
(1996) 01 PAT CK 0029
In the Patna High Court
Case No : Cr. W.J.C. No. 60 of 1990 (R)

Britannia Industries Ltd. and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Citation : (1996) 01 PAT CK 0029

Final Decision : Allowed

Judgement

Prasun Kumar Deb, J.—This writ petition has been filed by the abovenamed petitioners for quashing the seizure of the raw materials being Vanaspati, wheat flour and Sugar by the seizure list (Annexure 4) by respondent No. 3 on 15.5.1990 on the ground of violation of the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter to be referred to as "the Unification Order").

2. The grounds for seizure were mentioned in the seizure list and also in the first information report lodged with Chakradharpur Police Station which may be mentioned here:

- (i) the stocks of both the Companies were found lying in the same place:
- (ii) the stock registers were not found certified and appeared to have been written at one stroke;
- (iii) certain volumes of stock receipt notes of Britannia Company, petitioner No. 1, were not produced for verification and though at the back of the stock register it was endorsed that stocks are transferred to petitioner No. 2 but the aforesaid stock register does not justify the fact that:
 - (a) there has been no display of stocks and prices of the raw materials found in the factory premises; and
 - (b) the raw materials were found stored in excess of the storage limits prescribed under the Unification Order.

3. The facts of the case are almost admitted. The petitioners are Industries engaged in manufacturing biscuits in the backwards area of the State of Bihar, namely, at Chaibasa. As per the petitioner's case, petitioner No. 1 M/s. Britannia Industries Limited, they get biscuits of their brand name manufactured at Chakradhapur Manufacturing Unit of petitioner No. 2 M/s. Pawan Biscuits Co. (p) Limited. For the purpose of such manufacturing of biscuits by petitioner No. 2, for and on behalf of petitioner No. 1, there was an agreement between the two petitioners by which petitioner No. 1. was required to supply all raw materials and, as such, the seizure and criminal prosecution against the petitioners are on misconception of law and facts.

4. During the course of proceeding of this writ petition, the petitioners moved for release of the raw materials before the learned Chief Judicial Magistrate where the Criminal case was pending, but as the confiscation proceeding was there against the petitioners before the Deputy Commissioner, no release order was passed. Then the petitioners moved before this Court and this Court by order dated 19.6.1990 passed the order for release of the seized goods as per Annexure 4 to the writ petition on conditions, subject to the disposal of the confiscation proceeding.

5. From the writ petition and the counter-affidavit, it could be found that the petitioners were never doing any whole sale business of food grains rather petitioner No. 1 collects the raw materials such as Vanaspati, Wheat flour and Sugar and then passes it to petitioner No. 2 for manufacturing of Britannia Biscuits in the brand name for and on behalf of petitioner No. 1 and the stocks of raw materials are thus passed from petitioner No. 1 to petitioner No. 2 for the purpose of manufacturing of Biscuits and these passing of raw materials are in the internal process of the two Companies and there is no sale of those raw materials either by petitioner No. 1 to petitioner No. 2 or vice versa rather petitioner No. 2 with the raw materials supplied by petitioner No. 1 manufactures biscuits in the brand name for and on behalf of petitioner No. 1 and gives back finished products to petitioner No. 1 for the purpose of marketing. The petitioners are not making business as whole sale dealer although licenses were there in their names renewed from time to time is evident from the fact that respondent No. 3 just before one day of the seizure issued notices to the petitioners as to why their licenses should not be cancelled when they were not doing business as whole sale dealer of the essential commodities for which licences were obtained by them. Those notices have been annexed to this writ petition being Annexures 6 and 6/A. This fact has also been admitted in the counter-affidavit filed in the case, but no explanation has been given as to why after such issuance of notices for cancellation of licences, seizure have been made regarding the raw materials found in the premises of petitioner No. 2.

6. From the counter-affidavit filed in the case and the argument placed by Mr. V. Shivnath, learned Government Pleader No. 1 appearing on behalf of the respondents, it appears that the main contention of the respondents in support

of the seizure was that the petitioners had violated the provisions of the Unification Order contained in Clauses 18 thereof although there were transaction of the raw materials from petitioner No. 1 to petitioner No. 2.

