FOOD CORPORATION OF INDIA

v.

V.K. SUKUMARAN ETC. ETC.

NOVEMBER 23, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Essential Commodities Act, 1955—Sections 3(1) & (2)—Kerala Rationing Order, 1966—Sub-clause (8A) of Clause 45—Interpretation of—Rationed articles—Revision of prices including distribution Cost—Intimation of revised rates necessary to retail dealers—Retailers to account for differential price of the stock on hand on previous closing day.

The respondent, an authorised retail dealer at Ernakulam Distt. purchased from the appellant's godown rice on 10.10.1985 and 11.10.1985 at the pre-revised rates for public distribution to the cardholders. On 11.10.1985, the Civil Supplies Officials issued instructions to the respondent and other retail dealers revising the price of the rice w.e.f. 12.10.1985 and stating that the closing stock on 12.10.1985, should be ascertained and the difference of the price was to be deposited in the Treasury and Challan was to be submitted within two days thereafter and in the case of non-compliance, action would be taken against the defaulter. Writ petitions filed against the orders were allowed while holding that the respondent was not liable to refund the difference of the price for the stock on hand on closing day of 9.10.1986 and supplied on October 10 and October 11, 1985; that the liability would arise only from the date when intimation of the revised rate thereof was given by the Civil Supply Officer and since the intimation was given on 13.10.1985, for the stock on hand as on 12.10.1985 difference would be liable to be refunded at the revised rates from that date. Writ appeal filed challenging the order was dismissed by the Division Bench, upholding the order of the Single Judge. Hence these appeals by special leave. The question raised for consideration was whether the retailers were liable to refund the difference of the price for the opening stock held by the retailer on 10.10.1985 and purchased on October 10 and 11, 1985 as intimated.

Dismissing the appeal, this Court

A HELD : 1.1. The respondent was bound by the Kerala Rationing Order, 1966 issued under sub-section (1) and (2) of S.3 of the Essential Commodities Act, 1955. Sub-clause (8A) of Clause 45 of the order enjoins that whenever the existing issue price of rationed articles, i.e., the price at which the stock has to be released from the Food Corporation of India or Central Storage Depot, is revised by the Government of India or State Government either upward or downward, the stock of rationed articles with the authorised retail distributor as on the beginning of the day from which day the revised issue price will come into force, should be assessed by the authorised retailed distributor and intimated to the Taluk Supply Officer/City Rationing Officer or any officer authorised by the State Government for the purpose. [636-D-F]

1.2. The authorised distributor, either whole-seller or retailer, is enjoined to make good the difference of the price of stock on hand as on the previous closing day, in these cases as on October 9, 1985, consequent to the revision of the issue price by the Central Government with effect from October 10, 1985. Para 2 of the Government Circular No. 176, Ministry of Food and Civil Supplies issued on 11.10.1985, authorised the State Government/Union Territory to revise the rates of issue price consequent upon the revision of the price including the distribution cost with effect from October 10, 1985. In terms thereof, on revision of retail price by the State/Union Territory government and on issue of instruction from the State Government, the Taluk officials as stated earlier, had intimated to the retail dealers that the revised prices would come into effect from October 13, 1985 and they were directed to pay the difference on the stock on hand on 12.10.1985. It would be desirable to avoid loss to public exchequer and unintended windfall to whole-sale or retail dealers that before enforcing the revised rates of rice, an infrastructure in built, revision by State Government or Union Territory Authorities is made and intimation thereof and the date of its becoming effective is made public through media, i.e. Radio., T.V. or press so that the revised rates would come into effect from that date and the stock held at the close of the previous date would be assessed in terms contained in the Government of India Order so that there would not be any hiatus between fixation of revised rates and its enforcement and the liability of the retail dealer to refund the differential price in that behalf. If this procedure is adopted, there would be no difficulty for the retail dealers to account for the

differential price of the stock on hand on the previous closing day and to credit the same to the Treasury account as intimated by the concerned officer. [637-F-H; 639-B-D]

1.3. Admittedly such an intimation was in fact given by the Taluk Officer on October 13, 1985 and that a direction was given that the difference of the price of the stock on October 12, 1985 should be accounted, the respondent-retailer cannot be made liable to account for the difference on the revised price of the closing stock on October 9, 1985 or the stock purchased on October 10 and 11, 1985. Under the Order and Licence held by the retailer he is enjoined to distribute to the card-holders at the rates revised by the State Government and until that is done he is obliged to distribute the essential commodity, namely, rice at the pre-revised rates. If any contravention is made that would be a contravention of the licence of distribution or the Order. But that would be ascertained on the facts in each case. [639-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1826 of 1989 Etc.

