
(1989) 09 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 15913 of 1988

Mariappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-09-1989

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 31
Criminal Procedure Code, 1973 (CrPC) — Section 100, 165, 165 (2)
Essential Commodities Act, 1955 — Section 3, 6 A

Citation : (1991) CriLJ 1167 : (1989) 3 KarLJ 414

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : M.P. Eswarappa, for the Appellant; D.R. Rajasekharappa, Govt. Pleader, for the Respondent

Judgement

1. The petitioner seeks the quashing of the order of the second respondent made on 28-10-1988, whereby the Deputy Commissioner directed the sale of the paddy and rice seized from the petitioner, as an interim measure. The petitioner further seeks a direction to the second respondent (Dy. Commissioner) not to proceed u/s 6A of the Essential Commodities Act (for short, "the Act") in respect of the paddy and rice seized from the petitioner's premises. By amending the writ petition, one more prayer is sought, which is permitted. By this, the petitioner seeks quashing of the mahazar dated 27-10-1988 drawn by the third respondent, Tahsildar, whereby certain quantities of rice and paddy were seized from the petitioner's mill as per Annexure-K.

2. According to the petitioner, he has been carrying on the rice mill business and has been hulling the paddy in his rice mill. Apart from this, he owns about 6 acres of irrigated land growing two crops of paddy in a year along with his brother, who is living jointly with the petitioner. The farm house-cum-residence of the petitioner and the rice mill are adjacent to each other and according to the petitioner he keeps the paddy grown by him in the godown adjacent to the mill godown. It is alleged that on 26th October 1988 the third respondent along with

a staff of about 20 persons, including the police, came to the premises of the petitioner's rice mill at about after threatening the inmates of the house, locked the rice mill godown as well as the farm house godown and went away. The next day, again when the petitioner was absent - since he had gone to Mandya on the next day to approach the Dy. Commissioner to report about the high handedness of the third respondent - it is alleged that the third respondent came at about 2 p.m. and removed the lock and the seal and opened the doors of the godown and seized and took away 125 quintals of paddy and 18-90 quintals of rice.

3. In the mahazar Annexure-K, however, it is stated that the quantum of paddy seized was 88 quintals 81 Kgs. of paddy and 18 quintals 44 Kgs. of rice. The mahazar gives the time of the taking away of these articles as 11 a.m. on 27-10-1988 and that the third respondent had put his lock and seal on the rice mill on 26-10-1988 at 4 p.m. For the purpose of this writ petition, I have to proceed as if the statement made in Annexure-K (mahazar) is the correct fact. It is not necessary for me to go into the correctness of the assertion made in para 4 of the writ petition as to why the third respondent seized the paddy and rice in question. However, the petitioner has been asserting throughout that he has not contravened any provision of law and therefore there was no basis to seize the articles in question.

4. According to the petitioner, the respondents 2 and 3 acted contrary to Clause 12(2) of the Karnataka Rice Procurement (Levy) Order, 1984 (for short, "the Levy Order") while seizing the articles in question. It was also stated in the writ petition, at para 5 that there was no cause whatsoever for the act complained of and that the third respondent acted arbitrarily and unlawfully while seizing the paddy without there being any reasonable grounds to believe that there has been any contravention of the provisions of the Levy Order.

5. After the aforesaid seizure, the Tahsildar seems to have made a report to the 2nd respondent, who directed as an interim order that the seized goods are likely to get decayed and therefore the paddy shall be hulled to the "levy quality" and shall be sold "in the manner of public distribution system." The order further states that it was made u/s 6A(2)(ii) of the Act and that the receipt from the sale of the paddy, as aforesaid, after hulling, shall be credited to agricultural programs. This order is challenged on the ground that the same contravenes the provisions of S. 6A of the Act and it was contended by the learned counsel for the petitioner that in making the said interim direction the Dy. Commissioner has completely overlooked the enunciation of law made by this Court in *Sree Eswara Rice Mill Industries v. The Deputy Commissioner, Shimoga* (W.P. Nos. 5682 to 5684/1984 D.D. 9-7-84/17-8-1984 : (reported in 1985 Cri LJ 944).

