Dhanyalakshmi Rice Mills and Others

Vs

The Commissioner of Civil Supplies and Another

Shrinivasa Satyanarayana Bung

Vs

Union of India and Others

Dhanyalakshmi Rice Mills and Others

Vs

The Commissioner of Civil Supplies and Another

Nithin Kumar Co. and Others

Vs

Union of India and Others

Sri Seetharamanjaneya Rice Mills and Others

Vs

State of Andhra Pradesh and Others

Shri Rama Rice and Oil Mills and Others

Vs

State of Andhra Pradesh and Others

The Tenali Sri Ramalingaswara Rice Factory and Others

Vs

State of Andhra Pradesh and Others

M/S. Pradeep & Co.

Vs

Union of India and Others

Chadisetty Samaraju and Sons and Others

Vs

State of Andhra Pradesh and Others

Civil Appeal Nos. 2390-2391 of 1972, 604 of 1975, 2423-2437 of 1972, 2584-2586 of 1972, 281-286 of 1973, 539-540 of 1973, 2019-2034 of 1973, 653-662 of 1974 and 637, 1837-1842 of 1973,

(A.N. Ray, M.H. Beg, R.S. Sarkaria, P.N. Shinghal JJ)

16.02.1976

JUDGMENT

RAY, C.J. -

1. These appeals are by certificate from the common judgment dated March 27, 1972 of the Andhra Pradesh High Court dismissing the writ petitions of the appellants.

2. The appellants filed the writ petitions for an appropriate writ or order directing the respondent State of Andhra Pradesh to refund the sums of money collected from the appellants as administrative surcharges.

3. The appellants are dealers in foodgrains and held licences issued in accordance with the provisions of relevant statutes and control orders.

4. Under the provisions of the Essential Commodities Act, 1955 various control orders have been issued for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. The control orders contemplate regulation or prohibition of production, supply and distribution of essential commodities and trade and commerce therein.

5. The State Government exercising powers delegated to it by the Central Government in accordance with the provisions of the Essential Commodities Act issued several measures to achieve the objectives of the control orders.

6. The Government of Andhra Pradesh introduced a scheme known as "Incentive Export Scheme". Under that scheme all millers who delivered 50 per cent of their purchases to the Food Corporation of India towards mill levy would be eligible for export under the scheme. Incentive export permits were to be granted in the ratio of 2 : 3. The ratio meant that if a miller delivered two additional wagons on private trade account. The last date for delivering rice to the Food Corporation of India was fixed as May 20, 1971. The last date for issue of permits was fixed as May 31, 1971.

7. Permits were of four types. The A type of permits was for export from one block to another within the State. Under these permits administrative charges were Rs. 2.50 per quintal. The B type of permits was for export from the State of Andhra Pradesh to other States in the South. The administrative charges under the B type permits were Rs. 10 per quintal. The C type permits was for export to any State outside Andhra Pradesh. The administrative charges for C type permits were Rs. 8 per quintal. The fourth type of permits was for export of broken rice under the A type or the C type permits and the surcharges were Re. 1.00 per quintal.

8. By an order dated July 24, 1967 under Section 5 of the Essential Commodities Act, 1955 the Central Government directed that the powers conferred on it by Section 3(1) of the Essential

Commodities Act, 1955 to make orders to provide for matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i) and (j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions (1) that such power shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf, and (2) that before making any order relating to any matter specified in clauses (a) and (c) or in regard to regulation of transport of any foodstuffs under clause (d) of Section 3(2) of the Essential Commodities Act, the State Government shall also obtain prior concurrence of the Central Government.

9. By an order dated September 30, 1967 in exercise of powers conferred by Section 5 of the Essential Commodities Act the Central Government made an amendment to the order dated July 24, 1967. The amendment was to the effect that before making an order relating to any matter specified in clauses (a), (c) and (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff under clause (d) the State Government shall obtain the prior concurrence of the Central Government.

10. The State of Andhra Pradesh by an order dated July 22, 1968 pursuant to the representation of the millers for export of rice outside the block but within the State passed orders that permits for export of rice would be issued subject to the fulfillment of their commitments and that administrative charge of Rs. 2.50 per quintal of rice would be collected from the millers before the issue of permits.

11. Under the Southern States (Regulation of Export of Rice) Order, 1964, Andhra Pradesh Rice and Paddy (Restriction on Movement) Order, 1965 and the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale) Order, 1967 every dealer or miller was required to supply a minimum quantity of rice to the State Government or its nominee and the balance, that is to say levy free rice, could be sold in the open market or exported to the places outside the block or State under permit issued by the State Government. The representation of the millers for permission to export rice outside the block or the State was that the denial of permission to export rice would result in deterioration of stocks and consequential loss to both the trade and consuming public.

