

(1985) 12 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 18984 of 1985

Jai Jagdamba Trading Co. and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Essential Commodities Act, 1955 — Section 6A(2)

Citation : AIR 1986 All 336 : (1986) AWC 571

Hon'ble Judges : R.P. Shukla, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : M.D. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—Through this petition, the petitioners, sought quashing of the order dr. 11-11-1985 passed by the Additional District Magistrate under Sub-section (2) of Section 6A of the Essential Commodities Act directing for the sale of rice seized from truck Nos. PBN 4857 and HPG 2204 numbering 280 bags.

2. The argument was that the Additional District Magistrate was obliged to give an opportunity of hearing before passing the impugned order and as no hearing has been given, the same order is invalid.

3. For this purpose, we may quote Sub-sections (1) and (2) of Section 6A of the Essential Commodities Act, which read as under :--

"6-A. (1) Where any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto a report to this effect shall, without any unreasonable delay, be sent to the Collector of the district in which the seizure is made and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been contravention of the order, may order confiscation of-

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity :

Provided that, without prejudice to any action that may be taken under any other provision of this Act, no foodgrain or edible oil-seeds seized in pursuance of an order made u/s 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under the section :

Provided further that where any animal, vehicle, vessel or other conveyance is used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay in lieu of its confiscation a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried.

(2) Where the Collector on receiving a report of seizure or on inspection of any essential commodity under Sub-section (1) is of the opinion that such essential commodity is subject to speedy and natural decay or that it is otherwise expedient in the public interest so to do, he may order the same to be sold at the controlled price, if any, fixed under any law for the time being in force, or where no such price is fixed by auction :

Provided that in the case of foodgrain where there is no controlled price, the Collector may order the foodgrains seized to be sold through fair price shops at the price fixed by the Central Government or the State Government as the case may be, for the sale of such foodgrains to the public through these shops :

Provided also that wherever it is practicable so to do having regard to the nature of the essential commodity he shall take and preserve sample of the same before its sale or auction".

4. Learned counsel urged that the provision of sale of the commodity seized vitally affects the right of the person who is its owner, or is in its possession, it is incumbent that such a person be given an opportunity of hearing before an order contemplated by this provision is made.

5. Sub-section (1) of Section 6A deals with confiscation of the goods seized in pursuance of an order made u/s 3 in relation to which report is submitted to the Collector. Section 6B provides for an opportunity of hearing being given to the person in writing informing him of the grounds on which it is proposed to confiscate the goods. Unlike Section 6A(1) which has to be read along with Section 6B, there is no provision of hearing for taking the proceedings u/s 6A(2).

6. The argument of the learned counsel was that even if there was no provision for hearing as is provided (while) dealing with confiscation u/s 6A(1), the

principles of natural justice which have not been excluded to the proceedings u/s 6A(2) have to be necessarily applied. Any order of sale, counsel urged, without giving an opportunity would be void.

7. It is open to the legislature to exclude the applicability of the principles of natural justice by making provision in that regard expressly. Exclusion of principles of natural justice can also be by implication. For this purpose all the relevant provisions have to be considered and construed to find whether the legislature has impliedly excluded the applicability of principles of natural justice to a particular proceedings. Situation, where the rules of natural justice do not apply, may be where the consequences, of decision are not serious in the eye of law or there are no right of properties or otherwise involved.

8. Sub-section (2) of Section 6A confers a discretion upon the Collector to sell the seized goods at the controlled price or the appropriate price as the case may be, in case (i) the seized commodity is subject to speedy and natural decay, or (ii) it is otherwise expedient in the public interest so to do. Proviso to Sub-section (2) says that where the seized essential commodity is a commodity whose retail price has been fixed by the Central Government or the State Government under the Act or any order made thereunder the Collector may, for its equitable distribution and availability at fair price order the same to be sold through fair price shops at the price so fixed.

9. The argument of the learned counsel was that irrespective of the nature of the commodity seized, the opportunity would have to be given to the person who is likely to be affected by the order of sale contemplated by Sub-section (2) of Section 6A. This argument, if is accepted, may lead to results which the legislature could not have intended to provide for. The fact that (commodity) in respect of which an order under Sub-section (2) of Section 6A can be passed is the seized commodity, which is subject to speedy and natural decay, shows that the opportunity in such a case had been completely ruled out. If opportunity is given to file an objection against sale of the commodity of the nature perishable, instead of achieving the object of sale, it will defeat it, inasmuch as the goods seized would get destroyed or perished on account of delay. Seeing the nature of the seized goods and the requirement of selling them immediately leads to the conclusion that the legislature in respect of such goods could not intend to provide for an opportunity. The principle of opportunity is impliedly if not expressly ruled out of such a case.

