
(2014) 01 AP CK 0025

In the Andhra Pradesh High Court

Case No : W.P. No. 17684 of 2009 and Batch

Gurram Venkateswarlu and Others

APPELLANT

Vs

Collector and District Magistrate and Another

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Essential Commodities Act, 1955 — Section 6A, 6-A, 7

Citation : (2014) 2 ALD 523

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : P. Kamlakar for all the WPs, Advocate for the Appellant

Judgement

Asapu Ramalingeswara Rao, J.—These four petitions are disposed of by a common order in view of the commonality of the facts and law involved in these cases. It is stated by the petitioners that they are all agriculturists having lands in their respective villages. They are raising crops and selling the agricultural produce and thereby eking out their livelihood. During the year 2008, they raised red gram crop and realized good yield of red gram. Since the market at that time was not encouraging, they stored their agricultural produce in the godown of Central Warehousing Corporation (CWC) at Throvagunta Village, Ongole Mandal with a view to dispose of the same when the market conditions improve. The particulars of the agricultural produce deposited by them was entered in the registers of the CWC authorities.

2. While so, the 2nd respondent along with his officers inspected the godown on 28.7.2008 at 6 p.m. and seized the red gram stock stored in the godown. The 2nd respondent without conducting any enquiry and without verification of records under panchanama booked cases u/s 6A of the Essential Commodities Act, 1955 (for short "the Act"). Thereafter, the petitioners filed a petition before the 1st respondent along with documentary evidence showing the extents of land owned by them and pattadar passbooks in respect of the said lands and requested to release the seized stock of red gram. Subsequently, they also filed a

petition on 18.8.2008 to summon the Bank Manager to give evidence in support of their contention that they are agriculturists. The 1st respondent heard the arguments of Counsel for the petitioners on 4.2.2009 but without properly appreciating the facts of the case passed an order on 29.5.2009 ordering confiscation of the seized stock. Challenging the said order of the 1st respondent, the petitioners filed appeals in CrI. A. Nos. 66, 67, 68 and 69 of 2009 in the Court of Sessions Judge at Ongole. The learned Sessions Judge, on an erroneous view of law and facts dismissed the appeals by order dated 10.8.2009 confirming the order of 1st respondent. These writ petitions were filed challenging the orders of learned Sessions Judge confirming the orders of 1st respondent.

3. In all these cases neither a counter-affidavit was filed on behalf of the respondents nor the learned Government Pleader for the respondents was present on 26.12.2013 when the case was called nor on 27.12.2013 when the case was heard. Heard Sri E. Manohar, learned Senior Counsel for the petitioners.

4. The only point raised by the learned Senior Counsel is that the petitioners are not businessmen and a solitary instance of storing foodgrains would not be a violation of clause 3(2) and (3) of A.P. Pulses (LS&R) Order, 2007 and the said point is no longer res Integra as the issue was covered by ratio laid down in the decisions of Manipur Administration Vs. M. Nila Chandra Singh, and M/s. Satyanarayan Balkishan Proprietor, Satyanarayana (deceased) by L.R. Balkrishnan, Zaheerabad, Medak District v. The State of Andhra Pradesh by the Deputy Tahsildar, Civil Supplies, Zaheerabad, Medak District, 1971 (1) An. WR 254.

5. It appears that the 2nd respondent received information that some traders were illegally storing huge stock of pulses in the names of some farmers of surrounding villages and hence he went to CWC, Throvagunta Village, Ongole Mandal on 28.7.2008 and the Manager of CWC produced the Stock Register, Depositors Register and ledger for verification. From the record, he noticed that the farmers stored the red gram stock in the CWC godown. The 2nd respondent appears to have noticed that the stored red gram was more than the yield from their agricultural lands and thus came to the prima facie opinion that they have contravened the provisions of clause 3(2) and (3) of A.P. Pulses (Licensing, Storage and Regulation) Order, 2007 (Order) and hence seized the available stock under a cover of panchanama and handed over the same to Manager, CWC for interim safe custody and filed report u/s 6-A of the Act with request to 1st respondent to initiate 6-A proceedings against the respondents therein.

6. Subsequently, an interim disposal order was passed by the 1st respondent. Aggrieved by the same, the petitioners filed WP No. 18136 of 2008 and batch and the same was disposed of by a common order on 21.8.2008 with some observations. Aggrieved by the order of the learned Single Judge, the petitioners filed WA No. 944 of 2008 and Batch and the same were disposed of on 29.8.2008 directing the 1st respondent to give notice to the persons whose names were revealed as owners of the red gram stock at the time when the red gram had been seized and after hearing them and making a preliminary/summary enquiry,

