

(1977) 01 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 32 of 1976

Chandeshwar Mahto and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 226, 227
Essential Commodities Act, 1955 — Section 3, 6A, 6B, 6C, 6D

Citation : (1977) 25 BLJR 166

Hon'ble Judges : H.L. Agrawal, J; Chaudhary Sia Saran Sinha, J

Bench : Division Bench

Judgement

1. This writ application has been filed by four persons challenging the order dated 24th February, 1976 passed by the District Magistrate of Nalanda at Bihar Sharif (respondent No. 2) confiscating 36 bags of coarse rice weighing 69 maunds, in purported exercise of the powers conferred upon, him u/s 6A of the Essential Commodities Act (briefly the "Act"). A copy of the relevant order is Annexure 4 to the writ application.

2. The facts and circumstances leading to the passing of the impugned order are these: On 18.9.1975, the Assistant Superintendent of Commercial Taxes, Bihar Sharif, in course of his inspection at Madhopur Bazar, under Chandi Police Station, is said to have found Raghunath Sah (respondent No. 4) carrying on business in the house of Ram Pravesh Pandit (respondent No. 3) without any licence. He checked the shop in presence of the Circle Officer, Chandi, and the Assistant Sub-Inspector of Chandi Police Station, besides some local people, and found 36 bags of rice weighing 69 maunds, for which respondent No. 4 did not produce any licence or permit for its storage or business.

The said Assistant Superintendent, thinking that there had been a cotravention of the provisions of Section 7 of the Act, submitted a written report to the Officer-in-charge of Chandi Police Station on the same day. On the said report, the Chandi Police Station registered a case u/s 7 of the Act and took up investigation. The

rice bags in question were seized in presence of the witnesses.

3. The petitioners filed an application before the Sub-divisional Judicial Magistrate, Hilsa at Biharsharif for release of the said foodgrains in their favour on the ground that Raghunath Sah (respondent No. 4) had nothing to do with the same and that the same belonged to them and they had kept, the same in the house of Ram Pravesh Pandit (repondent No. 3) the owner of the premises in question. As stated in the writ application, their further case is that they are agriculturists and reside at a short distance from Madhopur Bazar, which is the nearest market place for them for the sale of their agricultural produce. They claimed that on 17.9.1975, they had gone to Madhopur Bazar for sale of their rice, being, agricultural produce of their own lands. In paragraph 2 of the writ application, they have given out the quantity and number of rice bags which belonged to each of them. According to that statement, the first two petitioners bad brought 10 bags of rice each and the remaining two eight bags each. The rice, however, could not be sold on that day and, therefore, they kept the same in one of the rooms of the house belonging to respondent No. 3, with whom they had old acquaintance, and went away. In the meantime the rice bags were seized, as already indicated earlier. The petitioners have further stated that respondent No. 3 informed them on 19.9.1975 4bout the seizure of the rice bags in question and, accordingly, they are said to have made an application for the release of the rice bags in the Court of the Sub-divisional Judicial Magistrate, Hilsa at Biharsharif, as already said earlier. The matter was postponed for some time as the Court wanted some information from the Assistant Public Prosecutor in the matter. On 8.10.1975, the Assistant Public Prosecutor filed the report of the District Supply Officer, Nalanda, informing the Court that a confiscation proceeding u/s 6A of the Act had already been started in the matter by the District Magistrate and as such, in view of the provisions contained in Section 6A of the Act, no order for the release of the seized lice bags could be passed on the petition of the petitioners.

4. It appears that the District Magistrate had started a confiscation proceeding which was registered as case No. 39 of 1975 against Raghunath Sah and one Devendar Pandit of Chandi. On issuance of show cause notice, the said Raghunath Sab and Devendar Pandit in their show cause made a complete disclaimer to the seized rice bags in question and asserted that they belonged to the petitioners and gave particulars of all the petitioners. On this attitude being taken by the persons against whom the confiscation proceeding was started, the respondent District Magistrate passed the impugned order on 24th February, 1976. I would do better to extract the relevant portion of the impugned order:

...The O.P. did not lay any claim to the foodgrains in question. It has, however, been alleged on their behalf that the foodgrains belonged to Chandeshwar Mahto, Sidheshwar Mahto, Bishun Dayal Singh and Ramjee Singh (petitioners). These persons have not appeared before me. This Court is concerned merely with confiscation of the seized articles and because the O.P. do not lay claim before

me. I am not expected to go any further in the matter. The above foodgrains are confiscated to the State Govt....

After passing the said order, he directed that the price should be deposited in the Revenue Deposit. It is this order that is being assailed before us.

