

The State of U. P.

Vs

Jai Prakash

Criminal Appeal No. 177 Of 1969

(H. R. Khanna, Y. V. Chandrachud JJ)

13.10.1972

JUDGMENT

KHANNA, J. -

1. This appeal by special leave is directed against the judgment of Allahabad High Court whereby that court set aside the conviction of Jai Prakash respondent under Clause 3(3) of the Uttar Pradesh Rice (Levy) Order, 1965 (hereinafter referred to as the Order) read with Rule 125 of the Defence of India Rules 1962.

2. The respondent holds a licence for paddy milling machine in Jansath, District Muzaffarnagar. He was prosecuted on the allegation that in 1965 he worked his paddy milling machine and produced 76 quintals of rice but did not sell 60 per cent. of the same to the State Government as required by Clause 3 of the Order. On March 8, 1966, Marketing Inspector V. D. Tyagi visited the mills premises of the respondent but did not find the said stock of rice there.

3. The plea of the respondent was that paddy in question did not belong to him but to the cultivators. As such, according to him, he was not liable to sell 60 per cent. of the rice to the State Government.

4. The trial magistrate held that the respondent had "hulled" rice at the rice mill and that there was no proof that the said rice belonged to the respondent. All the same the respondent, in the opinion of the trial magistrate, was bound to sell to the Government 60 per cent. of the rice manufactured at his mill. The respondent was accordingly convicted under Ruled 125 of the Defence of India Rules for non-compliance with Clause 3 of the Order.

5. In appeal the Additional Sessions Judge affirmed the judgment of the trial magistrate. When the matter was taken up in revision, the High Court took the view that Clause 3 of the Order was most unreasonable in so far as it dealt with rice not belonging to the licensed miller. In the opinion of the High Court, the said clause was liable to be struck down for sheer irrationality and illegality. The High Court accordingly set aside the conviction of the respondent and acquitted him.

6. We have heard Mr. Uniyal on behalf of the appellant State and are of the opinion that the acquittal of accused-respondent should not be interfered with. The Order was made by the Governor of Uttar Pradesh in exercise of the powers conferred by sub-rules (2) and (3) of Rule 125 of the Defence of India Rules. Sub-clauses (d) and (e) of Clause 2 of the Order define "licensed dealer" and "licensed miller" as under :

"(d) 'licensed dealer' means a person holding a valid licence under the Uttar Pradesh

Foodgrains Dealers Licensing Order, 1964;

(e) 'licensed miller' means the owner or other person in charge of a rice mill holding a valid licence under the Rice Milling Industry (Regulation) Act, 1958 (Act No. 21 of 1958);".

7. Clause 3 of the Order reads as under :

"3. Levy on rice produced or in stock. - (1) Every licensed miller shall sell to the State Government at the scheduled prices sixty per cent. (60 per cent.) of grades, I Special, I, II, III, IV and V rice produced or manufactured by him in his rice mill every day beginning with the date of commencement of this Order until such time as the State Government otherwise directs.

(2) Every licensed dealer shall sell to the State Government at the scheduled prices -

(a) sixty per cent. (60 per cent.) of Grades, I, II, III, IV and V rice produced or got milled by him out of his stocks of paddy every day beginning with the date of commencement of this Order until such time the State Government otherwise directs;

(b) sixty per cent. (60 per cent.) of grades, I Special, I, II, III, IV and V rice coming into his custody or possession for sale or disposal through him on commission basis or in any other manner by him every day beginning with the date of commencement of this Order and until such time as the State Government otherwise directs.

(3) No licensed miller or licensed dealer shall sell or otherwise dispose of or remove to any other place than his usual place of business or storage in a particular locality his stocks of rice unless he has sold the prescribed percentage to the State Government under sub-clause (1) or sub-clause (2), as the case may be, and obtained release certificate in token thereof in respect of stocks left in balance with him.

(4) Every licensed dealer who comes into possession of any stock of rice, as an agent of any other person otherwise than for the purpose of sale or disposal, shall -

(a) furnish full particulars of the owner of such stock to the Controller or such other person as may be authorised by him on this behalf :

(b) furnish proof, when so required, to the satisfaction of the Controller or such other person as may be authorised by him in this behalf that the licensed dealer has no power of sale or disposal over the stock; and

(c) retain the stock in his possession until a direction is received by him from the Controller.

(5) The rice required to be sold to the State Government under sub-clauses (1) and (2) shall be delivered by the licensed miller or the licensed dealer within one month of its production or otherwise coming into possession, as the case may be, to the Controller or to such other person as may be authorized by the Controller to take delivery on his behalf."

8. We are in the present case concerned with Clause 3(3) and the question which arises for determination is whether the respondent can be said to have contravened that clause because of his having allowed the removal of the stock of rice from the mill premises before selling 60 percent. of the same to the State Government. In this respect we are of the view that the ban on the sale, disposal or removal of the rice before the sale of the prescribed percentage of the stock of that rice to the State Government contemplated by sub-clause (3) of Clause 3 refers to such stock of rice as belongs to the licensed miller or licensed dealer. This is clear from the use of the words "his stock of rice" in the aforesaid sub-clause. The said words point to the inference that if the rice does not belong to the licensed miller but has been brought to the mill premises by others for the purpose of milling, the provisions of the said sub-clause would not be attracted. As the rice in question in the present case has been found to belong not to the respondent, it is manifest that he cannot be held to have contravened sub-clause (3) of Clause 3 of the Order. We are, therefore, of the opinion that the acquittal of the respondent should not be interfered with. The appeal consequently fails and is dismissed.

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