effect from 16th September, 1988.
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(2) The grouse of the petitioners is that they are holding stock of large quantities of rice of Punjab No. 1, mentioned at serial No. 3 in the said schedule, as also Basmati, mentioned at serial No. 4 in the said schedule, as these two varieties in the agricultural year 1987-88 were levy free. It is further maintained by the petitioners that they had purchased paddy of these varieties at high prices and after milling it, expected high profits. The grievance of the petitioners is that now under the impugned order levy has been created for all qualities of rice expected to be milled from paddy brought for sale in the State making it compulsory on them to sell to the Government 75 per cent of the said rice held in stock by them and other rice to be milled and that, too, at low prices mentioned in SCHEDULE III. This is termed by the petitioners to be arbitrary and violative of the fundamental rights granted to them under Articles 14 and 19(1)(g) of the Constitution of India, besides being unreasonable and unfair.

(3) We sent for the Advocate General, Haryana to clarify the position. He is here and we have heard him.

(4) It is common knowledge that Superfine varieties mentioned at serial No. 3 go to be adulterants for Basmati rice mentioned at serial No. 4. They have all the grain qualities as that of Basmati except for the aroma in the later. Rice adulterated would partake the character of the high priced Basmati. Since Punjab No. 1 out of the super fine varieties was levy free, it contributed to the adulteration and evasion of levy of other qualities. Apparently to do away with that racket all rice of whatever quality is now under levy.

(5) The position which emerges after hearing learned counsel is that there is no immediate compulsion to the petitioners' selling the rice held in stock by them to the Department, for sub-clause (c) is the release valve making it abundantly clear that out of the total quantity of rice, conforming to the specifications, purchased or otherwise acquired by them, 75 per cent is to be given in levy whatsoever be the kind. In other words, out of the total quantity of rice

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purchased or acquired by them, irrespective of the varieties of the rice, they are required to give levy rice to the extent of 75 per cent to the Government and the choice in the offer is entirely left with the dealers/millers. They may, if it is profitable, retain super fine varieties mentioned at serial No. 3 and Basmati variety mentioned at serial No. 4, in the schedule which are high priced. They may instantly give to the Government any other varieties of rice or fine varieties of rice, mentioned at serial Nos. 1 and 2 respectively which are of less prices. All what the dealer is supposed to do is to acquire his stock and give 75 per cent of rice conforming to the specifications. There is an inbuilt safeguard in the provisions of the Control Order for adjustment. The Department has never insisted and as stated by the learned Advocate General, Haryana, would not insist on instant delivery of the levy rice from the stocks of the petitioner. Levy can be given from other purchased rice so as to conform to the provisions of law.

(6) It is otherwise noticeable that the new rice crop, pertaining to the year 1988-89, has come in the market. As is apparent from Note 2 to the Schedule II, the prices mentioned in the schedule are applicable to the 1988-89 crop of rice with effect from 16th September, 1988. There is no compulsion under the impugned order that the petitioners have to instantly surrender the 75 per cent of rice in stock so as to satisfy the levy requirements. Even new rice can be purchased or acquired by them to fulfil the levy obligation. The petitioners are at liberty to buy the new crop of rice which has already come in the market and the season is expected to swing further, and satisfy the requirements of law without incurring any loss and hold the old stocks as part of their share of 25 per cent.

(7) For what has been stated above, we are clear in our mind that there is no violation of any Fundamental Rights of the petitioners nor is the impugned order unfair or arbitrary. It requires a few adjustments here and there and the trade is expected to be discreet in that regard.

(8) There was also a challenge by the petitioners to the vires of section 3B of the Essential Commodities Act, with regard to the fixation of the price, but the learned counsel for the petitioners has abandoned the plea. We, thus, do not pronounce upon the same in this case.

(9) For the foregoing reasons, we dismiss the writ petition *in limine*. No costs.

P.C.G.