(2017) 02 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 5778, 6127, 6129 and 12673 of 2016

M/s Axis Bank Ltd. APPELLANT

Vs

The State of Telangana RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Clause 2-K, Section 6-A

Citation : (2017) 2 ALT 666 : (2017) 3 AndhLD 381

Hon'ble Judges : Sri A.V. Sesha Sai, J.

Bench : Single Bench

Advocate : K.B. Ramanna Dora, Counsel, for the Petitioner; G.P. For Civil Supplies, for the Respondent Nos. 1 to 4

Final Decision : Disposed Off

Judgement

Sri A.V. Sesha Sai, J.—Since all these writ petitions are inter-related, this Court deems it appropriate to dispose of these writ petitions, by way of this Common order.

2. W.P.Nos.6127 and 6129 of 2016, filed by State and two others, challenge the common judgment rendered by the Principal Sessions Judge, Adilabad in Criminal Appeal Nos.138 and 146 of 2015 dated 23.11.2015. W.P.No.5778 of 2016, filed by Axis Bank Limited, prays for a direction to Respondents 1 and 2 authorities to return the goods covered by Criminal Appeal Nos.138 and 146 of 2015. W.P.No.12673 of 2016, prays for a direction to Respondents 1 to 4 authorities to release the seized stock of Soyabean as per the directions in Criminal Appeal No.138 of 2015 dated 23.11.2015. The fate of W.P.Nos.5778 and 12673 of 2016 depends obviously on the outcome of W.P.Nos.6127 and 6129 of 2016.

3. Followed by a raid conducted by the Revenue Divisional Officer and District Supply Officer, Adilabad, the District Collector, Adilabad initiated proceedings under Section 6-A of the Essential Commodities Act on the ground of alleged

violation of clause 2-K (2) of the A.P. Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008 (for short, hereafter referred to as "Control Order"). The District Collector, after calling for the report of the Revenue Divisional Officer, Adilabad dated 25.7.2015, passed an order bearing No.CS6/488/2015 dated 3.9.2015, ordering confiscation of 90% of the seized stock on the ground that the Soyabean was stored in huge quantity at National Collateral Management Services Limited by unscrupulous traders without holding Form-B licence as required under Control Order, 2008.

4. The above said order was challenged before the Court of the Principal District and Sessions Judge, Adilabad in Criminal Appeal Nos.138 and 146 of 2015 and the learned Judge rendered common judgment dated 23.11.2015, allowing Crl.A.No.138 of 2015 in full and Crl.A.No.146 of 2015 in part, setting aside the order of confiscation passed by the District Collector and further directing the appellants 1 and 2 in Crl.A.No.146 of 2015 to pay penalty of Rs.50,000/- each to Government. The validity of the said judgment is under challenge in W.P.Nos.6127 and 6129 of 2016.

5. Heard and perused the material available before the Court.

6. Submissions/contentions of the learned Government Pleader:

(1) The judgment rendered by the leaned Principal Sessions Judge in Crl.A.Nos.138 and 146 of 2015 is erroneous, contrary to law and contrary to the material available on record.

(2) The impugned judgment is opposed to the very spirit and object of the provisions of the Control Order, 2008 in general and clause 2-K (2) in particular.

(3) Since the order of the District Collector dated 3.9.2015, ordering confiscation is a reasoned order, the learned Principal Sessions Judge grossly erred in disturbing the same.

7. Submissions/contentions of Sri A.Sudarshan Reddy, learned Senior Counsel:

(1) There is no illegality, nor there exists any infirmity, nor there is any perversity in the impugned judgment and in the absence of the same, the petitioners in W.P.Nos.6127 and 6129 of 2016 are not entitled for any relief nor the said Writ Petitions are maintainable before this Court under Article 226 of the Constitution of India.

(2) The order of confiscation passed by the District Collector on 3.9.2015 is highly illegal, arbitrary and full of assumptions and presumptions and completely bereft of clear findings as per the relevant provisions of law.

