

(1971) 09 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3484 of 1969

K. Munivelu

APPELLANT

Vs

The Government of India and Others

RESPONDENT

Date of Decision : 22-09-1971

Acts Referred:

Essential Commodities Act, 1955 — Section 3(2)

Citation : AIR 1972 AP 318

Hon'ble Judges : Vaidya, J;Sriramulu, J

Bench : Division Bench

Advocate : P. Babul Reddy, for the Appellant; K. Subrahmanya Reddy for Central Govt. and Govt. Pleader, for the Respondent

Judgement

Sriramulu, J.—The petitioner is a licensed dealer in food grains. He has his shop and godown in Ramagiri village, which is two miles away from Naguiapuram and 12 miles away from Madras State border. From the producers in a village near Kalahasti, the petitioner purchased 76 age of millets and transported them in a lorry to his godown at Ramagiri village. The lorry with the bags of millets reached Ramagiri village at 3-15 a. m. on 14-9-1969. When the lorry driver was awaiting the opening of the godown for unloading purposes, the second respondent. Inspector of Police, with some other constables approached and seized and goods on suspicion that the goods were ultimately meant for transporting to Madras State.

2. In this Writ Petition the petitioner challenges the legality of the seizure of 76 bags of millets, inter alia on the ground that Cl. 5 of the Andhra Pradesh Coarse Grains (Export Control) Order, 1965 is in excess of the power conferred upon the Central Government by S. 3 of the Essential Commodities Act. 1955. The petitioner also contended that the seizure was illegal and accordingly prayed for a direction to the respondents to release the goods and not to take any section against him under clauses 4 and 5 of the said order.

3. In their counter the respondents opposed the writ petition. The respondents

submitted that clause 5 of the said order was neither vague nor in excess of the delegated power, nor inconsistent with Section 3(2)(j) of the Essential Commodities Act, 1955. The Act contemplates no proof before search and seizure but only reasonable belief. The order itself has been rescinded and there is no need to go into the question of the validity of clause 5 of the Order, which has been rescinded.

4. The short question that arises for our decision in this Writ Petition is, whether Cl. 5 of the Andhra Pradesh Coarse Grains (Export Control) Order, 1965, hereinafter called the Order, is in excess of the power conferred on Government of India by Section 3(2)(j) of the Essential Commodities Act, 1955.

5. Although Sri Babulu Reddy, the learned counsel appearing for the petitioner challenged the legality and validity of the seizure of 76 bags of the millets on various grounds in the Writ Petitioner, the only ground on which he pressed his objection was that Cl.5 (iii) of the Andhra Pradesh Coarse Grains (Export Control) Order, 1965 was in excess of the power conferred on the Central Government by Section 3(2)(j) of the Essential Commodities Act, 1965 and the impugned Cl. 5 (iii) of the said order is also ultra vires of the Constitution as it violated the fundamental right of the petitioner which is guaranteed under Art. 19 (I) (f) of the Constitution of India.

6. The Parliament passed the Essential Commodities Act 1955 (Act 10 of 1955), hereinafter referred to as the Act. Section 3(2)(j) of the said Act reads as follows:-----

"Section 3(1):

If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an Order made thereunder may provide-----

x x x x x

(j) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, and the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed".

In exercise of the powers conferred upon it by Section 3 of the Act, the Central Government made the Andhra Pradesh Coarse Grains (Export Control) Order, 1965 by G. O. Ms. No. 53. Food and Agriculture, dated 9th January 1965. The relevant portion of Cl. 5 (1) of that order reads as follows:-----

"Powers of entry, search, seizure; etc. Any Police Officer not below the rank of Head Constable and any other person authorised in this behalf by the State Government may with a view to securing compliance with this Order or to satisfying himself that this Order has been complied with:

(i) Stop and search or authorise any person to stop and search any person, boat, motor or any vehicle or receptacle used or intended to be used for the export or transport of any coarse grains;

(ii) Enter and search and authorise any person or enter and search any place;

(iii) Seize or authorise the seizure of any article in respect of which he suspects that any provision of this Order has been, is being or is about to be contravened, along with the packages, coverings or receptacles in which such article is found or the animals, vehicles, vessels, boats or conveyances used in carrying such articles and thereafter take or authorise the taking of all measures necessary for securing the production of the packages, coverings, or receptacles, animals, vehicles, vessels, boats or conveyances so seized, in a court and for their safe custody pending such production.