the 1st respondent was directed to take fresh decision. It was also further directed to conclude the enquiry after hearing the concerned persons within six weeks from that day and appropriate order be passed. It was also ordered that the stock of red gram, which does not belong to any of the appellants/petitioners in respect of which no claim has been made by any other farmer, may be dealt with by the Collector in accordance with law. Accordingly, the order of the learned Single Judge and the interim order of the Collector were set aside. Thereafter, the 1st respondent took up the enquiry and verified the individual holdings of the petitioners. The 1st respondent also enquired the bankers who sanctioned loans to the farmers. The 1st respondent observed that the farmers belong to various villages and they stored their produce in Throvagunta which is far away from their villages, even though there were some Cold Storages nearer to their villages and it gave rise to suspicion that the traders were involved in the whole exercise. He also came to the opinion that by not inspecting and by not ensuring proper documentation the Panics had deliberately aided and abetted the traders for hoarding their stocks which in turn caused price rise which affected lakhs of consumers. The banks have not scrupulously followed the guidelines of RBI by extending loans to benami traders under the provisions of pledge loan scheme. The 1st respondent also noted the written arguments filed on behalf of the petitioners herein and negated the contention that they raised red gram in their lands as well as leased lands and in the lands of their relatives on the ground that they have not produced any registered lease agreement or any credible documentary evidence in support of their claims. With regard to the claim petitions filed by the petitioners along with certificates issued by the concerned Village Revenue Officers, the 1st respondent opined that the reports of the VROs and Tahsildar concerned were varying with each other and VROs were not competent to issue certificates to the petitioners herein directly that they have raised red gram which were produced before him. Thereafter, he took handbook of Statistics pertaining to the year 2008 in the district and based on the statistics he came to the conclusion that the petitioners contravened the provisions of A.P. Pulses (Licensing, Storage and Regulation) Order, 2007 and accordingly ordered for confiscation of some quantity of seized stocks of red gram where mere was no evidence of their ownership of the lands from the petitioners in favour of the Government by order dated 29.5.2009.

7. In view of the said order, as already stated above, the petitioners preferred Criminal Appeal No. 68 of 2009 and Batch before the Court of Sessions Judge, Prakasham Division at Ongole.

8. Learned Sessions Judge framed two points for consideration as follows:

1. Whether the impugned common order of the Collector (CS) confiscating entire seized stock of red gram belongs to appellants 2 to 4, 6 to 8, 12 and 13 (R2 to R4, R6 to R8, R12 and R13) and part of the stock of appellants 1, 5, 9, 10 and 11 (R1, R5, R9, R10 and R11) is unsustainable and requires interference by this Court while sitting in appeal? If so, with what observations regarding the so-

called claim of them of yield from cultivation of the respective lands by the respective appellants owned or on lease kept in the godown and raised loans by pledge of stock?

2. To what result?

9. The learned Sessions Judge, considered the decisions reported in A. Siva Reddy and Others Vs. The District Collector, The Dy. Tahasildar, The District Manager, Civil Supplies Corporation and Sri Laxmi Agro Fibres (Cotton and Cotton Seed Merchants), , Madhav Keshav Mirashi Vs. The State of Maharashtra, , District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders Association and Others, and Samudrala Venkateswar Rao, Managing Partner, Maruthi Traders Vs. Govt. of India, Ministry of Agri. Dept. of Food and Others, , with regard to the scope of enquiry u/s 6A of the Act and the circumstances under which the proceedings of the nature taken against the petitioners should be considered. The learned Sessions Judge also considered the written arguments of the appellants. Thereafter the individual quantities of the yield in respect of each of the farmer was considered and the appeal was ultimately partly allowed by modifying the order of 1st respondent confining the confiscation to major portion of quantity seized.

10. Before the District Collector as well as before the Sessions Court, a specific ground was taken that the Investigating Officers have misconstrued the provisions of sub-clauses (2) and (3) of clause 3 of the A.P. Pulses (Licensing, Storage and Regulation) Order, 2007 which was not at all applicable to the petitioners who are admittedly neither the dealers nor traders nor carrying on any business as contemplated under the provisions of said Control Order. This crucial point was overlooked by the 1st respondent as well as the learned Sessions Judge.

11. Clause 3 of A.P. Pulses (Licensing, Storage and Regulation) Order, 2007 reads as follows:--

Licensing of Dealers:

1. No person shall carry on business as a dealer or producer or a commission agent dealing in pulses, except under and in accordance with the terms and conditions of a licence issued in this behalf by the Licensing Authority.

Provided that persons taken licences during the period from 23.9.2006 to 28.2.2007 shall invariably take licences afresh under this order.

2. For the purpose of this clause, any person who stores in quantity of more than 10 quintals of one or more of pulses put together at any one time, unless the contrary is proved be deemed to be carrying on business as a Dealer, Producer or a Commission Agent dealing in pulses, under this order.

3. A separate licence shall be obtained by a dealer for each place of business and storage point also except in respect of places of purchase.

