
(1982) 12 CAL CK 0005
In the Calcutta High Court

Hiralal Show and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-12-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities (Special Provisions) Act, 1981 — Section 5
Essential Commodities Act, 1955 — Section 3, 6A, 7
General Clauses Act, 1897 — Section 5, 6C, 6D, 6E

Citation : 87 CWN 358

Hon'ble Judges : J. Nag, J

Bench : Single Bench

Advocate : Sekher Kumar Basu, for the Appellant; Mukti Maitra for the State, for the Respondent

Judgement

J. Nag, J.—This application on behalf of the petitioners was filed with notice to State and was heard as a contested application on several dates. The facts out of which each of the present applications arises are as follows:-

2. Jagatdal Police Station Case No. 35 dated 12.11.81 u/s 7 of the Essential Commodities Act (hereinafter referred to "as the Act") was registered against the petitioners Nos. 1 to 3, Harilal Show, Ranjit Prasad Show and Bhagawan Show on the basis of the accusation that the search conducted at 4, Paper Mill Road, Police Station Jagatdal, District-24 Parganas revealed unauthorized possession of rapeseed oil, weighing about 16.5 kgs. and that on being challenged the petitioner No. 3 Bhagawan Show could not produce any licence or authority to justify the possession or storing of rapeseed oil; Sri D. P. Sarkar, Inspector of Police, District Enforcement Branch, 24-parganas seized the offending article for contravention of West Bengal Pulses and edible oil (dealer licensing) Order, 1978 and the provision of paragraph (3) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977; With reference to the aforesaid case the Sub-divisional Officer, Barrackpore issued a notice u/s 6A of the Act against the petitioner No.1 only calling upon him to show cause by way of written

representation within 30th December, 1981 as to why rapeseed oil should not be confiscated to the State of West Bengal the notice was undated; the petitioner No. 1 is the father of the other petitioners, that is petitioners Nos.3 to 4; the petitioners Nos. 2 to 4 are businessmen by profession and run grocery shops at kankinara Bazar and they possess licence granted by the Bhatpara municipality for carrying on their profession, trade or calling, By a petition filed before the learned Sub-Divisional Officer on 11.1.82; the petitioner No. 1 informed the Learned Sub-Divisional Officer that the seized oil is not owned by the petitioner No. 1 but the same belongs to his sons that is the petitioners Nos. 2 to 4, who run grocery shops; that no notice was served upon the petitioners Nos. 2 to 4 although the notice issued by the Learned Sub-Divisional Officer u/s 6A of the Essential Commodities Act shows that the learned Sub-Divisional Officer was conscious of the fact that the rapeseed oil was seized from the custody of Harilal Show and his sons; that by order dated 11.1.82 the Learned Sub-Divisional Officer directed that the entire stock of rapeseed oil be confiscated to the State of West Bengal and further directed the Investigating Officer to sell the seized stock of rapeseed oil at the rate fixed by the Government in consultation with Sub-Divisional Controller (Food & Supplies) Barrackpore and to deposit the sale proceeds with the State Bank of India through Barrackpore Treasury.

3. That at the time of hearing of the application threefold objections were raised on behalf of the State and the Learned Advocate for the State later on argued the case on merits too.

4. The objections were to the following effect :-

(a) the order of confiscation u/s 6A tantamounts to an "order of forfeiture" mentioned in Appellate Side Rule Part I Chapter II Rule 9(2) (i),

(b) the order of confiscation is appealable u/s 6C of the Act and as such no revisional application under Article 227 of the Constitution lies,

(c) Section 6E of the Act bars the jurisdiction of the High Court to pass any order with regard to possession, deliver, disposal or distribution of such property.

5. Mr. Sekhar Kumar Basu appearing for the petitioners has argued at length in reply to the several objections raised by and on behalf of the State. These submissions made by Mr. Sekhar Kumar Basu are summarized as follows :-

(a) rule 9(2) (i) of the Appellate Side rules runs as follows :-

9(2)-Applications under Article 227 of the Constitution dealing exclusively with criminal matters shall be placed either before the Criminal Bench or before a Single Judge taking Revisional criminal matters according to the subject-matter of the applications. Provided that a single Judge may hear any appeal, reference, or application for revision other than the following :-

(i) one relating to an order of sentence of death, transportation, penal servitude, forfeiture of property or of imprisonment, not being an order of imprisonment in

default of payment of fine.

