

(1980) 12 PAT CK 0001

In the Patna High Court

Case No : Criminal Rev. No's. 450 to 455 of 1980

Jagdish Trading Company and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-12-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Essential Commodities Act, 1955 — Section 6, 6A, 6B, 6C

Citation : (1981) 29 BLJR 289 : (1984) PLJR 163 : (1981) PLJR 206

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Judgement

M.P. Varma, J.—In all the six revision applications referred to above a common question of law has been posed at the Bar. As such, with the consent of the parties all the applications have been heard together and are being disposed of by this judgment.

2. It was on the order of the Collector, Purnea that officials of the Supply Department raided the business premises of the petitioners and on detecting some irregularities instituted several cases against each one of them. In course of the raid, articles belonging to them were also seized and each one of them was noticed to show cause why the articles seized be not confiscated. The notices were issued by the Collector u/s 6-B, of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act"). The copies of the notices have been attached with each one of the applications as annexure "2". It is stated that each one of the petitioners filed show-cause but the learned Collector after hearing the parties was pleased to confiscate the articles seized. Copies of the orders of the Collector, passed in each case have been filed along with the application marked annexure-"3".

3. The petitioners being aggrieved by the order of the learned Collector, preferred appeals before the Sessions Judge at Purnea. The learned Sessions Judge dismissed all the six appeals by order dated 1-5-1980 (vide annexure "4")

which is under challenge before this Court. According to the learned Sessions Judge the appeals filed before him by these petitioners were not maintainable. The Court took the view that a Sessions Judge is not a "judicial authority" u/s 6-C of the Act and therefore, a Sessions Judge is not competent to dispose of the appeals. Orders passed by the Sessions Judge is similar in all the appeals. But it will be profitable to quote one such order, which the Sessions Judge recorded in Cr. Appeal No. 66 of 1980. This appeal was against the order of confiscation passed by the Collector, Purnea in Misc. case No. 279/79-80.

...After hearing the lawyers of both the sides I perused the three notifications issued by the Government of Bihar regarding the appointment of Judicial authority u/s 6(c) of the Essential Commodities Act. The notification dated 21-2-1967 shows that the Governor of Bihar was pleased to appoint all the District and Sessions Judge including the Judicial Commissioner of Chotanagpur and Ranchi to discharge the duty of Judicial authority u/s 6(c) of the Act, within their respective jurisdiction. The 2nd notification was published in the official gazette on 11-11-1974 in which only Division Commissioners were appointed judicial authority u/s 6(c) of the Essential Commodities Act within their respective jurisdiction. The third notification is dated 25th of January, 1977 in which also the Governor of Bihar was pleased to appoint judicial Commissioners only to act as judicial authority. The 2nd and the third notification does not say anything about the appointment of the District and Sessions Judge as judicial authority u/s 6(c) of the Act. The last two notifications make it clear that the Divisional Commissioners alone were appointed judicial authority by the Governor of Bihar u/s 6(c) of the Essential Commodities Act to dispose of the appeals against the order of confiscation.

3. In view of the discussions, made above I think that the District and Sessions Judges are not judicial authority u/s 6(c) of the Essential Commodities Act. Hence, I am not competent to hear this appeal. The memo of appeal is accordingly rejected.

4. The learned Counsel for the petitioners canvassed at the Bar that the Sessions Judge was not correct in saying that he was not empowered u/s 6-C of the Act to hear the appeals. It has been stated that an appeal against the order passed u/s 6-A can be heard by any judicial authority appointed u/s 6-C of the Act and that the State Government may appoint more than one judicial authority for the purpose of hearing such appeals. In the year 1967, by notification No. 187 dated 21-8-1967 the State Government appointed all the District and Sessions Judges to be a "judicial authority" and this notification was never annulled or superseded and this being still in operation, it cannot be said that the Sessions Judge is not a judicial authority to hear such appeals.

5. Section 6-C of the Act reads as follows:

Any person aggrieved by an order of confiscation u/s 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial

authority appointed by the State Government concerned and the judicial authority 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.

6. The State Government, in exercise of the powers conferred under this section, appointed all the District and Sessions Judges including the judicial Commissioner of Chotanagpur and Ranchi to discharge the duties and functions of judicial authority in the year 1967 under notification No. S. O. 187 dated 21st August. 1967. The notification is as follows:

In exercise of the powers conferred by Sub-section (1) of Section 6-C of the Essential Commodities Act, 1955 (Act 10 of 1955) the Governor of Bihar is pleased to appoint all the District and Sessions Judges including the judicial Commissioner of Chotanagpur, Ranchi to discharge the duties and functions of judicial Authorities u/s 6-C of the said Act, within their respective jurisdiction.

7. It appears that in the year 1974 the State Government issued another notification empowering the Divisional Commissioner to Act as judicial authority u/s 6-C of the Act, vide notification No. 1747 dated the 11th November, 1974, which is as follows;

In exercise of the powers conferred by Section 6-C of the Essential Commodities Act (Act No. 1955) the Governor of Bihar is pleased to appoint all Divisional Commissioners to Act as judicial authority under the said section within their respective limits of jurisdiction.

8. In wake of the Essential Commodities (Bihar 3rd Amendment) Ordinance, 1976 the Governor of Bihar, in exercise of powers conferred by Section 6-C issued another notification with respect to appointment of Divisional Commissioners as judicial authorities and the notification reads as follows:

In exercise of the powers conferred by Section 6-C of the Essential Commodities (Bihar Third Amendment) Ordinance, 1976 the Governor pf Bihar is pleased to appoint all the Divisional Commissioners to Act as judicial Authority under the said section within their respective limits of jurisdiction.

