

**(1968) 06 BOM CK 0004**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 347 of 1967

Khushalchand Bhailal Jain

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision :** 12-06-1968

**Acts Referred:**

Essential Commodities Act, 1955 — Section 7(1)

**Citation :** AIR 1969 Bom 70 : (1968) 70 BOMLR 792 : (1969) CriLJ 298 : (1969) ILR (Bom) 120 : (1968) MhLj 685

**Hon'ble Judges :** Chandurkar, J

**Bench :** Single Bench

**Advocate :** V.R. Manohar, for the Appellant; P.G. Palshikar, Asst. Govt. Pleader, for the Respondent

## Judgement

Chandurkar, J.—The short question in this revision application is whether the conviction 7(1)(a)(1) of the Essential Commodities Act for his failure to maintain a register of retailers in Form D as required as required by Clause 7(A) of the licence given under the Maharashtra Foodgrains Dealers Licensing Order 1963, is proper. The applicant is a dealer who admittedly holds a licence issued under the Maharashtra Food grains Dealers Licensing Order 1963. Clause 3 of the Order provides that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licence authority. Clause 4 of this Order provides for a form in which a licence requires that a licensee, if he is a wholesaler, Shall sell such foodgrains only to retailers (including himself if he also sells in retail) who are registered with him and in according Authority or any officer authorised from time to time. This condition also requires that the register of retailers shall be in Form D. It is the breach of this condition for which the accused was prosecuted because when his shop was raided on 4-11-1965 no such register of retailers in Form D was found. He was, therefore, prosecuted and the trying Magistrate found that the accused had failed to maintain the register in Form D and had committed a breach of the condition of the licence which made his liable u/s 7(1)(a)(1) of the Essential

Commodities Act. He was also persecuted for other breaches with which we are not concerned in this case . The Magistrate convicted him and sentenced him to suffer imprisonment till the rising of Court and to pay a fine of Rs. 500.

2. This conviction was challenged by him by a revision application. but the learned Sessions Judge also found that a failure to maintain a register in Form D amounted to a breach of the condition of the licence. The learned Sessions Judge further found that such a register must be maintained irrespective of the fact that there were no dealings with retail dealers and merely because there were no dealings that does not exonerate the licensee from having a register. It is this conviction which is now challenged by this revision application.

3. The learned counsel for the applicant accepted the finding that no register in Form D was maintained by the applicant, but he contended that the prosecution had failed to establish that the applicant in fact dealt with any retail dealers or sold any grain to them and unless it was shown that there was a dealing with retail dealers it was not obligatory on the applicant to maintain a register of retail dealers as required by the conditions of the licence. In order to appreciate this contention it is necessary to reproduce condition No. 7-4 of the licence which is as follows:

"7-A (1) The licensee if he is a wholesaler shall sell foodgrains only to retailers (including himself if he also sells in retail) who are registered with him and in accordance with such directions as the Licensing Authority or any Officer by that authority in this behalf, may give from time to time. The register of retailers shall be in Form "D".

(2) The licensee who is a wholesaler may sell foodgrains direct to consumers at wholesale rates in quantities of bag or more. Such sales shall be entered in a separate register showing the correct names, addresses and other details of the consumers, to prove their identity."

The condition No. 7-A which is reproduced above is in two parts. The first relates to a sale to retailers and second relates to a sale to consumers at wholesale rates in quantities of a bag or more and the scheme is that the persons to whom sales are made by the wholesaler must be capable of being ascertained because he is required to sell only to those retailers who are registered with him. It is names of those retailers who are registered as to sell that are required to be entered in the register of retailers. Thus before a person is said to have contravened this provision, it must be shown that there were some retailers to whom the wholesaler sold foodgrains and if, in fact, there were no names to be included in the register there is really no necessity to maintain a register. Maintenance of register clearly implies that there is some information which is required to be incorporated in the register and this information in the register and this information in terms of condition No. 7-A(1) of the licence is the names of the retailers to whom the wholesaler has sold foodgrains.

4. The facts in the instant case will show that the prosecution has completely

failed to establish that the wholesaler has sold foodgrains to any retailer. The prosecution evidence does not even go so far as to show that at any time the foodgrains were purchased by any retailer from the applicant. On the other hand, there is an admission of P. W. 2 Madhaorao Patil, who is a Police Inspector, that he did not make inquiry with a view to ascertain the fact whether the accused had sold wheat by wholesale to retail licence dealers or otherwise. Thus, there is no evidence to show that the petitioner had sold any foodgrains to any retailer and if that was so, I fail to see why a register of non-existent retail dealers was required of non-existent retail dealers was required to be maintained by the applicant. The learned Sessions Judge was therefore not right in holding that even if there are no dealing the wholesale dealer is not exonerated from maintaining a register in Form D. A similar view has been taken by this Court in Criminal has been taken by Court in Criminal Reference No. 36 of 1967, D/-17-10-1967 (Bom), State v. Shankarlal. The applicant, therefore, could not be said to have committed any breach of the condition No. 7-A of the licence issued to him under the foodgrains Dealers licensing Order, 1963. He has , therefore, not committed a breach of the provisions of Section 7(1)(a)(1) of the Essential Commodities Act.

5. The revision application is allowed. The conviction and sentence passed against the accused is set aside. The find paid by the accused be refunded to him.

GGM/D.V.C.

6. Petition allowed.