

(1999) 12 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23597 and 24097 of 1999

Md. Ethe Shamuddin

APPELLANT

Vs

Joint Collector (Civil Supplies), RR Dist., Hyd. and another

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Constitution of India, 1950 — Article 123
Criminal Procedure Code, 1973 (CrPC) — Section 9(3)
Essential Commodities Act, 1955 — Section 3, 6

Citation : (2000) 1 ALD 472 : (2000) 2 ALT 35 : (2000) 1 APLJ 355

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. B. Lingaiah, for the Appellant; Additional Advocate General, for the Respondent

Judgement

1. Both these cases involve similar fact situations and are thus disposed of at the stage of admission after having heard respective learned Counsel for the petitioners Sri V.H.V.R.R. Swamy and Sri B. Lingaiah and the learned Additional Advocate-General Sri. D. Prakash Reddy, who appeared to assist the Court on behalf of the learned Government Pleader for Civil Supplies, for the respondents.

This writ petition is filed by a Kerosene dealer functioning in the name and style of O.M. Enterprises, Open Market, Miralam Tank, Hassannagar, Rajendranagar, Ranga Reddy District. On an allegation that the petitioner was selling blue kerosene and not maintaining true and correct accounts, pursuant to an inspection of petitioner's premises on 23-3-1999 the stocks of commodities therein 3261 liters, of white kerosene and 16 empty barrels, were seized a panchanama was conducted, a crime was registered as well on the complaint submitted, u/s 6-A of the Essential Commodities Act, 1955 (Act 10/55).

2. The petitioner approached this Court in Writ Petition No.6624 of 1999 and obtained a direction for release of the seized stocks on furnishing of a bank guarantee for the full value. Consequently the stocks were released vide

proceedings dated 9-4-1999 on the petitioner furnishing the bank guarantee for Rs.33,100/-. Notice u/s 6-B of the Act 10/55 was issued to the petitioner on 17-4-1999 to show-cause why the seized stocks should not be confiscated on the charge of the petitioner having violated the provisions of the relevant Control Orders and conditions of licence. The petitioner submitted his explanation dated 19-6-1999 denying the charges. The Joint Collector, Ranga Reddy District considered the record of the case and by orders dated 31-7-1999 directed encashment of 90% of the bank guarantee furnished by the petitioner at the time of the release of the seized stocks in his favour. The remaining 10% of the bank guarantee furnished was directed to be released in favour of the petitioner. The said orders also intimated that an appeal against the order u/s 6-C of Act 10/55 lies to the District and Sessions Judge, Ranga Reddy District, within 90 days from the date of receipt of a copy of the order.

3. Aggrieved by the above order the petitioner preferred an appeal before the III Additional Metropolitan Sessions Judge-cum-Special Judge for Trial of cases under the Essential Commodities Act, Hyderabad (Respondent No.2), according to the petitioner within time.

4. According to the petitioner the respondent No.2 admitted the petitioner's appeal u/s 6-C of the Act 10/55 and posted the Miscellaneous Petition seeking stay to 8-9-1999, which was later adjourned from time to time and ultimately on 4-11-1999 the respondent No.2 passed a docket order to the following effect:

"Docket Order Dated 4-11-1999 In view of the judgment of our Hon"ble High Court in Writ Petition No.32463 of 1998, dated 11-12-1998 and Writ Petition Nos. 15224 of 1999 and Batch dated 23-8-1999 and the Circular Roc. No.243/ SO/99, dated 14-9-1999, this Special Court ceased to be in existence since 24-10-1998 and therefore this Court solicited instructions from the High Court and the instructions are awaited:

In view of the fact that the Special Court ceased to be in existence, I am of the view that no judicial order in respect of EC Act or orders thereunder, could be passed by this Court which is functioning as Additional Metropolitan Sessions Judge Court, but not as Special Court, constituted u/s 12A of Essential Commodities Act. Therefore, await instructions from the High Court and call on 10-12-1999.

Sd/- xxxxx III Additional Metropolitan Sessions Judge,
Hyderabad."

