State Of Andhra Pradesh vs Bathu Prakasa Rao on 7 May, 1976

Equivalent citations: 1976 AIR 1845, 1976 SCR 608, AIR 1976 SUPREME COURT 1845, (1976) 3 SCC 301, 1976 CRI APP R (SC) 290, 1976 SCC(CRI) 395, 1976 SC CRI R 320, (1975) 2 APLJ 31

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
BATHU PRAKASA RAO

DATE OF JUDGMENT07/05/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1976 AIR 1845 1976 SCR 608
1976 SCC (3) 301

ACT:
Practice and procedure-Findings of fact by High Court-Supreme Court's interference, when called for.
Essential Commodities Act, 1955 s. 6-A Validity of confiscation proceedings by District Revenue Officer.

HEADNOTE:
The respondent-rice-millers obtained permits under clause (3) of the Southern States (Regulation of Export of Rice) Order, 1964, for exporting "broken rice" from Andhra Pradesh to Kerala but were intercepted for allegedly transporting "whole rice" for "broken rice". The rice was seized, and samples analysed in the presence of the District Revenue Officer who ordered confiscation of the estimated quantity of the "whole rice". On appeal, the District Judge remanded the matter for giving fuller opportunity to the

respondents for objecting to the sample analysis which was to be carried out afresh in their presence. The State's revision application against the remand order dismissed by the High Court, The Revenue Officer then ordered a release of 12%, and the confiscation of the remaining quantity seized, as no sample from the bags contained a minimum percentage of 60% of "broken" grains satisfying the test laid down in the Hand-book on Grading Foodgrains and Oilseed. The District & Sessions Judge partially allowed the respondents' appals. Both sides filed revision applications. The High Court decided in favour of the respondent, holding that "broken rice" included "whole rice".

Allowing the appeals, the Court,

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HELD: (1) Ordinarily, this Court does not interfere with findings of fact. But, where the errors of logic as well as law appear to be gross and to have occasioned a miscarriage of justice, the court is constrained to interfere. [609-D]

(2) The Revenue Officer's order releasing the seized rice to the extent of about 12% having become final, it should not be interfered with except to the extent that the learned Sessions Judge added 2% more for foreign matter thereby releasing slightly more in favour of the respondent. [610-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 100-146 of 1976.

Appeals by Special Leave from the Judgment and Order dated 29-8-75 of the Andhra Pradesh High Court in Crl. Rev. Cases Nos. 256-302/75 and 437-483/75 respectively.

Niren De, Attorney General for India (In Crl. A.100, 101 and 112 of 1976) P. Ram Reddy (Crl. A.102-111 and 113- 145/76); P. P. Rao and R. K. Deshpande for the appellants in all the appeals.

Sachin Chaudhary (In Crl. A.100/76); S. V. Gupte (In Crl. A.101/76) T. Ramam, B. Parthasarthi for Respondents in Crls. A. Nos. 101-105, 107-118 120-139 and 141-146/76.

The Judgment of the Court was delivered by BEG, J. These appeals, by Special Leave, raise an apparently simple question which appears to be essentially one of fact. But, as the real question to be answered was not correctly posed before itself by the High Court of Andhra Pradesh, it misdirected itself as to what was to be really decided by it and also how it should be decided according to rules of ordinary logic as well as law. Ordinarily, this Court does not interfere with findings of fact. But, where the errors of logic as well as law, discussed below, appear to us to be gross and to have occasioned a miscarriage of justice, we are constrained to interfere.

The crucial question to be decided may be put as follows: What did the respondents understand when they obtained permits for the despatch of "broken rice (raw, boiled)" shown in their export permits?

If the respondents understood what their permits meant, they could not, under the guise of these permits, transport any other kind of rice. It was their duty to abide by the terms of their permits, and to show, when proceeded against, that they did so.

Each permit shows: quantity permitted to be sent; the duration of the validity of the permit; the name of the consignor; the name of the station from which rice was to be despatched; the means of despatch (shown as "by rail only"); the name and address of the consignee (shown as "self"); the State to which the consignment was to be booked (shown as Kerala State), purpose of the consignment (shown as trade account). The permit was described as an "export permit". The details mentioned above were given in a schedule, the permit was addressed "to the Miller", and its operative part said:

> "In exercise of the powers conferred under clause 3 of the Southern States (Regulation of Export of Rice). Order, 1964 read with G.O.Ms. No. 2495 F & A Dt.

