(1984) 02 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 2003 of 1984

A.S. Parameshwaraiah — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 20-02-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 6 A, 6 A (20, 6 B

Citation : AIR 1985 Kar 161

Hon'ble Judges : K.S. Swami, J

Bench : Single Bench

Advocate : C.N. Kamath, for the Appellant; S. Udayashankar, Govt. Pleader., for the Respondent

Judgement

1. At the stage of preliminary hearing, the Government Pleader - Sri S. Udayashankar, was directed to take notice on behalf of the respondents and obtain the records and instructions. Accordingly, the learned Government Pleader has obtained the records and instructions.

2. In this Petition under Articles 226 & 227 of the Constitution, the petitioner has sought for quashing the orders dated 18-1-84 and 19-1-84 (Annexures C & D respectively) passed by the 2nd respondent.

3. On 15-1-1984, a lorry bearing Registration No. MYH 6109 was intercepted by the Police of Channarayapatna Police Station near Thirumala Bar Cross, on B.M. Road. It was found that the lorry was carrying 55 bags of rice without a release certificate. The Sub Inspector of Police, Channarayapatna, seized the commodity and the vehicle and produced the same before the 2nd respondent. On 16-1-84, the petitioner filed a petition before the 2nd respondent stating that he was an agriculturist, and the rice in question belonged to him and it was obtained from the paddy he had grown in the land bearing Sy. Nos. 10/1, 10/2, 10/3 and 10/4 of Kongalabeedu village in Kasaba Hobli, Holenarasi pura taluk; and it was being transported to the market at Arsikere for sale through Ganesh Trading Company,

Arsikere. The Dy. Commissioner, by the order dated 18-1-84, without referring to the petition filed by the petitioner and without satisfying that there was a prima facie case for proceeding under S. 6A of the Essential Commodities Act, directed the rice to be taken towards levy and it be handed over to the District Manager, K. F. & C. S. C., Hassan. The lorry was ordered to be released by obtaining an indemnity bond and surety worth Rs. 1,50,000/-. On 19-1-1984, the order dated 18-1-84 came to be modified and instead of taking the rice towards levy, it was ordered that the 55 bags of rice weighing 100 kgs. each seized by the Sub - Inspector on 15-1-1984 be taken for public distribution system. The District Manager, K. F. & C.S.C., Hassan was directed to take action immediately. The Tahsildar, Channarayapatna was ordered to distribute the rice through Fair price shops. Pursuant to that, it is submitted by the learned Government Pleader that the rice has already been distributed.

4. No doubt, Sri Kamath, learned counsel for the petitioner, is justified in contending that the orders dated 18-1-84 and 19-1-84 passed by the 2nd respondent, do not satisfy the requirements of sub-section (2) of S. 6A of the Essential Commodities Act; that there is nothing to show that the.2nd respondent has applied his mind to the facts of the case. There is no notice so far issued to the petitioner under S. 6B of the Essential Commodities Act (hereinafter referred to as the ''Act'').

5. Of course, under sub-sec. (2) of S. 6A of the Act, if the Dy. Commissioner is satisfied that the essential commodity produced before him is subject to speedy and natural decay or it is otherwise expedient to dispose of the same in the public interest, it is open to him to dispose it of in the manner provided in the said sub-section. But, before he orders for disposal of the essential commodity, he must be satisfied about two things: (1) that there is a prima facie case to proceed under S. 6A of the Act; and (2) that either on the report of seizure or on inspection, he must further be satisfied that the essential commodity is subject to speedy and natural decay or it is otherwise expedient to dispose of in the public interest. It must be apparent from the records that he has satisfied on these two aspects. It is then only the order directing the disposal of the essential commodity can be held to be valid. The satisfaction of the Dy. Commissioner of these two aspects is condition precedent for the exercise of his power to dispose of the essential commodity under sub-section (2) of S. 6A of the Act. The power given to the Dy. Commissioner under sub-section (2) of S. 6A of the Act is very wide. There is every possibility of this power being exercised arbitrarily, unless the aforesaid two aspects are satisfied. It must be apparent from the order itself that there is application of the mind to the facts and circumstances of the case and that is possible only when the Dy. Commissioner is satisfied that there is a prima facie case to proceed under S. 6A of the Act; and that it is necessary to pass an order for disposal of the essential commodity in terms of sub-section (2) of S. 6A of the Act.

6. (1) There is no reference to the petition filed by the petitioner on 16-1-84.

Unless the Dy. Commissioner is satisfied on the aforesaid two aspects, he cannot straightway proceed to pass an order for sale of the seized essential commodity or for distribution of the same by public distribution system. Therefore, I am of the opinion that the two impugned orders are not sustainable.

(2) But, in view of the fact that the essential commodity in question itself has already been distributed, no purpose whatsoever is served by quashing these two orders. Therefore, the only way left open is to direct the Dy. Commissioner to complete the proceeding under S. 6A of the Act, at the earliest.

(3) The learned H.C.G.P. submits that the proceeding, under S. 6A of the Act, will be completed within two months. Accordingly, the 2nd respondent is directed to complete the proceeding under S. 6A of the Act, within two months from the date of receipt of this order.

7. All the contentions of the petitioner are left open.

8. A copy of this order be sent to the 2nd respondent.

9. Order accordingly.