

Tapan Kumar Sadhukhan

Vs

Food Corporation of India and Others

Civil Appeal No. 10685 of 1996

(CJI A. M. Ahmadi, N. P. Singh, S. C. Sen JJ)

20.08.1996

JUDGMENT

AHMADI, C.J.

1. Leave granted.

2. The present civil appeal arises out of an order of the Division Bench of the High Court of Calcutta dated 13-10-1993 vacating an interim order of injunction passed by a Single Judge of the same court. The sequence of events up to the filing of this special leave petition may be narrated as under.

3. The Food and Supplies Department of the Government of India issued instructions to the Senior Regional Manager, Food Corporation of India, West Bengal region, Respondent 2 herein, on 28-4-1986 regarding disposal of substandard parboiled rice unacceptable to the Government of West Bengal through auction/tender. The Food and Supplies Department of the Government of West Bengal laid down certain conditions for disposal of such stocks of rice by the Food Corporation of India. The important conditions relevant for the present matter are as under :

"(1) All the stocks proposed to be auctioned should at first be jointly inspected by the Quality Control Staff of this department and the Food Corporation of India. Clear markings should be made on the stocks unfit for human consumption to prevent any mixture of these stocks with the stocks fit for human consumption.

(2) Substandard stocks should be sold to established cattle/poultry feed manufacturers only.

(3) Stocks for human consumption should be sold to licensed rice dealers only."

4. By a subsequent communication, the Department of Food and Civil Supplies substituted the word 'substandard' appearing in para 2 of the aforesaid communication by the word 'damaged'. On 2-8-1993, the Food Corporation of India issued a tender notice inviting tenders from the registered/licensed rice dealers for sale of 11,683 M.T. of substandard rice. The relevant clauses of the tender notice dated 2-8-1993 are as under :

"The above stock of rice is presently not fit for human consumption, so it will be subject to upgradation by the purchasers before issue for human consumption.

Out of the above quantity some stock in which the percentage of damaged grains are presently

beyond PFA limits, which will have to be brought within the said limit by the purchasers as they are not fit for human consumption so long as they remain beyond PFA limits. Tenderers shall have to give an undertaking to the effect that no stock will be issued for human consumption without upgradation and without bringing them in the PFA limits.

Stocks lying in S.R. Areas will have to be moved out of S.R. Areas by the purchasers after obtaining movement permit from Food and Supplies Department, West Bengal.

Tender documents containing details of terms and conditions for sale of substandard rice can be had from Commercial Division of FCI, 6, Royd Street, Calcutta-16, on payment of Rs. 100 in cash from 6-8-1993 to 17-8-1993 between 11.00 a.m. to 2.00 p.m."

5. Two licensed rice dealers who are Respondents 6 and 7 in the present civil appeal filed writ petitions before the High Court challenging the tender notice as being violative of the West Bengal Rice and Paddy (Licensing & Control) Order, 1967 as amended from time to time and also being violative of the Government circular issued in that regard. The learned Single Judge of the Calcutta High Court made an interim order dated 3-9-1993 directing the Quality Control Committee of the Food Corporation of India to submit a report as to whether the rice which was the subject-matter of the tender notice dated 2-8-1993 was capable of being upgraded for human consumption. Before submitting the report, the Quality Control Committee was also to invite the food technologists from the Central Government for their views. This interim order was challenged in appeal which was heard and disposed of by a Division Bench by an order dated 13-10-1993 which is the impugned order in this case. The injunction issued by the Single Judge was vacated and detailed instructions to deal with the stock of rice were issued. The relevant portion of the order is as under :

"Accordingly considering the facts and circumstances of the case, the balance of convenience and all other relevant factors, we are of the view that interim order of injunction should be vacated on this condition that the tender should be finalised and the goods may be delivered to the successful tenderers on condition that the same is brought within the required standard as laid down in the Prevention of Food Adulteration Act, 1954 and that after the upgradation is made, the same should be checked and examined by the Directorate of Inspection, Quality Control, Government of West Bengal and only after the said authority gives a certificate and clearance that the same was fit for human consumption and not damaged and/or unfit for human consumption. For this purpose the lifted stock should be stored at a place which should be immediately notified to the Directorate of Inspection and Quality Control Department of Food and Supplies, Government of India, 11, Mirza Galib Street, Calcutta-7 and without the permission and obtaining a clearance certificate from the authority who would examine the stock upon upgradation that it is fit for human consumption. The successful tenderers shall also file written undertaking before the trial Judge to the extent that they will keep the stock after lifting on a particular godown to be notified to that Quality Control Directorate within 24 hours from the storage and shall not remove from that place without standardisation and without obtaining a certificate and clearance on examination of the goods certifying that the same is fit for human consumption. Further no part of the said stock of rice should be released in public distribution system without having such certificates from the competent authority."