17-10-1964 the Collector hereby permits the transport of rice products mentioned in the Schedule subject to the conditions specified below".

The specified conditions, in addition to those mentioned in the details given above were:

> "1. This permit is not transferable.
>
> 2. It is liable for cancellation at any time by the issuing authority for the reasons to be recorded in writing.
>
> 3. It is valid only for the period mentioned in the permit and the consignment must be booked from the despatching station before the expiry of such period.
>
> 4. Any permit that is taken out but not utilised should be returned immediately to issuing authority.
>
> 5. The stuff should be got checked by the Assistant Grain Purchasing Officer assisted by the Food Inspector concerned while loading into the wagon and a certificate should be got recorded on the permit itself that the stuff loaded is broken rice and not whole rice and the quantity loaded.
>
> 6. In respect of self permits the permit holder, should furnish to the Collector, West Godavari, Eluru (A.P.) and the District Supply Officer, Tedepalligudam and the Collector of the importing District within one month from the date of issue of the permit the particulars of the Station to which the consignment is booked names and

addresses of the buyers".

The allegation against the respondents was that they had broken the conditions of their permits inasmuch as their consignments, which had been seized, whilst being transported in railway wagons from Andhra Pradesh to Kerala, consisted of rice instead of "broken rice". After the issue of show cause notices and the replies filed by the respondents, a number of writ petitions was filed on a number of grounds in the High Court of Andhra Pradesh questioning the validity of confiscation proceedings under Section 6A of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act'). These writ petitions were dismissed on 25th October, 1971.

After the dismissal of the Writ Petitions mentioned above, the Revenue Officer passed orders, on 18th November, 1971, confiscating only what was estimated as the quantity of "whole rice", according to the standards applied in drawing up an analysis report from samples which the Revenue officer accepted as correct. The respondents then appealed to the District and Sessions Judge who, on 16th February 1972, set aside the orders of the Revenue officer and directed him to decide again the question involved in the cases in accordance with law, after giving full opportunity to the respondents to object to the analysis which was to be carried out afresh in their presence. The District Judge did not consider the report of the Assistant Marketing officer of Chitur, after an analysis carried out in the presence of the District Revenue officer, to be a sufficient compliance with the requirement to give due opportunity to the respondents to show what the consignments contained.

It may be mentioned here that the reports upon which proceedings were commenced in respect of a very large quantity of rice had been filed by the Inspector of Police of the Vigilance Section of the Civil Supplies' Department. It was clearly mentioned in these reports that the rice which was seized by the police in the course of its transit in a number of wagons of a goods train proceeding from Andhra Pradesh to Calicut in Kerala State was not "broken rice". The respondents are regular Millers whose business it is to know the varieties and the nomenchature of various types and qualities of rice. They could not, therefore, be ignorant of what was the case against them. Moreover, when the cases were actually remanded to the Revenue officer with specific directions to give the respondents fuller opportunity to show cause and meet the cases against them there could be no possible excuse for the respondents not to put in evidence of their side of the case if they had a case to put up in defence.

The Revision Applications by the State against the orders of District and Sessions' Judge were dismissed by the High Court on 29th March, 1973. During the pendency of the revision applications in the High Court. notices of auction of boiled rice were issued under the orders of the High Court. The rice was sold as ordinary "boiled rice". It is alleged on behalf of the State, that the price for which the boiled rice. seized from the Railway wagons, was sold on 5th October, 1972. was about Rs. 30 lakhs. This price, it was submitted, could only be fetched by "whole rice".

We are, however, more concerned with what took place after the High Court had upheld the order of the District & Sessions' Judge remanding the case for full hearing and adduction of evidence by both sides.

In his final order of 4th December, 1973, after the remand, the District Revenue Officer gave the whole history of the case and pointed out the opportunities the respondents had been given for substantiating their case if they had one worth consideration.

