(1993) 09 KAR CK 0034

In the Karnataka High Court

Case No : W.Ps. No''s. 19494 to 19510 of 1993

Dada and Co. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 06-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 15, 15 A

Citation : (1993) ILR (Kar) 3476 : (1994) 1 KarLJ 58

Hon'ble Judges : Shivashankar Bhat, J

Bench : Single Bench

Advocate : U.L. Narayana Rao and T. Basavaraju, for the Appellant; Pradeep Rai, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Shivasbankar Bhat, J.—Petitioners are Wholesale dealers holding licences under the provisions of the Karnataka Essential Commodities Licensing Order, 1986 (referred to as the ''Licence Order''). They challenge Clause 14(d) of the Licensing Order:

2. Clause 14 of the Licensing Order reads thus;

"14; Power of entry, search and seizure etc: The licensing authority or any other officer of the department of Food and Civil Supplies not below the rank of a Food Inspector authorised by the Director of Food and Civil Supplies or any Police Officer not below the rank of Sub-Inspector or any officer of Revenue Department not below the rank of Revenue inspector within their jurisdiction may with such assistance, if any as he thinks fit and he has reason to believe that there is or has been contravention of the provisions of the order or with a view to securing compliance with the order or to satisfy himself that there is or has been any contravention of the order.

(a) require the owner occupier or any other person in charge of any place, premises, vehicle or vessel in which he has reason to believe that any contravention of the provisions of this order or of the conditions of the licence issued thereunder has been or is being or is about to be committed to produce any books of accounts or other documents showing the transaction relating to the contravention;

(b) enter, inspect or break open and search any place or premises vehicles or vessel in which he has reason to believe that any contravention of the provisions of this order or of the conditions of any licence issued thereunder has been, is being is about to be committed;

(c) take or cause to be taken extract from or copies of any documents showing transactions relating to such contravention which are produced before him;

(d) search, seize and remove stocks of essential commodities and the animals vehicles vessels or other conveyance used in carrying the said essential commodities in contravention of the provisions of this order or of the conditions of the licence issued thereunder and thereafter sale or authorises the taking of all measures necessary for securing the production of stocks of essential commodities and the animals vehicles or vessels or other conveyance seized in a court and for their safe custody pending such production,

(2) The provisions of Section (sic) and of V Code of Criminal Procedure 1973 (Central Act 2 of 1974) relating to such search and seizure shall so far may be apply to searches and seizure under this clause,"

3. The attack is against the power of search, seizure and removal of stocks, the animals vehicles etc., as per Clause (d). There is also a challenge to Clause (9) of the Licensing Order which empowers the authority to take action against the delinquent licencee. In the course of the hearing of these Writ Petitions, attack was confined to Sub-Clause (d) of Clause 14. Even otherwise, it is not understandable as to how Clause (9) could be attacked. A proper power to enforce any regulatory measure, requires a power to take action against the delinquent; enforcement of the terms of the licence and the Licensing Order will not be possible without a deterrent power in the enforcing authority.

4. Sub-clause (d) of Clause 14 is attacked as vesting an arbitrary and unguided power. The learned Counsel for the petitioners relied on a Decision of this Court in MANJA SETTY AND ORS. v. THE STATE OF MYSORE AIR 1972 Mys 138. Condition No. 8(i) and Condition No. 7(a) of similar Licensing Orders governing Vanaspathi Dealers, were held as vesting an unguided power and struck down by this Court. The Bench did not discuss the question raised in view of an earlier Decision in Appanna Setty''s case. Therefore, one has to look into the said earlier Decision for the reason which pursuaded the Court to strike down the provision.

5. In Appanna Setty''s case AIR 1970 Mys 289 the Bench was considering the Mysore Foodgrains (Wholesale) Dealers Licensing Order 1964 and a similar Licensing Order governing the retail dealers, as also another Licensing Order

governing the non-edible Essential Commodities.