5. According to the petitioner the said order of the respondent No.2 declining to entertain the petitioner's appeal and his application for interim order is illegal and based on an incorrect understanding of the legal position. According to the petitioner, the decision of this Court in Writ Petition No.15224 of 1999 and Batch is only in respect of power of the Special Court in respect of bails and trial of criminal offences under the Act and the lapsing of the Essential Commodities

(Special Provisions) Act, 1981 (Act 18/81) does not ipso facto result in extinction of the jurisdiction of the respondent No.2 to hear appeals against inter alia orders of confiscation, u/s 6-C of the Act 10/55.

6. The petitioner in the circumstances instituted the writ petition for a declaration that the action of the respondent No.1 by order dated 31-7-1999 directing confiscation of the 90% of the value of the seized stocks of the petitioner is illegal and for consequential declaration that the action of the respondent No.2 in not passing interim orders in the petitioner's appeal EGA No.61 of 1999 is illegal.

WP No.24097 of 1999:

This writ petition is filed for a declaration that the action of the respondent in not issuing kerosene quota to the petitioner even during the currency of his licence is illegal and for a consequential direction to issue kerosene quota to the petitioner.

7. On 19-5-1998 the petitioner's shop in KPHB Colony, Hyderabad, Ranga Reddy District, was inspected by the officials of the Vigilances Cell of the Civil Supplies Department and on allegations of variation in the stock of kerosene a case was registered in Cr.No.59/VCRR/98. Proceedings u/s 6-A of the Act 10/55 were initiated and show-cause notice u/s 6-B was issued to the petitioner calling for his explanation. The petitioner submitted his explanation denying the charges. By order dated 26-10-1998 the Joint Collector, Ranga Reddy District passed final orders confiscating the seized stock of 209 liters of kerosene. Aggrieved thereby the petitioner preferred an appeal (ECA 58/98) to the 1st respondent-The Special Judge for trial of cases under Essential Commodities Act-cum-III Additional Metropolitan Sessions Judge, Hyderabad, purportedly u/s 6-C of the Act 10/55, along with an application for interim orders. By orders dated 1-12-1998 the 1st respondent in CrI.MP No.1908 of 1998 in the petitioner's appeal rejected the petitioner's request for stay of operation of confiscation orders.

8. Aggrieved the petitioner filed Writ Petition No.12865 of 1999 seeking stay of the confiscation proceedings dated 26-10-1998 pending disposal of the appeal before the 1st respondent herein. The said writ petition was dismissed by order dated 29-6-1999 at the admission stage directing the Appellate Authority to dispose of the appeal expeditiously and not later than three months from the date of receipt of a copy of the order of this Court.

9. According to the petitioner, the 1st respondent has not disposed of the petitioner's appeal and when he approached the 1st respondent, he was informed orally that the said respondent has no jurisdiction to consider the appeal and in these circumstances the petitioner was constrained to approach this Court with the present writ petition.

10. Having regard to the fact that the identification of the Appellate Authority who was jurisdiction to entertain and adjudicate the appeals u/s 6-C of the Act 10/55 and the consequences of the lapsing of Essential Commodities (Special Provisions) Act, 1981, fall for consideration, this Court solicited the assistance of

the learned Additional Advocate-General who appeared and made his submissions.

11. Section 6-C of the Act 10/55 enables the person aggrieved by an order of confiscation passed u/s 6-A to prefer an appeal to any Judicial Authority appointed by the State Government concerned within one month from the date of communication of such order and ordains that the Judicial Authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, conforming, modifying or annulling the order appealed against.

12. By the Essential Commodities (Special Provisions) Act, 1981 (Act 18/81), the words "any Judicial Authority appointed by the State Government concerned" were substituted by the words "the State Government concerned" and the words "Judicial Authority" were substituted by the words "the State Government". Consequently appeals u/s 6-C of the Act 10/55 lay to the State Government under the Act 18/81. This Act as initially enacted, was a temporary Act for a period of 5 years which by the Essential Commodities (Special Provisions) Continuance Act, 1987 (Act 25/87) was extended for a further period of 5 years and further extended by the Essential Commodities (Special Provisions) Amendment Act, 1993 (Act 34/93) for a further period of 5 years, in all for a period of 15 years.

