

(1983) 04 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 295 of 1983

Bommoneni Venu Naidu

APPELLANT

Vs

The Joint Collector, Nellore and Others

RESPONDENT

Date of Decision : 13-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 6A

Citation : AIR 1985 AP 9

Hon'ble Judges : K. Madhava Reddy, Acting C.J.; Lakshamana Rao, J

Bench : Division Bench

Advocate : P. Krishna Reddy, for the Appellant; Govt. Pleader for F and A, for the Respondent

Judgement

K. Madhava Reddy, Ag. C.J.

1. The appellant is the petitioner in Writ Petition 1934 of 1983 wherein the seizure of 118 bags of paddy, belonging to the petitioner, effected from his house and the initiation of proceedings under S. 6-A of the Essential Commodities Act, are questioned.

2. It is the case of the appellant that he had produced the paddy and kept the same in his house for his personal purpose. The third respondent-Deputy Superintendent of Police, Vigilance Cell, Civil Supplies Department - came to his house and seized the stock, and reported the matter to the Joint Collector, Nellore - the first respondent alleging that the appellant had violated the provisions of the Andhra Pradesh Scheduled Commodities Order 1982 and Cl. (3) of the Andhra Pradesh Rice Procurement (Levy and Restriction on Sale) Order.

3. The appellant whose writ petition has been disposed of with a direction that half of the seized stock may be sold and proceeds thereof credited to the account of the case initiated or to be initiated against him under S. 6-A of the Essential commodities Act and the balance half of the stock shall be released to the

appellant petitioner on his furnishing immovable property security; and the proceedings under S. 6-A shall be disposed of expeditiously, has preferred this appeal and also prayed for a direction to release the entire stock of 118 bags of paddy in his favour, pending disposal of the proceedings under S. 6-A of the Essential Commodities Act.

4. Mr. P. Krishna Reddy, the learned counsel for the appellant contends that the appellant being a producer of paddy is not bound to give any part of produce by way of levy under the present control Orders. Admittedly, no levy is required to be delivered by a producer of paddy; and the proceedings under S. 6-A of the Essential Commodities Act are pending. The appellant is not a wholesaler for a retail dealer in foodgrains, therefore, this is not a case for confiscation of stock in proceedings under S. 6-A of the Essential Commodities Act and as such, the goods should be released.

5. Mr. N. Subba Reddy, the learned Government Pleader, contends that, in view of the provisions of S. 6-A of the Essential Commodities Act, once goods are seized on the ground that the provisions of the Act and the Control Orders issued thereunder are contravened, the Joint Collector may confiscate the goods. He may sell the goods if they are perishable, and if the sale is necessary in public interest. Ultimately, if the proceedings under S. 6-A of the Act conclude in favour of person from whom goods are seized, the goods, if not already, should, would be released; and if goods are sold, the amount realised would be refunded to him. On the other hand, if contravention of the Control orders is established, the entire stock or portion there may be confiscated. There is no provision for release of goods pending the proceedings under S. 6-A of the Act. Hence, according to him, this court, in exercise of its jurisdiction under Art. 226 of the Constitution is not competent to direct release of the seized stock. We are unable to agree with this contention of the learned Government pleader. In our view S. 6-A of the Essential Commodities Act lays down the line of the jurisdiction of the Joint Collector or other officer competent to make an enquiry therein. It does not impinge upon the jurisdiction or power of the High Court under Art. 226 of the Constitution. Of course, in exercising its powers under Art. 226 of the Constitution, the High Court would certainly be guided by the provisions of the Act, the object of a particular provisions and the enactment as a whole. The Joint Collector, who is an authority constituted under S. 6-A of the Act to make an enquiry into the question as to whether the particular person has contravened any provision of the Act or the Control Orders made therein, is empowered to make only the orders specified thereunder and not any other. Those provisions cannot place any restriction on the powers of the High Court exercising jurisdiction under Art. 226 of the Constitution, it can pass appropriate orders pending disposal of the writ petition and also issue appropriate directions while disposing of the Writ petition. Of course, if there is express prohibition against passing certain orders, imposed by statute, the High Court while exercising jurisdiction under Art. 226 of the Constitution will not ignore those specific provisions and make any order in total disregard of those provisions. Where the

