
(1975) 07 AP CK 0012
In the Andhra Pradesh High Court

Koliparthi Kotaiah

APPELLANT

Vs

Revenue Officer and Others

RESPONDENT

Date of Decision : 22-07-1975

Acts Referred:

Essential Commodities Act, 1955 — Section 6A, 6C, 7

Citation : (1975) 2 APLJ 163 : (1976) CriLJ 530

Hon'ble Judges : Ramachandra Raju, J;Punnayya, J

Bench : Division Bench

Judgement

Ramachandra Raju, J.—This revision is directed against an order of the Sessions Judge, Ongole Division, in an. appeal filed before him u/s 6-C of the Essential Commodities Act confirming the order of the District Revenue Officer, Ongole, confiscating to the Stata some quantities of foodgrains as provided:, u/s 6-A of the Essential Commodities Act on the ground that when the Sub-Inspector of Police, Vigilance Cell, Nellore, inspected the residence of the petitioner on 1-9-1972 he was found in. possession of some quantities of foodgrains and seized them and on the next day when, the Inspector searched the shop of the petitioner, the petitioner was found in possession of some more quantities of foodgrains and they were also seized arid he was found in possession of the same-without a licence under the Andhra Pradesh Foodgrajns Dealers" Licensing Order, 1964 (hereinafter referred to as the "focusing Order). The total quantity of foodgrains seized came to more than 35 quintals. The petitioner is holding a registration certificate under the Andhre Pradesh General Sales Tax Act. However, for dealing in foodgrains a licence is also required as provided under the provisions of the Licensing Order. Admittedly the petitioner was not holding any licence under that order. It is provided under Sub-clause (1) of Clause 3 of the Licensing Order that:

No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licensee issued in this behalf by the licensing authority.

2. It is provided under Sub-clause (2) of Clause 3 of the Licensing Order that:

for the purpose of this clause; any person who stores in quantity of ten quintals or more of any of the foodgrains or 25 quintals or more of all the foodgrains] taken together, at any one time shall, unless the contrary is proved, be deemed to be carrying on business as dealer.

3. The term "dealer" is defined in Clause (2)(a) of the Licensing Order. So far as it is relevant for our purpose, the term "dealer" is denned as meaning:

a person engaged in the business of purchase, sale or storage for sale of anyone of the foodgrains in quantity of ten quintals or more at any one time, or in quantity of twenty-five quintals or more of all foodgrains taken together.

4. According to the explanation with which the petitioner came forward the stocks seized belonged to three ryots of Jarugumilli who kept the stocks with the petitioner for being transported to their villages as there was a break-down of the lorry at Singarayakonda while the stocks were being transported in a lorry. This explanation of the petitioner was not accepted both by the District Revenue Officer and the Sessions Judge. It cannot be said that there is no justification for that view taken by the District Revenue Officer and the Sessions Judge. Therefore, it has to be taken that the petitioner was in possession of the seized stocks of food-grains on his own account. If that is so, the question for consideration would be whether there is contravention of the provisions of the Licensing Order which are referred to above.

5. When this criminal revision case came up for the first time, before a single Judge, one of us (Justice Ramachandra Raju). Sri Dasarathararna Reddy, learned Counsel for the petitioner, by placing reliance on two decisions of this Court in Satyanarayan Balkishan v. The State of Andhra Pradesh (1971) 1 An WR 254 rendered by A.D.V. Reddy J. and Peddapulla Reddy v. State of Andhra Pradesh 1968 M LJ (Cri.) 507 rendered by our learned brother Kondaiah. J. has argued that for the existence of a contravention as provided under Clause 3 of the Licensing Order it is not enough if there is a solitary instance of purchase, sale or storage for sale or even occasional or sporadic action of purchase or sale or storage for sale as that would not amount to carrying on of business and a course of conduct of either of purchase or sale or storage for sale would be necessary to infer that there is a business of dealing in food-grains. The learned Judges took that view in the above two decisions following the Supreme Court decision in Manipur Administration Vs. M. Nila Chandra Singh, . On the ground that the Supreme Court was dealing with a different Licensing Order and the decision of the Supreme Court does not help in considering the application of the provisions of the present Licensing Order, the case was referred to a Bench.

6. This is how the case came us before our Bench.

7. In the above case no doubt the Supreme Court has said that:

In dealing with the question as to whether the respondent is guilty u/s 7 of the

Essential Commodities Act, it is necessary to decide whether he can be said to be a dealer within the meaning of Clause 3 of the order (Mani-pur Foodgrains Dealers Licensing Order). A dealer has been defined by Clause 2(a) and that definition we have already noticed. The said definition shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 maunds or more at anyone time. It would be noticed that the requirement is not that the person should merely sell, purchase or store the food-grains in question, but that he must be carrying on the business of such purchase, sale or storage, and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single, casual or solitary transaction of sale, purchase or storage that would make a person a dealer. It is only when it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied. If this element of the definition is ignored, it would be rendering the use of the word "business" redundant and meaningless....

