

Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others

Vs

State of Andhra Pradesh

Sri Jayalakshmi Rice and Oil Mills Contractors Co. and Others

Vs

State of Andhra Pradesh

Civil Appeals Nos. 805-806 and 972 to 977 of 1973

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

22.03.1976

JUDGMENT

JASWANT SINGH, J. -

1. This batch of Appeals Nos. 805, 806 and 972 to 977 of 1973 by certificate from the judgments and decrees of the High Court of Andhra Pradesh in Appeals Nos. 766 of 1968, 18 of 1969, 779 of 1968, 780 of 1968, 782 of 1968, 783 of 1971, 784 of 1968 and 785 of 1968 raise a simple but an interesting question namely, whether for the supplies of rice made by the appellants in January and February, 1964, they are to be paid price according to the rate specified in the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 dated March 23, 1964 or according to the rate specified in the Rice (Andhra Pradesh) Price Control Order as it stood in 1963. The questions arises in the following circumstances.

2. The appellants are millers and carry on the business of paddy and rice in the State of Andhra Pradesh. On July 31, 1959, the Governor of Andhra Pradesh in exercise of the power conferred on him by Section 3 of the Essential Commodities Act, 1955 (Central Act X of 1955) hereinafter referred to as 'the Act' made an order called the Andhra Pradesh Rice Procurement (Levy) Order, 1959. Clause 3 of the order required every dealer and every miller to sell to the State Government on requisition served on him by the requisitioning authority at the controlled price (a) 40 per cent of the quantity of rice held in stock by him at the commencement of the order and (b) 40 per cent of the total quantity of rice purchased by him everyday beginning with the commencement of the order. Clause 2(a) of the order defined "controlled price" as meaning the maximum price fixed under Section 3 of the Act for the sale of rice by the Central Government from time to time. On December 19, 1963, the Central Government in exercise of the power conferred on it by Section 3 of the Act made an order called the Rice (Andhra Pradesh) Price Control Order, 1963, which extended to the districts of Krishna, West Godavari, East Godavari, Guntur, Nizamabad, Warangal and Nellore in the State of Andhra Pradesh. Clause (2) of the order provided that the maximum prices at which the varieties of rice specified in column (1) to the schedule to that order were to be sold in wholesale quantities would be as specified in the corresponding entries in column (2) of said schedule. The said schedule inter alia provided that Akkulu rice would be sold at Rs. 46.89 per quintal. In compliance with the requisitions served on them by the requisitioning authority of the

State of Andhra Pradesh, the appellants sold various quantities of that variety of rice to the Government of the State from January 26, 1964 to February 21, 1964, and were paid at the aforesaid rate of Rs. 46.89 per quintal. By means of the Rice (Andhra Pradesh) Price Control (Second Amendment) Order, 1964, dated March 20, 1964, the Central Government amended sub-clause (1) of Clause 2 of the Rice (Andhra Pradesh) Price Control Order, 1963 and ordained that in the said sub-clause for the words "the Schedule", the words and figures "Schedule I" shall be substituted. On March 23, 1964, the Central Government issued the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964. Clause 2 of the order Control (Third Amendment) Order, 1964. Clause 2 of the order ran thus :

2. In the Rice (Andhra Pradesh) Price Control Order, 1963, in Schedule I, for the varieties of rice and the maximum prices therefor, the following shall be substituted namely :

#-----	Varieties of rice	Maximum
Price per quintal-----		I. Districts
other than Nellore* * * *	Akkulu 52.25* * * *	-----
-----##		

3. On the issue of this order, the appellants made representations to the Government of Andhra Pradesh requesting that for the aforesaid supplies of Akkulu rice made by them from January 26 to February 21, 1964, they should also be paid at the enhanced price of Rs. 52.25 per quintal. As the representations made by them did not evoke a favourable response, they filed suits in the court of the Subordinate Judge, Machilipatnam for recovery of the difference between the controlled prices specified in the Rice (Andhra Pradesh) Price Control Order, 1963, dated December 19, 1963 and Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964. The suits filed by them were decreed by that court. Affrieved by these judgments and decrees, the State of Andhra Pradesh preferred appeals to the High Court at Hyderabad which were allowed on the ground that as the supplies of rice were made by the appellants before the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, they were entitled only to the price specified in the schedule to the Rice (Andhra Pradesh) Price Control Order, 1963. Dissatisfied with these judgments and decrees, the appellants applied for certificate under Article 133(1) of the Constitution which was granted to them.

