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IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC Nos.3721 of 2002 & 17037 of 2001
and
CONTC No.2932 of 2012

Nakul Kishor Merli & others
(In OJC No.3721 of 2002 &
CONTC No.2932 of 2012) .... ***Petitioners***

Sachidananda Biswal & others
(In OJC No.17037 of 2001)

-versus-

Union of India and others .... ***Opposite Parties***

Advocates appeared in this case:

For the Petitioners : Mr. S.S. Rao and
Mr. H.S. Mishra, Advocates
(In OJC No.3721 of 2002 &
CONTC No.2932 of 2012)

None
(In OJC No.17037 of 2001)

For the Opposite Parties : Mr. P.K. Parhi, Assistant Solicitor
General for Union of India,
Mr. Debasis Nayak, Advocate for
FCI and Mr. Debakanta Mohanty,
A.G.A. for the State

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
11.08.2022

Dr. S. Muralidhar, CJ.

1. There are two writ petitions filed as Public Interest Litigations (PILs) by the farmers of Odisha. While the farmers of the Districts of Cuttack and Kendrapara came forward, more than two decades ago, to file OJC No.17037 of 2001, the farmers of Bolangir District in western Odisha came forward in 2002 to file OJC No.3721 of 2002.

2. The CONTC No.2932 of 2012 was filed by the Petitioners in OJC No.3721 of 2002 complaining of failure to implement the interim judgment dated 25th April, 2002 and the detailed order dated 13th December, 2004 of this Court in these writ petitions.

3. The central concern in both these writ petitions, at the time they were filed, was about the "unholy combination/nexus of the Rice Millers, Storage agents, Civil Supply Officials and Officials of Food Corporation of India (FCI) in paddy procurement." According to the Petitioners, as a result, "there is wide distress sale of paddy all over the State, which has seriously affected the poor farmers." Therefore, the prayers in both the writ petitions are identical. Apart from asking for an investigation into the matter by an independent agency "to find out the remedial measures" so as to protect public interest and a CBI investigation against "the persons, who are involved in the corrupt practice.", the central prayer is for a direction to the FCI "to procure the paddy directly from the farmers instead of rice from the millers as per the provisions of the food policies."

The interim judgment

4. On 15th April 2002, after hearing the parties at some length, at the initial stage itself, orders were reserved and on 25th April 2002, the Court delivered what it termed as an 'Interim Judgment'. The necessity for the Interim Judgment, as explained by the Court, was on account of the fact that "this year the farmers of the Bolangir district have had reasonably good harvest compared to the previous disastrous years and that they need immediate protection in the matter of sale of their harvested paddy." Therefore, "notwithstanding the fact that the Opposite Parties are yet to file their counter affidavits, and we are granting them time of one month for filing such counter affidavits", the Court proceeded to deliver the 'Interim Judgment' on the expectation that the problems that may arise or the advantages that may be gained by implementing the Interim Judgment "can also be projected in the counter affidavits to be filed so that this Court can judge the impact, the efficacy and the usefulness of the Interim Judgment that is now being rendered."

5. The Court discussed the Food Corporations Act, 1964 (FC Act) and in particular Section 13 of the FC Act, which states that "it shall be the primary duty of the FCI to undertake the purchase, storage, movement, transport, distribution and sale of food-grains and other food-stuffs." Further, the FCI is also expected to "promote, by such means as it thinks fit, the production of food-grains and other food-stuffs".

6. The Court noted that procurement of food-grains would necessarily involve ensuring of the Minimum Support Price (MSP) to the growers in terms of the extant policy of the Government.

7. By this time, the pleadings in OJC No.17037 of 2001 was complete and from a perusal of those pleadings, the Court was of the view that "the farmers of Orissa, a good percentage of them being illiterate, are an exploited lot." The Court noted that the complaint in OJC No.17037 of 2001 as well as in the companion OJC No.3721 of 2002 was that the arrangement by which the State Government in conjunction with the FCI authorized private mill owners to procure paddy from cultivators and then deliver rice to FCI hulled out of the paddy so procured, with the obligation of the millers to procure paddy only at the MSP fixed by the Central Government, "has led to the mill owners supplying rice to the Food Corporation of India not produced out of the paddy hulled after procurement of the freshly harvested paddy but from quantities of rice diverted from the rice distributed under various relief programmes undertaken by the State in the wake of the natural calamities faced by the State and the fall in production of paddy."

