

(1978) 02 KL CK 0005
In the High Court Of Kerala
Case No : Criminal R.P. No. 62 of 1977

M. Abdulla Koya and Another

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 10-02-1978

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1978) 02 KL CK 0005

Hon'ble Judges : Narayana Pillai, J

Bench : Single Bench

Advocate : P.C.B. Menon and V.P. Mohankumar, for the Appellant; K.A. Varghese, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Narayana Pillai, J.—Is it a correct statement -- violation of terms and conditions of a licence issued under a statutory order is violation of provisions of that order itself. Decision here should rest on that.

2. Kerala Foodgrains Licensing Order, 1967, for short, order, was made by Government under Essential Commodities Act, 1955. Punishment for contravention of provisions of order is provided in Section 7 of Act. Clause 8 of order provides for cancellation or suspension of licence issued under order if licensee contravenes any term or condition of licence or provision of order.

3. The two revision Petitioners here were convicted and sentenced for violation of terms and conditions of licence. Those convictions and sentences were confirmed in appeal.

4. Clause 8 of order speaks separately about contravention of terms and conditions of licence and contravention of provisions of order. That itself is an indication that contravention of terms and conditions of licence is different from contravention of provisions of order.

5. It is true that in the model form B, given in Schedule I in the order terms and conditions to contain in a licence are made mention of. But that by itself would not make terms and conditions of licence provisions of order.

6. It is argued that as licence is a creature of order terms and conditions of licence are really provisions of order. This is unconvincing. A monkey is not necessarily a man because he is descended from the same anthropoid ancestors.

7. Some conditions of licence here were made part of order by insertion of Clause 7A in the order. But that was subsequent to framing of charge in the present case.

8. Terms and conditions of a licence unless they are made part of order itself would not become part of order by the mere fact of their being contained in licence issued under order. It was a similar interpretation that was given by Supreme Court in *Boothalinga Agencies Vs. V.T.C. Poriaswami Nadar, and Additional Collector of Customs, Calcutta and Another Vs. Best and Company*, in considering terms and conditions of licence issued under order passed in exercise of power conferred by Imports and Exports (Control) Act, 1947.

9. By violation of terms and conditions of licence Petitioners cannot be considered to have contravened provisions of order.

In the result this revision petition is allowed. Convictions and sentences of Petitioners are set aside. Petitioners are acquitted. Fines, if paid, are directed to be refunded to them.