(2) x x x x x"

7. It was argued by Sri Babulu Reddy, the learned counsel for the petitioner that clause 5 (iii) of the Order is bad on two grounds: (1) it is in excess of the powers conferred on the Central Government by Section 3 of the Act, and (2) it is violative of the fundamental right of the petitioner which is guaranteed under Art. 19 (1) (f) of the Constitution of India. By the use of the word "suspects" in clause 5 of the Order as against the words "reason to believe" occurring in Section 3(2)(j) of the Act, the Central Government has exceeded its power by giving unbridled and uncontrolled power of seizure and search to several persons, not below the rank of a Head Constable, which power is capable of being exercised in a most arbitrary manner and abused by those persons.

8. Sri Subrahmanya Reddy, the learned counsel appearing for the Central Government contended to the contra. It was argued that the impugned clause has been made with a view to secure compliance with the various clauses of the Order, that is, there is a sufficient safeguard in the clause itself against arbitrary exercise of power by any person. The connotation of suspicion or belief both indicate the subjective mind of the officer concerned in the matter of exercise of power conferred on him. Suspicion is one of the grounds for coming to a reasonable belief. "Suspicion" is not contrary to or inconsistent with "belief". Unless a rule is in excess of the rule making power or contrary to or inconsistent with the section of the Act, which conferred the power, it cannot be struck down ultra vires or invalid. The infringe or violate the freedom and liberty of the citizen guaranteed under Art. 19 (1) (f) of the Constitution of India.

9. The Constitution of India guarantees to its citizens under Art. 19 (1) (f) the right to acquire, hold and dispose of property. Seizure deprives a person of his

right to hold his property. Fundamental right to hold property, which is guaranteed by the Constitution cannot be lightly or arbitrarily interfered with. The citizen's freedom and liberty guaranteed under the Constitution to hold the property cannot be violated unless it is on a ground which the courts consider as sufficient. Therefore the Act wisely says that no seizure can be effected unless the person ordering it has got "reason to believe" that a contravention of the Act has been or is about to be committed.

10. "Reason to believe" is a much stronger expression than the word "suspect".

11. In *Corpus Juris Secundum* ----- Volume 10 at pages 236 and 237 the word "belief" has been explained as follows:

"there are different degrees of belief, for "belief" admits of all degrees from the slightest suspicion to the fullest assurance; and so, as a mere mental function or state, the word, in its ordinary sense, has been defined as meaning actual conclusion arrived at from external sources after weighing probabilities, conclusion of the mind as to the existence of a fact, conviction of the truth of given proposition or an alleged fact upon grounds insufficient to constitute positive knowledge or partial assurance without positive knowledge or absolute certainty; conviction of the mind founded on evidence that a fact exists that an act was done, that a statement is true".

In K. J. Aiyer's "Manual of Law Terms and Phrases" at page 510 the phrase "reason to believe" is explained thus:

"A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise".

12. Similarly in Prem's "Judicial Dictionary" the meaning given to the phrase "reason to believe" which is found at page 1377 is:

"A person "has reason to believe" u/s 26, I. P. C. if he has sufficient cause to believe the thing but not otherwise".

13. The object of the Essential Commodities Act is to provide, in the interests of the general public, for control of production, supply and distribution of and trade and commerce in commodities which are specified in the Act to be essential commodities. The power of search and seizure are incidental and supplementary to other powers which are necessary to secure the objects for which the Essential Commodities Act has been passed. Therefore Section 3(2)(j) of the Essential Commodities Act empowers the Central Government to make an order in regard to seizure and search of any vehicle etc., in respect of which he has "reason to believe" that a contravention of the order has been or is about to be committed. The Central Government is thus empowered to make an order for search and seizure by a person only if he has reason to believe that a contravention of the order has been or is about to be committed. In pursuance of the power so derived, the Central Government passed the Andhra Pradesh Coarse Grains (Export Control) Order, 1965, in G. O. Ms. No. 53. Food and Agriculture dated

9-1-1965. But in Clause 5 of that order, the Central Government authorised the seizure of the commodity in respect of which the person authorised "suspects" that any contravention of that order has been or is about to be committed.

