(2012) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition Nos : 9919 and 9922 of 2012

B. Pundarikam APPELLANT

Vs

The District Collector, Medak at Sangareddy and The Assistant Supply Officer, Sangareddy Division, Sangareddy, Medak District
 Kande Venkateswarlu Vs The Joint Collector (CS wing), Prakasam District, Ongole and The Enforcement Deputy Thahsildar, Giddalur Mandal, Prakasam District RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:
Essential Commodities Act, 1955 — Section 3, 6A, 6A(1)

Citation : (2012) 4 ALT 370

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : V.H.V.R.R. Swamy in Writ Petition Nos 9919 of 2012 and Sri. I. Koti Reddy in Writ Petition Nos 9922 of 2012, for the Appellant;

Judgement

Nooty Ramamohana Rao

1. Both these Writ Petitions can be disposed of by a common order, as the question that falls for consideration is one and the same. The petitioners are the owners of vehicles, which were also seized due to their involvement in illegal transportation or intended transportation illegally of scheduled/essential commodities meant for public distribution as the case may be. Section 6-A (1)(c) of the Essential Commodities Act, 1955 empowers apart from seizure of any essential commodity, pursuant to an order passed u/s 3 of the Act, any animal, vehicle, vessel or other conveyance used in carrying such essential commodity also to be seized and later on, if the offence is held established, can be confiscated as well to the State. The second proviso incorporated to sub-section (1) is relevant and it reads as under:

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

2. The second proviso therefore, makes it clear that the owner of such animal, vehicle, vessel or other conveyance deployed for the purpose of illegal transportation of the essential commodities, before confiscation, can be provided an option to pay a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance. It is therefore, crucial to understand that the owner of the animal, vehicle, vessel or other conveyance could be a different person from the owner of the scheduled or essential commodities, which have also been seized. Therefore, providing an option to him to pay up fine in lieu of confiscation has been contemplated. The statute has also taken care to regulate the quantum of fine amount by specifying the words "a fine not exceeding the market price at the date of seizure of the essential commodity". From usage of these expressions, the statute-maker tried to regulate the exercise of discretion for imposition of fine by the competent authority. The fine that can be imposed can be anything less but in no case it shall be in excess of the market price at the date of the seizure of the essential commodity. For determining the market price, the date of seizure becomes the crucial and relevant date. In other words, as there could be considerable time gap between the date of seizure and the order for confiscation, to avoid any such ambiguity in the matter of imposition of fine, the statute-maker directed the date of seizure of the essential commodities to be taken as the date relevant for determination of the fine amount, but not the date on which the confiscation per se could be ordered. It is one thing to prescribe the relevant date for reckoning, but it is another aspect to determine the market value. Market value to be determined is obviously of the animal or the vehicle or the vehicle or other conveyance. It does not mean the market value of the essential commodities transported or intended to be carried. Because, such commodities are ordered to be confiscated to the State the question of releasing them to the transporter would not arise.

3. It may not be very difficult to analyze the contingent situations that might arise in two different circumstances. Let us assume that a new truck, which is valued at Rs. 5 lacs, is deployed to carry the essential/scheduled commodities, which have been seized, and later on sought to be confiscated, the value of which commodities was more than Rs. 5 lacs. Let us put their value at Rs. 6 lacs. If the owner of the truck were to be given an option to pay Rs. 6 lacs, representing the value of confiscated commodities, in lieu of confiscation of his truck worth Rs. 5 lacs only, such an option would amount to a redundant exercise. No person in his senses would opt to pay up Rs. 6 lacs for retrieving a vehicle, which is worth less than that amount.

4. In a different case scenario, assuming that the truck is only carrying the essential commodities worth Rs. 2 lacs, if the option were to be given to the truck owner, to pay up Rs. 2 lacs and retrieve his vehicle, he would be too happy to exercise such an option.

5. In view of the clear provision that even the mode of conveyance, which is involved for the illegal transportation of the scheduled/essential commodities, which have been initially seized and later on ordered to be confiscated to the State, also is liable to be confiscated, it stands therefore, to reason that it is the market price of the animal, vehicle, vessel or other conveyance, which should be the determinative factor for releasing the same in lieu of confiscation. The value of the seized commodities would not be the relevant criteria. For releasing from confiscation an animal, vehicle or vessel, when a possibility of an absurd result is likely to emanate from interpreting a provision of law in a particular manner, Courts should endeavour to avoid putting any such interpretation on such a provision of law. It must be assumed at all times that the statute-maker has never intended any such absurd results to flow from any such provision. Keeping this basic principle in mind, I consider that for the purpose of providing an option to the owner of the animal, vehicle, vessel or other conveyance, which is used or sought to be used in the matter of illegal transportation of scheduled/essential commodities, which have been seized initially and later on confiscated, the market value of such animal, vehicle, vessel or other conveyance alone should be taken into account but not the value of the essential commodities carried thus. If the competent authority is not very sure of determining such a value, it is always open to him to solicit such assistance from any other assessor, such as a competent authority of the Animal Husbandry Department, or Live Stock Officer or any officer of the Motor Transport Department or Surface Transport Department, as the case may be. Based thereon, the market value of the animal or the vessel or the vehicle shall be determined and that must be offered for payment to avoid confiscation of the animal or the vehicle or the vessel as the case may be.

6. Accordingly, both these Writ Petitions are allowed. The respondents are directed to determine the market value of the vehicles involved and then, offer the same for the petitioners for the purpose of payment to avoid their confiscation.

7. Since confiscation proceedings are still pending, for regulating the interim custody of the vehicle, it would only be appropriate for the authorities to ask for a bank guarantee for a reasonable proportionate amount, drawn on any nationalized bank, or any immovable property security or any third party security, subject to the said bank guarantee being kept alive all through the pendency of the proceedings initiated u/s 6A of the 1955 Act. The owner of the vehicle must also give an undertaking not to alienate the same during the pendency of these proceedings, and that he shall keep the vehicle in good running condition by attending to its regular maintenance and upkeep and

undertake to produce the same as and when required to do so. Consequently, the miscellaneous applications, if any shall stand disposed of.