6. The Rule as it stands prohibits the jurisdiction of a single Judge of High court in any appeal, reference, or application for revision with regard to certain orders specified in sub-rule (i) of rule 9.

7. The argument on behalf of the State is that the expression "forfeiture of property" is equal to confiscation of property under the Essential Commodities Act. It is argued by Mr. Sekhar Kumar Basu that in interesting rule 9, one has to take into consideration all the words used in the relevant rules. One cannot pick up a single word or expression from the rule and interpret the same to suit his/her convenience. Sub-rule (i) shows that the word (forfeiture of property) is preceded by words like "sentence of death", "transportation", "penal servitude", and followed by words like "imprisonment, not being an order of imprisonment is default of payment of fine".

8. Mr. Basu cited the case reported in *Chairman of The Bankura Municipality Vs. Lalji Raja and Sons*, and argued that the Supreme Court took into consideration the meaning and effect of the words used in sub-rule (ii) of the Rule 9(2) and came to the conclusions that all those orders are "purely orders by way of penalty or punishment for the commission of crime or offences and forfeiture of property mentioned therein is no other than one which is entailed as a consequence of commission of crime or offence" and the other test that the Supreme court laid down is to see whether order of forfeiture of property is by way of penalty or punishment under any act for the commission of any offence or crime. If the test laid down by Supreme Court in the judgment referred to above is applied in the present case, it will be clear that forfeiture of property is not equal to confiscation of article u/s 6A of the Essential Commodities Act. The Essential Commodities Act describes confiscation as an "award" (under section 6D of the Act) whereas u/s 7 of the said Act "forfeiture" of property is mentioned as penalty for commission of offence or crime under the said Act. Sub-Rule (i) to (v) of rule 9(2) of the Appellate Side Rules will indicate in unmistakable terms that the orders which have been mentioned in those rules are all judicial orders passed in judicial proceedings and do not relate to orders by tribunal or administrative authority like the Collector under the Essential Commodities Act. The word "forfeiture of property" finds place in the relevant rule which deals with various kinds of orders passed in judicial proceedings and since the proceeding for confiscation can by no amount of logic, be described as a judicial proceeding, the order of confiscation cannot get the status of an order of forfeiture within the meaning of the Appellate Side Rules.

9. Question arises as to why the legislature has in the Essential Commodities Act made a specific distinction in describing "confiscation" and "forfeiture" under the said Act. Confiscation has been described as an "award"; forfeiture has been described as a "penalty". This distinction reflects the legislative mind and shows that the legislature itself has not put or placed an order of confiscation and an order of forfeiture in the same level, This distinction between the order of

confiscation and order of forfeiture can also be judged from another standpoint namely legal effect of order of confiscation and order of forfeiture, and the authorities competent to pass such orders. Whereas an order of confiscation is issued by a collector in an administrative proceeding u/s 6A, order of forfeiture is passed by a Magistrate at the conclusion of a trial or in a judicial proceeding, by way of penalty. Section 6A read with section 7 of the Essential Commodities Act shows that finality in an order of confiscation is dependant on the order of a Magistrate in a judicial proceeding initiated for contravention of any order issued under the Essential Commodities Act. In case, the offender is acquitted the order of confiscation does not achieve its finality and the offender gets back money value of the article confiscated by the Collector and in a case in which the Magistrate convicts the accused, the order of confiscation, in the event of such order being passed earlier to the order of conviction by the Magistrate and if no order of confiscation had been passed the Magistrate has the jurisdiction to forfeit the article u/s 7 (a) (b). Thus, it is clear that an order of confiscation is dependent on the final order of conviction or acquittal by a Criminal court. Had the order of confiscation and the order of forfeiture been equal legal meaning and effect then there would not have been any provision in the Essential Commodities Act rendering the order of confiscation dependant on the final order passed by a Magistrate in a criminal proceeding; together with this principle one can also advance the argument that section 6D of the Essential Commodities Act characterises confiscation as an "award" and forfeiture "penalty".