14. In other words when the Act empowers the Central Government to make order for search and seizure in respect of essential commodities only if the authorised person has "reason to believe" that a contravention of the order has been or is about to be committed, the rule-making authority authorised a person to search and seize if he "suspects" that a contravention of the Order has been or is about to be committed. In doing so the question arises whether clause 5 of the Order made by the Central Government is in excess of the power conferred on it by Section 3 of the Act.

15. From the meanings attributed to the words "suspect" and "reason to believe" it is evident that the initial stage for believing the existence of a certain thing or an alleged fact is suspicion. After suspecting the existence of a thing, condition or a statement of fact, you collect information and then examine that information and come to a final conclusion on the basis of that information that the thing, condition a statement or a fact exists. Thus when the Act contemplates various steps or degrees for persuading an officer to come to the conclusion that a contravention of the Act has been or is about to be committed, the order made under the power given by the Act, says that the initial or the first degree or step be taken into account by dispensing with other steps or degrees for coming to the conclusion that a contravention has been or is about to be committed. Certainly clause 5 of the Order goes far beyond the power conferred on it by Section 3 of the Act.

16. We will then consider the decision cited before us by the learned counsel appearing for the parties.

17. Our attention has been invited to the following passage occurring in paragraph 8 at page 1562 in the case of Pukhraj Vs. D.R. Kohli, .

"Then the other fact on which the reasonable belief can be founded is the suspicious circumstances of the appellant's journey."

18. In Badri Prasad and Others, etc. Vs. Collector of Central Excise and Others, etc., it was contended that the provisions for search as contained in Section 58(1) which allowed any Gold Control Officer authorised by Administrator to enter and search any business premises merely if he had any reason to suspect that any provision of the Act was being or was about to be contravened, was contrary to law and should be struck down. In support of his contention, the learned counsel Mr. Daphtary complained that it would be made an engine of oppression in the hands of any unscrupulous officer if he was minded to do so. It was also brought to the notice of their Lordships that the provision corresponding to the one under dispute was therein similar Act, which authorised seizure under those circumstances. In the Sea Customs Act, 1878, and the Customs Act, 1962, the words which authorised the search and seizure were "reason to believe".

Their Lordships of the Supreme Court rejected that argument and held that that by itself would not be enough to strike down the provision under S. 58. In this connection, it is significant to note that the impugned provision was found in the Act itself and not in any order made under the powers granted by the Act. Their Lordships justified the said provision in view of the objects for which the Gold Control Act was passed.

19. In *State of Madras v. Sri Vanamahalai Mutt* (1969) 2 Mad LJ 324 the question of the validity of clauses 4 and 5 of the Madras Paddy and Rice (Declaration and Requisitioning of Stocks) Order, 1966 vis-a-vis Section 3(2)(j) of the Essential Commodities Act, 1955 arose for decision before the Madras High Court. In his separate Judgment Natesan, J. at page 338 observed thus:

"The Act empowers u/s 3(2)(j) for making orders for any incidental and supplemental matter, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that contravention of the order has been, is being or is about to be committed. But clause 5 of the impugned order enabled the officer to enter and search and seize with a view to securing compliance with the provisions of the order or to satisfying himself that the provisions have been complied with. The protection to the citizen from search which is a process exceedingly arbitrary in character by insisting as pre-requisite that the officer should have reason to believe that a contravention of the order has been, is being or is about to be committed is not found in clause 5. Mere seizure could be had under the clause of paddy or rice in respect of which an officer suspects that any provision of the order is contravened or about to be contravened. There can be no doubt about the highly arbitrary character of the powers conferred for search and seizure. Clearly the occasion does not warrant such drastic powers, leave alone the question that the powers conferred are in excess of the delegated authority to issue order."