6. As could be seen from the order sheet, on 3-9-1988 the Government Advocate was directed to take notice. An interim order against the disposal of seized articles was also made on that day for three weeks. This interim order was communicated to the 2nd respondent by telegram of the same date, though it is not clear from the records as to when it was served on the 2nd respondent.

According to the learned counsel for the petitioner, the telegram was served on the same day on the 2nd respondent and in spite of such interim direction by this Court, the seized articles were sold on 4-11-1988. The order sheet further shows that the matter came up before the Court on 21-11-1988 and the interim order was continued for a further period of two weeks, and the matter was adjourned by one week. On 14-12-1988 the interim order was continued for a period of six weeks with a direction to post the case in January 1989. As could be seen from the order-sheet dated 9-1-1989, the respondents are stated to have been represented before the Court. Again on 9-1-1989 the Court directed the Government Advocate to take notice and to ascertain whether the respondents have lifted the seized articles. The matter was adjourned by a week thereafter. On 17-1-1989 the petition was adjourned to 18-1-1989 and again it was adjourned for a week on 18-1-1989. I.A. No. I for amendment of the writ petition raising additional plea to quash the mahazar was filed on 24-1-1989, after serving a copy of the same on the respondents' counsel. This I.A. No. I was allowed on 8-3-1989 and again the matter was adjourned by one week. Earlier to 8-3-1989 the writ petition seems to have been posted on 6-2-1989 and 1-3-1989. On 17-3-1989 this Court permitted the petitioner to move the 2nd respondent for interim relief of release of goods on such terms and conditions as deems fit. In view of this liberty given to the petitioner, it was held that there was no necessity to continue the interim order. Thereafter, it is stated that the petitioner filed an application before the 2nd respondent on 20-4-1989. The writ petition came up before the Court on 30-6-1989 and 7-7-1989, on which dates the matter was adjourned. On 17-7-1989 the Court sought information from the the Government Advocate as to why the application of the petitioner dated 20-4-1989 filed before the 2nd respondent stood undisposed of. Again the matter was adjourned for one week. Thereafter the matter Was adjourned on 24-7-1989, 31-7-1989, 1-8-1989 and 4-8-1989. On 18-8-1989 the matter again came up before the Court. Since the learned counsel for the respondents sought time, it was adjourned to 21-8-1989 with a specific understanding that the writ petition will be heard on merits for disposal. The order made on 18-8-1989 reads

"Call on 21-8-1989 for disposal, in the orders list."

The matter actually came up before the Court on 22-8-1989, on which day both the parties were heard.

7. The history pertaining to the posting of this writ petition stated by me is to show that the respondents had ample opportunity to place appropriate material before the Court to justify their action. The learned Govt. Advocate wanted further time to produce the records of the case, which I declined having regard to the aforesaid facts.

8. A practice has grown up in this Court to direct the Government Advocates or learned counsel for any other statutory Bodies to take notice at the preliminary hearing stage itself in cases where on ascertaining simple facts, the writ petitions can be disposed of quickly. For example, in the instant case the respondents -

