

(1989) 04 PAT CK 0036

In the Patna High Court

Case No : Criminal Writ Jurn. Case No. 215 of 1984

Dharmadeo Yadav and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6A(1), 6A(8), 6A(9)

Citation : (1990) CriLJ 1969 : (1990) 2 PLJR 169

Hon'ble Judges : Binodanand Singh, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : G.C. Bharuka, Navniti Prasad Singh and S.D. Sanjay, for the Appellant; K.N.P. Singh, Govt. Pleader III and Gopal Prasad, Jr. Counsel to Govt. Pleader III, for the Respondent

Final Decision : Allowed

Judgement

B.N. Agrawal, J.—This application has been filed for quashing the order dated 8-8-1983 passed by the respondent-Collector, contained in Annexure "I", by which he has confiscated 106.355 Quintals of foodgrains and the order dated 17-2-1984 passed in an appeal confirming the same, contained in Annexure "2".

2. The short facts for disposal of this application are that on 27-2-1979 the respondent-District Supply Officer along with other inspected the business premises of the firm M/s. Laxman Jee Sudama Jee, which was a retail-dealer having been granted a licence under the Bihar Foodgrains Dealers' Licensing Order, 1967 (hereinafter referred to as "the Licensing Order") found certain irregularities and seized 94-89 Quintals of rice 11.465 Quintals of pulses besides other grains which are not covered by the Licensing Order. Thereafter, a criminal prosecution has launched against Sudama Jee, Proprietor of the aforesaid licensee firm and the seizure of the foodgrains was reported to the respondent-Collector, who on receipt of the report initiated a confiscation proceeding u/s 6A of the Essential Commodities Act (hereinafter referred to as "the Act") on the ground that the aforesaid licensed dealer had committed various irregularities.

3. Upon service of notice of the confiscation proceeding, Sudama Jee, Proprietor of the aforesaid firm M/s. Laxman Jee Sudama Jee, filed show cause stating therein, inter alia, that out of the stocks seized, namely, 106.355 Quintals, 8 bags of rice and one bag of pulse belonged to the petitioner-Mahadeo Sah and 9 bags of rice belonged to petitioner Dharmadeo Sah. It was stated on behalf of the licensee-firm that the aforesaid stock of 18 bags, which was about 18 quintals, had been purchased by both the petitioners, who are petty dealers, from agriculturists and they had kept it in the premises of the Licensee-firm, as the market had not yet started in Aranda Bazar. According to it, if the aforesaid 18 bags of foodgrains are deducted out of 106.355 Quintals of the seized articles, in that event, the licensee-firm was storing the foodgrains within 100 quintals, which is within the permissible limits as such, there was no violation.

4. Thereafter, the petitioners entered appearance in the confiscation proceeding and they filed a petition before the Collector claiming the aforesaid articles and took a defence as disclosed on behalf of the licensee-firm. Both the petitioners also file their own affidavits besides affidavit of two other persons, namely, Mahabir Sah and Raghoji in support of their claim.

5. The respondent-Collector was of the view that the storage limit of rice by a retail dealer carrying on business in accordance with the Licensing Order was 76 quintals and even if the quantity of foodgrains claimed by the petitioner is excluded, the licensee firm was storing the stock of rice in excess of the limit of 75 quintals and therefore, the articles were liable to be confiscated. The respondent. Collector, accordingly, refrained from deciding the claim of the petitioners and passed the order of confiscation relating to the seized articles belonging to the petitioners as well.

6. It appears that when an appeal was taken by the petitioners against the aforesaid order of confiscation, the appellate authority has upheld the same observing that the petitioners had failed to substantiate their claim. The appellate authority in agreement with the respondent-Collector, was of the view that even if the articles claimed by the petitioners are excluded, the licensee-firm would be deemed to be storing rice beyond the storage limit. Hence, this writ application before this Court.

7. Learned counsel appearing on behalf of the petitioners in support of the writ application has raised three points; firstly, that the storage limit of rice under the provisions of the Licensing Order for a retail-dealer was not 75 quintals rather the same was 100 quintals; secondly, the appellate authority was not justified in throwing out the claim of the petitioners on the sole ground that cash memos showing purchase of the articles claimed by the respective petitioners were not produced and, thirdly, the respondent-Collector was not justified in refraining from deciding claims of the petitioners.