13. Section 3 of the Act 10/55 empowers the issuance of orders to control, production, supply, distribution etc., of essential commodities. Section 7 sets out the penalties for contravention of any order made u/s 3 and for matters incidental thereto. Section 11 of the Act 18/81 substituted Section 12-A of the principal Act with a new Section 12-A and further amendments by way of Sections 12-AA, 12-AB and 12-AC, providing for constitution of Special Courts and for matters incidental thereto and empowered the State Government by notification in the official Gazette to constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification, for the purpose of providing speedy trial of offences under the Act. These amendments were continued by Acts 25/87 and 34/93. Orders were issued from time to time inter alia by the High Court of Andhra Pradesh setting out the arrangements of the Special Judges under the Act 18/81. In Roc.No.138/50/96, dated 2-3-1996, the High Court of Andhra Pradesh made the following notification:

"Notification

"In supercession of the Notifications issued in Roc. No.333/SO/89, dated 28-2-1989 with regard to the arrangements of the Special Judges under Essential Commodities (Special Provisions) Act, 1981, the High Court hereby appoints the 1 Additional District and Sessions Judge/Additional District and Sessions Judge of the concerned District and the I Additional Metropolitan Sessions Judge, Hyderabad to deal with the cases arising under Essential Commodities (Special Provisions) Act, 1981, and exercise the powers conferred by Section 12-A(2) of the Essential Commodities (Special Provisions) Act, 1981

read with Section 9(3) of the Criminal Procedure Code, 1973 in absence or temporary inconvenience of the regular Special Judge (District Judge/111 Additional Metropolitan Sessions Judge, Hyderabad) and issues the following notification.

(1) All the District and Sessions Judges except Hyderabad, Nalgonda, Warangal and Mahabubnagar of the concerned Districts are conferred powers u/s 12-A of the Essential Commodities (Special Provisions) Act, 1981 to deal with the cases arising under the Act in the respective Districts, as Special Judges u/s 12-A(2) of the Act.

(2) All the I Additional District and Sessions Judges/Additional District and Sessions Judges except Hyderabad, Nalgonda, Warangal and Mahabubnagar of the concerned Districts are empowered to deal with the cases under the Act, in the absence or temporary inconvenience of the concerned Special Judge.

(3) The I Additional Metropolitan Sessions Judge, Hyderabad, is empowered to deal with the cases arising under the Essential Commodities (Special Provisions) Act, 1981 in the Metropolitan area of Hyderabad and Districts of Nalgonda, Warangal and Mahabubnagar in the absence or temporary inconvenience of regular Special Judge for the Act.

Registrar (Management)"

14. Essential Commodities (Special Provisions) Amendment Ordinance, 1997 (No.21 of 1997) was promulgated by the President of India on 3-10-1997 and also published in the Gazette of even date. Under this Ordinance further amendments were made to Section 12. The amendment to Section 6-C of the Act 10/55 introduced by Act 18/81 has constituted by Act 25/87 and Act 34/93 was however, not continued by Ordinance No.21 of 1997 and as a consequence the provisions of Section 6-C as contained in the Act 10/55 stood revived with the lapsing of temporary enactments. By the Essential Commodities (Special Provisions) Second Ordinance, 1998 (Ordinance No.1 of 1998) the provisions of Ordinance No.21 of 1997 were continued, but no amendments having been introduced to Section 6-C of the Act" 10/55, the position aforestated remained unaltered. By a further Ordinance being the Essential Commodities (Amendment) Ordinance, 1998 (Ordinance No.13 of 1998) the amendments to the provisions of the principal Act (Act 10/55) introduced by the temporary Acts and Ordinances Nos.21 of 1997 and 1 of 1998, were continued. This Ordinance has also lapsed in accordance with the provisions of Article 123 of the Constitution. However, Section 6-C of the Act 10/55 not having been amended in the Ordinance, the provisions of Section 6-C revived with effect from the provisions of the temporary Acts 18/81, 25/87 and 34/93 ceased to apply. Consequently the Appellate Authority u/s 6-C against an order of confiscation passed u/s 6-A would be a Judicial Authority appointed by the State Government.