especially the 3rd respondent - had to place the material to show that he had formed a reasonable belief that the goods in question had been seized under a particular provision of law; the other question pertains to the application of the principle laid down by this Court in Sree Eswara Rice Mill Industries" case 1985 Cri LJ 944. Several adjournments were taken after 4-11-1988 and at no point of time it was stated on behalf of the respondents that the goods in question were sold on 4-11-1988. There is no information as to when the interim order was communicated to the 2nd respondent and as to the manner in which he disposed of the goods referred by him in his interim direction. The 2nd respondent owed a duty to the learned Govt. Advocate, apart from his duty towards this Court, to inform him of the action taken by him and it is obvious that he never cared to inform the learned Govt. Advocate even as late as 17-7-1989, on which date again this Court sought information from the learned Govt. Advocate as to why the petitioner's application dated 20-4-1989 for release of the goods was not considered. Another information had been sought on 9-1-1989 from the learned Govt. Advocate, which was also not forthcoming. If actually the goods had been sold on 4-11-1988 as is now claimed by the learned Govt. Pleader, there was no occasion at all for this Court to continue the interim order on 21-11-1988 and thereafter. There was also no necessity for this Court to seek information from the Govt. Advocate on 9-1-1989 and 17-7-1989. The interim direction of the 2nd respondent, as already stated above, observes that the seized goods are likely to get decayed and therefore the paddy will have to be hulled and should be sold. In the decision of this Court in Sree Eswara Rice Mill Industries case 1985 Cri LJ 944 (by K. A. Swami, J.), the scope of S. 6A(2) has been explained. It has been stated that the action u/s 6A(2) is an interim measure and if it is exercised without proper application of the mind, it is likely to result in causing great loss to the person from whom the goods were seized. It was observed further that (at p. 947 of Cri LJ), -

27 "To avoid an arbitrary exercise of power, S. 6A(2) of the Act itself lays down certain conditions. According to it, it is only when the Deputy Commissioner is satisfied that the seized essential commodity is subject to speedy and natural decay or it is otherwise expedient to the public interest so to do, unless any one of those conditions is satisfied it is not permissible to dispose of the seized essential commodity. Therefore, in every such case it is necessary to record a positive finding on any one of the aforesaid conditions before the seized essential commodity is ordered to be disposed of u/s 6A(2) of the Act. In other words, a direction to dispose of the seized essential commodity pending disposal of the proceeding initiated u/s 6A of the Act must be supported by a finding that having regard to the nature and condition of such essential commodity it is either subject to speedy and natural decay or having regard to the requirement of such essential commodity for public consumption it is expedient in the public interest to dispose of the same. In the absence of any such finding the order directing the disposal of the seized essential commodity u/s 6A(2) of the Act becomes unsustainable. In the instant case there is no finding to the effect that the seized

essential commodity is either subject to speedy and natural decay or it is otherwise expedient in the public interest to dispose of the same. Therefore, the impugned orders directing the disposal of the seized essential commodities u/s 6A(2) of the Act cannot be sustained."

9. Therefore, the condition precedent for exercising the power to direct the sale of the seized commodity is the satisfaction of the Deputy Commissioner that the commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do. In the impugned order Annexure-J, the Dy. Commissioner has not referred to any Public interest warranting the exercise of the Power u/s 6A(2). He simply says that the seized stock if kept as such is likely to get decayed. He directed the sale of the said Stock. The goods were seized by the Tahsildar of Srirangapatna and the order of the Dy. Commissioner is solely based on the report of the Tahsildar. He has not seen the goods seized by the Tahsildar. Therefore, his inference that the goods seized are likely to get decayed is just a conjecture and devoid of any material basis. It must be noted here that the paddy and the rice were seized from the rice-mill, even according to the respondents. If those goods were stocked in the rice mill, the inference is that the goods were not likely to get decayed by any natural causes. It is common knowledge that the paddy and rice are not perishable commodities under normal circumstances. Agriculturists and others stock these commodities for months together. The nature and quality of the paddy will have to be examined before any one could opine as to whether the said paddy is likely to get decayed. The interim direction issued by the Deputy Commissioner is thus the result of the non-application of his mind and the reference to the goods that they are likely to get decayed is a mechanical repetition of the words found in S. 6A(2) of the Act. The Deputy Commissioner has only rendered lip-service to the requirement of law and therefore I am constrained to hold that the condition precedent for the exercise of power u/s 6A(2) did not apply in this case. Therefore, the interim direction, which is the impugned order before me, is liable to be quashed.