The District Judge had remanded the case principally because the first report of the analyst, issued by the Assistant Director of Marketing, Chitur, had been made without an analysis carried out in the presence of the respondents although it was made in the presence of the District Revenue Officer. The District Judge had held that the Asstt. Director of Marketing should have himself given evidence before his report could be treated as evidence.

After the case had been remanded, there was a fresh analysis with fresh samples taken under the orders of the High Court. And, this second analysis took place in the presence of the respondents. The Assistant Director of Marketing, who made the analysis, was produced in evidence. The respondent had full opportunity of cross-examining him and also of giving their own versions. But, they contented themselves with some cross-examination of the Assistant Director of Marketing in the course of which it was not suggested to the Assistant Director that the test of "broken rice" was itself incorrect. On the other hand, in answer to one of the questions in cross-examination, the Assistant Director of Marketing replied:

> "I agree that any grain which is less than 3/4th of the whole grain is a broken. According to Serial Grading Rules. 1966, rice includes brokens, but it is classified separately".

This meant that the respondents knew, and, therefore, suggested that the test applied by the Asstt. Director, Marketing that any grain less than 3/4th of the whole length was to be deemed as "broken", was correct. The cross- examination was directed towards showing that, accepting this test, known to both sides, the consignment was of "broken rice".

It is true that the Assistant Director, in his evidence, admitted that he had not actually measured a whole grain. He said that he had adopted the method of differentiation by looking at the grains with the naked eye and by picking them up with his hand using his own fingers. He also admitted that, in ten out of the 50 samples he had analysed, the percentage of brokens in the analysis conducted in 1973 was less than that of 1971 from 2 to 10% but in others it was greater. The Revenue Officer, after a careful consideration of all the facts of the case and the whole background, including the test laid down in the Hand- book on Grading Foodgrains and Oilseeds, had reached the conclusion that the whole of the quantity seized was liable to be confiscated because no sample taken from the bags contained a minimum percentage of 60% of "broken" grains satisfying the test adopted, that is to say, grain less than 75% of its normal length would be deemed to be broken. The Revenue officer treated the opinion of the Assistant Director as that of an expert which ought to be accepted.

The District and Sessions' Judge, in appeals from the orders of the Revenue officer, reconsidered the whole case at considerable length and allowed the appeals partially by holding that percentage which could be fairly classified as broken had to be deducted after an addition to it of 2% as allowable "foreign matter". The Sessions' Judge's interpretation of the remand order, as affirmed in

revision by the High Court, was that the Revenue Officer could only determine the quantities of "broken" rice and whole rice to decide what proportion was and not whether the whole of the seized rice was liable to confiscation as not covered by the permits. It appears that there had been an order by the Revenue Officer releasing 12% of the total rice as equivalent of "broken rice" which had not been set aside and had become final.

On the question whether the respondents could be said to have a mens rea the learned Sessions' Judge observed:

> "I am not prepared to accept the contention that they are under a mistaken impression that whole rice, when boiled could become boiled brokens. I do not also admit that they are not having any mens rea. I am of the opinion that they had certainly managed with the officers, and attempted to transport whole rice (boiled) under the guise of brokens (boiled). Therefore, it cannot be said that they have no mens rea in this case when they attempted to transport whole rice as brokens. It is a fact that huge quantities of rice are involved and the money involved is also huge. But the crime that these appellants attempted to prepetrate can also be considered as huge (Grave) in consonance with the quantity of rice they attempted to transport. Therefore, I am of the opinion, that these appellants do not deserve sympathy and it does not require any more alteration of the lower Court's orders, than the one I have already indicated above".

Hence, with the abovementioned notification of the orders of the Revenue Officer by adding 2% for "foreign matter" to the amount released as equivalent of "broken rice", the respondents' appeals were dismissed by the Sessions' Judge on 20th November, 1974.

Both sides filed revision applications. The High Court had before it two sets of Revision applications. One of these was by the State of Andhra Pradesh against that part of the order of the learned Sessions' Judge by which he held that the Revenue Officer had no jurisdiction, after the remand order, to order confiscation of the whole quantity of rice. The State claimed the price of the whole of the seized consignment. The other set of revision applications before the High Court was of the respondent millers against the affirmations of the orders of the Revenue Officer. The respondents submitted that no part of the consignment was liable to be confiscated as it was not proved that it was not broken rice. They, therefore, urged that they should get the price of the whole quantity sold.