6. The appellant, Tapan Kumar Sadhukhan, claims to be interested in the subject-matter of the case

as proprietor of one M/s Ma Kali Trading Company dealing in manufacture and supply of cattle food, poultry food, manure etc. as a registered contractor of Respondent 1. His plea is that rice which was unfit for human consumption was sought to be sold as substandard/damaged rice, subject to upgradation by the purchasers.

7. The appellant further claims that the Quality Control Manual issued by Respondent 1 in 1992 relating to the Central legislation regarding foodgrain handling makes no provision for sale of substandard/damaged rice for human consumption and does not prescribe that such substandard/damaged rice can be upgraded for making it fit for human consumption. The appellant expresses concern that while selling substandard rice in question, Respondent 1 was not taking any responsibility about the manner in which the seller would sell the same after having purchased the substandard rice and it depended entirely on the undertaking to be submitted by the purchaser for upgradation of the products to the standard quality before selling the same for human consumption.

8. The appellant further says that even according to the manual of Respondent 1 the stock being substandard/damaged could be sold only to cattle/poultry feed manufacturers or used as manure. The appellant claims locus standi to file the special leave petition as being a cattle/poultry feed manufacturer interested in buying the stock in question.

9. On 5-11-1993, this Court stayed the implementation of the impugned order pending notice to the respondents.

10. In response, Respondent 1 submitted that the appellant had no locus standi whatsoever to file the petition as he was not a party before the Calcutta High Court. Respondent 1 further submitted that 'substandard' rice is far better than 'damaged' rice and that the petitioner is trying to buy such substandard rice at the price of damaged rice and thereby attempting to make profit at the cost of the exchequer. Respondent 1 denies that the rice is not capable of being upgraded for human consumption and submits that since the Corporation did not have the necessary infrastructure for the upgradation process, it had to sell the stock to the purchasers who could upgrade the rice. Respondent 1 says that rice is categorised as category 'A' (good quality), category 'B' (very fair quality), category 'C' (fair quality) and category 'D' (average quality), and that rice of categories C and D requires to be upgraded or improved before being sold for human consumption and that if the rice contains less than 15 per cent damaged grains and foreign matter, it is said to be substandard and if the lot contains more than 15 per cent damaged grain and foreign matter apart from defective appearance, smell, colour and contamination, etc., the same is categorised as damaged rice which is fit only for cattle/poultry feed manufacture. Respondent 1 claims that the tender notice was within the authority granted by the Government of India and within the provisions of the Food Adulteration Act. Respondent 1 had accordingly taken a specific undertaking from the tenderers that they would sell the stock only after upgradation to make the rice fit for human consumption. Respondent 1 submits that the impugned order is connect since it prevents the chances of the rice being sold for human consumption without upgradation while ensuring that the stock of rice does not further deteriorate in the godowns of Respondent 1.

11. Keeping in view the conflicting claims of the parties and the risk to the health of the citizens, we made an order on 28-2-1994 directing Respondent 1 "(1) to state the process of upgradation; (2) what measures can be taken to ensure that before the rice enters the market it is upgraded and (3) what objection, if any, it has to the learned Single Judge's direction for a report to be submitted by a Quality Control Committee of the FCI itself". Respondent 1 in its additional affidavit stated that the rice could be upgraded by a process of sieving, cleaning, winnowing, polishing, remilling,

processing, reconditioning, etc. To ensure that the stocks of rice enter the market only after upgradation, Respondent 1 has taken the following measures : (1) stocks are sold to licensed dealers after being specifically informed that the rice is unfit for human consumption and the sale of stocks to the dealers is intimated to the State Government; (2) stocks are sold on a specific stipulation that such stocks can be sold to the public only after the same are upgraded and made fit for human consumption; (3) on the basis of information given to the State Government, the statutory authorities will ensure that the stocks are not sold to the public without making the same fit for human consumption and bringing the same within PFA limits.

12. As for the last direction, Respondent 1 stated that the compliance of the directions of the learned Single Judge of the Calcutta High Court would result in loss of time during which the stock of rice would further deteriorate and that it was in the interest of the Corporation as well as the public that the stocks were immediately sold to the tenderers. Respondent 1 also constituted a Committee comprising of senior officers from the quality control wing, who first checked 427 lots of lower category substandard rice representing about 11,683 M.T. held in 24 FCI depots in the State of West Bengal which were the subject-matter of the tender dated 2-8-1993 on random check basis and also scrutinised the results/findings of the analysis done by the earlier categorisation committees at different levels. The Committee found that the stocks which are the subject-matter of the present case are capable of being upgraded by tenderers by employing various processes of upgrading, viz., sieving, cleaning, winnowing, polishing, remilling, reprocessing and reconditioning to make the rice fit for human consumption. The report of the Committee was also filed. Appended to the report were statements showing stackwise analysis results in respect of different stocks, all of which contain a remark to the following effect :

"All stocks/stacks of LC/substandard rice have developed an unpleasant smell and have become dull in appearance in prolonged storage."