15. In G.O.Ms.No.38 (LA and J Courts C) Department, dated 11-3-1998, in exercise of powers u/s 6-C of Act 10/55, Government of Andhra Pradesh issued a

notification empowering the District and Sessions Courts to act as Appellate Authorities. The position as on and with effect from 11-3-1998 is that the District and Sessions Courts are constituted as the Appellate Authority to entertain and determine appeals against orders of confiscation u/s 6-C of the Act, u/s 6-C of the Act.

16. In Writ Petition No.23597 of 1999 the order of confiscation passed by the Joint Collector, Ranga Reddy District is dated 31-7-1999 and as mentioned in the said order and in view of the analysis of legislative developments and consequences aforementioned, an appeal against the order lies to the District and Sessions Judge, Ranga Reddy District. The petitioner therein however, has preferred an appeal ECA No.61 of 1999 to the III Additional Metropolitan Sessions Judge, Hyderabad. In Writ Petition No.24097 of 1999 the Joint Collector, Ranga Reddy District, passed an order of confiscation dated 26-10-1998 and as against the said order the petitioner preferred an appeals ECA No.58 of 1998 also before the III Additional Metropolitan Sessions Judge, Hyderabad.

17. The appeals in both the above cases have thus been instituted by the respective petitioners before the Court which has no jurisdiction to entertain the appeals u/s 6-C of the Act 10/55 even as on the date of institution of the said appeals. The appeals ought to have been instituted before the District and Sessions Judge, Ranga Reddy District.

18. In the light of the fact that there exists an effective alternative remedy of appeal against the orders of confiscation before the District and Sessions Court, Ranga Reddy District, u/s 6-C of the Essential Commodities Act, 1955, in view of the notification issued by the State Government in G.O.Ms.No.38 Law (LA and J Courts C) Department, dated 11-3-1998, this Court is not inclined to consider the substantive relief urged by the respective petitioners in the above cases. The petitioners may make an application to the III Metropolitan Sessions Judge, Hyderabad, seeking withdrawal of the respective appeals filed by them before the said Court, which shall be expeditiously considered, and orders issued, permitting withdrawal. The petitioners are at liberty to move the District and Sessions Court, Ranga Reddy District, by instituting appeals therein against the respective orders of confiscation passed by the Joint Collector, Ranga Reddy District u/s 6-A of the Act. Having regard to the fact that on a misconception as to the appropriate appellate Court the petitioners instituted their appeals before the III Additional Metropolitan Sessions Judge, Hyderabad, the District and Sessions Court, Ranga Reddy District may, on appeals being preferred by the petitioners along with application for condonation of delay, favorably consider the condonation of delay and take the appeals on file and dispose of the same expeditiously, as also any interlocutory applications filed for relief, on merits and in accordance with law.

19. It is represented at the Bar that number of cases have been instituted before the III Additional Metropolitan Sessions Judge, Hyderabad and that it would be a cumbersome procedure not conducive to effective implementation of justice in

the critical area of Essential Commodities that separate applications be filed by the concerned appellants seeking withdrawal of all such appeals, preferred u/s 6-C of the Act. Having considered this submission and the heard the learned Additional Advocate-General on this issue, the III Additional Metropolitan Sessions Court, Hyderabad is directed to post all the appeals instituted u/s 6-C of the Act, Act 10/55 (appeals instituted during the period the provisions of Central Acts Nos. 18/81, 25/87 and 34/93 were in force) for dismissal and pass appropriate orders therein, in the light of the decision herein, so as to enable the institution of appeals before the appropriate Appellate Court having jurisdiction in the light of the decision herein above.

20. The Registry is directed to issue a circular to the III Additional Metropolitan Sessions Judge, Hyderabad and to the District and Sessions Courts of all the Districts, informing them that appeals against orders of confiscation u/s 6-A of the Essential Commodities Act, 1955, lie to the District and Sessions Court of the concerned District u/s 6-C of the Act.

21. The writ petitions are disposed of with the above directions. No costs.