The High Court also went into the history of the case. It held that the object of the remand order "was to take samples of the stocks for the purpose of analysis in the presence of the rice millers and after the analysis and report of the Assistant Director, Marketing, Chitur, to give an opportunity to the rice millers to cross-examine him with regard to it". It held:

> "There is nothing in the remand order from which it can be said that the learned Sessions' Judge intended the entire matter to be reopened including that of the released stocks with regard to which, according to the learned Sessions' Judge, the matter had become final because of the view taken by him in the appeals preferred by

> the State that the State has no right of appeal as provided under Section 6-A of the Essential Commodities Act".

The High Court upheld the contention that the State Government had no right of appeal to the Sessions' Judge. It held that only a person aggrieved by an order of confiscation and not just anybody aggrieved by an order under Section 6-A had a right of appeal. It is, however, not necessary for us to go into this question as it has not been argued by either side.

The High Court held that there could be a contravention of the Southern States (Regulation of Export of Rice) order, 1964, by the rice millers if they attempted to transport essential goods requiring permit under the Regulation Order of 1964 from the State of Andhra Pradesh to Kerala. It, however, proceeded to hold that, as it was not proved that what was being transported was "broken rice", there was no contravention. It reached this conclusion by a somewhat strange reasoning that, since the percentages of whole rice in the samples analysed were not known, it could not be held that the consignment was of a kind of rice for which any permit was required. We are constrained to observe that we are not able to follow the reasoning of the High Court that, as the definition of rice in clause 2(B), in the Regulation order of 1964, says that rice "includes broken rice and paddy", it necessarily follows that the converse must be true so that "broken rice must include rice". It would have been quite correct if the High Court had said that "broken rice"

> is also "rice". As the definition of rice is a comprehensive one, it includes "broken rice as part of rice", But, to hold that this meant that "broken rice" must include whole rice is to accept that a part includes the whole, if the whole includes a part, it necessarily means that the part cannot possibly be equated with the whole. The natural, and, indeed, the only reasonably open logic would be: if the whole includes a part, nothing which is merely a part of the whole could be equated with the whole, we think that the High Court misdirected itself seriously by accepting an obviously fallacious reasoning on this question.
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> The High Court said:
>
> "By merely establishing that the goods are not broken rice, no offence or contravention is committed. It must fur their be established that the goods are rice in which case only there will be contravention of the control orders as the rice millers were not exporting the goods under permits issued for export of rice. Having regard to the uncertainty as to what the balance material other than the brokens contained in the samples, it is not possible to say with any assurance that the rice millers have contravened the control orders by attempting to export rice".

It went on to add:

> "It may be said that having regard to the circumstances of the case it is reasonable to assume that the rice millers have deliberately put some rice in the goods they were trans porting. Otherwise, normally, the price of whole rice being more, they would

> not have allowed it to go into the brokens, and, unless there were some substantive quantities of whole rice in the goods which the rice millers were transporting, the Inspector of Police, Vigilance Cell Civil Supplies Nellore, would not have thought of seizing the goods. It is common knowledge and judicial notice can be taken that rice or broken rice is very much costlier in Kerala State than in the Andhra Pradesh State. It is quite possible that broken rice in Kerala State was then even costlier than whole rice in Andhra Pradesh State and it may be in such circumstances the rice millers while exporting the goods allowed more whole rice to go into the brokens so that the entire thing could be sold as broken rice and even by that to get a better price than in Andhra Pradesh for the quantity of whole rice allowed into the brokens. But at the same time, in the absence of any guidelines by fixing standards for rice and broken rice it is difficult to say that the rice millers have done so with the necessary animus that in so doing they would be going outside the permits issued to them and they would be contravening the control orders. When there were no standards fixed with regard to whole rice and broken rice and when there is an admixture of both whole rice and broken rice, it is difficult to say when a particular admixture can be said to be broken rice or whole rice. On an uncertain ground or on vagueness, I do not think any person can be made liable for an action which will be penal in nature".