13. Respondent 1 did not have the infrastructure for upgradation and so the dealers would have to be entrusted with the responsibility of upgrading the stock. The counsel for the appellant, however, insisted that the rice was not fit for human consumption and that the report of the Quality Control Committee of Respondent 1 could not be taken as an independent report. On 2-5-1994, we, on the basis of the above, made the following order :

"Taking into consideration the above submissions we appoint a two member Committee comprising one expert to be nominated by each of the Directors of Indian Agricultural Research Institute and Indian Council of Agricultural Research who will submit a report to this Court within a fortnight from today. The Registrar of the Court will send an intimation at once. The officers of the Food Corporation of India will extend all necessary assistance to the said two members for enabling them to complete their task. The expenses for the same will be reimbursed by the Food Corporation of India. We direct the Food Corporation of India to deposit a sum of Rs. 20,000 in this Court in the first instance. The Directorate may initially bear the cost and communicate the same to the Food Corporation of India under advice to this Court. As soon as the communication is received the Food Corporation of India will fully reimburse the cost and charges incurred by the said two experts. Let the matter come up after the report is received."

14. The Committee consisted of Dr S.L. Mehta, Head of the Division of Biochemistry, IARI and Dr R.P. Kachra, formerly Head, Post-Harvest Engineering Division at Central Institute of Agricultural

Engineering, Bhopal and presently Assistant Director General (Process Engineering), ICAR, New Delhi. They collected the samples from the FCI godowns at Cossipore, Midnapore and Shalimar. The samples were sent to Delhi for analysis. The Committee observed as under :

"All the rice samples had developed off-flavour and also discoloration. This varied from stack to stack and from godown to godown. The stocks at Midnapore were better stored than samples at Cossipore and Shalimar. The samples were infested in a large number of cases specially at Cossipore and Shalimar. At Shalimar, many of the stocks had developed deep yellow colour. In the present form, the samples were certainly not suitable for human consumption and did not conform to standards. The major question before the Committee was whether the stocks could be upgraded to make them fit for human consumption. For this reason, the samples were taken to IARI, New Delhi for cleaning, milling and cookability etc.

The Committee on scrutiny of the records furnished by FCI observed that the stocks at Cossipore, Midnapore and Shalimar represented less than half of the total stock under dispute. Since the rice was stored in different godowns throughout the State, it was not feasible for the Committee to go to different places in the short time at its disposal. The Committee therefore, directed Mr M.K. Mitra, DM (QC), Zonal Office, Calcutta and Mr S.K. Dutta, DM (QC), Regional Office, Calcutta to go to different places indicated by the Committee, where large stocks are held and to draw samples personally and send these to IARI for analysis. 32 samples were drawn by them from rice stocks held at different places as per the list attached. These also included additional samples drawn from Cossipore and Shalimar because earlier Quality Control Team of FCI had not tested the samples from many of these stocks which in the opinion of the Committee, represented larger stock."

15. The Committee proceeded to give specific recommendations stackwise as to which stocks were suitable and could be upgraded for human consumption and which were not suitable and could not be upgraded. The Committee concluded thus :

"The total stocks tested by the Committee represent little over 50 per cent of the total stocks. The Committee felt that wherever all the samples are suitable for upgradation, the remaining stocks may also be taken up for upgradation. Whereas in other depots, the Quality Control Team of FCI may be requested to test each stock after cleaning, milling etc. and then give suitable recommendations as has been done by this Committee. The stocks which have been marked as NS (not suitable for upgradation) cannot be made fit for human consumption, because we have tested it even by milling. After milling, there is no off-flavour in the samples, but discolouration which is light deep yellow cannot be removed."

16. The report shows that all the samples from FSD Midnapore were suitable for human consumption but most of the samples from the other depots, viz., FSD Cossipore, FSD Sitarampur, ARDC Gopalpur FSD Shalimar and CWC Shyamnagar South Lute Mill were not suitable for human consumption. Needless to say, the stocks found unsuitable for human consumption cannot be sold to any rice dealer and have to be disposed of for purposes other than human consumption in the manner prescribed by the Government. The stock that is found suitable again cannot be immediately used for human consumption for, as the expert report says, that can be so used only after being upgraded.

17. The next question is whether the upgradation can be left to the volition of the dealers or whether

they should be bound by some further conditions in the matter. It is to be remembered that Article 47 of the Constitution directs the State to raise the level of nutrition and the standard of living and to improve public health.

18. The first respondent, FCI, is an agency of the State. It was established under the Food Corporation Act, 1964. The functions of the Corporation are mentioned in Section 13 of the Act as under :

"13. Functions of Corporation. - (1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to undertake the purchase, storage, movement, transport, distribution and sale of foodgrains and other foodstuffs.