8. The Court proceeded to note that "after thus improperly meeting their quota obligations, the Millers compelled the farmers to sell the paddy at prices below the Minimum Support price. The conditions were so manipulated by the Millers with the support of unscrupulous officers of the State Government and of the Food Corporation of India that the farmers were forced to sell their paddy in distress and at a price below the Minimum Support Price thus defeating the entire scheme evolved to help the farmers. In other words, the Millers in connivance with the officers of the Civil Supplies Department of the State and the Food Corporation of India satisfied their quota requirements by diverting rice intended for distribution under various alleviation schemes and selling

that rice in discharge of their obligation to supply rice to the Food Corporation of India and by not procuring the paddy from the cultivators by paying them the Minimum Support Price."

9. The FCI submitted that it did not have adequate facilities in the State of Odisha for procuring and storing paddy or rice and it was in that context with the help of the millers, who sought to procure paddy, store it till it was distributed by the direction of the FCI and/or the State Government. Since FCI had surfeit stock of rice in its godowns, the policy was that the FCI should not take up direct procurement of paddy from the cultivators. On its part, the Union of India informed the Court that it was for the State Government to make arrangements for procurement and to prevent exploitations of farmers and the Union Government is only concerned with fixing the MSP "and it was a matter for the State Government to take the necessary action."

10. The Court in its Interim Judgment then noted that there was perhaps a lack of will on the part of the authorities of the Civil Supplies Department and/or the officers of the FCI that had led to "the scandal of the previous years." The Court noted how during the course of hearing, the Court had suggested the FCI, Union of India and the State Government "to consider whether, to alleviate the poverty-stricken farmers of the State of Orissa, procurement should not be taken over by the State through the Food Corporation of India so as to eliminate the middlemen, who unfortunately have shown, more often than not, a tendency to exploit the generally gullible and illiterate farmers."

11. However, as noted by the Court in its Interim Judgment dated 25th April, 2002 "there has been no positive answer forthcoming from the State and from the FCI." Specific to the Bolangir district, which according to the Court is not an "unwieldy district", the Court said that

> "it would be just and proper in the circumstances, especially in the context of the obligation of the State and that of the Food Corporation of India under Section 13 of the Food Corporations Act, to direct the State, the Civil Supplies Department of the State and the Food Corporation of India to directly procure paddy from the farmers of Balangir district during this season at the Minimum Support Price now in vogue (we are told that the harvest has been completed by the month of February). This will enable the Court to know what if any are the real difficulties faced by the Civil Supplies Department of the State and the Food Corporation of India in the matter of procuring paddy directly from the farmers. After all, the Civil Supplies Department and the Food Corporation of India together or either of them, can get the paddy milled through any of the mills on paying the usual milling charges. This would ensure that the farmers get the Minimum Support Price for the paddy they have produced and that they are not exploited by any one from outside the State agency and the Food Corporation of India entrusted with the authority of procurement. This will also preclude or at least discourage the diversion of rice supplied to the State under various alleviation programmes by the Central Government and eliminate the prospect of the mills supplying the diverted rice to the Food Corporation of India in place of the rice hulled from paddy procured from the farmers after the current harvest. If this is implemented, we feel that the Food Corporation of India will also be in a position to inform the Court as to what exactly were the problems that it faced (as opposed to what it apprehends it may be facing) while implementing our direction. Since the object of the whole exercise is to ensure that the policy of the Central Government to ensure a fair return to the farmers is fulfilled, a direction of this nature is warranted and justified and a direction should be issued to the Civil Supplies Department of the State and the Food Corporation of India to make the procurement direct in concert

and to report to this Court the practical aspects of implementing this direction."

12. The Court observed that it would be open to the Union Government in consultation with the State Government to modify or vary the MSP for the paddy to be procured for the State “and also to fixed a price for paddy which according to them, does not conform to the minimum quality as envisaged by them.” Therefore, the Court did not consider the objection of FCI to the quality of the paddy sought to be procured to be of “much significance” since the rice made out of such paddy “is to be distributed in the State of Odisha itself.” Terming its directions “as an experimental measure in respect of a district in the State so as to get at the result of the experiment so as to enable the Court to effectively give the necessary directions regarding the State as a whole to ensure that the farmers get a fair deal and a proper price for their produce as envisaged by the Union Government when it fixed the Minimum Support Price."

13. The Court, with a view to eliminating middlemen from the scene, as an interim measure directed "the State of Orissa, its Civil Supplies Department, the Union of India, the Food Corporation of India and its officials to procure in concert the paddy from the farmers of Balangir district at the Minimum Support Price as fixed by the Central Government and deal with that paddy as per the directions of the Central Government and the State Government and as per the policy of those Governments."