9. The learned Session Judge took the view that the State Government by the two subsequent notifications referred to above annulled the jurisdiction of the Session Judge to dispose of the appeals u/s 6-C of the Act. In the impugned order the Sessions Judge has said the Governor of Bihar was pleased to appoint Judicial Commissioners only to Act as Judicial authorities and while stating so, the learned Sessions Judge has referred to the second and the third notifications as quoted above. He further said in his order that the last two notifications made it clear that the Divisional Commissioner alone were appointed judicial authorities u/s 6-C of the Act to dispose, of appeals against the orders of confiscation. I paused for a moment and examined the three notifications over and over again but I could not . find. anywhere, that the Judicial Commissioners alone were

appointed as judicial authorities or it was only the judicial Commissioners, who can Act as such authorities u/s 6-C of the Act. I am constrained to observe that I could not find these two words in any of the notifications. It does not seem proper for a Court to find out and read something which is not there in the context. It is not the duty of the Court to import words in the notification and thereby to legislate or interpret in a manner which may render the scheme to an absurdity. It is no denial that authority does not mean any authority as "persona designata". But in any view a judicial authority would mean a pre-existing authority. A judicial authority is an authority, which under law, exercises powers or Acts in judicial manner in disposing of matters which come before it. In the Constitution the Courts are no doubt, repository of the judicial powers and a Sessions Judge presides over the Sessions Court in the Sessions division set up by the State and thereby the Sessions Judge discharges the functions conferred by the Code. If the Sessions Judge is appointed as a judicial authority u/s 6-C by the State Government, it will only mean that the Sessions Judge presiding over the Sessions Court is appointed as an appellate authority and admittedly, he cannot be deemed to be a persona designata. Section 6-C lays down that the appellate authority to act in appeal against the order of the Collector passed u/s 6-A must necessarily be a judicial authority.

10. The simple question raised at the Bar is whether the two subsequent notifications are in supersession of earlier notification No. 187 dated 21st August, 1967 and whether the subsequent notification annulled or in any way modified the powers conferred on the Sessions Judge to function as judicial authority u/s 6-C of the Act within his respective jurisdiction. Before I discuss this issue, it may be pertinent to mention here that Counsel for the State Sri R.S. Roy took the stand and conceded that the jurisdiction of the Sessions Judge in disposing of appeals u/s 6-C in its jurisdiction has not been ousted and the Sessions Judge very much continues to be a judicial authority under the Act in pursuance of the notification referred to above.

11. The conclusion arrived at by the Sessions Judge is that the subsequent notification issued by the Government explicitly repealed the earlier notification No. 187 dated the 21st August, 1967. I may say that there is no provision in the Act that by any subsequent notification appointing any other judicial authority u/s 6-C of the Act would, in effect, repeal the earlier notification explicitly either explicitly or impliedly. However, it may be said that if there be two such notifications on the same subject and if any inconsistency is noticed between the two, which may cause some conflict in Function, the earlier one may, in such circumstance be taken to be as repealed. But this is not the position here. In the present case I do not find any clash between the earlier notification No. 187 dated 21st August, 1967 and the two subsequent notifications No. 1747 dated 11th November, 1974 and No. 174 dated the 25th January, 1977. I find that two different authorities have been appointed. Both the authorities can very well function side by side. Even the parties are not put to any inconvenience if the two authorities are allowed to continue. Of course, I must say that in such a

situation, the only caution to be exercised is that a party has to choose one forum in between the two authorities having concurrent jurisdiction. A party cannot be permitted to approach the doors of both the authorities for redressal of his grievance. This, restraint has to be exercised to avoid clash or any contradictory finding. Failure to add repealing clause in the subsequent notification appears to be deliberate and this indicates that there was no intent of the State Government at any stage to annul the earlier authority and the powers vested in the Sessions Judge to act u/s 6-C. The proper intention appears to be that the State Government wanted and allowed to function both the authorities and thus, it is a case of co-existence of two authorities without any conflict or clash. It cannot be said that any one of the authorities is in superiority over the other. This Court in the case of Ashok Kumar v. The State of Bihar Cr. Revision 251/79 disposed of on 17th May, 1979 has held that a revision against the order of the Commissioner passed u/s 6-C of the Act lies before the High Court u/s 397 of the Code of Criminal Procedure in the same manner as revision against the order of District and Sessions Judge passed u/s 6-C of the Act is entertainable and competent before the High Court. The High Court, under its revisional jurisdiction exercises control over both the Courts and is entitled to call for the records of such proceedings to examine the correctness, propriety or the legality of the orders passed by such appellate Courts. There is no repugnancy between the two authorities appointed by the State Government and both can conveniently function. The interpretation of the Sessions Judge would only render the scheme of the Government as non-workable. Sessions Judge is admittedly in error in giving a finding that judicial Commissioners alone are to act u/s 6-C or that the State Government appointed Divisional Commissioners only as Judicial authorities. This is a clear misreading and wrong interpretation of the concerned notifications.

12. In the circumstances, referred to above, I hold that the District and Sessions Judge continues to be judicial authority u/s 6-C of the Act and he has got jurisdiction and is competent to dispose of the appeal.

13. In the result, these applications succeed and the orders of the Sessions Judge dated 1-5-1980 are set aside. All the six cases are remanded to the Court below with a direction that the Sessions Judge will now dispose them of on merit. Since the cases have been, long delayed due to some reason or the other, the Sessions Judge will do well to expedite disposal of these cases, preferably within three months from the date of receipt of this order.