(1984) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 175 of 1983

Jethalal Nemichand and Sons — APPELLANT

Vs

State of M.P. and another — RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7
Madhya Pradesh Essential Commodities (Exhibition of Prices and Price Control) Order, 1977 — Clause 6(1)

Citation : (1984) JLJ 449 : (1984) MPLJ 223

Hon'ble Judges : C.P. Singh, J

Bench : Single Bench

Advocate : V.B. Ganatra, C.R. Khanvilkar and M.L. Bansal, for the Appellant; K.N. Puntambekar, for the Respondent

Final Decision : Allowed

Judgement

C.P. Singh, J.

This petition aims at setting aside the order of the Judicial Authority (Sessions Judge), Indore in Criminal Appeal No. 111/1981, maintaining the order of the Collector, Indore of 27-5-1983 confiscating 498 quintals, 14 kgs. and 100 grams whole chillies contained in 2023 bags and 437 quintals 89 kgs. and 700 grams of whole dhaaia contained in 1074 bags worth Rs. 4,00,000 belonging to the petitioners.

The petitioners are a registered partnership firm. They are licensed wholesale dealers and they besides other foodgrains sell whole chillies and whole dhania at 77/3, Ushaganj, Main Road, Indore-1. On 18th March, 1980, M/s Samarsingh Bhadoria and G.D. Shelke both Inspectors of Food and Civil Supplies Department, went to the godowns of the petitioners and seized 498 quintals, 14 kgs. and 100 grams of whole chillies contained in 2023 bags and 437 quintals, 89 kgs. and 700 grams of whole dhania contained in 1074 bags from them evidencing which a memorandum (the copy of which is annexure A) was prepared. It was found that the petitioners had not maintained the Daily Stock Register of the seized chillies and dhania. The matter having been reported to the Collector, Indore, he on 17-7-1980 by a notice called upon the petitioners to show cause why they be not prosecuted for violating clause 6(1) of the M.P. Essential Commodities (Exhibition of Prices and Price Control) Order, 1977 made u/s 3 of the Essential Commodities Act and made punishable u/s 7 of that Act and why the goods seized be not confiscated. The petitioners did show cause on 20-8-1980 that they were neither liable to be prosecuted against; nor were their goods liable to be confiscated. But the Collector, finding that the petitioners had failed to maintain a Daily Stock Register, proceeded to confiscate the whole chillies and whole dhania seized from the petitioners. The petitioners dissatisfied with this order, preferred an appeal to the Judicial Authority, but only unsuccessfully. They now prefer this revision petition.

2A. The first question for decision is whether a revision petition at all lies from (he order of the Judicial Authority in view of section 6E of the Essential Commodities Act.

In Khemraj Jugraj Vs. The State of M.P., a single Judge of this Court had taken the view that the words "notwithstanding anything to the contrary contained in any other law for the time being in force" (as used in section 6E of the Act), supersede and override any enabling provision that may be there in any other law in the matter of making orders with regard to the possession, delivery or distribution of such property seized in pursuance of an order made u/s 3 of the Act. Taking the aid of the meaning of the word ''disposal'' u/s 452(1) of the Code of Criminal Procedure, 1973 the conclusion arrived at by the learned single Judge was that in the matter of order of confiscation of the essential commodity except for the Collector and the Judicial Authority, as the case may be, no other Court (not even the High Court), tribunal or authority has jurisdiction to make any orders. It impliedly follows that the orders of the Judicial Authority in this regard are final, not open to challenge any further, in any other Court, whatsoever, be it by way of revision or appeal or be it by way of any other separate proceedings". This decision has been overruled by a Division Bench of this Court in Kanhaiyalal Kasturchand v. The State of M.P. Misc. Petition No. 636/81 decided on 13-10-1981

The relevant provisions are contained in sections 6A, 6C, 6D and 6E of the Essential Commodities Act and some aid may be taken also of the provisions contained in section 7 of that Act.

In short, section 6A deals with the seizure of the essential commodity in pursuance of the order made u/s 3, and its possible confiscation by the Collector (after following the procedure laid down u/s 6B or dealing with the essential commodity as specified in this section or paying the price of the confiscated commodity to the owner thereof or the person from whom it is seized. Section 6C provides for an appeal to the Judicial Authority who may confirm, modify or annul the order of the Collector, and in the event of his acquittal either to return the seized and confiscated commodity to him or its price together with reasonable interest calculated from the day of its seizure. Section 6D also deals with the confiscation part of the commodity. But neither of these sections-6-A to 6-D-deals with what is to happen if the seized commodity is not confiscated to the Government and for that purpose it seems to me that there is an independent enactment u/s 6E.