8. Sub-clause (2) of Clause 3 of the Manipur Licensing Order is as follows:

For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale.

9. In considering what the presumption contained in the above clause of the Manipur Licensing Order would amount to the Supreme Court said:

It amounts to this and nothing more that the stock found with a given individual of 100 or more maunds of the specified foodgrains had been stored by him for the purpose of sale. Having reached this conclusion on the strength of the presumption, the prosecution would still have to show that the store of the foodgrains for the purpose of sale thus presumed was made by him for the purpose of carrying on the business of store of the said foodgrains. The element of business which is essential to attract the provisions of clause 3(1) is thus not covered by the presumption raised under Clause 3(2). That part of the case would still have to be proved by the prosecution by other independent evidence. All that is necessary to be said in connection with the presumption under Clause 3(2) in this case is that after the presumption is raised under it, some evidence must be led which would justify the conclusion that the store which was made for the purpose of sale was made by the person for the purpose of carrying on the business.

10. Following this Supreme Court decision our learned brother Kondaiah J., in Peddapulla Reddy v. State of Andhra Pradesh 1968 M LJ (Cri) 507 observed that the decision of the Supreme Court is directly on the point as it was decided under a similar order which is analogous to the provisions of the Andhra Pradesh Foodgrains Dealers' Licensing Order, 1964 and applying the principles laid down

by the Supreme Court it is for the prosecution to establish by independent evidence that accused No. 1 was not only found to have stored the foodgrains in question more than the quantity he was entitled to keep without a licence under the Licensing Order, but also that he was engaging himself in the business of storing the foodgrains for the purpose of sale and unless this ingredient of business of storing is established by independent evidence, he cannot be found to have contravened Clause 3 of the A. P. Licensing Order.

11. Similarly. A.D.V. Reddy. J., in *Satyanarayana Balkishan v. State of Andhra Pradesh* 19711 I An WR 254 after mentioning the Supreme Court case said that the presumption in Clause 3(2) of the Manipur Foodgrains Dealers" Licensing Order dealt with by the Supreme Court is also to be found in the A.P. Foodgrains Dealers" Licensing Order, 1964 and therefore a single instance of storing of foodgrains would not constitute "Carrying on business" and would not attract the provisions of Clause 3 (2) of the Food-grains Dealers" Licensing Order, 1964.

12. As noticed above there is a fundamental difference between the presumption as in Clause 3 (21 of the Manipur Foodgrains Dealers" Licensing Order and the presumption in Clause 3 (2) of the A. P. Foodgrains Dealers" Licensing Order, 1964, According to the Manipur Licensing Order the presumption is that any person who stores any foodgrains in quantity of one hundred maunds or more at any one time shall, unless the contrary is proved, be deemed to store, the foodgrains for the purpose of sale, whereas the presumption under Clause 3 (21 of the A. P. Licensing Order is that any person who stores in quantity of ten quintals or more of any one of the foodgrains or twenty-five quintals or more of all the foodgrains taken together at anyone time shall, unless the contrary is proved, be deemed to be carrying on business as dealer. Thus, in the Manipur Licensing Order the presumption is that the foodgrains were stored for the purpose of sale, whereas in the A. P. Licensing Order the presumption is that the foodgrains were stored for carrying on business as dealer. In a given case when once a person is found to store foodgrains over and above the permitted quantity without a licence and the presumption under the A. P. Licensing Order is raised, unless the contrary is proved, the contravention under Clause 3 (1) straightway would have been established without further proof of anything else by independent evidence because even as found by the Supreme Court if the element of business is essential for the contravention contained in Sub-clause (1) of Clause 3 it is covered by the presumption. While Sub-clause (1) of Clause 3 of the Manipur Licensing Order is similar to Sub-clause (1) of Clause 3 of the A. P. Licensing Order, the presumptions to be drawn when a person was found to be in possession of more than the permitted quantity are different in Sub-clause (2) of Clause 3 in the two orders. When once the presumption according to the A. P. Licensing Order is applied there is nothing more that has to be established to prove the contravention as provided in Sub-clause (D) of Clause 3, while according to the Manipur Licensing Order the presumption is only that the foodgrains were stored for the purpose of sale and to prove the contravention it has further to be established that there was also carrying on business on the part of

the dealer. In that context only the Supreme Court said:?