10. The next question that arises for consideration is regarding the relief sought for by the petitioner by amending the writ petition. According to the learned counsel for the petitioner, there is nothing to indicate that the Tahsildar had any material to form a "reasonable belief", which is again a condition precedent for the seizure of the goods in question. To appreciate this contention, it is necessary to refer S. 3 of the Act and the Levy Order. An order made u/s 3 of the Act may have a provision for any incidental and supplemental matters including a provision for the entry, search and seizure of any articles in respect of which the authorized person has "reasons to believe" that a contravention of the said Order has been, or is being, is about to be committed (vide S. 3(2)(j)). In the instant case, the learned Government Pleader has invoke Clause 12(1)(a) of the Levy Order to justify the impugned seizure. Clause 12(1)(a) and (b) read as follows

"12. Power of Entry, Search and Seizure, etc. :- (1) Any police Officer not below the rank of Sub-Inspector of Police and any officer of the Department of Food

and Civil Supplies not below the rank of a Food Inspector or any Officer of the Revenue Department not below the rank of a Revenue Inspector, may with a view to securing compliance with this order, or satisfying himself the provision of this order have not been contravened;

(a) enter and search any place, premises, animals, vessels, vehicles or other conveyances in which he has reason to believe that a contravention of this order has been, is being or is about to be committed;

(b) seize, remove or authorize the seizure or removal of any paddy or rice in respect of which he has reasons to believe that a contravention of this order has been, is being or is about to be committed along with the packages, coverings or receptacles in which such rice or paddy is found or the animals, vessels, vehicles or other conveyance used in carrying, such rice or paddy and thereafter shall take or authorise the taking of all measures necessary.

(i) and (ii) xx xx xx xx xx

Clause 12(2) is also relevant, which reads :-

"The provisions of Sections 100 and 165 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), relating to search and seizure, shall, so far as may be, apply to searches and seizures under this order."

11. Aforesaid sub-cl. of Clause 12(1) of the Levy Order has to be read with its sub-cl. (2) and S. 3(2)(j) of the Act. Therefore, the condition precedent for the act of seizure of any article under the Levy Order is the existence of a reason to believe, that a contravention of the Levy Order "has been", "is being", or "is about to be" committed.

12. As per S. 165(1) of the Code of Criminal Procedure, the grounds of belief for the search to be made are to be recorded in writing and under its Clause (5), a copy has to be furnished to the person (if asked for) who is the owner or occupant of the place to be searched, while S. 165 of the Cr.P.C. requires the recording of reasons for the search, S. 3(2)(J) of the Act read with Clause 12(1) of the Levy Order, requires existence of a reasonable belief (as to the matters referred there in), for the seizure. The power to search the premises and seize the articles there in, are exceedingly drastic in nature and the effect of seizure is quite injurious to the person's right, to whom the articles belong. The exercise of this power results in trespass into the premises and on the articles, but for the power given by the law in that regard. Having regard to the element of arbitrariness inherent in such a power, law requires strict adherence to the legal formalities to be satisfied before the seizure is effected.

13. In the case of an illegal search, the consequential seizure may not always be bad, in the sense, the evidence collected through an illegal search may be used as relevant evidence; but, retention of the illegally seized article will be a continuous and recurring illegality; deprivation of a citizen's property (whether movable or immovable) not authorized by law, is an unconstitutional act (vide

Art. 300A of the Constitution); if the articles seized are part of the stock in trade, such illegal deprivation, also would offend the fundamental right guaranteed under Article 19(1)(g) of the Constitution. If the exercise of a statutory power is found to be based on no reason, or the authority who exercised the power to the detriment of a person is not able to justify it in a court of law, irrespective of the bona fides of such an authority, the impugned act has to be characterized as being vitiated by arbitrariness.

