
(1995) 07 AHC CK 0090
In the Allahabad High Court
Case No : Criminal Revision No. 2397 of 1982

Babulal Coal Depot, Varanasi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Citation : (1995) 07 AHC CK 0090

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

Final Decision : Allowed

Judgement

S. K. Jain, J.—M/s. Babulal Coal Depot, Chandasi, district Varanasi was holder of Coal Licence No. 132 (b) for the year 1979-81 i.e. for the period with effect from 14/1/1979 to 31/3/1981.

2. The premises of the said licensee were raided by the Supply Inspector on 31/3/1981. He found that although the licence had been suspended yet business was being carried on inasmuch as 65 tons of slack coal and 12 tons of R. O. M. coal was found stacked in the premises. Beside this no stock board and rate board was displayed at business premises. Finding that provisions of U. P. Coal Control Order, 1977 and the terms of the licence were being contravened and that an offence punishable under Section 3/7 of the Essential Commodities Act had been committed a case was registered and whole of the stock of the Coal as mentioned above seized. The matter was reported to the Additional District Magistrate, Varanasi vide letter dated 19/2/1981. Proceeding under Section 6(B) of the Essential Commodities Act (hereinafter referred to as the Act) was initiated and a show cause notice was issued to the licensee. In reply thereto written objections were filed by the licensee on 7th March, 1981 contending that the licence was suspended by the District Supply officer OQ 48/1980 ; that the said suspension order was served on 48/1980 ; that he had filed an appeal against the said order of suspension before the Commissioner, Varanasi who vide his order dated 7/2/1981 had stayed the operation of the suspension order and that the stock board and rate board had been duly displayed at the business premises at

the time of raid and therefore, there was no contravention either of the control order or the terms of the licence. Learned Additional Collector after hearing the parties found that the licence had been suspended by the District Supply Officer ; that at time of inspection no stock board and rate board had been displayed at the premises and therefore, licensee was guilty of contravening the provisions of the control order as well as terms of the licence. In the result he ordered confiscation of the seized stock of the coal.

3. Against this order dated 2951986 passed by the Additional Collector the licensee preferred appeal No. 200 of 1981 under Section 6C of the Essential Commodities Act which was heard and dismissed by the Illrd Additional Sessions Judge, Varanasi vide his judgment dated 2931982.

4. It is that judgment dated 2931982 of the Additional Sessions Judge, Varanasi the correctness, propriety, regularity and legality whereof has been challenged in this criminal revision before this Court.

6. I have heard learned counsel for the parties and have gone through the record of the case. Learned counsel for the petitioner has argued that the premises of the petitioner had been raided after the operation of the order of suspension of the licence had been stayed by the Commissioner, Varanasi.

6. On the other hand learned counsel for the State has submitted that the raid was conducted on 3111981 and by that date the stay order had not been passed. He has drawn my attention towards the relevant portion of the judgment of the Additional Collector (Administration) Varanasi, photostat copy whereof finds, place on the record and has submitted that the operation of the order of suspension of licence dated 441980 was stayed by the Commissioner on 721981 whereas the raid was conducted on 3111981 and therefore, on that date the licensee held no valid licence.

7. In reply learned counsel for the petitioner has argued that against the order dated 481980 passed by District Supply Officer he had filed an appeal on 1121980 which came up for hearing before the Commissioner on 2411981 when he passed the following order (which is noticed in para 4 of the impugned judgment):

Send the file with report before 7th February, 1981 otherwise stay would be considered. Meanwhile stay further proceedings till disposal of the appeal.

From the above order he wants this Court to infer that the operation of the order of suspension dated 481980 had been stayed on 2411981.

8. This argument attractive at first sight is, in my opinion not tenable on the sound appreciation of the said order. The Commissioner had stayed the proceedings before the lower Authority and not the operation of the order of suspension dated 481980.

9. Learned counsel has lastly urged that on 1621981 an application on behalf of

the licensee was moved before the Additional Collector to the effect that since the licensee was carrying on no business of coal there was no question of displaying Stock Rate Board on his premises. But the said application was ignored by the lower authorities on one hand and on the other hand the learned III Additional Sessions Judge, Varanasi has not taken this aspect of the case into consideration and rather had drawn an adverse inference against the petitioner to the effect that he had admitted that no Stock/Rate Board had been exhibited on his business premises. To buttress his argument he has drawn my attention towards para No. 1 of the order of the Additional Collector dated 2951981 and has submitted that even from his order it was clear that on their own showing when the premises of the petitioner were raided no body was present there. So much so that there was no body to own the stock of coal lying there which goes a long way to show that no business at all was being transacted on the premises His contention is that this aspect of the case was not examined by the learned Add ional Sessions Judge and therefore he had committed a grave error in dismissing the appeal

10. I find force in this argument. Relevant part of para No. 1 of the order of Additional Collector dated 2951981 when translated into English would read some what as under :

"District Supply officer vide his letter No. 724/Jee. Aa/Pra5/81 dated 1921981 informed that the said case has been instituted against M/s. Babulal Coal Depot Coal Licensee, Chaudasi. Under Section 6A, E. C. Act in the Court of Additional Co llector (Nagar) Varanasi. The allegation therm u that on 3111981 on my direction Supply Inspector She Mahesh Prasad Singh had inspected the premises of M/s. Babu Lal Coal Depot (Lot No. 182 in the presence of other witnesses). These premises are situated in between M/s. Vipin and Company in the North and M/s. Indian Air Gasses Ltd. Company coal department in the south. In spite of inquiry at the spot the owner of the depot could not be found, nor any person had produced any document relating to the said firm. As per the office records lot No. 182 of the firm stands suspended. At the time of inspection 65 to as of stock coal and 12 tons of R. O. M. Goal was lying at the spot. No stock Board/ Rate Board was displayed on the depot. No claimant of the coal appeared at the spot. In his way the him has contravened the provisions of U. P. Coal Control Order, 1977 and the terms of the licence framed there under by carrying on business in spite of the suspension of the licence and by not displaying Stock/ Rate Board by the firm."

11 Examination of the above part of para No. 1 of the said order itself shows that nobody was present at the spot nor any business was being transacted at the premises. Perusal of the order of the Additional Collector dated 2951981 shows that he did not deal with application dated 1621981 of the petitioner. The learned Additional Sessions Judge as mentioned above instead of probing the question as to whether any business was being transacted by the petitioner in his premises alter the suspension of the licence had drawn an adverse interneer from the said

application against the petitioner. Thus the learned lower Appellate Court has alien into error. He has therefore, exercised vested in him illegally or at least with material irregularity. Consequently the impugned judgment 2931980 is set aside. The case is remanded back to Additional Judge Section 401 read with Section 386, Cr P. C. with a direction to hear the parties on the question as to whether any business was being carried on by the licensee after the suspension of the licence in his premises. If necessary they be allowed to lead evidence in this regard. He should then readjudicate the case. Parties through their counsel are directed to appear before the Court of III Additional Sessions Judge, Varanasi on 2881995. Records be transmitted backwards forthwith.

Revision allowed.