10. The forfeiture of property mentioned in the Appellate Side Rules is a judicial order and considered in the context of the Essential Commodities Act it will mean the order issued u/s 7(a)(b) of the Essential Commodities Act and not an order of confiscation u/s 6A. The entire direction given under Rule 9 of the Appellate Side Rules has to be considered and a mere grammatical or etymological meaning of the word "confiscation" will not govern its legal meaning and effect. The Hon'ble Supreme Court in the case reported in Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli, , while laying down the principle with regard to construction of words used in the statute vis-?-vis its grammatical meaning observed at paragraph 19 of the said judgment as follows :-

Normally, the words used in a statute have to be construed in their ordinary meaning but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction, exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision the context in which the words occur the object of the Statute in which the provision is included and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words "should be construed in the light of their

context rather than what may be either their strict etymological sense or their popular meaning apart from that context." Following the rules of interpretation of statute or statutory words as laid down by the supreme court in the aforesaid case reported in Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli, one comes to the conclusion that forfeiture of property used in Rule 9 in the Appellate Side Rules has been used in the sense of a judicial order of forfeiture of property issued by way of penalty or punishment by a court and this view finds support not only from words associating the word "forfeiture of property " but also from other sub-rules, that is sub-rule (ii) to (v) incorporated under Rule 9. Grammatical meaning of the words "confiscation" and "forfeiture" may be same, but when read or considered in the context it is used the meaning may be radically different and effect may be substantially different. In the present case confiscation is an award by administrative authority in an administrative proceeding and forfeiture of property is a judicial order of penalty or punishment issued by a criminal Court in a criminal proceeding.

11. On a consideration of the judgment of the Supreme Court reported in Chairman of The Bankura Municipality Vs. Lalji Raja and Sons, and Appellate Side Rules, the distinction between the order of confiscation and order of forfeiture as indicated in the Essential Commodities Act itself and the rule of interpretation of statute as laid down by the Supreme Court reported in AIR 1965 1839 leads to the conclusion that an order of confiscation u/s 6A of the Essential Commodities Act can by no stretch of imagination be an order of forfeiture of property within the meaning of the Appellate Side Rules and as such the single Judge has every right and jurisdiction to hear and to dispose of a criminal revisional application which arise out of an order of confiscation of article issued by a Collector under the Essential commodities Act.

12. In reply to the second objection raised on behalf of the State, Mr. Sekhar Kumar Basu has argued at length that under Article 227 of the Constitution as it stands now by virtue of the amendment every high Court has jurisdiction to correct jurisdictional errors of mistakes committed by Subordinate Courts and Tribunals. If the subordinate court or tribunal is lacking in jurisdiction to do or not to do something or if the subordinate court or tribunal has gone beyond its jurisdiction or refuses to exercise jurisdiction vested in it. Then the constitutional watchman namely the High Court unquestionably steps in to the matter and corrects the jurisdictional mistakes committed by the court or Tribunal. The test is not the mere existence of an appellate forum or alternative forum but the test is how the High Court reacts to the facts and circumstances of a particular case. If the information given to the High Court by way of an application satisfies the court that there has been a jurisdictional error then the mere existence of an appellate court or tribunal will not take away the jurisdiction of the High Court under Article 227 of the Constitution. Article 227 being a part of the Constitution puts itself over all the ordinary laws and coming next to Article 226 it reveals the magnitude and the solemnity that is attached to it. No ordinary law of the provision of any ordinary law can tarnish the image of Article 227 or interfere

with the magnitude of it. Article 227 remains untrammelled by the ordinary provision of law. But it has to be exercised sparingly that is why the judicial precedent indicates that the facts must satisfy the mind of the High Court that its interference is necessary to set things at right so far as jurisdictional aspect of the case is concerned, in Union of India (UOI) Vs. Ad-hoc Claims Commissioner and Others, , this principle has been recognized which negatives the argument that existence of appellate forum or appellate remedy or alternative remedy bars jurisdiction under Article 227. On a consideration of all aspects of the matter that this court can entertain the present application.

13. The Essential Commodities Act was amended in September, 1981 by promulgation of Essential Commodities (Special provision) Act 1981 and by section 5 of the Act of 1981 the provision of appeal to the judicial authority has been deleted and provision has been made for preferring appeal u/s. 6C of the Essential Commodities Act to the State Government. The Essential Commodities (Special provision) Act 1981 is an Act of the Parliament and it received the assent of the president on 1.9.81 and by virtue of section 5 of the General Clauses Act the day on which the act received the assent of the President it became enforceable,

14. In course of her argument Mrs. Mukti Maitra, learned Advocate for the State admitted that no step has been taken by the State Government either to receive appeals or to consider appeals under the amended section 6C of the Essential Commodities Act. So the position as it now stands is that the provision of preferring appeal to the judicial authority is no longer there and there is no arrangement by the State Government to receive or hear appeals under the amended provisions of law. This uncertainty with regard to appellate authority also fortifies the position that High Court's interference under Article 227 is justified. But this argument does not mean that once the State Government has made the arrangement the jurisdiction of High Court under Article 227 will come to an end. As it has been stated earlier that Article 227 in its magnitude and solemnity over-shadows all the ordinary provisions of law and whenever the mind of the of the high Court is satisfied with regard to jurisdictional error committed by the subordinate court or tribunal, it can with all force and authority interfere under Article 227 and as such in the present case the high Court can definitely interfere under Article 227 of the Constitution and the mere existence of appellate forum will neither bar the jurisdiction of High Court under Article 227 nor it will frustrate the present application.