12. The appellants applied for and obtained permits by fulfilling two principal conditions. One was to satisfy the statutory requirements of supply to the Food Corporation of India and the other was payment of administrative surcharges for every quintal of rice.

13. In the petitions before the High Court the appellants alleged that they paid the surcharge under "trying circumstances", "mistaken belief and impression" that "the respondent has the right to collect the surcharge". The appellants also alleged that having come to know about the correct legal position in the matter they asked the respondents to refund any administrative surcharges. The respondents refused to refund any administrative surcharge.

14. The appellants contended in the petitions that the respondent Government has no right to collect any administrative surcharge, and, therefore the amount should be refunded. The appellants alleged that they made the payments under mistake of law.

15. The High Court held that the levy of administrative surcharges "is not backed by valid legislative sanction". The High Court said that the agreements between the State and the appellant millers for export were an executive scheme undertaken by the State but liability to pay tax must be covered by the statute. The High Court expressed the view that there could be no estoppel when

both parties are under a mistake of law.

16. The High Court however held that the appellants were not entitled to any relief on three grounds. First, the administrative surcharges were paid voluntarily by the appellants. The appellants themselves represented for issue of permits. The appellants obtained the permits. They exported rice under the permits. The High Court, therefore, held that the appellants cannot claim refund of the entire amount without giving due credit for the expenses or charges incurred by the Government for the issue of permits and for the supervision of export, transport and other administrative charges. The second reason given by the High Court was that the court not be justified in exercising discretion in favour of the appellants who voluntarily paid the administrative charges, obtained the permits and derived considerable profits therefrom. The third reason given by the High Court was that there was undue delay in claiming the refund.

17. The appellants contended that the three grounds on which the High Court dismissed the writ petitions were unsustainable. It is said on behalf of one of the appellants (Civil Appeal Nos. 2584 to 2586 of 1972) that in their applications dated February 10, 1970 for refund of charges paid by them the appellants gave particulars of payments showing the dates of payment, quantity covered by the permit, the amount of charges paid, the number of permit against which payment was made as well as the challan under which the payment was made. Thereafter the appellants called upon the Collector to furnish copies of regulations under which surcharge was collected. The Collector by letter dated July 28, 1970 informed the appellants that the State Government alone was competent to give the copy of the relevant rule or regulation under which surcharge was collected. The appellants referred to the letters dated December 22, 1970 and January 2, 1971 by which the State Government refused to grant certified copy of the rule or regulation on the ground that it was part of the official correspondence not meant to be supplied to the private party. In this background the appellants contended that since February 10, 1970 when the appellants demanded refund the appellants from time to time made application for refund and the last reminder was on December 30, 1971. Some of the appellants filed their writ petitions in the High Court in the month of September, 1970 and some of them filed their writ petitions in the month of January, 1972. It was, therefore, said that the applications for refund were all made within three years from the date of payment and the High Court should not have dismissed the writ petitions on the ground of delay.

18. The appellants next contended that the pleadings were not vague and the appellants in Civil Appeal Nos. 2584 to 2586 of 1972 gave all details of the payments and, therefore, the High Court should not have dismissed the writ petitions on the ground of vagueness of particulars and pleadings.

19. It was also said on behalf of the appellants that if the levy as well as collection of administrative surcharges was without authority of law the High Court was in error in refusing any relief to the appellants on the ground that the payments were voluntarily made.

20. The appellants relied on the decision of this Court in State of Kerala v. K. P. Govindan Tapioca Exporter ((1975) 2 SCR 635 : (1975) 1 SCC 281 : 1975 SCC (Tax) 41) as an authority for the proposition that the levy of administrative surcharge is illegal. In the Tapioca case, under the Kerala Tapioca Manufacture and Export (Control) Order, 1966 no person could export tapioca except in accordance with permit. The State Government levied administrative surcharge under a scheme. The State contended that the administrative surcharge was in effect and substance a licence fee charged in exercise of the police powers of the State for permitting the appellants by grant of permits to export tapioca. This Court held that the scheme was not an order under any of the provision of the

Essential Commodities Act and no licence fee or fee for grant of permit was imposed by the Kerala Tapioca Control Order. The Kerala Tapioca Control Order only provided for levy of administrative surcharge. The Kerala Tapioca Control Order came into existence on June 9, 1966. Even before the promulgation of the order administrative surcharge was levied under a scheme formulated by the State Government on April 15, 1966 published in the Kerala Gazette on May 3, 1966. The rate of administrative surcharge levied on tapioca under the scheme dated April 15, 1966 varied from time to time. This Court found that the order dated April 15, 1966 formulating the scheme was not an order under any of the provision of Section 3 of the Essential Commodities Act. The scheme did not impose any licence fee. The scheme merely provided for levying of administrative surcharge. The orders levying administrative surcharge which followed the Tapioca Control Order did not refer to the exercise of any power under the order. Therefore, this Court held that the administrative surcharge in the Tapioca case was bad and the realisations were without any authority of law.