The purpose of the part of provisions contained in section 6E (whenever any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto the Collector, or, as the case may be, the Judicial Authority appointed u/s 6C shall have..) mentioning section 3 and section 6C (thereby implying an order by the Collector u/s 6A), is only attributive in nature to the pre-existing powers of the Collector and the judicial authority regarding only confiscation. The latter part of the section and, notwithstanding anything to the contrary, contained in any other law for the time being in force, any other Court, tribunal or authority shall not have, jurisdiction to make orders, with regard to the possession, delivery, disposal or distribution of such property) for the first time invests the Collector and the judicial authority (as the case may be) with jurisdiction to make orders regarding the possession, delivery, disposal or distribution of such property.

''Confiscation'' is a process distinct from the possession, delivery, disposal or distribution of essential commodity. It is distinct also from forfeiture of property which has been dealt with u/s 7 of the Act.

The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case grammatical or ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.

Per J. Jessel M.R. In Re Levy ex-p. Walton (1881) 17 Ch. D. 746 at p. 751.

The meaning of the word has to be gathered from the section itself and from the statute in which it appears. If the meaning is plain and unequivocal no extraneous help is necessary. In case, however, of doubt, or ambiguity, aid may be had of a similar statute but that, other statute cannot control the meaning of the word used in the statute itself if the meaning be clear.

''Confiscation'', therefore, carries a meaning distinct from the other expressions regarding the possession, delivery, disposal and distribution u/s 6E, and it is not necessary to have recourse to the provisions contained in section 452 (1), Criminal Procedure Code for ascertaining its meaning.

8A. But there is nothing in the terms of section 6E doing away with the powers of a superior Court to revise (or review) the order passed by either the Collector or the Judicial Authority. There is a presumption against the intention to disturb the established state of law. "It is, perhaps, on the general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject, that so strong a leaning now exists against construing a statute so as to oust or restrict the jurisdiction of the superior Courts, although this feeling may owe its origin to the pecuniary interests of the judges in former times, when their emoluments depended mainly on fees. It is supposed that the legislature would not make any important innovation without a very explicit expression of its intention; especially since in recent years such an intention has often been very explicitly expressed. It would not be inferred, for instance, from the grant of a jurisdiction to a new tribunal over certain cases, that the legislature intended to deprive the superior Court of the jurisdiction which it already possessed over the same cases''. (Quoted in Maxwell on The Interpretation of Statutes on page 122 Eleventh Edition).

In Re Downshire Settled Estates (1953) Ch. 218 at p. 247, while interpreting section 57 of the Settled Land Act, 1925, it was observed as follows:

If Parliament, in enacting section 57, had intended to confer this power on the Court it is.....inconceivable that it would not have done so in express terms, having regard not only to the novelty but also to the width of the jurisdiction that it was creating.

In Lee v. Showmen''s Guild of Great Britain (1952) 2 QB 329 at p. 354 it was observed as follows:

The proper tribunals for the determination of legal disputes in this country are the Courts, and they are the only tribunals which, by training and experience, and assisted by properly qualified advocates, are fitted for the task.

Tindall C.J. in Alton v. Pyke (1842) 4 M&G 421 at p. 424, observed as under:

The general rule undoubtedly is that the jurisdiction of the superior Courts is not taken away except by express words or necessary implication, and Lord Salvesen said : ''A general rule applicable to the construction of statutes is that there is not to be presumed without express words, an authority to deprive the Supreme Court of a jurisdiction which it had previously exercised or to extend the privative jurisdiction of the Supreme Court to the inferior Courts.

In Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, , their Lordships of the Supreme Court in para, 11 laid down as follows:

We are accordingly of the opinion that even though the State Government is authorised to appoint an appellate authority u/s 6C, the legislature clearly indicated that such appellate authority must of necessity be a judicial authority. Since under the Constitution the Courts being the repository of the judicial power and the officer presiding over the Court derives his designation from the nomenclature of the Court, even if the appointment is made by the designation of the judicial officer the appellate authority indicated is the Court over which he presides discharging functions under the relevant Code and placed in the hierarchy of Courts for the purposes of appeal and revision. Viewed from this angle, the Sessions Judge, though appointed an appellate authority by the notification, what the State, Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal Court in relation to High Court. Therefore, against the order made in exercise of powers conferred by section 6C a revision application would lie to the High Court and the High Court would be entitled to entertain a revision application under sections 435 and 439 of the Code of Criminal Procedure, 1898 which was in force at the relevant time and such revision application would be competent.

A Division Bench of this Court in Harbhajan Singh Vs. State of Madhya Pradesh, observed as follows:

A Judicial Authority u/s 6C of the Essential Commodities Act does not act as a persona designata while hearing appeals from orders u/s 6A of the Act, but acts as a Criminal Court inferior to the High Court. From the order of the Judicial Authority, a revision would lie under the Code of Criminal Procedure. Where the Judicial Authority is a Sessions Judge, a revision would lie to the High Court u/s 401 of the Code of Criminal Procedure, 1973.

I, therefore, have no doubt in my mind that a revision is competent from an order of the Judicial Authority acting u/s 6C of the Essential Commodities Act.