A ground given by the High Court to justify the millers' case, that the rice was broken rice, was:

> "In the present case, there is also the fact that both the Assistant Grain purchasing Officer and the food inspector inspected the goods when they were loaded into the wagons and certified that the goods loaded to be broken rice. Across the Bar, Shri Babu Reddy has stated that no action was taken by the Government against those officers on the ground that colluding with the rice millers they falsely certified that goods loaded to be broken rice. He has also submitted that not only that no action was taken against them, but they were also promoted to higher posts subsequently perhaps, in usual course. Of course, there is no material before the Court with regard to it. But suffice it to say that the fact remains that those two officers certified the materials to be broken rice".

A surprising conclusion of the High Court, which conflicts with the earlier conclusion that there was an attempted transport of rice which would contravene the Regulation order, was stated as follows by the High Court:

> "The rice millers were having the permits for exporting BROKEN RICE and they were not having any permits for exporting RICE. Even assuming that the goods which the rice millers were transporting were not broken rice, it is not enough, to prove the contravention, to show that the goods they were transporting were not broken rice. It must be proved that the goods which the rice millers were exporting were rice for which they have no permits. If the goods which the rice millers were transporting could neither be said to be broken rice nor rice, there would be no contravention in either of which case no permits will be necessary under the control orders. The

> consequences of the contravention of the control orders being penal in nature, the rice millers cannot be penalised by confiscating the goods on uncertain ground or vagueness. I have no doubt that the Government have failed to establish that the rice millers in attempting to export the goods in question outside the State have contravened the two control orders".

We can only make the passage from the High Court's judgment, set out above in the last paragraph, intelligible to ourselves by believing that what the High Court meant was that the control order does not make it necessary to have a permit for the transport of goods containing a mixture of broken rice and rice by requiring a permit for such a mixture. If this be the meaning, as it probably is, we think that it constitutes a complete oversight or misreading of the Regulation Order 1964, clause 3 of which says:

> "3. Regulation of export of rice from specified areas.- No person shall export or abet the export of rice from any place within a specified area to a place outside that area except under and in accordance with permit issued by the State Government or an officer authorised by that Government in this behalf".

It follows that the person who transports has to prove that he has a permit for the rice he is transporting.

Learned Attorney General has, very rightly, pointed out that the whole case of the respondent Millers from the outset, when they sent a reply to the show cause notice, was that they were transporting what was wholly "broken rice". In other words, their case was that they knew that they were holding the permit. They never said that they did not know what their permit meant or had misunderstood it. They did not plead that they had been cheated by somebody. Who sent something on their behalf which was not authorised by them.

We think that Section 106 of the Evidence Act was clearly applicable to such a case. It says: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him". The illustrations to this section are also helpful:

> "(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
>
> (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him".

So far as the actual intentions of the respondent Millers are concerned, the High Court recorded a finding, set out above, that it appeared that they had deliberately mixed whole rice with broken rice, because, unlike the situation in Andhra Pradesh, broken rice sells at a higher price in Kerala than it does in Andhra Pradesh. If this had been the correct state of affairs, it would have been reasonable for the Millers to transport broken rice to Kerala, where it fetches a higher price, and keep whole rice

which sells at a higher price in Andhra Pradesh, for sale in their own State.

Apart from this obvious flaw in the reasoning of the High Court, it is difficult to understand how the High Court could act on such an assumption about relative prices. It thought it could take judicial notice of such a state of prevailing prices of rice in the two States. It was certainly not a fact commonly or generally known to people that broken rice fetches a much higher price in Kerala than even whole rice. Such as assertion has to be proved to be correct. It was unreasonable to assume that, even if that was so, the millers of Andhra Pradesh would be so anxious to cheat the purchasers in Kerala as to deliberately mix some whole rice with broken rice instead of selling the whole rice in Andhra Pradesh and broken rice in Kerala. The more natural inference, from patent facts, was obviously that there was some advantage in mixing some "broken rice" with "whole rice" for which the millers had no permit.

Thus, the learned Judges of the High Court have themselves expressed a view indicating that the Millers were quite conscious of the distinction which existed, in accordance with the accepted practice, between what could be deemed to be "whole rice" and what could be described as "broken rice". If they were labouring under some mistake of fact and had no intention to commit an offence, which the character and circumstances of their acts suggested, the burden of proving this was certainly upon them.

