

(1984) 03 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 21780 of 1983

G. Rajendra

APPELLANT

Vs

The Deputy Commissioner, Belgaum and Others

RESPONDENT

Date of Decision : 06-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 6 A, 6 C

Citation : AIR 1985 Kar 118 : (1985) 1 KarLJ 149

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : N.Y. Hanumanthappa, for the Appellant; S. Udayashankar, Govt. Pleader, for the Respondent

Judgement

1. In this petition under Arts. 226 and 227 of the Constitution, the petitioner has sought for quashing the order dt. 9-12-1983 passed by the first respondent in No. SB.COM.SR.45/83 under S. 6A of the Essential Commodities Act (hereinafter referred to as the Act), confiscating the seized 45 barrels of groundnut oil and further directing the same to be sold in public auction and the sale proceeds to be credited to the Government.

2. The petitioner has made certain allegations against the first respondent and some officials in the office of the first respondent. Learned Government pleader Sri Udayashankar submits that he may be granted time to file the statement of objections having regard to the allegations made by the petitioner. It appears to me that it is not necessary to go into those allegations having regard to the fact that this writ petition can be disposed of on a short ground.

3. It is not in dispute that there is an order passed under S. 6A of the Act, confiscating 45 barrels of seized groundnut oil. An order passed under S. 6A of the Act is appealable under S. 6C of the Act. An appeal lies on facts and law to the State Government. It is open to the petitioner to put forth in the appeal, all the contentions which have been raised in this writ petition. Therefore, it is not at

all necessary to go into the contentions raised in this petition as there is a substantial remedy available to the petitioner by way of an appeal which he has not yet availed of.

4. It is, however, submitted on behalf of the petitioner that now that the period for preferring an appeal is over, the petition be considered on merits. It is also not possible to accept this contention. It is not in dispute in this case that what has been served upon the petitioner is only the communication dt. 12-12-1983 bearing No. SB.COM.SR.45/83 produced as Annexure-G informing him that the Deputy Commissioner, Belgaum on 9-12-1983 for the reasons stated in his office order of even No. dt. 9-12-1983 has confiscated 45 barrels of seized groundnut oil. Thus the actual order confiscating 45 barrels of ground-nut oil in question has not been communicated to the petitioner. That it is so, is also not disputed. S. 6C(I) of the Act as amended by Central Act 18 of 1981 reads as follows :-

"Any person aggrieved by an order of confiscation under S. 6A may, within one month from the date of the communication to him of such order, appeal to the State Government concerned and the State Government shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against."

From the aforesaid provision, it is clear that an appeal has to be preferred within one month from the date of the communication of the order of confiscation. The context in which the expression "communication to him of such order" occurs in S. 6C(I) of the Act, means nothing but the communication of the actual order of confiscation and not a mere communication of the fact that an order of confiscation has been passed, if the order of confiscation is pronounced in the absence of and without notice to the party of the date fixed for pronouncement of the order. If the order of confiscation is pronounced in the presence of the party or his authorised representative or his counsel, the party will come to know of the contents of the order and it will satisfy the requirement of the Section as it amounts to communication of actual order of confiscation. Consequently, the limitation for preferring an appeal begins to run from the date of such pronouncement of the order. It is only when the order of confiscation is pronounced or passed in the absence of, and without notice to, the party of the date fixed for pronouncement of the order, the actual order of confiscation will have to be communicated to the party and it is from the date of such actual communication of the order, the limitation begins to run. In this case, it is not the case of the first respondent that the order of confiscation is pronounced or passed in the presence of or with notice to the party of the date fixed for pronouncement, Unless actual order of confiscation is communicated to the party, he will not be in a position to know the contents of the order and will not be in a position to challenge the same in appeal. The intentment of the provision is to see that the actual order is communicated to the party against whom it is passed, so that he can immediately avail the remedy of an appeal. It is because of this, the statute uses the expression "such order". Therefore, in the instant

case, as it is already pointed out, the order is passed in the absence of and without notice, to, the party of the date fixed for pronouncing the order; a mere communication to the party informing him, that an order of confiscation is passed is not sufficient and it does not amount to "communication to him of such order". Consequently the date of receipt of such communication cannot become a starting of limitation. It is the date of communication of actual order of confiscation that will form a starting point for the commencement of limitation. The Supreme Court in the case of State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, , while dealing with clause (b) of the proviso to sub-sec. (2) of S. 18 of the Land Acquisition Act, has held as follows:

"As to the second part of cl. (b) of the proviso, the true scope and effect thereof was considered by "this Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, It was there observed that a literal and mechanical construction of the words "six months from the date of the collector"s award" occurring in the second part of Cl. (b) of the proviso would not be appropriate and, "the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. "Admittedly award was never communicated to the respondents. Therefore the question before us build down to this. When did the respondents know the award either actually or constructively? Learned Counsel for the appellant has placed very strong reliance on the petition which the respondents made for interim payment of compensation on Dec. 24, 1954. He has pointed out that the learned Subordinate Judge relied on this petition as showing the respondents" date of knowledge and there are no reasons why we should take a different view. It seems clear to us that the ratio of the decision in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under S. 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the Scheme of the Act, we think that knowledge of the award must mean knowledge of the essential contents of the award."

Similarly, this court in the case reported in (1981) 1 Kant LJ 35, while considering the expression 30 days from the date of receipt of the order appealed against, has held that the party is entitled to a copy of the order in order to avail his right of appeal and the limitation commences from the date the

copy of the order is served.

5. As it is already pointed out in the instant case, the order of confiscation has not yet been served upon the petitioner. Therefore it is not possible to hold that the limitation has commenced to run. The limitation in the instant case, having regard to aforesaid facts, will begin to run only from the date the actual order is served upon the petitioner. As the order has not yet been served, it is still open to the petitioner to avail the remedy of an appeal within one month from "the date the order, is served upon him.

6. Under these circumstances, I decline to interfere at this stage. However, it is necessary to direct the first respondent to serve a copy of the order of confiscation dt. 9-12-1983 in subject No. SB.CQM.SR.45/93 passed by the first respondent within six weeks from today, to enable the petitioner to avail his remedy of an appeal.

7. All the contentions relating to the merits of the case are left open.

8. Sri Udayashankar, learned Government pleader, is permitted to file his memo of appearance on behalf of the respondents M six weeks.

9. Order accordingly.