4. A producer (Miller)/Commission Agent shall take wholesale licence from the licensing authority.

12. An identical clause came up for consideration before the Hon'ble Supreme Court in Manipur Administration v. M. Nila Chandra Singh (supra). In that case, the respondent therein was charged for having committed an offence punishable u/s 7 of the Essential Commodities Act, 1955 on the ground that on February, 9, 1960 he was found storing 178 Mds. of paddy in his godown without any licence in violation of Clause 3 of the said order. The learned Sub-Divisional Magistrate, Bishenpur did not accept the plea of the respondent that stock was meant for the consumption of the members of his family and accordingly convicted the respondent of the offence charged. Against the said order, the respondent preferred appeal before the learned Sessions Judge at Manipur who confirmed the order of sentence. The respondent then moved the Judicial Commissioner, Manipur by filing revision application and said revision application was allowed. Against the same, Manipur Administration preferred criminal appeal before the Hon'ble Supreme Court. While dealing with the contentions of Manipur Administration that the order of the Judicial Commissioner was passed on misconception of clause 3(2) of the order, the Supreme Court extracted the said clause for the purpose of deciding the case and it reads as follows:--

(1) No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority;

(2) For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale.

After considering the said clause, the Supreme Court held as follows:

In dealing with the question as to whether the respondent is guilty u/s 7 of the Essential Commodities Act, it is necessary to decide whether he can be said to be a dealer within the meaning of Clause 3 of the order. A dealer has been defined by Clause 2(a) and that definition we have already noticed. The said definition shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the schedule, and that the sale must be in quantity of 100 Mds, or more at any one time. It would be noticed that the requirement is not that the person should merely sell, purchase, or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale, or storage and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single casual or solitary transaction of sale, purchase or storage that would make a person a dealer. It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied. If this element of the definition is ignored, it would be

rendering the use of the word "business" redundant and meaningless. It has been fairly conceded before us by Mr. Khanna that the requirement that the transactions must be of 100 Mds., or more at any one time governs all classes of dealings with the commodities specified in the definition. Whether it is a purchase or sale or storage at any one time it must be of 100 Mds, or more.. In other words, there is no dispute before us that retail transactions of less than 100 Mds. of the prescribed commodities are outside the purview of the definition of a dealer.

13. The Supreme Court further held that, Clause 3(3) raises a statutory presumption when the stock is found with any individual having 100 Mds. or more of specified foodgrain is meant for sale. In addition to the said presumption the prosecution has to show that the store of foodgrains was for the purpose of carrying on business. The element of business which is essential to attract the provisions of Clause 3(1) is thus not covered by the presumption raised under Clause 3(2). It was held that if the presumption is raised under the said clause some evidence must be lead, which would justify the conclusion that the store, which was made for the purpose of sale, was made by the person for the purpose of carrying on the business. The Court opined that Clause 3(2) was deliberately worded so as to raise a limited presumption in order to exclude cases of cultivators who may on occasions be in possession of more than 100 maunds of foodgrains grown in their fields. If a cultivator produce more than 100 mds. in his fields or otherwise comes into possession of such quantity of foodgrains once in a year and casually sells them or stores them, the order apparently did not want to make such possession, sale or storage liable to be punished under Clause 3(1) read with Section 7 of the Essential Commodities Act. Accordingly it upheld the order of Judicial Commissioner. This Court in M/s. Satyanarayan Balkishan's case (supra), considered Clause 3 of the A.P. Order, 2007 and followed the judgment of the Hon'ble Supreme Court cited supra. It was held that it is not a solitary instance of storage or sale or even an occasional or sporadic actions of storage or sales that would amount to carrying on business, but a course of conduct of either storage or sale that would lead to inference that he is dealing in them. Ultimately it was held that single instance of storing of foodgrains here would not constitute "carrying on business" and would not attract the provisions of Clause 3 of the "Foodgrains Dealers" Licensing Order, for the contravention of which the penalty of confiscation as provided u/s 6-A of the Act is attracted.

14. In the instant case also neither the 1st respondent nor the learned Sessions Judge considered this aspect of the matter and examined whether the petitioners have stored the foodgrains for the purpose of business or only on a solitary instance of storage. When there is no finding that the petitioners are carrying on the business of such produce or sale or storage of the red gram, the seizure of stock and the conviction under the provisions of Essential Commodities Act cannot be upheld.

15. Consequently, the orders in Crl. A Nos. 66, 67, 68 and 69 of 2009, dated 10.8.2009 confirming the orders passed by the 1st respondent dated 29.5.2009 are set aside and the writ petitions are allowed. No order as to costs. With regard to the bank guarantees furnished by the petitioners pursuant to the interim orders of this Court on 25.8.2009, the 1st respondent shall release them to the petitioners. Pending miscellaneous petitions, if any, in these writ petitions shall stand closed in consequence. No order as to costs.