
(2011) 08 CHH CK 0022
In the Chhattisgarh High Court
Case No : Criminal Revision No. 323 of 2001

Firm-M/s Jagdish Prasad Agrawal

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 7
Madhya Pradesh Foodgrains Dealers Licensing Order, 1958 — Section 3

Citation : (2011) 3 CG.L.R.W. 164 : (2012) 1 CGLJ 1 : (2011) 5 MPHT 92

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Amit Sharma, for the Appellant; Arvind Dubey and Panel Lawyer, for the State, for the Respondent

Judgement

Hon"ble Shri Sunil Kumar Sinha, J.—This revision is directed against the judgment dated 6th of July, 2001 passed in Criminal Appeal No. 229/2000 by the Session Judge, Raigarh. By the impugned judgment, the appeal filed by the petitioner against the order dated 18.4.2000 passed in Food Case No. 44/99 by Collector, Raigarh, whereby the said authority passed an order of confiscation of 60 quintals of rice u/s 6A of the Essential Commodities Act, has been dismissed. The facts, briefly stated, are as under:-

The petitioner is a licensed dealer holding a valid license under the Madhya Pradesh Food grains Dealers Licensing Order, 1965. On 23.3.99, he was issued a Levy Paid Certificate (LPC) by competent authority which was valid for 60 days from 20.3.99. According to the LPC, he was having levy free stock of 93.80 quintals of rice. On 19.5.99, the petitioner sold 60 quintals of rice to one Vijay Kumar Gupta (FGL No. 7/94), Main Road, Gumla, District Gumla, Bihar. He obtained a permit from Krishi Upqj Mandi, Sakti, District Janjgir-Champa on 19.5.99. The above rice was loaded in Mini-Truck (609) No. B.R. 14-G-2971. When consignment was being transported to its destination, on 20.5.99 at about 1.30 a.m., it was seized by Food Inspector, Raigarh on the pretext that the LPC

issued to the petitioner was valid for 60 days from 20.3.99 and the said period expired on 18.5.99, therefore, sale of the rice on 19.5.99 was in contravention of Madhya Pradesh Rice Procurement (Levy) Order, 1970 (hereinafter referred to as "the Order 1970") Show-cause was issued by the Collector to the petitioner who contended that this LPC was valid for 60 days from the date of its issuance on 23.3.99. Even if it is held that it was valid for 60 days from 20.3.99 which expired on 18.3.99, later on, on an application made by the petitioner before its expiry, its validity was extended till 20.6.99, therefore, the sale on 18.5.99 would not be in contravention of the above Order 1970, as the same was made under bonafide belief that the period of the LPC is going to be extended on their application.

The Collector did not accept the above contention and held that the sale on 19.5.99 was in contravention of the Order 1970, because the period of LPC had expired on 18.5.99. On appeal the learned Session Judge also took similar view and dismissed the appeal filed by the petitioner.

2. Mr. Amit Sharma, learned counsel appearing on behalf of the petitioner, argued that even if it is taken that the period of LPC expired on 18.5.99, the same was extended upto 20.6.99 and an endorsement to this effect was made in the LPC, therefore, the LPC would be taken as valid continuously from 20.3.99 till 20.6.99 and the sale and transportation in this period cannot be held to be in contravention of the Order 1970. Alternatively, he also argued that there does not appear to be mens rea on the part of the petitioner as it had already applied for extension of period of LPC, and under the impression that normally extension is not refused, which later on was also granted, the act of the petitioner was bonafide. He cited the judgment of Nathulal Vs. State of Madhya Pradesh,

3. On the other hand, Mr. Arvind Dubey, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment and order passed by the Session Judge and the Collector.