14. It is in this background, the law empowering the seizure and the extent of such a power, are to be construed

In *The State of Rajasthan Vs. Rehman*, , it was found that the search was conducted without the requisite reasons being recorded u/s 165 of the Code of Criminal Procedure. The person who obstructed the search was prosecuted, but the Courts held him not guilty. The Supreme Court observed at pages 212-213 : (of AIR) : (at p. 289 of Cri LJ) :

"..... As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. A comparative study of the aforesaid provisions with the provisions of R. 201 of the Rules indicates that searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorized officer under R. 201 of the Rules; for, in the former case, the police officer makes a search during the investigation of a cognizable offence and in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer u/s 165 of the Code, but no such safeguard need be provided in the case of a search by the excise officer under the Rules. We think that the legislature, by stating in S. 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorized under the Act and the Rules. We, therefore, hold that the provisions of S. 165 of the Code must be allowed in the matter of searches under R. 201 of the Rules."

"..... The recording of reasons does not confer on the officer jurisdiction to make a search, though it is a necessary condition for making a search. The jurisdiction or the power to make a search is conferred by the statute and not derived from the record of reasons. That apart, S. 18 of the Act in express terms states that searches shall be carried out in accordance with the provisions of the Code of Criminal Procedure. S. 165 of the Code lays down various steps to be followed in making a search. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure; it would be a search made in contravention of the provisions of the Code."

15. If the condition precedent for the search is to be so strictly complied with, there cannot be any reason at all to dilute the requirements for an act of seizure which deprives a person, of his property (even though it may be for a limited duration). While recording of the grounds for the search is mandatory, existence of a "reasonable belief" that the Levy Order is being contravened, or about to be contravened, is a condition precedent for the seizure, and whenever, the seizure is challenged, the burden will be entirely on the authority who seized the articles, to show that, he reasonably believed that there was a contravention or likelihood of the contravention of the provisions of the Levy Order, in respect of the seized articles.

16. While seizing the articles, if the said authority had stated the existence of the reasonable belief and the provisions of the law under which the seizure is effected, it can be said that to some extent the authority has discharged this onus cast on him. It is not for the Court to examine the sufficiency of the grounds for the reasonableness of the belief; but, existence of a relevant material leading to such a belief, has to be shown to the Court to validate the seizure.

17. The mahazar in this case is Annexure-K. It is dated 27-10-1988. It was prepared at 11 a.m. It states that, on the previous day at 4 p.m. the Taluka Tahsildar had locked and sealed the Rice Mill in question (Boredevaru Rice Mill) and that the seal and the lock continued as they were effected on the previous day and that they were removed in the presence of the villagers; the owner of the Mill refused to open the doors and hence the Tahsildar got them opened. Thereafter, there is a reference to the paddy and rice found inside the premises. The Mahazar concludes by stating that all the said paddy weighing 88 quintals 81 Kgs. and 18 quintals 44 Kgs. of rice were taken possession of on behalf of the Government.

18. The Mahazar does not recite any statement of the Tahsildar that he seized the paddy and rice under any reasonable belief that in respect of the said paddy, and rice a contravention of the Levy Order "has been, is being, is about to be, committed". The mind of the Tahsildar, is not disclosed in any manner. He does not even purport to act under a belief, which, he could call as reasonable. The Mahazar assumes that whenever, paddy or rice is found, same could be taken possession of by the governmental authorities.

19. No attempt was made to justify the existence of the requisite reasonable belief for the seizure of the goods, by the respondents. The contention was mainly aimed at showing the futility of the reliefs sought, because, the paddy and the rice were sold by the order of the 2nd respondent, on 4-11-1988. According to the learned Government Pleader, the petitioner can seek the payment of the value of the the sold articles, in case ultimately the proceedings u/s 6A of the Act conclude in his favour. The respondents did not produce any record showing the recording of the reasons prior to the search, nor any material indicating the existence of the requisite reasonable belief, prior to the impugned

seizure.