8. In relation to the first point raised on behalf of the petitioners, learned counsel appearing on their behalf submitted that storage limit of rice at the relevant time

was 100 quintals and not 75 quintals, whereas on behalf of the State it was submitted that a retail licensed dealer could store rice up to a maximum quantity of 75 quintals only. Relevant provisions of the Licensing Order have been placed before the Court and from a bare perusal thereof, I am prima facie of the view that a licensed retail dealer in foodgrains could store rice upto 100 quintals under the provisions of the Licensing Order. But, in view of the nature of order which I am going to pass in this case, in my view, it is not necessary to record any concluded opinion on this question as such, I refrain from deciding the same in the present writ application which may be decided at the appropriate stage.

9. Turning now to the second point raised on behalf of the petitioners, it may be relevant to state that there is no law requiring an agriculturist to sell foodgrains, which are products of his land, under a cash memo. There is no practice prevalent in the agriculturist world to issue cash memo to a purchaser by an agriculturist rather the practice is that an agriculturist does not issue any cash memo to a person who makes purchases of food-grains from him. It appears to me that this practice has developed because it is not feasible and practicable for an agriculturist to issue cash memo and perhaps for that reason no statutory provision has been made for issuance of cash memo by an agriculturist either under an Order issued u/s 3 of the Act or under any law for the time being in force.

From the foregoing discussions, it becomes clear that claims of the petitioners could not have been rejected by the appellate authority on the ground that they failed to produce any cash memo relating to the articles claimed by them, which they had purchased from agriculturist; as such, the appellate order having been passed on such an extraneous consideration, is liable to be quashed.

10. Now I proceed to consider the last point taken on behalf of the petitioners. It was contended that the respondent collector committed an error of law apparent on the face of the record in refraining from deciding claims of the petitioners. It was submitted that in support of their claims the petitioner had filed affidavits of four persons including their own, whereas on behalf of the State no evidence whatsoever had been adduced; as such, the respondent-Collector ought to have considered claims of the petitioners on ex parte evidence. On behalf of the State, on the other hand, it was contended that the report, by which seizure was reported to the respondent-Collector, should be treated to be an evidence on behalf of the State.

Firstly, I would like to consider the question as to whether a report, by which seizure of the essential commodities is reported to a Collector, is evidence or the same only discloses case of the State. I have no difficulty in holding that the said report is a mere repository of case of the State disclosing facts therein that there was contravention of provisions of an order issued u/s 3 of the Act relating to a particular essential commodity conferring jurisdiction upon the concerned authority to seize the articles in question and report its seizure to the Collector concerned. The said report is statutory one and can be basis for a Collector u/s

6A of the Act for formation of an opinion that an essential commodity in question has been seized for contravention of provisions of an order issued u/s 3 of the Act which is a condition precedent for initiation of a proceeding u/s 6A of the Act for confiscation of the seized" essential commodity, but cannot take the place of evidence.

11. After initiation of confiscation proceeding u/s 6A of the Act, a Collector is required to issue notice to the owner of such an essential commodity or the person from whom it was seized giving him an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation. After representation is filed, a Collector is further required to give reasonable opportunity of hearing to the concerned person and, thereafter, only the goods seized can be confiscated. In this connection, I may usefully quote the provisions of Sub-section (1) of Section 6B of the Act which run thus:

"(1) No order confiscating any essential commodity, package, covering, receptacle, animal, vehicle, vessel or the conveyance shall be made u/s 6A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance 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, package, covering, receptacle, animal, vehicle vessel, or other conveyance;

(b) is given an opportunity of making a representation in writing within such reasons able time as may be specified in the notice against the grounds of confiscation;

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

From a bare perusal of the aforesaid provisions, it would appear that after initiating a confiscation proceeding u/s 6A of the Act, a Collector is required under Clause (a) of Sub-section (1) of Section 6B of the Act to give a notice in writing informing the concerned person of the grounds on which the essential commodity in question is proposed to be confiscated under Clause (b) thereof, an opportunity of making a representation in writing Within a reasonable time has to be afforded. Under Clause (c) of the same, alter representation is made reasonable opportunity of hearing to the concerned person is required to be given.