Act is silent and only provides for orders which the authority constituted under the Act while disposing of a particular proceedings under that Act may pass, that may provide a guideline to the High Court but cannot impose a restriction on the power of the High Court to pass appropriate orders. It is seen that proceedings under S. 6-A of the Act, though expected to be disposed of expeditiously invariably take a long time. If ultimately proceedings under S. 6-A of the Act end in favour of the party from whom goods are seized. It is little consolation to him that the damaged goods often stored in open godown, are released or goods sold abruptly at a place where there are no sufficient buyers resulting in fetching abnormally low price that is paid to him. Goods, specially foodgrains, deteriorate if not properly stored. It is to nobody's benefit that they are allowed to lie in godowns or in the open until proceedings under S. 6-A are completed. That is why, a provision is made even under s. 6-A(2) of the Act, for sale of such perishable goods. If the Joint Collector could direct sale of goods there is no reason why the High Court, having regard to the circumstances of the case, could not permit the petitioner to obtain delivery of the goods on furnishing security or bank guarantee and dispose of the goods. The purport and intendment of all these control orders is to make available goods for public consumption. Of course, it is also the subject of the Act to bring to book persons who contravene provisions of the Act. But, in an anxiety to punish such persons, goods should not be allowed to be kept in godowns or in the open exposing them to deterioration and damage merely with a view to ultimately confiscate those goods. In fact, adopting such a course may defeat the purpose and object of the act which is to secure supply of goods to consumers. We are not unaware of the fact that goods may be seized under varying circumstances. In this case, paddy was seized from the house of the person who is, admittedly, neither a miller nor a dealer but claims to be an agriculturist who has produced it. There may be cases where goods are seized from rice mills or from dealers who are liable to deliver levy. Cases of those may stand on a different footing, and certain conditions to ensure delivery of levy by such persons may have to be imposed. Different conditions may weigh with authorities in directing release of such goods.

6. Mr. N. Subba Reddy, the learned Government Pleader, relies upon a decision of the Supreme Court in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, to contend that the High Court should not direct release of goods seized and that it should be left to the Joint Collector who is the fact finding authority under S. 6-A of the Essential Commodities Act. The relevant portion of that Judgment on which reliance is placed by the learned Government Pleader is as follows: -

The State contests the right of the Court to investigate into the facts, particularly when the matter is a fact in issue in the aforesaid proceedings before the Additional District Magistrate (Civil Supplies), Agra. Normally it is not the function of this Court to investigate into facts in proceedings under Art. 32 of the Constitution when they are controverted with a view to discerning the truth. The matter must, in a situation like this, be left to the fact finding body. For the

establishment of their right to relief under Art. 32, the petitioners must, in our opinion, establish the necessary facts before the said Additional District magistrate in the proceedings under S. 6A of the Act. If they fail to get relief in such proceedings, their obvious remedy lies in a suit for damages for wrongful seizure."

7. It would be seen that the Supreme Court was dealing with a petition under Art. 32 of the Constitution, and in that context, it observed as quoted above. The scope of a petition under Art. 32 of the Constitution is restricted to an enquiry as to whether a Fundamental Right has been violated, and any restraint which this Court imposes upon itself in having regard to the facts and circumstances of the case. The Supreme Court, in our opinion did not intend to lay down the limits of jurisdiction of the High Court in this behalf nor to define the scope of any order that may be made under art. 226 of the Constitution in a case such as this. Any such law cannot limit the scope of the orders which the High Court may make under Art. 226 of the Constitution. These statutes only regulate the jurisdiction, power and procedure of the authorities constituted under the Act and these provisions may only guide the high Court in making interim orders, in such case pending disposal of writ petitioners; but they cannot restrict the power or authority or jurisdiction of the High Court under Art. 226 of the Constitution to pass appropriate orders having regard to the circumstances of each case. We are, therefore, unable to agree with the contention of the learned Government Pleader that the High Court is not competent to order release of the goods in favour of the appellant merely because the proceedings under S. 6-A of the Essential Commodities Act are pending. This Court has directed release of goods in a number of cases and that authority has never been seriously disputed on the ground that the High Court has no jurisdiction to make such orders. Those orders were questioned on the ground that a particular case was not a fit case for ordering release of the goods.

8. In view of the above discussion and on the facts and circumstances of the case, we direct the release of the goods in favour of the appellant on condition that he furnishes immovable property security to the satisfaction of the Joint Collector, Nellore for the full value of the goods. The security shall be subject to the final orders that may be passed under S. 6A of the Essential Commodities Act. The proceedings under S. 6A of the Essential Commodities Act shall be disposed of within two months of receipt of this order.

9. The Writ Appeal is accordingly allowed to the extent mediated above. There will be no order as to costs. Advocate's fee Rs.150/-.

10. On the pronouncement of the above judgment, the learned Government Pleader sought leave to appeal to the Supreme Court. We are unable to certify that this Appeal involves such substantial questions of law of general importance as require consideration by the Supreme Court or that it is otherwise a fit case for grant of leave to appeal to the Supreme Court. Leave refused.

11. Appeal allowed.