4. I have heard learned counsel for the parties at length and have also perused the records of the Courts below.

5. Admittedly, the LPC issued to the petitioner was valid for 60 days from 20.3.99. Later on, by the order of competent authority i.e. Collector, Janjgir-Champa, the validity period of LPC was extended for 30 days with a further endorsement that it would be valid till 20.6.99. The endorsement made in the LPC, filed and proved by the evidence of NAW-1 reads as follows:-

6. Sub-clause (5) of Clause 3 of the Order 1970 provides that no licensed miller or licensed dealer shall sell or agree to sell or otherwise dispose of rice out of his stock unless and until he has delivered such quantity of rice to the Purchase Officer as is required to be sold under the provisions of this order and has obtained a certificate from the Purchase Officer indicating the quantity of rice so delivered and the quantity of rice he is free to dispose of. Further by a circular of the Government dated 2nd February, 1999, it was provided that the concerned

Collector would be entitled to extend the period of LPC on the application made by the dealer/miller as the case may be and the period of extension would be on certain considerations mentioned in the above circular. The copy of the circular has also been filed on the record of the Collector. As per evidence of Vishnu Agrawal (NAW-1), an application for extension of period of LPC was filed before the concerned Collector prior to expiry of initial period of the LPC and ultimately the period of LPC was extended upto 20.6.99 by order dated 25.5.99. The language of the order passed by the concerned Collector does not speak that extended period of LPC would begin to run from a particular date. However, it speaks that it would end on 20.6.99. This shows that the period of LPC granted earlier was simply extended upto 20.6.99. Therefore, under the provisions of Order 1970 as also circular dated 2nd of February, 1999 it would be held that the LPC issued in favour of the petitioner on 23.3.99 which was valid for a period of 60 days from 20.3.99 was further made valid till 20.6.99, and if a transaction took place in between this period, that cannot be held to be invalid. Learned counsel for the State has argued that the LPC cannot be renewed from a retrospective date. I am unable to accept the said argument. When the original LPC itself was issued on 23.3.99 saying that it would be valid for 60 days from 20.3.99 i.e. from retrospective date, how a renewal from the retrospective date can be challenged. After going through the entire documents available on records, I am of the view that the LPC issued on 23.3.99 valid for 60 days from 20.3.99 got extended upto 20.6.99 by a further order of the competent authority on 26.5.99 and the sale in this period cannot be held to be invalid.

7. In *Nathulal Vs. State of Madhya Pradesh*, the accused a dealer in food grains, had made an application for a license under the Madhya Pradesh Food grains Dealers Licensing Order, 1958 and had also deposited the requisite license fee. There was, however, no intimation to him that his application was rejected. He purchased food grains from time to time and submitted returns to the Licensing authority showing the grains purchased by him. The Inspector checked the godowns of the accused and found that the accused had stored food grains without holding any license, in excess of the quantity permitted by S. 3 of the Order. The accused was prosecuted under S. 7 of the Essential Commodities Act, 1995 but was acquitted on the ground that he had no guilty mind; in appeal, however, the High Court convicted him. On appeal, the Supreme Court held that "an offence under S. 7 of the Essential Commodities Act, for breach of S. 3 of the concerned Order 1958, necessarily involves a guilty mind as an ingredient of the offence. Considering the scope of the Act it would be legitimate to hold that an offence under S. 7 of the Act is committed by a person if he intentionally contravenes any order made under S. 3 of the Act. The object of the Act will be best served and innocent persons will also be protected from harassment, if S. 7 is so construed." Though the above principle was laid down in relation to a criminal prosecution u/s 3/7 of the Essential Commodities Act, the same can also be made applicable to test the bonafides of the defence taken by the concerned dealer/miller who may be facing the proceedings of confiscation u/s 6A of the

Essential Commodities Act; otherwise a bonafide mistake committed by the dealer or the miller would also become a ground for confiscation under these provisions. If we apply the above principles in the facts and circumstances of the present case, the act of the petitioner, even otherwise also, appears to be bonafide for the reasons stated herein above. For the foregoing reasons, the revision is allowed. The impugned judgment passed by the Session Judge in Criminal Appeal No. 229/2000 as also the order passed by Collector, Raigarh in Food Case No. 44/99 both are set-aside. The petitioner would be entitled to refund of the amount, if any, deposited in lieu of the confiscation.