THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL No.36 of 2019

JUDGMENT: *(per the Hon'ble Justice Sri A.Rajasheker Reddy)*

This appeal, under Clause 15 of Letters Patent, is preferred against the order dated 31.12.2018 passed by the learned Single Judge in W.P.No.43010 of 2018, dismissing the writ petition filed by the appellant-writ petitioner.

2. Heard learned counsel for the appellant-writ petitioner, learned Government Pleader for Civil Supplies for respondents 1, 2 and 4, and learned Standing Counsel for respondents 3 and 5.

3. The case of the appellant-writ petitioner is that it has taken on lease M/s Balaji Industries Rice Mill and invested good amount of money to repair and renovate the sick mill; that thereafter, it applied for allotment of Custom Milled Rice (CMR) paddy for the Kharif Marketing Season 2018-19; that the second respondent *vide* proceedings dated 15.11.2018 rejected the request of the appellant for allotment of CMR paddy to it on the ground that the owner of the Rice Mill, namely, K. Ravinder Reddy committed illegalities in milling of CMR paddy; that a case under Section 6-A of the Essential Commodities Act, 1955 (for short, 'the Act') was booked against the said owner apart from registration of a criminal case. Challenging the

proceedings dated 15.11.2018, the appellant-writ petitioner filed the present writ petition. The present writ petition was clubbed along with W.P.No.43418 of 2018. The learned Single Judge, after hearing both sides and considering the entire material on record, dismissed both the writ petitions. The present writ appeal is filed against the order passed in W.P.No.43010 of 2018.

4. Learned counsel for the appellant-writ petitioner, while reiterating the averments made before the learned Single Judge, submits that the Policy of Procurement of Paddy under Minimum Support Price Operations and Delivery of Custom Milled Rice for the Kharif Marketing Season 2018-19 notified *vide* G.O.Ms.No.21, Consumer Affairs, Food and Civil Supplies (CS.I-CCS) Department, dated 03.10.2018, is subject to Telangana Rice (Custom Milling) Order, 2015, notified *vide* G.O.Ms.No.18, Consumer Affairs, Food and Civil Supplies (CS.I-CCS) Department, dated 30.10.2015; that only 'the miller' of the rice mill is personally liable for any illegalities committed by him in undertaking the job of milling the CMR paddy under the Procurement and Delivery of Custom Milled Rice Policy and 'the mill' is no way connected with such illegalities; that the appellant is no way concerned with the illegalities committed by the owner; that since the appellant obtained valid lease of the mill, it is entitled to be enrolled under the

policy and to secure paddy for milling; that the lessee of the mill cannot be penalized by depriving the enlistment of the mill to undertake the job of milling paddy as per the policy notified *vide* G.O.Ms.No.21 dated 03.10.2018; that the Government recognized entitlement of the lessee of rice mill for allotment of paddy under the policy; that subject to fulfillment of the condition of obtaining guarantee from the owner of the rice mill and guarantee from two financially sound rice millers or by obtaining 50% of bank guarantee from the lessee, the lessee is entitled to secure paddy during the current agricultural season, mill the paddy and deliver the identified quantity of rice; that denying enrolment and supply of paddy under the policy to the appellant amounts to arbitrary exercise of power, illegal and offends the right to carry on business as guaranteed by Article 19(1) of the Constitution of India.

5. *Per contra,* the learned Government Pleader for Civil Supplies as well as the learned Standing Counsel for the Telangana State Civil Supplies Corporation, while reiterating the submissions made before the learned Single Judge, submit that once the miller earns disqualification as per the policy, no paddy can be supplied to the same mill, and therefore, the competent authority had rightly rejected the request of the appellant; that by drawing attention to paragraph 12 of G.O.Ms.No.21 dated 03.10.2018, they

would contend that power is vested in the Collectors (Civil Supplies) to take action against the rice millers, who divert paddy stock delivered for custom milling or indulge in purchase of PDS rice and attempt to deliver the same under CMR, and to black-list them; that once action is taken in exercise of said power, the paddy cannot be supplied to the same rice mill merely because the said rice mill is leased out and that the lessee cannot claim independent right ignoring the fact that illegalities were committed by the owner in the very same rice mill.

6. In view of the rival claims, the issue that arises for consideration in this appeal is:

"Whether the disqualification suffered by the mill owner by virtue of G.O.Ms.No.21 dated 31.10.2018, which is the policy for grant of CMR paddy, disables the subsequent lessee of the mill for grant of CMR paddy or not?."