(2) Subject as aforesaid, the Corporation may also, with the previous approval of the Central Government, -

(a) promote by such means as it thinks fit the production of foodgrains and other foodstuffs;

(b) set up, or assist in the setting up of, rice mills, flour mills and other undertakings for the processing of foodgrains and other foodstuffs; and

(c) discharge such other functions as may be prescribed or as are supplemental, incidental or consequential to any of the functions conferred on it under this Act."

19. Thus the processing of foodgrains and other foodstuffs is also one of the functions which Respondent 1 may perform with the prior approval of the Central Government. For such processing of foodgrains and other foodstuffs, Respondent 1 can also set up or assist in setting up of rice mills, flour mills and other undertakings.

20. In the Statement of Objects and Reasons, the Government, while introducing the Bill, inter alia, stated :

"1. It is considered desirable, in the interests of increased agricultural production as well as in the interests of the common consumer, to set up a State Agency for the purpose of undertaking trading in foodgrains in a commercial manner but within the framework of an overall Government policy. * * *

#2. * * *##

3. The Corporation will engage itself primarily in the purchase, storage, movement, distribution and sale of foodgrains. Provision has also been made in the Bill enabling the Corporation to deal in other foodstuffs if considered necessary by the Government. The Corporation may also discharge certain incidental functions as provided for in the Bill in consultation with the Central Government.

4. The Corporation will be encouraged to function generally as an autonomous organisation working on commercial lines. It is expected to secure for itself a strategic and commanding position in the foodgrains trade of the country. Bearing in mind the several large spheres in which the Corporation will ultimately have to operate, this Bill is being introduced to enable it to function as a statutory

Corporation wholly owned by the Government."

21. The Food Corporation of India, i.e., Respondent 1, is to secure a commanding position in the foodgrains trade of the country. Being an important factor in the market of foodgrains and being an agency of the State, it must conform to the letter and spirit of Article 47 of the Constitution. Such being the position of Respondent 1, the trading activity in rice and other foodgrains must be done keeping in view the obligation to improve public health.

22. There can be little doubt that if substandard rice is released and sold in the open market it would be highly injurious to the consumers. Public health would be jeopardised if such rice is consumed by members of the public. Poverty in our country is quite rampant and illiterate, ignorant and poor persons would not hesitate to consume such rice if sold at cheap rates. That would undoubtedly be exposing the poor to the risk of consuming substandard rice. A mere undertaking is no guarantee that the dealer will upgrade the rice before marketing the same. What action could be taken against a defaulting dealer who markets the rice without upgrading the same? At the most, he may be blacklisted but the damage or injury caused to the consumers cannot be remedied. Therefore, in addition to the undertaking, something more by way of a sanction against misuse seems necessary.

23. It seems to us that the most ideal solution is that FCI should itself upgrade the rice before sale. A corporation dealing with such huge quantities of rice can certainly set up a plant to upgrade the substandard rice before release to the dealer. The Ministry concerned of the Government of India should seriously examine this proposal. If, however, the idea of FCI itself setting up a plant to treat the substandard rice is not feasible, the next alternative is that the Ministry concerned in the Government of India should evolve guidelines which would secure a foolproof system which ensures that substandard rice does not enter the market for human consumption before it has been upgraded and made fit for human consumption. We are particularly anxious because the consumers of such rice are likely to be people who are downtrodden and stricken with poverty. Such a segment of society needs the State's protection in this behalf. If a reasonable and safe arrangement cannot be worked out, the third alternative would be to use such substandard rice for any other purpose, such as, for cattle feed, chicken feed, etc.

24. We leave it to the State authorities to determine the course which it considers most appropriate, keeping in mind this Court's anxiety to ensure that the poor segment of society is not exposed to the risk of consumption of such rice without it being upgraded. A copy of this judgment shall be forwarded by the Registrar General of this Court by a letter to the Cabinet Secretary who will ensure that the appropriate Ministries in the Government of India initiate action in this behalf within a reasonable time and complete the exercise without loss of time keeping in mind the fact that it concerns the lives of the poor and downtrodden masses. We would appreciate it if the decision taken in this behalf is communicated to the Registrar General of this Court within a reasonable time, preferably not later than six months from the receipt of this judgment.

25. Accordingly, (i) we direct that the entire stock of the rice in question, to the extent it is suitable for human consumption, be duly upgraded by Respondent 1 either in its own undertaking or under its active supervision and dispose of the same by selling it to the licensed dealer only after the upgraded rice is tested and certified by its quality control team; (ii) the portion of the rice stock found by the Expert Committee appointed by us to be unsuitable for human consumption be disposed of for purposes other than human consumption as may be deemed proper by Respondent 1 in compliance of government directions in the field.

26. The appeal is disposed of accordingly. No costs.