It is not merely enough to prove by applying the presumption in the Manipur Order that the foodgrains were stored for the purpose of sale to show the contravention because the fact of business cannot be established by means of an isolated sale and the requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale or storage: and the concept of business in the context must necessarily postulate continuity of transactions. It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirement as to business postulated by the definition would be established. The presumption amounts to this that the stock found with a given individual of 100 or more maunds of the specified foodgrains had been stored by him for the purpose of sale. Having reached this conclusion on the strength of the presumption, the prosecution would still have to show that the store of the foodgrains for the purpose of sale thus presumed was made by him for the purpose of carrying on the business of store of the said foodgrains. The element of business which is essential to attract the provisions of Clause 3 (2) is thus not covered by the presumption raised under Clause 3(2).

13. This difficulty is not there so far as the A. P. Foodgrains Dealers' Licensing Order, 1964, is concerned. The presumption enacted under Sub-clause (2) of the Clause 3 is not merely a presumption of storage for sale, but it is a presumption that the person who stores more than the prescribed quantity of foodgrains was carrying on business as a dealer. By applying the presumption without further proof the contravention of the provisions as provided in Sub-clause (1) of Clause 3 of the Licensing Order would be established when there is no evidence to the contrary.

14. The learned Judges in the above two decisions of this Court failed to notice, perhaps their attention was not specifically drawn to it. This vital difference between the presumption enacted in Sub-clause (2) of Clause 3 of the A. P. Licensing Order and Sub-clause (2) of Clause 3 of the Manipur Licensing Order with which the Supreme Court was dealing with in the decision referred to above following which the learned Judges in the two cases said that to establish the contravention the prosecution has to establish further by independent evidence that the person with whom the foodgrains were found not only kept the foodgrains with him but he was also engaged in the business of purchase, sale or storage for sale of the foodgrains in question.

15. Our learned brother Chinnappa Reddy, J., happened to consider the difference between Clause 3 (2) of the A. P. Licensing Order and Clause 3 (2) of the Manipur Licensing Order in Cri. R C. No 119 of 1971 rendered on 9-8-1971 (Andh. Pra.). The learned Judge in that connection observed thus:

Thus it may be seen that while under the Manipur Order the "deeming" is only to the extent of treating the storage as the storage for the purpose of sale, the

"deeming" under the Andhra Pradesh Order goes much further and extends to "carrying on business as dealer". This difference is very important because the "deeming" was confined in the Manipur Order to "deeming" the storage as storage for sale. It therefore became necessary under that order to further establish that the person who carried on business was a dealer; otherwise he could not be made liable for carrying on business as a dealer without a licence, whereas under the Andhra Pradesh Order the "deeming" extends to "carrying on business as dealer" and, therefore it becomes unnecessary to go any further and prove that the person is carrying on business as dealer. This difference in language makes a vital difference to the question at issue. Under the Andhra Pradesh Order, if a person is shown to have stored more than the prescribed quantity of foodgrains he shall be deemed to be carrying on business as a dealer and if he does not possess a licence, there is a contravention of Clause 3(1) of the Licensing Order. Nothing further need be established by those alleging that the person was carrying on business as a dealer.

16. We are in entire agreement with the view thus expressed by our learned brother Chinnappa Reddy, J.

17. Under these circumstances, we hold that the decisions in *Satyanarayan Balkishan v. State of Andhra Pradesh* (1971) 1 An WR 254 and *Peddapulla Reddy v. State of Andhra Pradesh* 1968 M LJ (Cri.) 507 are not good law and accordingly they are overruled.

18. Of course the presumption mentioned in Clause 3 (2) of the Licensing Order is a rebuttable presumption. By adducing the necessary evidence, the person against whom the contravention under Clause 3 (1) is complained can show, that in spite of the fact that he was found in possession of more than the permitted quantity of foodgrains without a licence, as a matter of fact he is not carrying on business in the same as a dealer. The petitioner did not, by adducing any evidence, rebut the presumption. Sri Dasaratharama Reddy has, however, argued that the matter was not proceeded on the basis of the presumption and, therefore, an opportunity may be given to the petitioner to adduce rebuttal evidence by remanding the case to the District Revenue Officer. Admittedly the petitioner is holding a licence under the Andhra Pradesh General Sales Tax Act, Therefore generally he is dealing in business. It is also a circumstance against him to show that he must have been dealing in the business of foodgrains also. We do not think there is any -justification now to remand the case to the District Revenue Officer to enable the petitioner to adduce evidence- that as a matter of fact he was not dealing in the business of foodgrains. As the seized goods happened to be sold away by the petitioner, the District Revenue Officer while passing the order of confiscation of the entire quantity of the food-grains directed the petitioner to pay the value of the seized goods at the current market rates. We think the interests of justice would amply be met if the confiscation is restricted to 50 per cent, of the seized goods and the petitioner is directed to pay the value of half of the stocks of foodgrains seized at the market rates as on the

date the confiscation order was passed by the District Revenue Officer.

19. With this modification with regard to confiscation, the Criminal Revision Case is dismissed.