7. The Policy of Procurement of Paddy under Minimum Support Price Operations and Delivery of Custom Milled Rice for the Kharif Marketing Season 2018-19 notified *vide* G.O.Ms.No.21 dated 03.10.2018 prescribes the procedure for procurement of paddy, delivery of paddy to rice millers, the nature of job to be undertaken by millers etc. As per paragraph 11 thereof, the Collectors (CS) are required to

review the entire process of custom milling operations, regulate and take action against rice millers, who fail to deliver the resultant CMR paddy within the stipulated time. As per paragraph 12, the Collectors (CS) are entitled to take action against the rice miller, who divert paddy stocks delivered for custom milling or indulge in purchase of PDS rice and attempt to deliver the same under CMR, and power is vested on them to blacklist such millers.

8. Paragraph H of Annexure–IV appended to G.O.Ms.No.21 dated 03.10.2018 deals with allotment of paddy to rice millers. As per sub-paragraph (1) thereof, paddy should not be allotted to the rice millers against whom cases under Section 6-A of the Act are booked. As per sub-paragraph (2), paddy should not be allotted to the rice millers, who failed to deliver the CMR rice for the Kharif Marketing Season 2017-18 by 30.09.2018. As per sub-paragraph (3), paddy should not be allotted to defaulted rice millers. As per sub-paragraph (4), if rice mill is taken on lease, it requires an additional safeguard in the form of guarantee from the owner of the rice mill and also guarantee from two financially sound rice millers or alternatively furnishing of 50% of the value as bank guarantee from the lessee to supply CMR paddy for milling.

9. While interpreting the words ‘Miller’ and ‘Rice Mill’ as defined in paragraphs 2(g) and 2(m) of the Telangana Rice

(Custom Milling) Order, 2015, the learned Single Judge rightly came to the conclusion that the proceedings initiated against the owner are equally binding on the lessee, who stepped into the shoes of the owner and managing the affairs of the mill or the new millers of the rice mill. The learned Single Judge, after referring to policy of the Government, came to conclusion that unscrupulous mill owner may indulge himself in illegalities in milling paddy procured under the scheme, secure PDS rice illegally and introduce a person by way of lessee and defeat the purpose of the scheme, and therefore, the said lessee cannot contend that he is eligible for grant of CMR paddy for milling since a case under Section 6-A of the Act has been booked against the owner.

10. It is to be seen that violation of Article 19 (1) of the Constitution of India is alleged in the instant case. The policy envisaged in G.O.Ms.No.21 dated 03.10.2018 is only to the effect that the millers, against whom cases under Section 6-A of the Act are booked, are not entitled for grant of CMR paddy, but there is no total prohibition on the lessee to carry on the milling operations. The appellant, who is said to be the lessee of the mill, is not prohibited from carrying on milling operations, as such there is no violation of Article 19(1) of the Constitution of India.

11. According to G.O.Ms.No.21 dated 03.10.2018, the paddy procured is to be milled in a time bound manner and delivered to the Food Corporation/State Corporation to enable it to utilize the same for Public Distribution System. As the Government is not in a position to carry on the milling operations on its own, certain restrictions and conditions were imposed for grant of paddy for milling. The object of the Government for introducing the Policy for Procurement of Paddy under Minimum Support Price Operations and Delivery of Custom Milled Rice is for public purpose and the same cannot be thwarted.

12. The learned Single Judge relied on the proposition that exercise of jurisdiction under Article 226 of the Constitution is discretionary and a writ is not issued as of right or as a matter of course, as the power exercised by the Writ Court is discretionary, it need not be exercised in each and every case where there is an error of law and exercise of jurisdiction will not necessitate unless substantial injustice has ensued or is likely to ensue. (See *C.R. Reddy Law College Employees' Association, Eluru, W.G. District v. Bar Council of India, New Delhi*[1] and *Sangram Singh v. Election Tribunal, Kotah*[2]*.)*

13. The discretion exercised by the learned Single Judge in exercise of jurisdiction under Article 226 of the

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[1] (2004 (5) ALD 180 DB)
[2] AIR 1955 SC 425

Constitution, cannot be interfered with except in compelling circumstances and there is no reason to take a view than the view taken by the learned Single Judge in the facts and circumstances of the case, and therefore, the discretion exercised cannot be unfolded in intra-Court appeal filed under Clause 15 of the Letters Patent Act.

14. In the result, the appeal is devoid of merits and it is accordingly dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 18.02.2019
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