20. It is not necessary, here, to examine as to whether the sale effected on 4-11-1988, was after the interim order was communicated to the 2nd respondent. The respondents did not instruct their counsel, of what happened on 4-11-1988. This is clear from the orders of this Court dated 17-3-1989 and 17th July 1989. On 17-3-1989 petitioner was given liberty to move the Dy. Commissioner to release the goods in question; on 20-4-1989 the petitioner filed an application before the Dy. Commissioner in this regard. On 17-7-1989 when the writ petition came up before the Court, the learned Government Advocate expressed ignorance as to the fate of the said application. If actually, the goods were sold on 4-11-1988, all subsequent orders made, in the presence of the counsel for the respondents, were infructuous; the respondents owed a duty to this Court to point out that such orders cannot be made. No relevant record of any sort was sent to the Govt. Advocate, who had to justify the impugned acts.

21. In the circumstances, I am constrained to hold that, condition precedent for the seizure of the goods in question did not exist. The 3rd respondent has failed to prove the existence of the requisite reasonable belief at the time of the impugned seizure.

22. If the seizure was illegal, the seized goods should be restored to the person from whom they are seized. In *Wazir Chand Vs. The State of Himachal Pradesh*, , such a direction was issued in the exercise of writ Jurisdiction. At page 417 (of AIR) : (at p. 1031 of Cri LJ),

Supreme Court held :-

..... It is obvious that the procedure adopted by the Kashmir and the Chamba police was in utter violation of the provisions of law and could not be defended under cover of any legal authority. That being so, the seizure of these goods from the possession of the petitioner or his servants amounted to an infringement of his fundamental rights both under Art. 19 and Art. 31 of the Constitution and relief should have been granted to him under Art. 226 of the Constitution."

Again, in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, it was held at p. 67 :

"It follows therefore that anything recovered from the search of the residential accommodation on the basis of this defective warrant must be returned. It also follows that anything confiscated must also be returned, as we have held that sub-section (4) must fall. As to the accounts etc. said to have been seized, it appears to us that the safeguards provided u/s 165 of the Code of Criminal Procedure do not appear to have been followed when the search was made for the simple reason that everybody thought that provision was not applicable to a search under sub-section (2). Therefore, as the safeguards provided in S. 165 of the Code of Criminal Procedure were not followed, anything recovered on a

defective search of this kind must be returned."

To the same effect are the decisions of the Delhi High Court in Hindustan Aluminium Corporation Ltd. Vs. Controller of Aluminium and Others, and in P. Ramachandra Chetty Vs. Secretary, Ministry of Food, Govt. of India, New Delhi and Others, .

23. Therefore, the petitioner is entitled to the restoration of the articles seized from him on 27-10-1988. If those articles are not now available, their money equaling has to be paid to him. It is not known as to the manner of sale effected by the 2nd respondent and the price fetched, thereby. If the sale effected was for the statutory price envisaged under the Act, the said price cannot be equated to the market price. There is a free market in existence for the paddy and rice in Karnataka. Since the seized goods are alleged to have been sold, the petitioner is entitled to be compensated by the payment of market price of these goods as on 27-10-1988. The respondents are directed to pay the petitioner, the value of 88 quintals 81 Kgs. of paddy and 18 quintals 44 Kgs. of rice seized on 27-10-1988, the value to be computed by reference to the wholesale market, as distinguished from the statutory price under the Act. The payment to the petitioner shall be made within two weeks from today.

24. In the result, for the reasons stated above, this petition is allowed, the impugned mahazar dated 27-10-1988 and the consequential seizure thereunder as per Annexure-K as well as the interim direction of the Dy. Commissioner (2nd respondent) dated 28-10-1988 are quashed. Consequently the respondents are directed to pay the petitioner the market price of the goods in question as on 27-10-1988 within two weeks from today. The Rule is made absolute.

25. The respondents shall also pay a sum of Rs. 1,500/- (rupees one thousand and five hundred only) to the petitioner as costs of this petition.

26. Petition allowed.