7. Mr. A.K. Ganguli, learned Counsel appearing for and on behalf of the petitioners after referring to the different clauses of the agreement has submitted that there is no question of sale of raw materials by petitioner No. 1 to petitioner No. 2 in transferring the raw materials from petitioner No. 1 to petitioner No. 2 for the purpose of manufacture of biscuits. Admittedly biscuit is not the essential commodity and it has now become a settled principle that if the finished product of the raw materials is marketed and that finished product does not come within the definition of the essential commodities, then the manufacturer or the Marketing Agent cannot be made bound for taking licenses under the different Control Orders of the State of the essential commodities for procuring the raw materials. A Division Bench of this Court in the case of . Jamshedpur Beverages v. The State of Bihar (C.W.J.C. No. 365 of 1994 (R) disposed of on 28th November, 1994) have held that a licence under the Unification Order is applicable only to such persons who carried on business of purchase/sale and store for sale of any trade articles. If a particular trade article is consumed by the concerned person in the sense that he has utilised it for the manufacture of any other commodity, such a person cannot be said to be carrying on business in the purchase/sale of sugar nor does he store for sale such sugar, he is neither a retailer nor a whole sale dealer. Indeed, he is not a dealer at all.

8. In that judgment, reference has been made to a Full Bench decision of this Court in Steel Authority of India Limited v. Bihar Agricultural Produce Market Board and Ors. 1990 BBCJ 294 . Although that was not a case under the Unification Order but the question was same as to whether the petitioner was required to take out a licence under the provisions of the Bihar Agriculture Produce Market Committee Act, 1960, treating him as a trader under the provisions of that Act. It was found by the Court that wood was utilised by the petitioner which, was engaged in the manufacture of steel in its mines for certain purposes and in that context, it was observed that he could not be considered as a trader in that commodity within the meaning of that Act. The Division Bench judgment relates to manufacture of popular cold drinks by the petitioner M/s. Jamshedpur Beverages and for manufacturing cold drinks he procured Sugar from M/s. Parley (Export) Private Limited, Bombay, for whom it was manufacturing the cold drinks at the plant of the petitioner Company at Jamshedpur. The petitioner was called upon by the State authorities for taking out licence under the Unification Order for storage of Sugar and it was held that the petitioner cannot be bound to take licence under the Unification Order for storage of Sugar, the essential commodity coming within the purview of the Essential Commodities Act and the Unification order as those storage was not for sale but for manufacturing of beverages. The same principles, as per the contention of Mr. Ganguli is applicable in the present case. From the different

clauses of the agreement as contained in Annexure 3 to the writ petition, it appears that petitioner No. 1 supplies raw materials to petitioner No. 2 only for the purpose of manufacture of biscuits. Neither petitioner No. 1 nor the petitioner No. 2 was indulged in trade of the raw materials, rather those were stored for the purpose of manufacture of biscuits and for that manufacturing purposes of biscuits and marketing for the same, both the petitioners are subjected to different Acts and taxes of Excise and Factory Act etc.

9. Mr. V. Shivnath by referring to Clause Nos. 5,6,7 and 13 of the Agreement submitted that the raw materials seized, namely, Sugar, Vanaspati and Wheat flour were practically sold to the petitioner No. 2 by petitioner No. 1 and as such they come within the purview of "trade/sale" u/s 6 of the Sales of Goods Act read with Section 24 and as such the petitioners are liable to be prosecuted under the Essential Commodities Act for violation of Clause 18 of the Unification Order. Clause 2(e) of the Unification Order defines a "dealer" which runs as follows:

"dealer" means a person, a firm, an association of persons or a co operative society other than a National and State Level Cooperative Society, engaged in the business of purchase, sale or storage for sale of any trade article whether or not in conjunction with any other business and includes his representative or agent but does not include:

(i) a person who holds or is in possession of agriculture land under any tenure or any capacity and on which he raises or has raised crop of food-grains, oil seeds or whole pulses;

(ii) a Manufacturer of sugar;

(iii) Hawkers engaged in the purchase and sale of non-controlled cloth;

10. Similarly "Retail Dealer" and "Whole sale dealer" have also been defined under the Unification Order in Sub-Clause (p) and (u) of Clause 2. We are not concerned with the retail dealer as the petitioners in the case having whole sale dealer licence. The "whole sale dealer" has been defined under Clause 2(u) in the following manner:

(u) "wholesale dealer" means a person engaged in the business of purchase, sale or storage of any article (specified in Schedule I) for purpose other than personal consumption within the storage limit fixed by the Government from time to time.