Again, what was covered by the permit would be deemed to be known to the Millers who were carrying on the business of exporting rice of various kinds, grades, and descriptions. It is their business to see that they carry on their trade in accordance with the terms of the permits they actually obtained. It is true that it appears, as the High Court observes, that the Millers had, apparently, been given the green signal by the officers who were expected to inspect the consignments and certify that it was "broken rice". It is difficult to know what evidence the High Court was relying upon, apart from the conditions attached to the permits and the presumption that their duties were carried out by their officers concerned, to hold what they had inspected and certified correctly. The respondents, who had objected to the first analysis report, the ground, inter alia, that the analyst did not enter the witness box could be met with a similar objection to the alleged inspection reports of some officers.

The only evidence produced in the case was that of the Assistant Director of Marketing who performed the analysis in the presence of the Millers after the remand order.

If the respondents were relying upon some inspection carried out by the officers in compliance with the conditions of the permit, they ought to have produced that evidence SQ that the officers concerned could have been subjected to cross-examination. An opportunity had been given to the Millers to produce evidence in rebuttal. They produced none. On the other hand, the cross-examination of the Assistant Director showed that the Millers were accepting the tests laid down in the Hand-Book on Grading of Foodgrains and oilseeds as applicable to the descriptions of rice and broken rice. These terms, as used in the Hand-book, must have been well understood by the Millers. The Foreward to the Hand-Book says that it contains instructions based on practice followed in this country for many years by the Directorate of Marketing and Inspection. The

Hand-Book is an official publication. It could be looked into to find out the accepted practice and tests employed by the Assistant Director. As already observed, the Assistant Director was cross-examined on matters contained in the Hand-Book.

It was not suggested to him that the Hand-Book did not contain correct information.

At page 8 of this Hand-book, we find: "Broken Rice"-In addition to the classes mentioned above broken rice forms a class by itself as it is a bye-product of rice milling. It has been classified into two groups, viz., fine brokens and common brokens. Fine brokens cover the brokens of long slender and scented varieties of rice and common brokens over the rest". At page 6, we find: "Brokens.-Brokens shall include pieces of rice kernels which are less than 3/4th of the whole kernel. Pieces smaller than 1/4th of the kernel are to be treated as fragments". The cross-examination of the Assistant Director showed that the Counsel for the Millers were fully acquainted with the contents of the Hand- book and were accepting it as the basis for finding out whether the tests laid down in the Hand-book had been observed.

The Hand-book contains several schedules. Schedule 7 gives maximum limits of tolerance for various grades of "mill rice", a term apparently used for whole rice. The maximum tolerance of brokens in whole rice of first grade is given as 3%, whereas the maximum tolerance of the brokens in the whole rice grade is 20%. Schedule VIII is for "Parboiled Milled Super fine Rice". In Schedule X, for "Parboiled, milled common rice", is shown to vary from 10% in Gr. I to 40% in Gr. IV. Schedule 14 gives the grade designations and definitions of different qualities of "common broken rice". It shows that, in order to constitute "broken rice", the percentage of brokens, the maximum limit of tolerance is from not less than 80 to not less than 60% in grade 1 to 3.

The District Judge had reached the conclusion that, quite apart from these technically prescribed tests for the purpose of grading, by the Directorate of Marketing and Inspection, the common sense test was that at least 50% must be brokens in order to constitute what could pass as a marketable consignment of "broken rice". He had also made the necessary allowances for foreign matter. We do not think that the test adopted by the District & Sessions' Judge was either incorrect or unreasonable. Indeed, we think that the High Court was quite unjustified in interfering with this test on what seems to us like metaphysical reasoning to justify its view that, where the quantities of the whole grains and broken grains in a consignment cannot be accurately determined, the consignment should be deemed to be no longer one of rice which requires a permit. The learned Attorney General has rightly pointed out to us that at no earlier stage was it the case of the Millers that more mixture of some broken rice with some whole rice is enough to constitute the whole consignment into one of broken rice or of substance which was not "rice" at all. In our opinion, the High Court has quite erroneously held that such mixtures do not fall within the mischief provided for by the Regulation Order of 1964.