With those observations the learned Judge struck down clauses 4 and 5 of the Madras Paddy and Rice (Declaration and Requisitioning of Stocks) Order, 1966 as invalid, both on the ground that they were in excess of the power and also on the ground that it was violative of Art. 19 (1) (f) of the Constitution of India. The Chief Justice who delivered a separate judgment also agreed with Natesan, J., in striking down the above clauses.

In the exercise of powers by an authorised person to order seizure of property, admittedly belonging to a citizen and to which he has got a fundamental right to hold under Art. 19 (1) (f) of the Constitution, there is bound to be some element of arbitrariness because the person who order seizure has no positive knowledge and is not absolutely certain that the provisions of the Act have been or about to be contravened. The use of the words "reason to believe" in Section 3(2)(j) of the Act provides a check on the arbitrary exercise of the power by an authorised person to order seizure and gives certain amount of protection to the citizen against arbitrary seizure. The use of the word "suspects" in clause 5 of the Order,

made in pursuance of the rule making power granted to the Central Government u/s 3 of the Act. the restriction which the Act places on the arbitrary exercise of the powers by the authorised person is reduced almost to nil and enlarged the arbitrariness to a greater extent. The protection against the arbitrary seizure guaranteed to the citizen is thereby reduced. Can an order made in pursuance of the power granted under the Act reduce or do away with the protection granted by the Act and enlarge the arbitrariness of the power of seizure exercisable by the authorised person ? The answer to the above question should be an emphatic "no".

20. We are therefore of the opinion that clause 5 of the order is in excess of the power of the Central Government granted to it by Section 3 of the Act.

21. In *Rai Bahadur Seth Sreeram Durgaprasad (P) Ltd., Visakhapatnam Vs. Deputy Collector, Customs Dept., Visakhapatnam and Others*, Division Bench of this Court in regard to construction of statutes which encroach on the rights of the subject observed that:

"Statutes which encroach on the rights of the subject whether as regards person or property are similarly subject to a strict construction in the sense above explained. Provisions as to search of the premises of a citizen place certain restrictions adversely on his possession and enjoyment of the properties and thereby encroach upon his civil liberties. They are subject to strict interpretation, just like statutory provisions imposing a tax on a citizen."

22. It emerges from the above discussion that (1) the right to hold and dispose of property is a fundamental right guaranteed to a citizen under Article 19(1)(f) of the Constitution of India. (2) that the power to search and seize the essential commodities is an encroachment of the fundamental right of a citizen and therefore such provisions must be strictly constructed and (3) the power to search and seize should not be permitted to be used as an engine of oppression against the citizen.

23. In view of the decision of the Madras High Court in (1969) 2 Mad LJ 324 striking down similar clause in the order made by the Central Government in exercise of the powers derived by it u/s 3 of the Essential Commodities Act, we have no hesitation in striking down clause 5 of the Andhra Pradesh Coarse Grains (Export Control) Order 1965 as being in excess of power granted to the Central Government u/s 3 of the Essential Commodities Act.

24. The argument of the learned counsel appearing for the Central Government that "suspicion" is one of the grounds for coming to reasonable belief may be correct, but in that sense it may not be contrary or inconsistent with Section 3(2)(j) of the Act. But we are not striking down clause 5 on the ground that it is inconsistent with Section 3(2)(j) of the Act, but on the ground that it is in excess of the power granted to the Central Government. Suspicious circumstances in a given case may lead to a reasonable belief, but suspicious circumstances cannot be equated with "suspects". We, therefore, hold that the observations of the

Supreme Court in *Badri Prasad and Others, etc. Vs. Collector of Central Excise and Others, etc.*, do not help or advance the argument of the learned counsel.

25. In the view that we have taken we do not find any necessity to go into the question whether the impugned clause 5 of the Order violates Art. 19 (1) (f) of the Constitution of India. We, therefore, leave that question open.

26. We accordingly hold that the order of seizure passed by the second respondent in pursuance of the powers derived by him under clause 5 (iii) of the Order is illegal as Clause 5 (iii) itself is in excess of the power. The Writ Petition is accordingly allowed with costs. Advocate's fee Rs. 100/-. Goods seized be returned.

Petition allowed.
