

Ratan Lal vs State on 30 January, 1953

Equivalent citations: AIR1953ALL475, AIR 1953 ALLAHABAD 475

JUDGMENT

Agarwala, J.

1. This is an application in revision by Ratan Lal against his conviction under Section 7, Essential Supplies (Temporary Powers) Act, 1946, for contravention of Para 3, U. P. Food-grains Procurement Order, 1949, and sentence of three months' rigorous imprisonment and Rs. 200/- fine.

2. The applicant is a cultivator in villages Purqazi and Bhoraheri and pays rent and canal dues. Under the Foodgrains Procurement Order, 1949, he was asked to deliver to the Government in 1949 scheduled foodgrains of the value of Rs. 1139/9/-, which would roughly amount to 100 maunds of foodgrains. He failed to do so and was consequently prosecuted for contravening Para 3 of the said Order. His defence was that he had grown only 60 maunds of foodgrains which he had distributed to labourers and to the Cane 'Co-operative Society which had advanced to him seeds for growing foodgrains. He further raised a plea that the U. P. Foodgrains Procurement Order was invalid because it went beyond the powers of the U. P. Government as delegated to it by the Central Government under Section 3(2)(f), Essential Supplies (Temporary Powers) Act.

There was no evidence to show that the applicant held stocks more than 60 maunds in weight. Evidence was led by the applicant of respectable persons to show that the produce in the year in question was lean and that many cultivators had perforce to satisfy the Government demand by purchasing foodgrains from other sources. The contention of the applicant that the Foodgrains Procurement Order was 'ultra vires' was rejected by the Magistrate and by the learned Sessions Judge in appeal and he was convicted by the Magistrate as aforesaid and his conviction was upheld by the learned Sessions Judge. The only point for our consideration is whether the U. P. Foodgrains Procurement Order, 1949, is 'ultra vires' or not.

3. The U. P. Foodgrains Procurement Order, 1949, was made in exercise of the powers conferred by Clause (f) of Sub-section (2) of Section 3, Essential Supplies (Temporary Powers) Act 1946, No. 24 of 1946, and by virtue of the authority delegated to the Provincial Government under the Government of India, late Food Department's Notification No. PY-603(2)I, dated 21-10-1946, as continued in force under Section 17 of said Act. Section 3(2)(f), Essential Supplies (Temporary Powers) Act authorises the Central Government to make an order to provide "for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order."

The words "holding stock" should be specifically noted. The order could require a person who actually held stocks of essential commodity to sell the whole or part of it. The Order could not require a person not holding such stocks to procure it from somewhere and to sell it to the specified person. Para 3, U. P. Foodgrains Procurement Order, 1949, however, did not observe this essential feature of Clause (f) of the said Act. Para 3 of the Order runs as follows:

" 'Liability of cultivator to deliver grain'. Every cultivator shall sell and deliver to such person, in such manner, and by such date as the Collector may specify, such quantity of scheduled foodgrains as shall be equivalent in value calculated in accordance with the prices prescribed by the Provincial Government under Clause 14, to the total of his 'rabi' rent, 'rabi' assumed rent and canal dues: Provided that the quantity of scheduled food-grains which he shall be required to deliver, shall be equivalent in value to his canal dues and....."

4. It will be clear that Para 3 compels every cultivator, whether he has got the stock of scheduled foodgrains or not, to sell and deliver it to specified persons certain quantity of foodgrains, which are calculated according to certain multiples of the 'rabi' rent and canal dues, actual or assumed.

5. "Cultivator" is defined in Para 2 of the Order as a person recorded in the 'Khatauni' as holding land in some of the classes mentioned in the Land Records Manual and also includes persons who are not so recorded but to whom land is let by the Collector. "Rent" means the rent of a holding recorded in the 'Khatauni'.

"Assumed rent" means the amount which the Collector may declare to be the assumed rent of holding or any part thereof in respect of which no cash rent is recorded in the 'Khatauni'.

6. In para 7 a demand list is prepared showing an area of a cultivator's holding as well as its 'rabi' rent, 'rabi' assumed rent, 'canal dues and the amount the equivalent of which in scheduled foodgrains he is to deliver to the Collector. It is to be published for objections. What objections can be taken is described in Para. 8. These refer merely to the amount of cash rent entered in the list and the area of the land other than cash rent entered therein. The objection has nothing to do with the actual amount or estimated amount of foodgrains grown on the land. No provision is made in the Order for estimating the actual produce of the cultivator before a demand is made from him or before the demand list is prepared.

7. Para 21 prescribes the penalty "If any person contravenes any of the provisions of this Order, he shall be liable to the punishment provided under Section 7, Essential Supplies (Temporary Powers) Act, 1946 (No. 24 of 1946), as amended from time to time." (3) It is clear from a perusal of the Order that it does not concern itself with the actual stock which a cultivator may have in his possession. It is quite true that ordinarily a cultivator, who has a certain amount of land, will produce some foodgrains thereon. But it is quite possible, and it does happen, that in a particular year or season a particular cultivator may be so unfortunate as not to grow the expected amount of foodgrains. The Order makes no exception in his case. He is bound to deliver the required foodgrains only because

he possesses the land and pays canal dues of the land. The Order takes no account of the fact whether a particular cultivator has in fact grown a particular amount of foodgrains or not. In our judgment, the Order goes beyond the powers conferred by the Central Government on the Provincial Government under Section 3(2)(f), Essential Supplies (Temporary Powers) Act and, as such, is 'ultra vires'.

9. The question whether in this particular case the applicant did have the required amount of foodgrains in his stock is really immaterial when the Order itself is invalid. If the Order goes beyond the powers under which it could be made and is 'ultra vires' on that account, the question of fact, whether the applicant possessed the food-grains which he could have delivered could not arise for consideration. But as we have already observed, the prosecution led no evidence to show that the applicant was possessed of the required amount of foodgrains. Indeed, there was evidence to show that he was not and this evidence remained un-contradicted.

10. It seems that the Government itself recognised that it had gone beyond the powers conferred upon it under Section 3(2) of the said Act as the Order was superseded by another Order in 1950 under which the demand from a cultivator was based upon the actual amount of food-grains held by him in his stock. Section 3, U. P. Foodgrains (Requisitioning) Order says; "The requisitioning authority may by order in writing, require any person holding stock of any foodgrains to sell the whole or a specified part of it to such person as he may; appoint in this behalf."

11. We, therefore, allow this application and set aside the conviction of the applicant. He is on bail. He need not surrender to his bail. His bail bonds are cancelled. He has not paid the fine. He need not pay it.