From the Judgment and Order dated 14.1.88 of the Kerala High Court in W.P. No. 597 of 1987.

S.K. Gambhir for the Appellant.

K.V. Viswanathan and K.V. Venkataraman for the Respondent in C.A. No. 1826/89.

S.A. Syed and M.A. Firoz for the Respondent for State of Kerala.

E.M.S. Anam for the Respondent No. 1 in C.A. No. 405/92.

The following Order of the Court was delivered :

Leave granted.

The controversy raised in these cases hinge upon the interpretation of sub-clause (8A) of Clause 45 of the Kerala Rationing Order, 1966 and the circular of the Union of India dated October 11, 1985. The facts of CA No. 1826/89 which lie in a short compass would be sufficient for disposal of all the appeals before us and are stated as under :

A The respondent is an authorised retail dealer at Kanayannur Taluk, Ernakulam Distt. He had purchased from the appellant's godown rice on October 10, 1985 and October 11, 1985 at the pre-revised rates for public distribution to the card-holders. On October 11, 1985, the Civil Supplies officials issued instructions to the respondent and other retail dealers that the price of rice has been increased with effect from October 13, 1985 and B the closing stock on October 12, 1985, should be ascertained and the difference of the price was to be deposited in the Treasury and Challan was directed to be submitted within two days thereafter. If the difference of the rate would not be deposited in the Treasury or in the event of non-submission of the Challan, action would be taken against the defaul- C ters. By letter dated November 28, 1985, the Assistant Manager of the appellant-Corporation called upon the respondent to pay the difference of the rate for the stock on the closing day of October 9, 1985 and the purchase from October 10, 1985 onwards till October 11, 1985. Calling in question of the said demand, writ petitions came to be filed. The learned single Judge following the decision dated June 19, 1986 of the High Court D in O.P. No. 7926/82 entitled *Kerala State Wholesale Distributors Federation & Ors.* v. *Union of India & Ors.* had held that the respondent was not liable to refund the difference of the price for the stock on hand on closing day of October 9, 1986 and supplied on October 10 and October 11, 1985. The liability would arise only from the date when intimation of the revised rate E thereof was given by the Civil Supply Officer. Since the intimation was given on 13.10.1985, for the stock on hand as on October 12, 1985 difference would be liable to be refunded at the revised rates from that date. The order was challenged in writ appeal and the Division Bench in the impugned order dated January 14, 1988 in Writ Appeal No. 597/87 upheld F the order of the learned Single Judge and dismissed the appeal. Thus these appeals by special leave.

The Government of India issued Circular No. 176, Ministry of Food and Civil Supplies on 11.10.1985 revising the issue price of the rice from Central Pool for public distribution with effect from October 10, 1985. It G reads thus :

> "As already intimated in Telex/Telegram of even number dated 9.10.1985, the revised Central issue prices of rice supplied from the Central Pool for distribution through the public distribution H system, which will be effective from 10.10.1985 are as under :

(Rs. per quintal) A

1.	Current Issues Prices (Raw & Parboiled)	Revised Issue Prices w.e.f. 10.10.85 (Raw Parboiled)
(i)	208.00	217.00
(ii)	220.00	229.00
(iii)	235.00	244.00

B

2. The aforesaid issue prices of rice are for delivery Ex-FCI depots or F.O.R. destination stations. The State Government/Union Territory Administrations are aware that foodgrains from the Central Pool are supplied to them at the subsidised issue price with a view to enable them to meet their requirements of the public distribution system. Even after the increase, with effect from 10.10.1985, the issue prices of rice will be heavily subsidised. The State Governments/Union Territory Administrations are, therefore, requested to arrange sale of foodgrains, supplied to them from Central Pool, through ration/fair price shops at retail issue prices fixed by them after adding only reasonable distribution costs to the revised issue prices effective from 10.10.1985. It may be stressed here that the State Government/Union Territory Administrations, wholesalers, retailers of any other agency that may be involved in distribution, should not derive any profit put of these transactions. The new retail issue prices as will be fixed by the State Governments/Union Territory Administrations may be intimated to this Department as early as possible.

