

Sri Vijaylakshmi Rice Mills, New ... vs State Of Andhra Pradesh on 22 March, 1976

Equivalent citations: 1976 AIR 1471, 1976 SCR (3) 775, AIR 1976 SUPREME COURT 1471, 1976 3 SCC 37, 1976 3 SCR 775, 1976 UJ (SC) 367

Author: Jaswant Singh

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

PETITIONER:

SRI VIJAYLAKSHMI RICE MILLS, NEW CONTRACTORS COMPANY ETC.

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH

DATE OF JUDGMENT 22/03/1976

BENCH:

SINGH, JASWANT

BENCH:

SINGH, JASWANT

RAY, A.N. (CJ)

BEG, M. HAMEEDULLAH

CITATION:

1976 AIR 1471

1976 SCR (3) 775

1976 SCC (3) 37

ACT:

Rice (Andhra Pradesh) Price Control (3rd Amendment) order 1964, clause 2-Whether retrospectivity of substitution inferred in absence of express provision.

HEADNOTE:

Under s. 3 of the Essential Commodities Act 1955, the respondent passed the Andhra Pradesh Procurement (Levy) order 1959, requiring every miller and dealer of rice (including the appellants) to sell to the respondent certain specified varieties and quantities of rice at controlled price on requisition being served on him. Clause 2(a) of the order defined "controlled price" as the maximum price fixed by the Central Government from time to time under s. 3 of the Act for the sale of rice. On December 19, 1963, the

Central Government Passed the Rice (Andhra Pradesh) Price Control order 1963, fixing the maximum price of akkulu rice at Rs. 46.89 per quintal. The appellants sold several quantities of akkulu rice to the respondent from January 26, 1964, to February 21, 1964, and were paid at the controlled rate. On March 23, 1964 the Central Government issued the Rice (Andhra Pradesh) Price Control (3rd amendment) order 1964, and substituted Rs. 52.28 for Rs. 46.89 as the maximum price per quintal, of akkulu rice. The appellant's claim for the benefit of the enhanced price for the earlier sales was rejected by the Government of Andhra Pradesh. The appellants succeeded before the Subordinate Judge, Machilipatnam in their suits for recovery of the difference between the two controlled prices but lost before the High Court, in appeals preferred by the State of Andhra Pradesh. It was contended before this Court that the prices fixed by the Government are for the entire season, and the appellants are entitled payment at the amended rates, regardless of the dates when the supplies were made, and that the word "substitute" infers retrospective effect.

Dismissing the appeals, the Court.

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HELD: 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. 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 the Amending Act came into force. [778B-C]

(2) The property in the goods having passed to the Government of Andhra Pradesh on the dates the supplies the made, the appellants had to be paid only at the controlled prices obtaining on the dates the sales were effected and not at the increased price which came into operation subsequently. [778-D]

K. Appayya Shanbhague & Co. v. The State of Mysore and Anr. (Unreported decision S.C. dated 20-4-1962); The Union of India. represented by the Secretary Ministry of Food & Agriculture, Government of India, New Delhi v. Kanuri Damodariah & Co. Alluri Venkatanarasiah (1968) 1 An. W.K. 81 and Mani Gopal Mitra v. The State of Bihar (1969) 2 S.C.R. 411, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 805, 806 and 972-977 of 1973 From the judgment and decree dated the 8th June 1971 and 23rd November 1971 respectively of the High Court of Andhra Pradesh at Hyderabad in Appeal Suit Nos. 766 of 1968, 18 of 1969, 779, 780, 782 to 785 of 1968, respectively.

F. S. Nariman, J. V. K. Gurunathan, T. V. Narasimhan Murty and A. Subha Rao, for the appellants.

P. Ram Reddy and P. P. Rao, for the respondents. The Judgment of the Court was delivered by JASWANT SINGH, J. 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 question arises in the following circumstances:

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 powers 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 percent of the quantity of rice held in stock by him at the commencement of the order and (b) 40 percent of the total quantity of rice purchased by him every day 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 (emphasis supplied). 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) of the Schedule to that order were to be sold in wholesale quantities would be as specified in the corresponding entries in column (2) of the 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 that 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 ran thus:-

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

Varieties or rice maximum price per quintal.

1. Districts other than Nellore

Akulu	52-25

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. Aggrieved 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 is 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) (a) of the Constitution which was granted to them.

The sole question for determination in these appeals, as already indicated, is whether the appellants were to be paid price for the supplies to 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.

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 validity 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 dates an 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 disability or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. (See *Mani Gopal Mitra v. The State of Bihar*).

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 dates the supplies were made, the appellants had to be paid only at the controlled price obtaining on the dates 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 Shambhague and Co. v. The State of Mysore & Anr.* 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 *The Union of India, represented by the Secretary, Ministry of Food and Agriculture, Government of India, New Delhi v. Kanuri Damodariah & Co. Alluri Venkatanarasiah*, 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 in accordance with the price notified under the provisions of section 3(3) of the Act.

In the instant cases, the sale 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.

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 in a former statute, or, as Parke J. (afterwards Baron Parke) said in *R. V. Dursley* (1832) 3 B. & Ad. 465, 469 "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. Poughett* (1816) 2 Price 381, 392, 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. 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 9s. 4d. per cwt., but Thomson C. B., in giving judgment for the Attorney General, said:

"The duty in this instant was in fact imposed by the first Act, but the gross mistakes 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.' 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.

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.

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.

In the result, the appeal, fail and are dismissed with cost, limited to one set.

M.R.

Appeals dismissed.