14. Explaining the directions further, the Court ordered as under:

> "… In others words, the only direction which modifies the existing arrangement is the direction not to use the millers for procuring paddy from the farmers at the Minimum Support Price, but to procure it direct from the farmers on paying the Minimum Support Price. The procurement will be started by the Food Corporation of India and the State Government without any delay to prevent the farmers from having the resort to distress sale especially taking note of the fact that the previous two years have not been good for the farmers. It will be open to the State Government and the Food Corporation of India to seek further directions from this Court regarding implementation of this interim judgment if it is found necessary."

15. The Court is informed that the Special Leave Petition filed in the Supreme Court of India against the above order was dismissed.

16. On 19th November 2003, the Court was of the view, after hearing all the parties, that the Opposite Parties "should be given some further time to implement the directions issued by this Court by the aforesaid interim judgment dated 25.4.2002 in letter and spirit as the harvesting season of paddy in the District of Bolangir is not far away and it is the admitted position by all concerned before us that the season for procurement of paddy will start from December and will come to an end by the end of February at the latest."

17. Accordingly, the Court directed the Opposite Parties to implement all interim directions issued by the Court in the Interim Judgment dated 25th April, 2002 in "letter and spirit and submit a report within March, 2004 giving the details of the procurements made in compliance with the aforesaid interim directions."

18. The Opposite Parties were asked to elaborate in their affidavits “whether the paddy was procured directly from the farmers or not.” The above directions were reiterated on 8th December, 2003 and it was directed in the interim that “no procurement of paddy in the District of Bolangir be made by the State Government or Food Corporation of India in contravention or violation of any of the directions” including interim directions issued in both the writ petitions.

19. On 24th December 2003, another detailed order was passed by this Court after perusing the affidavits filed till then. It was clarified by the Court that "in no case the State Government will procure the paddy from the farmers through the millers and that paddy will be procured directly from the farmers by paying minimum support price henceforth." Likewise, "F.C.I. will continue to purchase paddy directly from the farmers and will pay the minimum support price to the farmers."

20. On 10th August 2004, it was clarified that the earlier directions issued to the State Government and FCI to purchase paddy from the farmers at the MSP and that “nothing prevents the farmers to sell their paddy to Gram Panchayat Level Committees or any other person”.

Order dated 13th December, 2004

21. Another detailed order was passed by this Court on 13th December, 2004 after hearing the parties. The Court discussed the situation in the Bolangir district during the year 2004-05 and noted that "the purchase of the paddy for conversion to 90,000 MT of rice has to be made by the

State Government and the Food Corporation of India directly from the farmers in Bolangir District."

22. The Court noted the provisions of Clause 5 of the Orissa Rice and Paddy Procurement (Levy) and Restriction on Sale and Movement Order, 1982 (the 1982 Order) to ensure cooperation amongst dealers. The Court was informed that the FCI is having to procure rice from other States to meet the requirements in Bolangir district. The Collector, Bolangir district was directed, if need arose, to "issue directions to the millers to mill the paddy procured by the State Government and its agencies and the Food Corporation of India by the millers on such terms and conditions as may be specified by the Collector."

23. It was noted that Clause 5 of the 1982 Order, envisages milling of paddy into rice and that such provision was “independent of and different from the provision in Clause 3 of the Order, 1982 for levy of rice on millers”. It was then further directed as under:

> "Now that we have issued directions as above and also clarified the position of law, the State Government and the Food Corporation of India will purchase directly from the farmers of Bolangir District during the year 2004-2005 paddy for conversion to 10,000 MT of rice and 80,000 MT of rice respectively at 15 centres to be opened up by the State Government and its agencies and 100 centres to be opened up by the Food Corporation of India and such 115 centres will be distributed evenly throughout the District of Bolangir. Since these directions have been issued by the High Court under Article 226 of the Constitution and there are no statutory bars to implement these directions, the State Government and the Food Corporation of India will forthwith implement the directions and excuses on the ground of

administrative constraints will not be entertained by this Court."

24. At the hearing on 12th May 2010, learned counsel for the Petitioners pointed out that "in consonance with the order dated 7th April 2010, the State Government and the FCI have not furnished the list of farmers from whom they have purchased paddy during the kharif year relatable to the year 2009-10." The Court left it open to the Petitioners to initiate appropriate proceedings for non-compliance of the order dated 13th December, 2004. The Court was informed on 19th December, 2012 that pursuant to the orders of the Court, FCI and state-owned undertakings had opened 141 paddy purchase centres. An affidavit to that effect was asked by the Court to be filed by the Opposite Parties.

