(1995) 07 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15524 of 1995

Jawahar Brothers, Grain Merchants and Commission Agent — APPELLANT

Vs

The Chief Rationing Officer and Another — RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:
Essential Commodities Act, 1955 — Section 3

Citation : (1995) 2 ALT 820 : (1995) 2 APLJ 446

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : V.H.V.R.R. Swamy, for the Appellant; G.P. for Civil Supplies, for the Respondent

Final Decision : Allowed

Judgement

T.N.C. Rangarajan, J.—This writ petition challenges the seizure of the essential commodities held by the petitioner.

2. The admitted facts are that the petitioner is a firm having licence under the Andhra Pradesh Scheduled Commodities Dealers'' (Licensing and Distribution) Order, 1982 to carry on business at premises No. 15-9-48, Maharajgunj, Hyderabad. In the same premises, another firm Nanakram Hanuthram has also been licenced to carry on business. On 13-7-1995 at 12.15 p.m. the Inspector of Vigilance visited the premises and searched the same. Sri Devender Kumar, who was a partner of both the firms produced the records viz., stock registers, bill books, purchase bills etc., as well as the licences. The Inspector checked the documents and took an inventory of the stock. According to the panchanama, there was a slight variation which was within the permissible limits taking each firm as a separate entity. He also found that 215 bags of green peas under invoice dated 1-7-1995 received by Nanakram Hanuthram was entered in the register only on 13-7-1995; another 215 bags of green peas received by Jawahar Brothers under invoice dated 5-7-1995 was not entered in the stock-register. He recorded in the panchanama that "though these two loads are taken into

consideration they are giving suspicion of their genuineness on account of the abnormal delay in receiving them". The partner explained that he received the stocks on 13-7-1995 but could not make an entry because he was busy with customers. The panchanama recorded that in view of the above facts, the enquiry was not completed and further follow-up action will be taken in due course after further enquiry. Stating thus, the ground stocks except wheat were seized.

3. The petitioner challenged the seizure and pleads that the total variation of the stocks was less than five quintals which is permissible under the control orders and there was no contravention for which the goods could be seized. The learned Counsel for the petitioner states that seizure was illegal because there was no find ing of contravention while on the contrary there was a finding that the variation was within the permissible limits; that no statutory provision which was contravened had been mentioned in the panchanama; and further, relying on the decision of the Supreme Court in East India Commercial Co. Ltd.,Calcutta and Another Vs. The Collector of Customs, Calcutta, it was submitted that there-cannot be a seizure for infringement of the licence, but only for infringement of the control order.

4. The respondent has filed a counter-affidavit stating that there was delay in producing the records giving rise to the suspicion that the records were produced after manipulating the entries and since two firms were carrying on the business in the same premises, the respondent felt that the licencees were indulging in clandestine business which required further inquiry. It is also stated that after further investigation, a report vinder Section 6-A has been sent noting that the petitioner had failed to maintain stock registers properly and thus had violated conditions 3(1) (b) (iii), 3 (vi) and 2(b) of the licence. It is also stated that if the total stocks of both the firms as entered in their respective stockregisters are taken into consideration together the variations found are not within permissible limits. The counter mentions that the petitioner failed to maintain the accounts properly, stocks of the two licencees were kept in one premises, and there were variations beyond the permissible limits. The learned Government Pleader submitted that in view of these facts, the omission to state the provision of law which was contravened, is not material and since report u/s 6-A has already been sent, the petitioner should approach the Joint Collector for release of the goods.

5. The learned Counsel for the petitioner submitted that he was challenging the seizure itself and the respondent cannot improve its case by the counter when the panchanama did not spell out the provision of law actually contravened. According to the petitioner, this allegation in the counter- affidavit is an after thought for if the allegations had been made earlier they would have been met at the time of the search.

6. Since the counter hs been filed by the respondents, the writ petition was itself argued by both the sides. Before dealing with the facts, I may refer to the

relevant provisions of the statute.

7. Section 6-A of the Essential Commodities Act states that where any essential commodity is seized in pursuance of an order made u/s 3, a report of such seizure shall, without unreasonable delay, be made to me Collector of the district. Thereafter, u/s 6-B, a show-cause notice is issued before confiscation is ordered. Section 3 provides for regulating production, supply and distribution of essential commodities by issuing Control Orders. One such Control Order is the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. This order states that no person shall carry on business as a dealer or a commission agent except under and in accordance with the terms and conditions of a licence issued in that behalf. This order covers dealing with sugar, food grains and pulses apart from edible oils and edible oil seeds. Clause 18 of this order states that the licencing authority or an officer of the rank prescribed may require the person incharge to produce the books of accounts and documents, and ",. search, seize and remove stocks of all or any of the commodities mentioned in Schedule I to that order in respect of which contravention has taken place. The licence provides under condition 3 that the licencee shall maintain a daily register of accounts and keep all the records in the premises.