C D E F

3. In order to ensure that the wholesalers, fair price shops and other retailer who are supplied rice from Government stocks do not make any unintended profit on account of enhancement of wholesale and retail issue prices of these foodgrains, stocks of rice available with them at the close of transactions on 9.10.1985, should be verified and the difference between the old prices and the revised prices should be recovered from them for being credited to the Central account. Immediate action may, therefore, kindly be taken to arrange for the stocks of rice issued from the Central stocks available with the wholesalers, fair price shops and other retailers, if any.

G H

A 4. The State Governments/Union Territory Administrations will also have to credit to the Central account the difference between the old prices and the enhanced prices of rice in respect of stocks that the State Governments/Union Territory Administrations had with them at the close of transactions on 9.10.1985. For the purpose of calculation, stocks held by the State Governments/Union Ter- B ritory, at the close of 9.10.1985 and still in transition that date will also be included.

5. Arrangements may also be made to notify to the Government of India, latest by the 31st October, 1985, the quantity of rice C available with the State Government/Union Territory Administrations, the wholesalers, fair price shops and other retailers at the close of transactions on 9.10.1985 so that the Controller of Accounts may be requested to raise necessary details for the difference between the old and revised prices."

D

The respondent is bound by the Kerala Rationing Order, 1966 issued under sections 3(1) and (2) of the Essential Commodities Act, 1955. Sub-clause (8A) of Clause 45 of the order enjoins that whenever the existing issue price of rationed articles, i.e., the price at which the stock has to be released from the Food Corporation of India or Central Storage E Depot, is revised by the Government of India or State Government either upward or downward, the stock of rationed articles with the authorised retail distributor as on the beginning of the day from which day the revised issue price will come into force, should be assessed by the authorised retail distributor and intimated to the Taluk Supply Officer/City Rationing Of- F ficer or any officer authorised by the State Government for the purpose. In the case of revision of price upward, differential cost on the quantity of rationed articles so held in stock should be remitted to the State Government. Similarly, in the case of revision of price downward, a refund claim for the differential cost shall be submitted by the authorised retail distributor to such officers of the State Government authorised for the pur- G pose. In this behalf, the retailer has also entered into an agreement under cl. 45(6) of the Order which reads thus :

"Whenever the existing issue price of rationed articles (i.e. the price at which the stock has to be released from the Food Corporation H of India or Kerala State Civil Supplies Corporation Depot) is

revised by the Government of India or State Government either upward or downward, the stock of rationed articles in the hands of the Bounden as on the beginning of the day from which the revised issue price shall come into force shall be assessed by the Bounden and intimated to the Taluk Supply Officer/City Rationing Officer or any Officer authorised by the State Government for this purpose. In the case of upward revision of price differential cost on the quantity of rationed articles so held in stock shall be remitted by the Bounden to the State Government, within such time as the Taluk Supply Officer/City Rationing Officer or other authorised officer as the case may be, may order in writing. Similarly, in the case of downward revision of price a refund claim for the differential cost shall be submitted by the Bounden to such officers as the State Government may authorise for this purpose. Any sum found- due to Government on account of excess transport charges, handling charges, profit and the like gained by the bounden due to incorrect fixation of price or any other defect in calculation when the mistake is subsequently detected should be remitted to Government by the Bounden.

Under the above provision, an authorised retail distributor is bound to ascertain the stock in hand on the date with effect from which the price of rationed articles was revised. Differential cost consequent on upward revision of price held in stock on the relevant date was also to be remitted by the dealer to the State Government."

In terms thereof the authorised distributor, either whole-seller or retailer, is enjoined to make good the difference of the price of stock on hand as on the previous closing day, in these cases as on October 9, 1985, consequential to the revision of the issue price by the Central Government with effect from October 10, 1985. Para 2 of the Government circular referred to hereinbefore authorised the State Government/Union Territory to revise the rates of issue price consequent upon the revision of the price including the distribution cost with effect from October 10, 1985. In terms thereof, on revision of retail price by the State/Union Territory Government and on issue of instructions from the State Government, the Taluk officials as stated earlier, had intimated to the retail dealers that the revised prices would come into effect from October 13, 1985 and they were directed to

A pay the difference on the stock on hand on 12.10.1985.