12. A question which arises is as to what will happen in case where representation is made under Clause (b) of Sub-section (1) of Section 6B of the Act by the concerned person denying the grounds of confiscation. In that event, can a Collector confiscate an essential commodity merely upon the ipse dixit of the facts stated in the report of the concerned authority under which the seizure was reported to the Collector. My answer to this question is emphatically in the

negative. If the allegations in the report of the seizure are denied on behalf of the concerned person in his representation, a Collector has no option . but to make inquiry in the confiscation proceeding and thereafter only he can finally, dispose of the same. In that inquiry, both the parties should be allowed to lead evidence which may be documentary or oral in the shape of affidavit or otherwise. Of course, the technical rules of evidence will not apply to such an inquiry. In a case where the. allegations are denied and the State fails to produce any evidence or adduces such evidence which are not found satisfactory by the Collector, in that event, the confiscation proceeding has got to be dropped unless the Collector is of opinion that the denial in the representation is such which even if taken at its face value and accepted in its entirety cannot-affect the grounds of confiscation disclosed in the show cause notice and the report of seizure. The State or the concerned person who has filed representation may make a prayer before the Collector for giving them an opportunity of examining the affidavit swearer of the other party in relation to veracity or otherwise of the statements made therein. It may be further open to the parties to examine witnesses in support of their respective cases and, in that event, the other side shall have right of cross-examination. If any document, which is necessary to be produced in the confiscation proceeding for deciding the grounds of confiscation and the parties or any one of them has no access to the same, they or any one of them, may make a prayer before the Collector for taking steps for compelling production of that document. In my view, the expression "giving reasonable opportunity of being heard" used in Clause (c) of Sub-section (1) of Section 6B of the Act requires an inquiry postulated above as the provision of Section 6A of the Act is confiscatory and the confiscation proceeding is quasi criminal in nature.

13. Apart from the interpretation which I have put forth upon the language of Clause (c) of sub-section (1) of Section 6B, it may be stated that in Bihar the State Legislature by the Essential Commodities (Bihar Amendment) Act, 1977 (Bihar Act IX of 1978) has made various amendments in the Act and substituted a new Section 6A for existing Section 6A of the Act. Sub-Sections (8) and (9) of the substituted Section 6A of the Act read thus:

"(8) The Collector shall for the purpose of this Act have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 when making enquiries under this Section in respect of the following matters, namely:--

- (a) receiving evidence on affidavit;
- (b) summoning and enforcing the attendance of say person and examining him on oath; and
- (c) compelling the production of documents.

(9) All enquiries and proceedings under this section before the Collector and the appellate authority shall be deemed to be judicial proceeding and while discharging functions under this section Collector and the appellate authority shall be deemed to be a Court."

From a bare perusal of the aforesaid provisions, it would appear that the confiscation proceeding before the original authority as well as before the appellate authority shall be deemed to be a judicial proceeding and both the authorities shall be deemed to be a Court. It further lays down that the Collector making an inquiry in a confiscation proceeding shall have same powers as are vested in the court under the Code of Civil Procedure, 1908 for receiving evidence on affidavits, summoning and enforcing the attendance of a person and examining him on oath and compelling the production of documents. The view which I have taken in the preceding paragraph regarding inquiry postulated in a confiscation proceeding by giving interpretation to the language of Section 6-B(1) of the Act specially Clause (c) thereof is reinforced by sub-sections (8) and (9) of the substituted Section 6-A of the Act, referred to above. From the order of confiscation passed by the respondent-Collector, it would appear that he had passed the same without making the inquiry postulated in law; as such, the order of confiscation and the appellate order confirming the same suffer from serious legal infirmity and cannot be sustained.

14. In the result, the writ application is allowed, the order of confiscation, contained in Annexure "1" and the appellate order, contained in Annexure "2", confirming the same are quashed and the respondent-Collector is hereby directed to dispose of the confiscation proceeding in accordance with law after giving opportunity of leading evidence, both oral and documentary, to the State and petitioners as well as the licensee-firm in support of their respective cases.

Binodanand Singh, J.

15. I agree.