21. The appellants contended relying on the decision of this Court in State of Madhya Pradesh v. Bhailal Bhai ((1964) 6 SCR 261 : AIR 1964 SC 1006 : (1964) 15 STC 450) that the High Court in exercise of powers under Article 228 has power to order refund and repayment of tax illegally collected. The appellants submitted that the State had no power under any statute or any authority to impose and collect administrative surcharge and, therefore, the payments which were made by the appellants were made under mistake of law and the State was liable to refund them. The appellants contended that the administrative surcharge was neither in the nature of a fee nor was it a tax and there was no authority of law to support the levy and collection of administrative surcharge. It was said on behalf of the appellants that neither the Essential Commodities Act, 1955 not the Southern States (Regulation of Export of Rice) Order, 1964 nor the Andhra Pradesh Rice and Paddy Order, 1965 nor the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale) Order, 1967 conferred any power to levy administrative surcharge.

22. The respondents contended that the permits were granted pursuant to the representation of the appellants that unless they were allowed the movement of rice to places outside their blocks or outside the State they could not sell rice locally because there was no demand. The respondents further said that for ensuring export of rice the administrative machinery had to be set up. The permits were granted on terms and conditions of payment of surcharge and the appellants voluntarily paid surcharge and received benefits under permits. The respondents also said that the permits were contractual obligations between the appellants and the respondents.

23. The High Court in exercise of its discretion refused to grant a mandamus on a consideration of facts and circumstances of the case. The two principal matters which weighed with the High Court are these. First, the appellants voluntarily paid the amounts and derived full advantage and benefit by utilizing the permits. Second, there is undue delay in claiming refund. Where the High Court has in exercise of discretion refused to grant a writ of mandamus, this Court does not ordinarily interfere. [See Municipal Corporation of Greater Bombay v. Advance Builders (India) Private Limited ((1972) 1 SCR 408, 420 : (1971) 3 SCC 381); D. Cawasji & Co. v. State of Mysore ((1975) 2 SCR 511, 527 : (1975) 1 SCC 636 : 1975 SCC (Tax) 172).]

24. Refund of illegal taxes stands on a different footing from claiming refund of surcharge paid under terms and conditions of permits. The only basis of tax is legislative sanction and if the legislative sanction fails, the collection of tax cannot be sustained. In the present case the claim for refund is to be judged between the rival contentions. The appellants contend that there is no legislative sanction for collection of administrative surcharge. The respondents on the other hand support the collection of administrative surcharge first as a condition for permit and second as an

item of maintenance charges in the maintenance and supervision of the scheme for export of rice.

25. The respondents also contend that the appellants have no right to claim refund under Section 72 of the Indian Contract Act because the payments were neither under mistake of law nor under coercion. It is said by the respondents that there is no coercion because the export scheme was voluntary. Again, it is said that there is no mistake because the payments made were in fact due as part of the export scheme initiated at the instance of the appellants. The respondents deny the claim of the appellants on the further ground that the appellants having derived the benefit and caused detriment to the Government are estopped from questioning the validity of the payments voluntarily made. Another ground on which the respondents challenge the claim of the appellants is that the payments were part of the consideration of the agreement entered into by the appellants with State. If it be assumed that the agreements are illegal, the respondent contends that the appellant being a party to the same cannot sue for recovery of money paid.

26. All the matters were covered by the common judgment. In some cases the claims were beyond three years from date of the payments. In some cases they were within a lesser time but the ground of delay on which the High Court exercised discretion is not confined purely to period of limitation but is bound up with matters relating to conduct of parties in regard to payments pursuant to agreements between the parties.

27. The remedy under Article 226 is not appropriate in the present cases for these reasons as well. First, several petitioners have joined. Each petitioner has individual and independent cause of action. A suit by such a combination of plaintiffs would be open to misjoinder. Second, there are triable issues like limitation, estopped and questions of fact in ascertaining the expenses incurred by the Government for administrative surcharges of the scheme and allocating the expenses with regard to quality as well as quantity of rice covered by the permits.