Clause 8 of the Non-edible Essential commodities Control Order was upheld with the following observation;

"In the said Clause 8, the words, with a view to securing compliance with this order, or to satisfying himself that the provisions of this order have not been contravened, occur in the opening part of that Clause and hence govern Sub-clauses (a) and (b) of that clause. Thus, the power of entry, search and seizure can be exercised by an Enforcement Officer only for the aforesaid purpose and such power is not an unguided, unregulated, unconditional or unqualified one.

However as to the power given under the Wholesale and Retail Licensing Order, the Bench held:

"But in Clause 11 of the Wholesale and Retail Licensing Order, the words, ''has reason to believe that any contravention of the provisions of this Order or of the conditions of any licence issued thereunder has been, is being, or is about to be committed do not occur only in Sub-clauses (a) and (b) and not in Sub-Clause (d) which provides for search and seizure. In Sub-clause (d) the words in contravention of the provisions of this Order, or of the conditions of the licence issued thereunder'' relate only to the words ''animals, vehicle or vessels or other conveyance used in carrying of the said foodgrains", but not the words ''stock of foodgrains'' which also may be seized."

The resultant position is that the power to search any premises in which foodgrains may be stored, and the power to seize and remove stocks of foodgrains, are not regulated by any guiding principle and are not controlled by any conditions like the Enforcement Officer having reason to believe that any contravention of the provisions of the respective licence has been, is being or is about to be committed. Thus, the power, of search, seizure and removal in regard to stocks of foodgrains is unguided, uncontrolled and unqualified. There is no check on the exercise of such power by an Enforcement Officer, Thus, the powers conferred by Clause 11 are so wide as to enable the Enforcement Officer to seize stocks of foodgrains even without the least suspicion of there being any contravention of any of the provisions of the Orders or the licence."

6. The Bench also pointed out that the relevant Clause 11 (d) which empowered search and seizure "even without the safeguard that the Enforcement" Officer should have reason to believe or suspect contravention of the provisions of the Licensing Orders or the conditions of licence" cannot but be regarded as arbitrary, unguided etc., and hence it was violative of Article 19 of the Constitution of India.

7. In the instant case, the power of search and seizure is a guided and controlled power; the requisite guidance and control are found in the opening sentence of Clause 14, which govern all the Sub-clauses (a) to (d) of Clause 14. The authority has to have reason to believe that (i) there is or has been

contravention of the provisions of the Order or (ii) with a view to securing compliance with the Order or (iii) to satisfy himself that there is or has been any contravention of the Order, before exercising the power under Sub-clause (d)

8. Such provisions are found in all regulatory legislations and have been upheld by the Supreme Court. The scope of the power of search and seizure and the safeguard provided against an arbitrary exercise of such a power, have been considered by the Supreme Court in several cases.

9. Though power of search and seizure is an exceedingly drastic power, vesting of such a power in responsible Officers of the State is inevitable for the proper enforcement of the law; such a power at the worst, may be described as a ''necessary evil'', without which, law enforcement would become impossible.

10. In fact, I dismissed W.P.No. 27112/93 DD 10-7-93, Janadhari Laxamana Setty & Sons v. The State and Ors. at the threshold, with a short order as follows:

"Petitioner insists that opportunity should be given at the time of seizure. I do not agree. Opportunity to be given before it is confiscated or any penalty is levied, W.P. is accordingly rejected."

11. The safeguard provided by applying the provisions of Section 165 of the Criminal Procedure Code, against an arbitrary search, has been considered in STATE OF KARNATAKA v. APPAIAH LAXMINARAYANA 1985(2) KLJ 506.

12. I may also refer to a few Decisions of the Supreme Court, wherein power of search and seizure have been considered.

13. In The State of Rajasthan Vs. Rehman, "the Court considered the scope of power of search under the Central Excise Act and Rules framed thereunder. At page 212, the Court held:

"It is manifest from the aforesaid provisions that the officer empowered by the Central Government can only'' make a search when he has reason to believe that excisable goods are processed, sorted, stored, manufactured or carried in contravention of the provisions of the Act or the Rules. The object of the search is, therefore, only to ascertain whether there is a contravention of the provisions of the Act or the Rules; and, as we have already noticed, the contravention of the said provisions is an offence under the Act. To put it differently, Rule 201 enables the authorised officer to make a search only for the investigation of an offence.