The first contention by the Learned Counsel for the petitioners is that the provisions of M.P. Essential Commodities (Exhibition of Prices and Price Control) Order, 1977 (which will be referred to simply as the Order) regarding the maintenance of a Daily Stock Register did not apply to the petitioners because their turnover during the preceding year had exceeded Rs. 1,00,000.

I find that the contention prevails. The First Information Report, inter alia, alleges that the petitioners-firm had not maintained a Daily Stock Register even though its turnover had exceeded Rs. 1,00,000 annually. This allegation is reiterated in the statement of the Food Inspector Mr. Samarsingh Bhadoria of 9-3-1981 during investigation. Clause 6 (1) of the Order lays down as follows:

Every dealer, other than a retail dealer whose turnover during the preceding year does not exceed one lakh rupees, shall maintain proper accounts of the purchase and sale of essential commodity showing the price of purchase, price of sale as the transactions take place and the balance in stock on each day at the close of the day.

The petitioners have submitted their turnovers for the previous five years. They are not disputed by the respondents, and they all far exceed the turnover of one lakh rupees annually. The petitioners not being retail dealers and they not being dealers whose turnover during the preceding year had not exceeded one lakh rupees, they were not required to maintain proper accounts of purchase and sale of chillies and dhania under clause 6(1) of the Order.

Even though the Order with regard to the petitioners maintaining proper accounts of purchase and sale did not apply, it appears that they had fulfilled the requirement of the Order in its spirit. The Order in terms does not make any reference to ''Dainik Stock Register'' as such. The First Information Report records, among other matters, the petitioners being a licensed firm dealing, among others, in pulses, oilseeds, edible oil and sugar; the firm having displayed the prices and the stock of different commodities available with it, Daily Stock Register completed till 18-3-1980 (the date of the alleged violation), the stock of the firm having been found correct after verification, the firm having been found to be dealing also in chillies and dhania regarding which it having displayed their prices and the stock and the particular number of sacks left with the firm after selling those commodities. These facts are again reiterated in the statement of the Food Inspector Mr. Bhadoria. It, therefore, appears to me that the spirit of the Order had apparently been complied with and that is assuming the Order includes the petitioners which it, as already seen, does not do.

In Ramkishan and another v. The State Misc. Criminal Case No. 993/76 decided on 24-9-76 though it was in a different context, where the alleged breach on the part of the accused was under clause 6(2) of the Order inasmuch as the petitioners therein had not issued to buyer separate receipts, but had accounted for those transactions as ''Chillar Khata'', K.K. Dube J, considering the terms of clause 6 (4) of the Order came to the conclusion that the spirit of the provision had been complied with when the petitioners had for the purpose of accounting shown the sums under the head ''Chillar Khata''. It is not disputed by the Learned Counsel for the respondents that the petitioners had maintained the bill-books, Rokar, Jama Nond, Udhar Nond, Khata Bahi and Stock Register.

The next contention for the petitioners is that M/s Bhadoria and Shelke were not validly appointed because they were not designated ''officers'' as such. The argument is more technical than substantial. No doubt the order in question is made by the State Government while exercising the powers u/s 3 (and 5) of the Essential Commodities Act read with the order of the Government of India among others contained in G.S.R. 316 (E) dated 20th June, 1972, the condition (3) of which requires that:

in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorise only an officer of Government", but I find that clause 8 (1) (ii) of the Order does substantially comply with that requirement. The Learned Counsel for the petitioners has been unable to show why the two inspectors are not officers within the meaning of the said condition (3).

Though no doubt on 18-3-1980 (the date of the seizure of the commodities) chillies and dhania were included in the essential commodities, they had ceased to be so vide Notification No. 3659-2162-XXIX-(1)80 of 2nd July, 1980 made by the State Government deleting item No. 15 Condiments (including chilly, pepper, haldi, dhania (powdered and unpowdered), Jira, dalchini, cardamom and clove). The Collector, admittedly had sent show cause notice to the petitioners on 17-7-1930, that is to say, when the chillies and dhaaia had ceased to be the essential commodities. The confiscation of those commodities, therefore, was not justified by the Collector OH 27-1-1981.

To conclude, a revision to the High Court even in the face of the provisions contained in section 6E of the Essential Commodities Act from an order passed by the Judicial Authority u/s 6C is competent; that clause 6(1) of the Order in terms, does not apply to the petitioners, they being neither the retail dealers, nor ones whose turnover annually was less than Rs. 1,00,000 that they had even then in spirit complied with the requirement of the Order and that in these circumstances, at any rate the confiscation of chillies and dhania on 27-1-1981, which had ceased to be essential commodities long before on 2-7-1980, was not justified.

The revision petition, in consequences, is allowed. The order of the Judicial Authority in Criminal Appeal No. 111/1981 of 27-5-1983 maintaining the order of the Collector, Indore confiscating chillies and dhania is set aside. The seized chillies and dhania be restored to the petitioners or their price together with interest @ 6% per annum from 18-3-1980 be paid to them.