4. The sole question for determination in these appeals, as already indicated, is whether the appellants were to be paid price for the supplies of rice made by them from January 26, 1964 to February 21, 1964, at the rate of Rs. 46.89 per quintal - the rate specified in the Rice (Andhra Pradesh) Price Control Order, 1963, dated December 19, 1963 or at the enhanced rate of Rs. 52.25 per quintal as fixed by the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 dated March 23, 1964.

5. Mr. Nariman appearing on behalf of the appellants has laid great emphasis on the word "substituted" occurring in Clause 2 of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 and has urged that the claim of the appellants cannot be validly ignored, Elaborating his submission, Counsel has contended that as the prices fixed by the Government are meant for the entire season, the appellants have to be paid at the controlled price as fixed vide the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, regardless of the dated on which the supplies were made. We cannot accede to this contention. It is no doubt true that the literal meaning of the word "substitute" is 'to replace' but the question before us is from which date the substitution

or replacement of the new schedule took effect. There is no deeming clause or some such provision in the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 to indicate that it was intended to have a retrospective effect. It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time of the Amending Act came into force. See *Nani Gopal Mitra v. State of Bihar* ((1969) 2 SCR 411 : AIR 1970 SC 1636 : 1970 Cri LJ 1396).

6. The aforesaid sales in the instant cases having been made by the appellants before the coming into force of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, and the property in the goods having passed to the Government of Andhra Pradesh on the date the supplies were made, the appellants had to be paid only at the controlled price obtaining on the date the sales were effected and not at the increased price which came into operation subsequently. This view is in consonance with the provisions of Section 3 of the Act and the Andhra Pradesh Rice Procurement (Levy) Order, 1959 which clearly indicate that the price payable to the dealers and millers for the supplies of rice made by them is the control price obtaining on the date when the sale is made. Similar view is taken in the unreported decision dated April 20, 1962 of this Court in *K. Appayya Shanbhague and Co. v. State of Mysore* (Decided on April 20, 1962 (SC)), where it was laid down that the order made under Section 3(2)(f) of the Act are offers of sale which the person on whom a requisition is served has no option but to accept and that the price that has to be paid is the controlled price fixed by the Government under Section 3(2)(c) of the Act on the date when the goods are ascertained or when the property in the goods passes to the buyer. This decision was followed by the High Court of Andhra Pradesh in *Union of India, represented by the Secretary, Ministry of Food and Agriculture, Government of India, New Delhi v. Kanuri Damodaraiah & CO. Alluri Venkatanarasiah* ((1968) 1 Andh WR 81) where it was held that an order under Section 3(2)(f) amounts to an agreement for sale and the price payable for the quantities of rice supplied is a price payable for the quantities of rice supplied is a price notified under the provisions of Section 3(3) of the Act.

7. In the instant cases, the sales having been made before the coming into force of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, the appellants cannot justifiably claim the benefit of the increased price specified in the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964. The acceptance of the contention raised on behalf of the appellants will lead to grave consequences. It will have the effect of reopening the transactions past and closed and would thus give rise to lots of difficulties.

8. Mr. Nariman has, in support of his contention relied on the following passage occurring at p. 394 in *Craies on Statute Law* (Sixth Edition) :

#### Explanatory and declaratory Acts Retrospective

Where a statute is passed for the purpose of supplying an obvious omission on a former statute, or, as Parke, J. (afterwards Baron Parke) said in *R. v. Dursley* ((1832) 3 B & Ad 465, 469 : 1 LJMC 37 : 110 ER 68) "to explain a former statute", the subsequent statute has relation back to the time when the prior Act was passed. Thus in *Att. - Gen. v. Pougett* ((1816) 2 Price 381, 392 : 146 ER 130) it appeared that by a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s. 4d.,

but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson, C.B., in giving judgment for the Attorney-General, said :

The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act.

Where an Act is in its nature declaratory, the presumption against construing it retrospectively is inapplicable.

9. This passage has, in our opinion, no bearing on the question before us in view of the fact that the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964 is neither explanatory nor declaratory, as sought to be interpreted by the Counsel.

10. The contention of Mr. Nariman that the controlled prices fixed by the Central Government for sale of rice are seasonal prices not being based upon any cogent material cannot also be accepted.

11. The High Court was, therefore, right in allowing the aforesaid appeals preferred by the respondent and reversing the judgment and decrees passed by the Subordinate Judge, Machilipatnam.

12. In the result, the appeals fail and are dismissed with costs limited to one set.

</html