The question, therefore, that emerges is whether the retailers are liable to refund the difference of the price for the opening stock held by the retailer on October 10, 1985 and purchased on October 10 and 11, 1985, as intimated in the letter of the Superintendent of the appellant-Corporation. It is true that the wholesale or retail dealer were not entitled to have windfall of the differential price when they had sold at revised rates of the stock on hand supplied at pre-revised rates. The differential rate should be credited to the Central Account as it was releasing the stock at subsidised rate. It is seen that the Government Order clearly indicates that the closing stock as on October 9, 1985 should be verified and the stock on hand as on that date should be revised and distributed at the revised price. The difference of the price was directed to be credited to the account of the Central Pool. But until the State Government or Union Territory Authorities revised the retail price including distribution costs and intimation of the revision of the prices is given to the whole-seller or retailer, it may be difficult for them to know, in the normal circumstances, whether the price of the essential commodities, namely, the rice, in these cases, meant for distribution was revised and at what rate it should be distributed to the card-holders at the pre-revised or revised rates. In this behalf, as rightly held by the High Court, an intimation thereof is necessary. The reasons are obvious. In terms of the conditions of licence and the Order and in terms of the provisions of the Essential Commodities Act, the violation of the conditions of licence entails cancellation of the licence of the whole-sale or retail dealer and prosecution under section 7 of the Essential Commodities Act. Intimation of the revised price would be necessary to the retail dealers. In terms of para 2 of the Central Government Circular dated 11.10.1985, the State Government in turn is required to revise the retail price for the distribution to the card-holders. On that basis the distributor is enjoined to distribute the essential commodities at the revised price. In view of these facts, it is necessary that they should get an intimation of the revision of the price of the essential commodities.

It is true, as rightly pointed out by Mr. S.K. Gambhir, the learned Counsel appearing for the appellant-Corporation, that the difference of the price of the released stock will be of considerable magnitude and may be a loss to the public exchequer since the rice is supplied at a subsidised rates to the card- holders. But retail dealers must equally have knowledge

of the revision of the prices at which they are required to distribute to the card-holders as per the price fixed by the State Government/Union Territory Authorities under the relevant orders. Until that is done and intimated, it is difficult for him to know at what price he is required to distribute to the card-holders. Consequentially, he should distribute to the card-holders at pre- revised rate only.

Considered from this perspective, it would be desirable *to avoid loss* to public exchequer and unintended windfall to whole-sale or retail dealers that before enforcing the revised rates of the rice, an infrastructure is built, revision by State Government or Union territory Authorities is made and intimation thereof and the date of its becoming effective is made public through media, i.e., Radio, T.V. or press so that the revised rates would come into effect from that date and the stock held at the close of the previous date would be assessed in terms contained in the Government of India Order so that there would not be any hiatus between fixation of revised rates and its enforcement and the liability of the retail dealer to refund the differential price in that behalf. If this procedure is adopted, there would be no difficulty for the retail dealers to account for the differential price of the stock on hand on the previous closing day and to credit the same to the Treasury account as intimated by the concerned officer.

In view of the fact that admittedly such an intimation was in fact given by the Taluk officer on October 13, 1985 and that a direction was given that the difference of the price of the stock on October 12, 1985 should be accounted, the respondent-retailer cannot be made liable to account for the difference of the revised price of the closing stock on October 9, 1985 or the stock purchased on October 10 and 11, 1985. It may be reiterated that under the Order and Licence held by the retailers he is enjoined to distribute to the card-holders at the rates revised by the State Government and until that is done he is obliged to distribute the essential commodity, namely, rice at the pre-revised rates. If any contravention is made that would be a contravention of the licence of distribution or the Order. But that would be ascertained on the facts in each case. No general principle can be laid down in that behalf.

Considered from this perspective, we think that the High Court was right, though for different reasons, in negativing the claim of the appellant

A for accounting for the difference held at the close of October 9, 1985 and purchases by the respondents on October 10 and 11, 1985.

The appeals are accordingly dismissed. But in the circumstances without costs.

B The respondent No. 1 in C.A. No. 405/89 had already deposited the amount as demanded by the appellant-Corporation. In view of the law laid down above, the appellant is directed to refund the amount within one month from the date of the receipt of this order.

R.A. Appeal dismissed.