

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.1456 of 2011

ORDER:

The relief sought for in this Writ Petition is to declare the action of the 1st respondent, in recovering the alleged excess payment in pursuance of its letter dated 08.02.2008, as arbitrary and illegal.

Under the Control Order, millers were obligated to supply 50% of the rice, milled by them from the paddy procured for the relevant crop year, at the levy price; over and above the prescribe 50%, rice millers were free to sell the same in the open market without reference to the levy price. During the crop year 2000-01, the petitioner supplied 50%, of the rice milled by them, to the FCI for effecting supplies through the Public Distribution System. They were, accordingly, paid the levy price fixed for the year 2000-01.

For the crop years 2000-01 and 2001-02, the Central Government introduced the Food for Work Scheme and, consequent thereto, the rice millers were called upon to supply the required quantity of rice, which the petitioner claims is far in excess of the 50% which they were required to supply under the Control Order. The petitioner was paid the price of rice as prevalent during the year 2001-02. On the ground that the stock of rice, supplied by rice millers including the petitioner, was the rice milled from the paddy procured during the crop year 2000-01, an audit objection appears to have been taken as to how the price prevalent in 2001-02 could have been paid for the rice milled, from procured paddy, relating to the year 2000-01. The excess payment made was recovered from the petitioner.

While Sri K.Govardhan Reddy, Learned Counsel for the petitioner, would contend, not without justification, that the petitioner could not have been compelled to supply rice in excess of the 50% prescribed under the Control Order, at a price fixed for levy rice under the Control Order, it is only if the petitioner had been compelled to do so, would the FCI be required to pay them the price of rice prevalent in the year 2001-02, since the rice was purchased from them by the FCI. If, on the other hand, the petitioner had voluntarily supplied rice to the FCI, on its own accord, and the stock of rice relates to the crop year 2000-01, the petitioner cannot be heard to contend that they should be paid the higher price prevalent in the year 2001-02, as these are all matters, for the parties to the agreement, to mutually decide.

The affidavit, filed in support of the Writ Petition, makes no mention of the petitioner having been forced to supply rice in excess of the 50% prescribed in the Control Order. In the absence of any such assertion in the writ affidavit, it is evident that the petitioner could have refused to supply rice to the FCI at the levy price of 2000-01 contending that such supplies would be effected only at the price prevalent in the year 2001-02. Having voluntarily supplied the rice, the petitioner cannot now be heard to contend that the Government was obligated to pay them the price prevalent in the year 2001-02 on the ground that rice was procured from them by the FCI during that period, even though the milled rice related to the paddy procured by them during the crop year 2000-01.

While a feeble attempt is made by Sri K.Govardhan Reddy, Learned Counsel for the petitioner, that the impugned order itself discloses the petitioner having been compelled to supply rice, beyond the prescribed 50% under the Control Order, all that the said order

records is for the District Collector (Civil Supplies) to allow delivery of raw rice of the crop year 2000-01, available with the rice millers, to the FCI immediately to meet the requirement of PDS and other schemes like Food for Work etc.

While Sri K.Govardhan Reddy, Learned Counsel for the petitioner, would submit that the word “allow” can only be read as compulsion, in the absence of any such assertion in the affidavit, filed in support of the Writ Petition, I see no reason to do so. As it does not appear that the petitioner was compelled to supply rice; and, as the rice supplied by them related to the paddy procured by them during the crop year 2000-01, the respondents cannot be faulted in holding that the price of rice, supplied by the petitioner in excess of the stipulated 50%, should be the price prevalent during the crop year 2000-01; and in seeking to recover the excess amount (i.e the difference in price between the years 2000-01 and 2001-02) from the petitioner.

Even otherwise, the question whether or not the petitioner is entitled to be paid the price prevalent in the year 2001-02, as against the price prevalent in the year 2000-01, are all disputed questions of fact which arise in the contractual realm and would not, ordinarily, be examined in the proceedings under Article 226 of the Constitution of India.

The Writ Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions pending, if any, shall also stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ.

Date:08.12.2017.

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