25. It appears that nearly six years thereafter neither of the writ petitions were listed for hearing. In between, the CONTC No.2932 of 2012 was filed on 19th December, 2012 and on 20th June 2018, in the said contempt case, time was granted to the Petitioners "to file copy of the order of which contempt is alleged."

Changed circumstances

26. Reverting to the writ petitions, they were listed twice in 2019 and twice in 2020. In their own turn, they were listed for hearing before this Court on 6th December, 2021 when the FCI's note dated 23rd November, 2021 indicating the status of compliance with the directions issued on 27th January, 2020 was filed. By this time, as stated in a written note submitted by learned counsel for the State in both the PILs on 22nd November 2021, it was stated that in May, 2002 "2166.28 Quintals of paddy was directly purchased from the farmers at the minimum support

price by opening few centers. The total payment made was Rs.11,48,000/- to the farmers of the District. It is pertinent to mention that paddy in respect of 3259 bags out of 6690 bags were found below FAQ standard and could not be purchased."

27. It was further stated that quality test of paddy was undertaken at the spot at purchase centres with moisture metres installed. Nearly 50% of the paddy was rejected due to lack of prescribed specification of quality. It was further pointed out as under:

> "The most difficult aspect of the direct procurement of paddy was shortage of space in the district and non-availability of FAQ standard paddy. During Kharif year 2003-04, the Central Task Force Team of Government of India visited certain paddy purchase centre in Bolangir district. From one of the purchase Centres at Junagarh, they obtained four random samples and analyzed it at Central Green Analysis Laboratory, New Delhi. They found that paddy of all those samples were below the FAQ standard."

28. In this note, it was pointed out that "for last twenty years, the cases were being heard from time to time on the existing facts and materials on record up to 2015 though there was complete change of policy and mode of procurement of paddy in 2005 and then in 2015. New MOUs for Kharif year 2004-05 and 2015-16 due to changed procurement policy, were executed between the State Government and Government of India and are annexed to the affidavit filed on behalf of FCI."

29. It was further stated in the note of the submissions of the State as under:

> "9. The last such MOU executed between the State Govt. and the Govt. of India in the year 2019-20 along with the Food and Procurement Policy of the State for the Kharif Marketing

> Season (KMS) 2021-22 is enclosed with a further affidavit filed on the same date as the present note. As per Clause 21 of the MOU, the State Government will make special efforts to extend procurement operations from poor, remote and backward districts of the State. If the State Government is not in a position to extend procurement operations in all poor, remote and backward districts of the State, the FCI, shall on the specific request of the State Government intervene and open procurement centres in these areas after mutual consultation. However, it has been specifically stated that the State Government would take necessary measures to take over full responsibility of procurement in the State within a time bound period. In view of such facts and circumstances, the FCI is only to make joint teams with the State Government to oversee the conduct of procurement-operations and attend to the specific complaints, problems etc. Accordingly, the State Government has made arrangements since 2015 and is procuring paddy from the farmers of Bolangir district by opening 174 paddy procurement centres (2020-21 data)."

30. Under Clause 4.1 of the 2021-22 KMS Policy, the role of FCI had been "reduced to accepting surplus rice and evacuate it to outside consuming States." It was claimed that since Kharif year 2017-18, there had been smooth procurement of paddy from the farmers of Bolangir district by the State Government through its agencies like the Orissa State Civil Supplies Corporation Ltd (OSCSCL), Primary Agricultural Cooperative Societies (PACS) and the Orissa State Cooperative Marketing Federation (MAEKFED). It was further stated "the total quantity of paddy procured in Kharif season 2020-21 in Bolangir district is 3,83,182 MT and 715.78 Crores of rupees have been paid to 54856 farmers at minimum support price. During the 2020-21 Kharif Year, the total quantity of paddy to the extent of 62,89,555 MT was purchased on payment of almost 11,749 Crores of rupees to 11,91,120 number of framers in paddy procuring districts of Odisha."

31. There was change of counsel for the Petitioners in view of the fact that Mr. Narasingha Mishra, learned Senior Counsel, who was appearing for the Petitioners, became the Chair of the Standing Committee-VI of the Odisha State Legislative Assembly on "Co-operation, Handlooms, Textiles & Handicrafts and Food Supplies & Consumer Welfare Department." Mr. S. S. Rao, learned Advocate appeared for the Petitioners in both petitions.

32. Mr. Debasis Nayak, learned counsel appearing for the FCI specifically drew attention to Clause 4.1 of the 2021-22 Kharif Marketing Season (KMS) Policy, which clarifies that the role of FCI has been reduced to accepting surplus rice and evacuating it to outside consuming States. According to FCI, there was no complaint received from any farmer of Bolangir district during the Kharif years about problems faced due to distress sale of paddy. Apparently, no complaint had been received even from the State Authorities. He further assured the Court that FCI would not hesitate to step in whenever asked to do so for procurement of rice subject to such rice meeting the minimum quality.