(3) The report of the Revenue Divisional Officer dated 25.7.2015 was not furnished to the persons effected, as such, the order of the District Collector is vitiated by violation of principles of natural justice.

(4) Since the Respondents 1 to 11 in W.P.No.6129 of 2016 are Agriculturists,

they do not fall under the definition of dealer as per Section 2(K) of the Control Order. The very initiation of action by the District Collector under Section 6-A of the Essential Commodities Act is totally without jurisdiction.

(5) As the judgment of the learned Principal Sessions Judge is supported by cogent, valid and convincing reasons, no interference of this Court is warranted under Article 226 of the Constitution of India.

(6) There is absolutely no reason for not initiating any action against the stocks of Markfed lying in the same godown.

The learned Senior Counsel, in support of his submissions/contentions, relied on the following judgments:

(1) Gopal Naidu A. and others v. State of A.P.2013(2) ALD (Crl) 474 (DB).

(2) Gurram Venkateswarlu and others v. Collector and District Magistrate, Prakasam district, Ongole and another, 2014(2) ALD 523.

(3) N. Nagendra Rao and Co. v. State of A.P., AIR 1994 SC 2663.

(4) Dharani Trading Company v. State of A.P., 1974 Law Suit (AP) 183.

8. Submissions/contentions of Sri K.B.Ramanna Dora, learned counsel for petitioner in W.P.No.5778 of 2016:

(1) Since the judgment rendered by the learned Principal Sessions Judge is supported by valid reasons, the same does not warrant any interference of this Court under Article 226 of the Constitution of India.

(2) The District Collector in the impugned order of confiscation dated 3.9.2015 did not consider the claim of the Bank dated 2.7.2015.

(3) No licence is required for farmers under Section 2(K)(2) of the Control Order.

(4) In view of variations in the report of the Revenue Divisional Officer, the same cannot be given any credence.

(5) There is no proof of indulging in clandestine business by farmers.

9. Submissions/contentions of Sri S.Laxma Reddy, learned Senior Counsel representing Sri Rahul Reddy:

(1) Having recorded the findings categorically against the order of confiscation, the learned Principal Sessions Judge grossly erred in imposing penalty on Respondents 2 and 3 in W.P.No.6127 of 2016.

(2) The order of the District Collector, ordering confiscation is totally one without jurisdiction.

10. In the above back ground, now the issues that emerge for consideration of this Court are;

(1) Whether the common judgment dated 23.11.2015 rendered by the learned Principal Sessions Judge, Adilabad, setting aside the order of the District Collector, Adilabad bearing No.CS6/488/2015 dated 3.9.2015 is sustainable and tenable or whether the same warrants any interference of this Court under Article 226 of the Constitution of India ?

(2) Whether the Respondents 1 to 11 in W.P.No.6129 of 2016 fall under the definition of dealer as stipulated under Clause 2-K of the Control Order, 2008?

11. Section 6-A of the Essential Commodities Act, 1955 empowers the District Collector to order confiscation of essential commodity seized under Section 3. In the instant case, pursuant to a raid conducted by the Revenue Divisional Officer and District Supply Officer, Adilabad, the District Collector initiated proceedings under the said provision of law on the ground of violation of Clause 2-K (2) of the Control Order against the Respondents 1 to 3 in W.P.No.6127 of 2016.

12. The District Collector, Adilabad vide order bearing No.CS6/488/2015 dated 3.9.2015, ordered confiscation of 90% of the stocks, stating that the Soyabean stock was stored in huge quantity at National Collateral Management Services Limited by unscrupulous traders without holding Form-B license as required under Control Order, 2008. The said order was carried in Criminal Appeal Nos.138 & 146 of 2015 before the Principal Sessions Judge, Adilabad under Section 6-C of the Essential Commodities Act, 1955 by Respondents 1 & 2 in W.P.No.6127 of 2016 and Respondents 1 to 11 in W.P.No.6129 of 2016. The learned Principal Sessions Judge, by way of a common judgment dated 23.11.2015 allowed Crl.A.No.138 of 2015 and partly allowed Crl.A.No.146 of 2015, setting aside the order of the District Collector dated 3.9.2015 and directed the Respondents 2 and 3 in W.P.No.6127 of 2016 to pay penalty of Rs.50,000/- each.