11. From the notice given as contained in Annexures 6 and 6/A it remains admitted fact that the petitioners at the relevant time although having whole sale dealer licence were not carrying business/trade of the article contained in Schedule I of the Unification Order, If they were not making trade then they cannot come within the definition of wholesale dealer even if they have got a licence to that effect. Nothing could be shown from the side of the respondents that the petitioners were engaged in trade as whole sale dealers of the articles seized. Only attempt was made to show that transaction between the petitioners

No. 1 and 2 regarding making over of raw materials by petitioner No. 1 to petitioner No. 2 for the purpose of manufacture of biscuits comes within the purview of the definition of sale under the Sales of Goods Act as mentioned above, but I am unable to accept the contentions made by Mr. Shivnath appearing for the State. The agreement entered into between petitioner No. 1 and petitioner No. 2 must be construed as a whole and not by any isolated clause or terms and conditions mentioned in the agreement. The raw material made over to the petitioner No. 2 by the petitioner No. 1 were only for the purpose of manufacture of Britannia Biscuits and after manufacture, finished products are made over to petitioner No. 1. Not only that, the balance raw materials which remained unutilised in the manufacturing purposes were also to be returned to petitioner No. 1 or the same might be adjusted in the next lot of supply for the purpose of next manufacture of biscuits. Thus in that sense no where it can be said that making over of raw materials by the petitioner No. 2 for petitioner No. 1 comes within the definition of sale even under the clause as mentioned above under the Sales of Goods Act and as such neither of the petitioners can be said to be a dealer of the materials seized which comes within the purview of Schedule I of the Unification Order. This point was also decided by the Apex Court in the case of State of U.P. and others etc. Vs. Janta In. Udyog and others etc., . A finished product of different components of the essential commodities which is being marketed cannot come within the purview of the essential commodity and as such the same cannot be subjected to any Control Order of the area, that case relates to the manufacture of bricks for which coal was used for manufacturing bricks and it was held that even though the coal comes within the essential commodities under the U.P. Coal Control Order, 1977, the same being used for the purpose of manufacture of bricks, the manufacturers of bricks cannot be subjected to take licence under the Control Order. But here the petitioners had already taken licenses for whole sale dealership under the State Government but they were not doing business or trade as whole sale dealer of the essential commodities articles as specified under Schedule-I. This fact has been admitted by the state as per notices contained in Annexures 6 and 6/A. Only because the petitioners had taken licence which they have stated specifically that on mistaken advice they had to take such licence, they do not come within the purview of the Unification Order. Now the question comes in whether taking of licences of whole sale dealership by the petitioners means that any storage of articles even not for the purpose of sale can make them liable of violation of any clause under the Unification Order. Submission of Jurisdiction to the Licensing authorities does not mean that they are liable for violation even if they do not come within the purview of dealership. So only because licences were there in the name of the petitioners being renewed from time to time, they cannot be held liable for violation of the Unification Order unless it can be shown that the seized articles were stored for the purpose of sale either by the petitioner No. 1 or petitioner No. 2 or by them jointly. Thus from the above discussions, I find and hold that the seizure in the present case is not proper and justifiable and the same is liable to be quashed.

12. MR. V. Shivnath, G.P.I. tries to make an attempt that supply of raw materials by petitioner No. 1 to petitioner No. 2 comes within the meaning of sale by referring a judgment of the Apex Court in M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, wherein a contractor was supplied with Iron, Steel and Cement by the P.W.D. for the purpose of construction for and on behalf of P.W.D. and these supply of materials by the P.W.D. to the contractor is construed as a sale within the definition of Sales of Goods Act. That analogy was brought on the fact that the price of materials supplied to the contractor by the P.W.D. was deducted from the bill of the contractor but that analogy cannot be brought in the present case as nowhere in the agreement it is there that the price of raw materials supplied to petitioner No. 2 by petitioner No. 1 was being deducted from the final bill of the manufacturer. So that judgment of the Apex Court has no application in the present case. Lastly, Mr. V. Shivnath tried to impress upon this Court to the fact that at this stage this Court should not interfere with in quashing the first information report by referring to a decision of the Apex Court in Union of India and others Vs. B.R. Bajaj and others, wherein their Lordships of the Supreme Court held that when the first information report discloses commission of a cognizable offence, investigation was going on, then the High Court ought not to have quashed the first information report u/s 482 of the Code of Criminal Procedure, when the question remained undecided whether offences alleged in the first information report could be made out or not. This judgment has got no application in the present case. As the challenge is made with respect to the seizure itself having without jurisdiction and the consequences of the seizure is penal provision. Mr. Shivnath has further referred to a decision of the Apex Court in the State of Maharashtra Vs. Abdul Hamid Haji Mohammed, wherein quashing of criminal proceeding by the High Court under Article 226 of the Constitution of India was held to be not proper. That case related to TADA Act. Under the provision of TADA Act, High Court has got no jurisdiction of interference, so that judgment has also got no application in the present case.

13. On the discussions made above, it is found that the petitioners have got a good case and the seizure list contained in Annexure 4 is without jurisdiction and hence liable to be quashed and I do the same accordingly. The consequences of the seizure would follow accordingly.

14. In the result, this application is allowed and the seizure list (Annexure 4) is quashed, but no order as to costs.

Surinder Sarup, J.

15. I agree.