An argument advanced by Mr. Sachin Chaudhari on behalf of the Millers, is that no rice in the course of Milling can really remain whole or unbroken in the sense that the whole length of it will be preserved.

He contended that, in that sense, every grain must be broken to some extent. If that be the correct position, we think that the test laid down in the Hand-book on Grading of Foodgrains and Oilseeds, issued by the Directorate of Marketing and Inspection, compiled by the Ministry of Agriculture of the Govt. of India, is based on sound knowledge of what actually happens to grains of rice in the course of milling.

Still another argument was that it is impossible to determine with the maked eye whether a grain of rice was above or below 3/4th its normal length. We think that this would not be a difficult task at all for an expert in the line as an Asstt. Director of Marketing could be deemed to be. Indeed, even with his naked eye, any person can make out, by looking at the two ends of a grain, how much of a grain of rice appears to be broken. As we know, a grain of rice is thicker in the middle and tappers at each end. It is not like a cylinder with a uniform diameter throughout. From its shape and size, it is possible, even for an ordinary careful observer, to assess the length of a broken grain as compared with its expected length had it been whole.

Mr. S. V. Gupte appearing for some respondents, has invited our attention to the differences, in the analysis conducted in 1971 and in 1973, between percentages of broken rice" in samples from the same stocks. The explanation of these differences according to the learned Attorney General, is indicated in the order of the High Court, dated 29th March, 1973, by which Revision petitions against remand orders were dismissed. The High Court observed:

> "During the pendency of these proceedings in this Court admittedly fresh samples had been taken in the presence of the parties and the rest of the grain was directed to be disposed. These fresh samples are now available for analysis, it is contended by the learned public prosector that on account of lapse of time there is the possibility of even whole rice getting broken and a larger percentage of broken rice being forged in analysing now to be done. It should be possible for the Analyst to know how long rice stay preserved as whole rice and what is the lapse of time that results in breaking up of even the whole rice and what percentage should be allowed in that connection and come to the conclusion in making analysis of the new samples taken".

The High Court had said that "there should be no difficulty in getting the fresh samples taken analysed also and the analyst giving his opinion with regard to both the samples".

There is not only a difference between the results of the analysis of 1971, as compared with the analysis of 1973, for which samples were taken, afresh from the same bags of rice, but we find that the report of 1973 itself shows, that, out of 50 samples taken from different bags of rice, there is a variation ranging from 12.5%, in the case of two samples from wagon No. SE 53657 to 40% in the case of the sample from wagon, No. SE 57670. The analysis of another sample from the same wagon SE 57670 gives a percentage of 36.2 of "broken rice".

Two samples from the same wagon WR 70715 show 22.5% and 37.5% of broken rice, thus making a difference of 15% between two samples from the same wagon. In seven samples, the percentages of broken rice were above 35%. In 16 samples, the broken rice found ranged between 30% and 35%. Of

course, these different percentages may lead to the inference that some broken rice had been deliberately introduced unevenly between rice found in different bags. But, once the principle is accepted that it is only the rice not covered by the permits which, under the orders of the Court, was to be confiscated, these variations do introduce an element of difficulty in determining precisely what that amount was. Sec. 6A of the Act, however, says that the Revenue officer (who exercised the powers of the Collector), "if satisfied that there has been a contravention of the order", that is to say, the Control Order, "may order the confiscation of the essential commodities seized". It is arguable that the power is there to confiscate whatever essential commodity may have been seized for the purposes of proceeding against the person who has contravened the Control Order, yet, it cannot be denied that this power is discretionary.

Therefore, we do not propose to interfere with the order of the learned Sessions' Judge, to the effect that, as the Revenue Officer's order releasing the seized rice to the extent of about 12% had become final, it should not be interfered with except to the extent that the learned Sessions' Judge added 2% more for foreign matter. Thereby releasing slightly more in favour of the respondents.

For the reasons given above, we allow these appeals and set aside the judgment and orders of the High Court and restore those of the learned Sessions' Judge in the cases before us.

M.R. Appeals allowed.