5. The petitioners challenge the Impugned order on the ground of violation of the principles of natural justice as no notice was issued to them by respondent No. 2 who was in clear terms informed that it were the petitioners who were the owners of the rice in question and the person from whose possession the commodity was seized had put no claim of ownership to the same and had specifically stated in the show cause that it were the petitioners who were the real owners of the rice in question. The second contention raised on behalf of the petitioners is that the impugned order does not record any finding as to whether there has been any contravention of any order made u/s 3 of the Act, which is a jurisdictional fact, and, therefore, the impugned order cannot be upheld.

6. A counter-affidavit has been filed on behalf of respondents Nos. 1 and 2, namely, the State of Bihar and the District Magistrate of Nalanda, which has been affirmed by the Supply Inspector. It has been stated in this counter affidavit that the real owners of the foodgrain seized were respondents Nos. 3 and 4 who deal in the said commodity, without having any valid licence in an unauthorised manner; the petitioners having been set up by them simply to escape the liability for the offence committed by them. It has further been stated that the petitioners having full knowledge of the confiscation proceeding, no question of issuing any notice to them arose and, therefore there has been no infraction of the principles of natural justice.

7. In order to decide the controversy raised for our consideration, we would refer to the relevant provisions of the Act. The scheme for confiscation of foodgrains, edible oilseeds and edible oils was introduced in the Essential Commodities Act by Act 25 of 1965 and a few Sections were inserted as Sections 6A to 6D. Section 6A empowers the Collector to confiscate the essential Commodity which may have been seized in pursuance of an order made u/s 3 in Relation thereto, if he is satisfied that there has been a contravention of the said order. This power is without any prejudice to any action which may be taken under any other provisions of the Act.

Then there is Section 6B which prescribes a machinery for holding an inquiry in the matter by the Collector before he passes a final order of confiscation u/s 6A of the Act. It says that, "No order confiscating any essential commodity shall be made u/s 6A unless the owner of such, essential commodity or the person from whom it is seized

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity;

(b) is given an opportunity of making a representation in writing within such

reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

Section 6C provides a right of appeal to "any person aggrieved by an order of confiscation u/s 6A..." within one month from the date of the communication of such order.

8. Coming to the point in issue and the relevant provisions, namely, Sections 6A and 6B, which we have extracted earlier, it is apparent that in order to authorise the Collector to make an order of confiscation, he has to take some essential preliminary steps which are in the nature of condition precedent and have been very clearly indicated in separate clauses, namely, Clauses (a), (b) and (c) of Section 6B, that is, he has to give a notice in writing to the owner of the essential commodity in question or the person from whom it is seized, then he has to give an opportunity of making a representation in writing and a further reasonable opportunity of being heard in the matter. After completing these formalities and hearing the offender, if the Collector comes to a conclusion that there has been a contravention of any order made u/s 3 of the Act in relation thereto, then alone he may order confiscation" of the essential commodity so seized.

9. Confiscation is deprivation of the property rights of a person, and in order to deprive him of such rights, the Parliament in its wisdom has provided a regular machinery for adjudicating the same, keeping in view the principles of natural justice by affording sufficient opportunity to the person concerned of representing his case and of being heard and also if aggrieved by the order, to appeal against that before the prescribed authority.

10. We would take up the second ground for consideration first as we feel that the impugned order should be set aside on this second ground alone as contended by Mr. Bharuka, learned Counsel appearing for the petitioners, namely, that the impugned order does not record the satisfaction of the respondent Collector that there has been a contravention of any order made u/s 3 of the Act. We have extracted earlier the order passed by him, which clearly shows that no finding to this effect has been recorded. The learned Collector has reconciled himself in passing the impugned order on the mere observation that inasmuch as the opposite party Nos. 3 and 4 did not lay any claim before him to the seized commodity, he was not expected to go any further in the matter, and that was sufficient for him to pass the order of confiscation. We are afraid, the order of confiscation passed in these terms does not satisfy the conditions imposed by Section 6A of the Act. It was open to respondent No. 2 to reject the plea of opposite party Nos. 3 and 4 before him to the effect that it were not they, but the petitioners who were concerned with and were owners of the commodity in question and then to record a finding that they dealt in the essential commodity for which a licence was required. But having recorded no

finding in this regard, even by implication, but stopping short by mere observation that as they did not lay any claim, his function was over and the condition for passing the order of confiscation was satisfied, he has, in our opinion, committed an apparent error. This order, therefore, must be quashed on this ground alone.