8. I may first dispose of the legal contention of the petitioner based on East India Commercial Company case (1 supra). The learned Counsel for the petitioner submitted that the seizure under clause 18 of the control order could be only for contravention of the control order itself and cannot be made for contravention of the conditions of licence granted thereunder. In the case cited, there was violation of the conditions of licence which was not incorporated in the control order and hence, the Supreme Court held that the section providing for seizure for violation of the statute could not include the violation of the conditions of the licence. In the present case, Section 3 itself provides that no person shall carry on business except under and in accordance with the terms and conditions of the licence. It follows that the conditions of the licence have been incorporated in the order itself and violation of the conditions of the licence shall also have to be viewed as contravention''of the provisions of the control order. lam, therefore, unable to accept this contention which is hereby rejected.

9. The petitioner has taken up the plea that green peas is not a pulses or food grain and is not covered by the Control Order. There is no definition of pulses in the control order, but the learned Government Pleader refers to the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 where there is definition of pulses which includes peas. In view of this position, I am unable to accept this contention also.

10. Under Cla use 18 of the control order, the power to seize and remove the stocks has been conferred only with reference to the commodity in respect of which contravention has taken place. This necessarily implies that there must be a finding that in respect of those particular goods there was a clear contravention

of either the Control Order or the conditions of licence. If there is no such finding, then the seizure will be clearly arbitrary and unreasonable. In the present case, the only contravention alleged in the panchanama was that there was delay in recording the receipt of the goods. This is a venial contravention which has to be ignored according to the Government''s Memo No. 26776 dated 7-5-1991. Other than this, no specific contravention had been alleged in the panchanama which itself says that there is a suspicion over the genuinenessof the transaction on account of abnormal delay, requiring inquiry. It is well settled that a suspicion does not amount to a finding. In this context, the Memo cited above itself says that an omission to record in the stock register can be ignored if the stock register does not show the place from which the stock was brought or sent but the information is available from any other register or document, and similarly if the stock register could not be maintained on a particular day due to pressure of work. Keeping this in mind, as the investigating officer is bound to do, it is apparent that he had no material to arrive at a finding that there was a contravention with reference to the stocks not being accounted. Since there was material to indicate that the stocks had been purchased by the petitioner under invoices which were available with him,any inference that the goods were part of the clandestine business, will be untenable. Therefore, the contention of the learned Government Pleader that there was contravention of condition 3 i.e., not entering the particulars in the register as soon as the transaction took place, fails. As regards the condition mat the commodities were not stored in the licenced premises and thereby condition 2(b) was violated has only to be stated to be rejected inasmuch as admittedly both the firms were granted licence to carry on the business in the same premises. With regard to variation, since the two firms have independent licences, any variation must be with respect to each licence and the contention in the counter-affidavit that the stocks should be pooled together for finding out the variation, is clearly untenable and an after thought particularly when the officer concerned has correctly recorded in the panchanama that the variation was within the permissible limits. The contention that condition 3 (vi) that the licencee shall keep the records in the premises was violated, is concerned, there is nothing in the panchanama to show that they were not kept in the premises. The only allegation in the panchanama was that it was produced from inside (upstairs) after 10 minutes and therefore, it could have been manipulated. This statement also is self-contradictory because if it had been so manipulated, then the omission to record the omission (sic. goods) would not have been there at all. In the counter-affidavit it is stated that part of the premises from which the record was brought was not licenced premises and therefore there is contravention, which is clearly an after thought. Moreover, the reasons given at the time of the seizure cannot be strengthened by the additional reasons in the counter-affidavit.

11. Thus, even assuming that the provisions of the control order or the conditions which have been contravened need not be stated in the panchanama, it is clear that the material in the panchanama was insufficient to draw a clear

inference that there was any contravention of the conditions of the licence. In fact, the panchanama itself shows that the seizure was made only on suspicion and not on the basis of any clear finding. The contravention of provisions of clause 18 of the control order do not empower the authority concerned to seize the goods merely on suspicion. The learned Government Pleader contended that the authority concerned had the power under that clause to effect the seizure. But, that power cannot be arbitrarily or unreasonably exercised. It can be exercised only when the material support a clear finding that there was a contravention of the control order or the conditions of licence, and without such a clear finding the action of the authority in seizing the goods, would be clearly arbitrary and untenable. I would have expected, when the writ petition was filed, that the respondent would gracefullly return the goods, in view of the patent irregularity in the panchanama viz., that there is no material for a clear finding of the contravention. However, the respondent has attempted to support the illegal seizure with the additional reasons in the counter, which were not found in the panchanama. In the circumstances, I have no hesitation in quashing the panchanama by which the goods were seized. I, accordingly, direct the respondents to return the goods forthwith. Writ petition is allowed with costs of Rs. 1,000/-.