Thereafter the Court pointed out that the need to follow the provisions of Section 165 of the Code of Criminal Procedure and held:

"The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches, if that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure; it would be a search made in contravention of the provisions of the Code."

14. Before referring to other Decisions, I may reiterate that it is imperative that the Officer acting under the impugned Clause 14(d) should have a "reason" for the action..

15. In R.S. Seth Gopikrishan Agarwal Vs. R.N. Sen, Assistant Collector of Customs and Others, a similar provision u/s 105 of the Customs Act 1962 came up for consideration. At page 1301, the Court held:

"Then it is contended that Section 105 of the Act confers an unguided and arbitrary power on the Assistant Collector of Customs to make a search, the only condition being that he has reason to believe in the existence of the facts mentioned therein. It is said that the said belief is practically a subjective satisfaction and the section neither lays down any policy nor imposes any effective control on his absolute discretion. So stated the argument is attractive, but a deeper scrutiny of the provisions indicates not only a policy but also effective checks on the exercise of the power to search by the Assistant Collector of Customs. The object of the section is to make a search for the goods liable to be confiscated or the documents secreted in any place which are relevant to any proceeding under the Act. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to a proceeding under the Act. No doubt the power can be abused. But that is controlled by other means. Though under the section the Assistant Collector of Customs need not give the reasons, if the existence of belief is questioned in any collateral proceedings, he has to produce relevant evidence to sustain his belief."

16. In Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, the Supreme Court considered the power of search and seizure vested in the authorities under the Income Tax Act, 1961. The broad approach to the validity of these provisions were-stated at page 355, thus:

"Indeed the measure would be objectionable if the implementation is not accompanied by safeguards against its undue and improper exercise. As a broad proposition it is now possible to state that it the safeguards are generally on the lines adopted by the Criminal Procedure Code they would be regarded as adequate and render the temporary restrictions imposed by the measure reasonable."

In the context of the allegation of mala fides on the part of the Offices, the Court pointed out at page page 363:

"It is undoubtedly true that search and seizure is a drastic process arid is bound to be associated with some amount of unsavory and inconvenient results. A sudden search and seizure may unnerve the inmates of the place where the search is made. But this is to be expected, When oppression and mala fides are alleged, we should have more substantial grounds than these."

Earlier, in Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth

Brothers and Others etc., it was held that in cases where serious allegations of mala fides are made, Court would exercise its Writ jurisdiction to examine the validity of the search and seizure. At page 297, the Court held;

"Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purpose for which the law authorizes it to be exercised. If the action of the Officer issuing the authorization, or of the designated Officer is challenged the Officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down toy the Court. If the conditions for exercise of the power are not satisfied, the proceeding is liable to be quashed. But where power is exercised bona fide and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the Officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the Officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the Officer has in executing the authorisation acted bona fide."

17. The power vested in the impugned Clause 14 cannot be considered as arbitrary; responsible Officers of the State are vested with the power who are expected to exercise the same based on a reasonable belief that the situation calls for its exercise. If it is shown that power was exercised maliciously, protection given to the authority is taken away u/s 15 of the Essential Commodities Act; by obtaining an appropriate sanction as per Section 15A of the said Act, the Officer could even be prosecuted. In an appropriate case, if the situation requires, this Court''s jurisdiction under Article 226 can be invoked, to scrutinise the action taken, as pointed out by the Supreme Court in Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., .

18. A likelihood of the power being abused is no ground to nullify the power itself. Power is created and vested in the Officers of the State in the larger interest of the public and the presumption is that the power would be exercised reasonably and for valid reasons.

19. Consequently I do not find any merit in these Writ Petitions. They are accordingly dismissed.

Rule is discharged.