13. In order to resolve the issue in the case on hand, it would be appropriate to refer to the relevant provisions of the A.P. Scheduled Commodities Dealers (Licensing, Storage and Regulation) Control Order, 2008. The Government made the said order in exercise of the powers conferred under Sections 3 and 5 of the Essential Commodities Act, 1955. Clause 2 of the said order deals with definitions. Clause 2-K defines the term "Dealer", which reads as under:

"Dealer" means any person engaged in the business of purchase, movement, sale, supply, distribution or storage for sale of any of the commodities specified in the schedule-I whether as a wholesaler or retailer or producer or manufacturer or exporter but except importer, whether or not in conjunction with any other business and includes his representatives or agent".

14. Sub-clause (2) of Clause 2-K of the Control Order, 2008 reads as under:

"A person, who engages himself in the business of purchase, sale or storage for sale of edible oilseeds or edible oils in quantity of more than five quintals of any one or all edible oils including hydrogenated vegetable oils taken together or thirty quintals of any one or all edible oilseeds including groundnut in shell taken together, and includes a manufacturer of edible oils, but does not include agriculturalist/Ryot who stores the oil seeds produced by his personal cultivation or seed purpose".

15. While referring to the above provision, it is the contention of the learned Government Pleader that the Respondents 1 to 11 in W.P.No.6129 of 2016 are not Agriculturists/Ryots, as such, the District Collector is perfectly justified in ordering confiscation of the seized stock. On the other hand, it is the submission of the learned Senior Counsel, Sri A.Sudarshan Reddy that the very basis for the District Collector is the report of the Revenue Divisional Officer dated 25.7.2015 and the authorities did not furnish the same to the persons likely to be effected and the said action is untenable. It is also the submission of the learned Senior Counsel that Agriculturists/Ryots do not fall under the purview of Clause 2-K (2) of the Control Order, 2008, as such, the very action is impermissible. A perusal of the order of the District Collector shows that the District Collector, in order to arrive at the conclusion against the ryots, completely placed reliance on the report of the Revenue Divisional Officer. Failure to furnish the said report to the persons affected is not in dispute, as such, the said action is a patent violation of principles of natural justice.

16. It is also evident from the order of confiscation passed by the District Collector that basing on the report of the Revenue Divisional Officer and District Supply Officer, the District Collector issued a show cause notice under section 6B of the Essential Commodities Act, 1955 and framed the following charge:

"That the Respondents 1and 2 have illegally stored huge quantity of Scheduled Commodities i.e., 19310 bags each 50 kgs weighing 9655.00 qtls of Soyabean oil seed worth Rs.3,66,89,000/- without having any valid license with an intention to create artificial shortage of Soyabean seed in the market with a malafide intention to indulge in black marketing the scheduled commodities for their pecuniary gain, thereby contravened clause 2 k(2) of the A.P. Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008 issued under E.C. Act.1955."

17. It is also clear from the order of the District Collector that Respondents 2 and 3 before the Collector submitted an explanation, stating that the National Collateral Management Limited is a country leading organization providing a bouquet of service to manage risks at various stages of commodities and inventory handling under a single umbrella and the said organization is registered under Companies Act, 1956. They also stated that the godowns taken on lease from 1st respondent before the District Collector were provided to the farmers and other public and private enterprises including Telangana Markfed and that the Warehouse has valid Warehouse license bearing No. 5/2015 dated 1.1.2015 and that the subject Soyabean stock found in the Warehouse belongs to various farmers and the stocks were pledged to Axis Bank. The District Collector placed complete reliance on the report of the Revenue Divisional Officer

dated 25.7.2015. In the said report, the Revenue Divisional Officer showed not only the report of the Tahsildar, but also the report of the Agriculture Officer and there is abnormal variation between the said reports and no plausible explanation is forth coming as to why the District Collector completely discarded the report of the Tahsildar. There is no foundation to come to a conclusion that the stocks were stored by unscrupulous traders.