15. The jurisdictional error committed in the present case is as follows :-

(a) the Collector did not issue notice upon all the persons who were and are affected by the order of confiscation. The Collector was informed by the petitioner No.1 that the petitioners No. 2 to 4 are the real owners of the rapeseed oil. But the learned Collector issued a notice upon the petitioner No. 1 only. His jurisdiction to confiscate is dependent on a valid exercise of power namely issuance of a notice upon the persons likely to be affected by the order of

confiscation. By not issuing notice upon the petitioners Nos. 2 to 4 the learned Collector failed to exercise the jurisdiction vested in him and caused serious prejudice to the petitioners Nos. 2 to 4.

(b) the notice issued by the learned Collector itself shows that the learned Collector was conscious of the fact that the oil was seized not only from the custody of the petitioner No. 1 but from the custody of the other petitioners also and as such it was incumbent upon him to issue notice upon all the petitioners and to give them opportunity of being heard inasmuch as such opportunity is the mandatory part of a proceeding for confiscation.

(c) These jurisdictional mistakes have not been disputed on behalf of the State and nothing was placed on behalf of the State to show that the learned Collector acted within his jurisdiction.

16. In reply to the third contention the submissions on behalf of the petitioner may be summarized as follows :-

Section 6E itself shows that no court tribunal and authority constituted under any law shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in a prosecution u/s 7 initiated for violation of an order passed u/s 3 in relation thereto. Here also the expression "any other law" signifies ordinary law of the land and does not embrace the constitutional provision under Article 227. In this case of course, the petitioners are not praying for possession, delivery, disposal or distribution of such property; they are only praying for an opportunity of being heard after being notified about the proposed grounds for confiscation by the Collector. The petitioners are praying that the matter should go back to the Collector with a direction that the Collector will hear the petitioners after issuing proper notice upon them and after giving them the statutory opportunities of making written representation and to be heard in their defence before any order of confiscation is passed. The prohibition imposed by section 6E is with regard to "possession", "delivery", "disposal" or "distribution" of the property and not with regard to seeking an opportunity of being heard in High Court in an application under Article 227 of the Constitution, nor is the High Court debarred from directing the Collector to offer an opportunity to the petitioners to make a representation and to be heard in their defence nor the petitioners are precluded from praying for such opportunity. Section 6E of the Essential Commodities Act is not in conflict with the principles of natural justice. Article 227 is definitely not disturbed by section 6E of the Essential Commodities Act. Section 6E of the said Act cannot go behind the prohibition it imposes on the ordinary court, tribunal or authority. Needless to say, that section 6E does not impose any condition or restriction on the High Court's exercise of power under Article 227 of the Constitution. In summing up, the order of confiscation is not an order of "forfeiture of property" within the meaning of the Appellate Side Rules and Hon'ble single Judge has every right and jurisdiction to entertain the application under Article 227 moved against an order of confiscation, the existence of appellate or alternative forum or remedy

against an order of confiscation does not bar the jurisdiction of the High Court under Article 227 and that section 6E of the Essential Commodities Act neither applies to the present case nor prevents the petitioners from achieving the relief they are praying for, namely to have the case sent back to the Collector to issue valid notice to the petitioners so that the petitioners may get an opportunity of making written representation against the proposed grounds for confiscation and be heard in their defence before any order of confiscation issued.

17. I accept all the submissions of Mr. Sekhar Kumar Basu and I find that this Court has jurisdiction to entertain the application. The order of confiscation made by the Collector which is impugned in this case is without jurisdiction inasmuch as no proper notice was served upon the petitioners prior to making the said order.

18. In the circumstances, the impugned order is set aside and the Collector is directed to issue fresh notice on all the petitioners so that the petitioner may get an opportunity of making representation against the proposed grounds for confiscation and be heard in the defence before any order of confiscation is made.

19. Let this order be communicated to the Collector forthwith.