28. The appellants contended that in all cases of claim for refund of money, the payments were voluntary and, therefore, the High Court was in error in refusing refund because of the voluntary character of payment. In cases relating to refund of payments of tax which is illegal the voluntary character of payment is that taxpayer has no say but is compelled to pay. In the present cases the questions are whether it can be said that payments of administrative charges were voluntary in order to reap benefits of export of rice covered by the permits. The contention of the respondents that the export scheme was framed at the instance of the appellants and that the administrative surcharge is the consideration for preparation, maintenance and supervision of the scheme raises questions which can be solved by a suit. A mandamus will go where there is a specific legal right. Mandamus may be refused where there is an alternative remedy which is equally convenient, beneficial and effectual. If there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done. Those are cases where justice cannot be done unless a mandamus is to go. R. v. Bristol and Exeter Railway Co. ((1845) 3 Ry & Can Cas 777 : 5 LTOS 215) is an authority for the proposition where the corporation could be compelled to pay a sum of money pursuant to an agreement which could not be enforced by action because the agreement was not under seal. This Court is Lekhraj v. Deputy Custodian ((1966) 1 SCR 120 : AIR 1966 SC 334) and Har Shankar v. Deputy Excise and Taxation Commissioner ((1975) 1 SCC 737) held that contractual obligations cannot be enforced through a writ of mandamus.

29. The view of this Court in Sales Tax Officer, Banaras v. Kanhaiya Lal Mukundlal Saraf ((1959) SCR 1350 : AIR 1959 SC 135 : (1958) 9 STC 747) was that a mandamus could be issued when the assessments were found to be illegal. In Suganmal v. State of Madhya Pradesh (AIR 1965 SC 1740 :

(1965) 16 STC 398) this Court said that the mandamus for recovery of money could be issued only when the petitioner was entitled to recover that money under some statute. In Burmah Construction Co. v. State of Orissa ((1962) Supp 1 SCR 242 : AIR 1962 SC 1320 : (1961) 12 STC 816) this Court said that normally the parties are relegated to a suit to enforce civil liability arising out of a breach of contract or a tort to pay an amount of money. An order for payment of money may sometimes be made to enforce a statutory obligation. In the State of Kerala v. Aluminium Industries Ltd. ((1965) 16 STC 689 (SC) the refund claimed was by reason of the moneys being paid under mistake of law and the collection having been made wrongly. The petitions solely for the writ of mandamus directing the State to refund the moneys in the present case have been rightly refused by the High Court on the grounds of delay, insufficiency of particulars and pleadings, and voluntary payments. The additional reasons in our opinion are that various questions of fact arise as to whether there was really mistake or it was a case of voluntary payment pursuant to contractual rights and obligations.

30. The plea of mistake is a bare averment in the writ petitions. The payments did not disclose the circumstances under which the alleged mistake occurred and the circumstances in which the legal position became known to the appellants. The respondents contradicted the plea of mistake. A triable issue arose as to whether there was a mistake in paying the amounts and when exactly the mistake occurred and under what circumstances.

31. Section 72 of the Contract Act states that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. The mistake is material only so far as it leads to the payment being made without consideration. This Court has said that the true principle is that if one party under a mistake of law pays to another money which is not due by contract or otherwise that is to be repaid. When there is a clear and unambiguous position of law which entitles a part to the relief claimed by him equitable considerations are not imported. A contract entered into under a mistake of law of both parties falls under Section 21 of the Contract Act and not Section 72. If a mistake of law had led to the formation of a contract, Section 21 enacts that contract is not for that reason voidable. If money is paid under that contract, it cannot be said that the money was paid under mistake of law; it was paid because it was due under a valid contract, and if it had not been paid payment could have been enforced. (See Shiba Prasad Singh v. Srish Chandra Nandi (76 IA 244 : AIR 1949 PC 297). See also Pollock and Mulla : Contract Act, 9th Ed. by J. L. Kapur, pp. 519-520.) In the present case, the respondents do not support the demand for administrative charges either as a tax or as a fee but as a term and condition of permit and as a term of agreement between the parties for the maintenance and supervision expenses for the scheme for export permits of rice from one block to another within the State or outside the State.

32. It may be stated here that in cases where the State collected administrative charges but could not grant permits the State refunded moneys to such person. It is only where millers have obtained permits and taken advantage thereof that the State contends that there is no mistake and that the payments were made voluntarily with full knowledge of facts.

33. For these reasons the appeals are dismissed. If the parties are so advised they may institute suits and all rival contentions would be open to both parties. Parties will pay and bear their own costs.

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