11. Now we propose to take up the second question, namely, the necessity of giving a notice to the owner. We have already indicated that Section 6B enjoins upon the Collector to give a notice in writing before an order confiscating any essential commodity is made. Sub-section (1) clearly lays down that the notice has to be issued to the owner of such essential commodity or to the person from whom it is seized. In the disjunctive manner in which the two expressions "owner" and "the person from whom it is seized" have been used, we are not inclined to take the view that it is obligatory upon the authority concerned to issue notice on the owner of the essential commodity as a matter of course. The provisions of Section 6B may be deemed to be fully complied with if the notice is issued to the person from whom the essential commodity is seized. The facts and circumstances of the case before us, however, are slightly different. The intention of providing the issuance of any show cause notice u/s 6B is with a definite purpose; the purpose being to enable the authority to see as to whether there has been a contravention of any order made u/s 3 of the Act or not, and with that end in view, a regular representation and hearing has been provided for. Therefore, where a person from whose possession such a property has been seized, has *id essence* no cause to show on the merits, as in the present case, where it was simply stated by him that he had no concern with the property and the persons, concerned were different and he informed the authority concerned as to who are the alleged owners of the commodity, then in that situation, that is, where a person from whom any essential commodity is seized, pleads no concern with the commodity asserts to be simply a custodian and the real owners are disclosed to the authority, who is to hold the inquiry, their in that situation, in our opinion, it is desirable to issue show cause notice to such persons, namely, the alleged owners of the essential commodity, before any actual order of confiscation is made. Taking any other view would be doing simply an empty formality in the matter and the scheme of these provisions substituted by the amendment would be rendered meaningless. We find support for our view from a Bench decision of Karnataka High Court in the case of T.R. Ramaiah and Others Vs. Deputy Commissioner, Chitradurga District and Another, There from a rice mill, 2307 bags of paddy were seized which belonged to the second respondent of that case. Notice was, however, issued to the second respondent, i.e., the mill owner, as in the case before us. In response to the notice, the mill owner stated that the paddy bags in question belonged to different persons, namely, the appellants before the High Court in whom the ownership of the stock vested. According to the definite case of the second respondent, namely, the mill-owner, the paddy in question was delivered, by the appellants for the purpose of hulling. The Deputy Commissioner of Chitradurga

district, the authority empowered to adjudicate confiscation, however, did not issue any notice to the appellants and passed the order of confiscation. The order was challenged under the writ jurisdiction of the High Court and the High Court set aside the order and held that when the proprietor of the mill disclaimed all ownership to the paddy seized and put forward a definite case that it belonged to the appellants and the fact that the appellants had already claimed to be the owners of the paddy in question, no order of confiscation could have been made in such a situation without affording an opportunity to the appellants to show cause as to why the paddy should not be confiscated. The facts of that case are very much similar to the facts and circumstances of the case before us. We would like to make it clear that we do not propose to lay down that in every case where the person from whose possession any essential commodity is seized, disowns ownership of the same, it would be obligatory on the authority to find out the real owners of the said property by holding any inquiry or otherwise before he could pass any final order in the matter.

12. Learned State counsel, however, contended that inasmuch as the petitioners did not appear of their own before respondent No. 2, there was no necessity of issuing any show cause notice to them and therefore there has been no infraction of the principle of natural justice. He next contended that the petitioners were merely creatures of the real owner who were already noticed by respondent No. 2, and therefore, this Court should not interfere in exercise of the writ jurisdiction. The second ground must be rejected on the face of it as no such finding has been recorded by respondent No. 2 before passing the final order. Section 6B of the Act enjoins a duty upon the authority to issue a show cause notice before passing the order of confiscation. Simply because a person has got any knowledge or information aliunde of any confiscation proceeding already initiated by any Collector or authority, in our decision that would not absolve the said authority from following the statutory procedure prescribed u/s 6B of the Act. In view of the mandatory requirement of the issue of show cause notice, the petitioners might be very well waiting that they would receive the show cause notice from the Collector and, therefore, simply because they themselves did not choose to intervene in the proceeding, they are not estopped from challenging the correctness, or legality, of the order on the ground of infraction of the provisions contained in Section 6B of the Act. It is well settled that any order which visits a person with any civil or evil consequence, must be based on following the basic principles of natural justice. Recently the Supreme Court has reiterated this view in the case of *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, by observing that it is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order and after following the principles of audi alteram partem a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

13. The facts of the present case that we have stated earlier leaves no room for any doubt that the order of the learned Collector dated 24.2.1976 (Annexure 4) is vitiated on both the grounds, namely, that it does not record the fact of contravention of any order nor it is a speaking order recording any reasons for passing the same, as well as it has failed to follow the basic principle of natural justice. Therefore, the impugned order cannot be sustained.

14. Accordingly we, in exercise of the powers conferred upon this Court under Articles 226 and 227 of the Constitution of India, quash the order dated 24.2.1976 passed by respondent No. 2 and direct him to pass a fresh order after following the procedure as laid down u/s 6B of the Act in the light of the observation made above by us Let an appropriate writ issue accordingly.