10. The Collector under Sub-section (2) of Section 6A can also order for sale of the seized goods where he finds that the public interest requires the same to be sold. The sale of the commodity seized could safeguard the right of the dealer inasmuch as if ultimately it is found that no contravention or violation of any order had taken place, he would be paid back the price of the goods fetched by its sale. The phrase "public interest" is of wide amplitude and confers discretion on the Collector to order for the sale through the exigencies of situation and other conditions prevalent are such that the seized commodity should be sold to

the public so that it becomes available to it. In *Pankaj Dal Mill. Labartara, Varanasi v. State of U.P.* 1985 All WC 123, the Division Bench interpreted Section 6A(2) and held :-

"The scheme as formulated by the Legislature in Section 6A(2) clearly negatives the idea that even at the stage when the Collector is passing an order directing the sale of an essential commodity seized, he should record a finding or satisfaction that there has been a contravention of the Order. It is to be noted that both in Sub-section (1) and in Sub-section (2) of Section 6A the Collector of the district concerned or the Presidency Town concerned, is the officer empowered to act. The object and purpose for enacting Sub-section (2) in Section 6A is to not only serve the interest of the consumer public but also to safeguard the interest of the dealer. The Legislature could not and did not intend that the Collector should perform the same exercise twice over namely, at the stage of Sub-section (1) and again at the stage of Sub-section (2).

The question of the Collector making an enquiry on the merits of the case while proceeding u/s 6A(1) does not arise. In proceedings u/s 6A(2) the Collector is merely concerned with the interest of the consumers. The Collector is authorised under Sub-section (2) of Section 6A to direct the sale of the commodity which has been seized.

The proceedings u/s 6A(2) regarding the sale of the commodity shall have no bearing whatsoever on the defence the petitioner may ultimately take regarding the actual quantum of the commodity which was physically found in the premises of the firm at the time of the raid. If a prosecution is launched, the Court concerned shall adjudicate upon all the pleas raised by and on behalf of the firm including the plea that the quantity as shown in the recovery memo did not represent the correct picture."

11. From the above, it would appear that no finding is required to be recorded by the Collector while dealing with a case u/s 6A(2). It necessarily follows that no opportunity of hearing is to be given to the person who is not affected by the sale of the seized commodity under this provision.

12. In his book on Natural Justice, Jackson has stated the law about exclusion and non applicability of the rules of natural justice in Chap. VI at page 112. The first paragraph of this Chapter in so far as it is relevant on the controversy in question is as follows :--

"By implication and, sometimes, expressly, the previous chapter indicated situations where the rules of natural justice do not apply such as where the consequences of a decision are not serious in the eye of law; or where there are no property rights or other interests involved which the courts are prepared or able to protect. However, a number of situations require particular mention because they raise problems quite unconnected with the previous chapters. For example, in a situation where natural justice would normally be applicable, can a person waive his right to the protection afforded by the right to a hearing?"

13. The authority while making an order u/s 6A(2), however, is expected to act fairly.

14. Reliance was placed by the counsel for the petitioner on a case reported in *Durga Bhawani Trading Co. v. Joint Collector Medak* 1984 EFR 38 : (1983 Cri LJ 233 Andh Pra), and *Wasudeo Industries Ginning Factory v. State of Maharashtra* 1982 EFR 488.

15. Apart from these two cases, the reliance was placed on the unreported decision of this Court in Civil Misc. Writ No. 14346 of 1982, *Salik Ram Dakchini Prasad v. State of UP.*, decided on 3-5-1983.

16. Coming to the last case first, it appears that the Bench en account of its peculiar facts directed that requisite notice would have to be given before proceeding to sell the goods. This case is therefore, of no application to the facts of the present case.

17. So far as the other two cases, referred to above, are concerned, with great respect we are unable to subscribe to the view taken therein. There is a clear distinction between Sections 6A(1) and 6A(2). The legislature provided for an opportunity u/s 6A(2)(1) but it was not provided for in Section 6A. When the Legislature provided for hearing in one case and not in the other, the only conclusion to be drawn is that whereas in a case u/s 6A(1) opportunity has to be given, in the other there is no such requirement. The reason for this purpose is obvious inasmuch as Section 6A(1) read with Section 6B deals with confiscation. Therefore, the Legislature provided for hearing before the property is appropriated by the Government whereas in the case u/s 6A(2) no right of any person or the dealer is affected. The nature of the proceeding u/s 6A(2), as has already been emphasised by us, was such that the Legislature deliberately did not provide for hearing and that being the position, it must be held that the same was expressly excluded.

18. For what we have said above, we negative the submission of the petitioner's learned counsel and reject the writ petition summarily.