Standing Committee Reports

33. Mr. S. S. Rao, learned counsel appearing for the Petitioners filed I.A. No.34 of 2022 to place on record the interim reports submitted to the Odisha State Legislative Assembly by the aforementioned Standing Committee including the latest report submitted on 13th July, 2022.

34. The Court notes that along with the enclosures to this I.A. are the action taken notes (ATN) of the State Government on the observation/recommendation of the first and second report of the Committee. In particular, the Court notes that it touches on various aspects including

- creating additional storage space in the PACS for storage of paddy, seeds and fertilizers;
- solving problems in selling of FAQ and non-FAQ paddy by the farmers at Mandi level of PACS;
- steps to be taken for provision of adequate infrastructure by RMCS and PACS to access the FAQ quality of paddy and conversion of non-FAQ paddy to FAQ standard;
- Collection of data through the PACS by conducting joint survey with the Agriculture Department;
- providing share capital assistance and financial assistance to PACS; revival/modernization of existing defunct cold storages and providing funds from the State budget, NABARD etc.;
- steps to empower the small / marginal/ landless farmers /share crop basis and farmers with small land holding to access as a free credit by organizing 'Joint Liability Groups' and providing Agricultural Credit by the cooperative Banks/ PACS with credit linkage of JLGS & NABARD;
- Interest Subvention Scheme on crop loan and term loan;
- Setting up of a programme management agency comprising of professionals to support to OSAM Board for development and promotion of Agricultural Marketing in Odisha;
- holding of election in the RMCS;

- developing market infrastructure including establishment of wholesale markets in various districts;
- integrating land details of the farmer members of PACS with Bhulekh and all other accounts;
- action plan providing for adequate modern marketing infrastructure/equipment/weighing scale creating a conducive environment for Farmer Producers Organizations (FPOs) and so on.

35. On all the above topics, the ATNs on both the first and second report of the Committee are instructive. As far as the 3rd Report is concerned, which was extensively referred to by Mr. Rao in the course of his submissions, the Court would not like to comment because it is still under consideration by the Odisha State Legislative Assembly. The ATNs thereon would have to be also examined by the Legislative Assembly and deliberated upon. It is, therefore, not proper for the Court at this stage to make any reference to or comment on the 3rd report which was submitted only on 13th July, 2022.

36. The petitions, which were filed more than two decades ago have served the purpose of keeping the issue of procurement of paddy from the farmers centre stage and has ensured focused attention on the issues both by the Legislative Assembly as well as by the State Government through all these years. Mr. Narasingh Mishra, learned Senior Counsel who was present for one of these writ petitions and made submissions in the Court through all these years has been staying with the cause in his new role as the Chairperson of the Standing Committee, which has made numerous recommendations and which have been acted upon by the State Government as noted hereinbefore. Although the Committee

may have made further recommendations, which require the attention of the Government, the Court has no reason at this stage to conclude that those recommendations will not receive the attention of the Government.

37. The Court suggested to Mr. Rao that the Petitioners could reserve their right to approach the Court for directions by filing fresh petitions given the fact that not only has the procurement policy changed considerably since the petitions were first filed two decades ago but several developments have taken place which have brought forth the complexities of the issues involved in the procurement of paddy. While it could be said that the Interim Judgment dated 25th April, 2002, the detailed order dated 13th December, 2004 and other orders passed from time to time by this Court have provided impetus to the State Government to bestow attention to the issue of paddy procurement in all its dimensions, it would not be appropriate for the Court, to direct, as was urged by Mr. Rao, that the said Interim Judgment and those interlocutory orders should be considered to be the 'final orders' in the case. Doing so would fail to acknowledge the policy changes and the various developments that have taken place in the last two decades.

38. Suffice it to say that if there are any specific instances of distress sale of paddy, the farmers would not hesitate to ventilate their grievances before the Standing Committee and if particular recommendations of the Standing Committee are not acted upon by the State Government, or if FCI does not adhere to the assurance conveyed to the Court through its counsel as noted hereinbefore, to seek further appropriate remedies as are available to them in accordance with law.

39. The Court is of the view that these petitions have more than adequately served their purpose as has the contempt petition filed seeking implementation of the Interim Judgment dated 25th April, 2002 and the detailed order dated 13th December, 2004.

40. Consequently, with the above observations, the two writ petitions and the contempt petition as well as the pending IAs are hereby disposed of.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

M. Panda