18. Ryots and the Respondents 2 and 3 before the Collector assailed the validity and legal sustainability of the order of the District Collector before the learned Principal Sessions Judge, Adilabad by way of filing Criminal Appeal Nos. 138 and 146 of 2015 under Section 6-C of the E.C. Act, 1955. The learned Principal Sessions Judge framed the following points for consideration:

(1) Whether the appellants 1 to 11 in Criminal Appeal 138 of 2015 have stored their produce besides the produce of other farmers by forming 11 groups including 163 farmers in National Collateral Management Services Limited Ware House godowns?

(2) Whether the appellants 1 to 11 in Criminal Appeal 138 of 2015 have stored the produce of Soyabean oil seeds belonging to them and of the other farmers also in order to facilitate in getting loans from Axis Bank?

(3) Whether the order challenged in the appeal is maintainable?

(4) Whether there are any grounds which are sufficient to interfere with the order under appeal?

19. The learned Principal Sessions Judge took note of the fact that the District Collector (Civil Supplies) addressed a letter on 16.6.2015 to the Bank Manager, Adilabad to furnish the information as to whether (11) farmers pledged stock in Axis Bank, Adilabad and the SBH, lead bank addressed a letter to the Axis Bank calling for information. It is also evident from the order of the learned Principal Sessions Judge that the record of the Collector (Civil Supplies) demonstrates that Axis Bank furnished the details of the farmers who pledged the goods and borrowed the loans along with the photostat copies of the letters. It is also important to note that the District Collector also overlooked completely the claim filed by the Bank and the documents filed by the Bank on 2.7.2015 pursuant to the orders of this Court in W.P.No.19183 of 2015 dated 6.6.2015 filed by Axis Bank. No plausible explanation is forthcoming as to why the said claim of the Bank was completely ignored, despite the above said orders of this Court. The learned Principal Sessions Judge also took note of the stocks stored by (173) farmers and their particulars. On thorough analysis of the entire material, the learned Principal Sessions Judge came to a categoric conclusion that without any evidence as to clandestine business, the District Collector arrived at the impugned finding. The learned Sessions Judge also relied on the judgments in Gopal Naidu A. v. State of A.P. (1 supra) and Gurram Venkateswarlu v. Collector and District Magistrate (2 supra).

20. In W.P.Nos.6127 and 6129 of 2016, the State and the authorities are praying this court to issue writ in the nature of Writ of Certiorari. It is a settled law as laid down by the Hon''ble Apex Court in Syed Yakoob v. Radhakrishnan, AIR 1964 SC 477 and this Court in Dr. K.L.Narayana v. Special Tribunal under A.P. Land Grabbing Prohibition Act, 2017 (1)ALD 655 (DB), that unless the order impugned is patently perverse and suffers from inherent lack of jurisdiction, a Writ in the nature of Certiorari cannot be issued. In the instant case, this Court does not find any such contingencies. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that there are absolutely no merits in W.P.Nos.6127 and 6129 of 2016 and are liable to be dismissed.

21. In view of the above reasons and having regard to the findings recorded by the learned Principal Sessions Judge, this Court holds that the unofficial Respondents 1 to 11 in W.P.No.6129 of 2016 do not fall under the definition of ''Dealer'' under Section 2-K of the Control Order, 2008. In view of the finding on W.P.Nos.6127 and 6129 of 2016, W.P.Nos.5778 and 12673 of 2016 are liable to be allowed.

22. 23.11.2015 on the file of the learned Principal Sessions Judge, Adilabad, within a period of two weeks from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any shall stand closed. There shall be no order as to costs.