

(1972) 05 CAL CK 0013
In the Calcutta High Court
Case No : C.R. No. 1932 (W) of 1968

Munilal Bhagwat Sharan and Others

APPELLANT

Vs

The Chief Commercial Superintendent, Eastern Railway and
Others

RESPONDENT

Date of Decision : 10-05-1972

Acts Referred:

Essential Commodities (Amendment) Act, 1967 — Section 6A, 6B

Citation : AIR 1972 Cal 405

Hon'ble Judges : Pradyot Kumar Banerjee, J

Bench : Single Bench

Advocate : P.K. Sen Gupta and Paritosh Mukherjee, R.C. Deb, A.C. Bhabra, Somnath Chatterjee, D.P. Bagaria, Ganandra Narayan Roy and Samresh Kumar Nandi, S.D. Banerjee and Prasanta K. Ghose, S.K. Roy Choudhury, for the Appellant; S.M. Sanyal and M.G. Mukherjee, for the Respondent

Judgement

Pradyot Kumar Banerjee, J.—The petitioner is a partnership firm and deals in foodgrains and oil seeds. The petitioner No. 1 Messrs. Munilal Bhagawat Saran is the holder for value of several Railway Receipts having been negotiated through Bank in Calcutta, upon payment made by the petitioner firm. The Railway Receipts are quite a number issued between 11th October, 1967 and 15th October, 1967. The said Railway Receipt is for carrying on maize and bazra from different stations in Haryana to Howrah. It is alleged that the State of Haryana is a surplus State in foodgrains but there was a ban on export of maize from the said State imposed by the Northern Inter Zonal (Movement Control) Order, 1967. It is alleged that the State Government of Haryana lifted the ban on export of maize and other coarse grains including bazra outside the State of Haryana from October, 1967. It is further alleged that an announcement to the said effect was made at Karnal by the then Hon'ble Chief Minister of Haryana on October 11, 1967. The said lifting of ban on the export of maize was broadcast in the news bulletin and was also published in various newspapers. The Tribune, a daily published from Ambala, within the State of Haryana, in its issue dated October,

12, 1967 published the following Press Note:

"Haryana Ban on coarse Grain Movement goes-- F. O. S. O. Chandigarh October 11, 1967. The Haryana Government has decided to remove the restriction on the movement on coarse grains produced in the State of Haryana during the current Kharif season says an Official Press Note. The major coarse grains are Bazra, Maize and Jowar."

In the same issue of Tribune it has been published as follows :--

"The Chief Minister disclosed that Haryana Government today ordered the lifting of ban on the export of Bazra, Jowar and Maize to ensure grains" of farmers. The Government would also do its best to ensure a suitable price of paddy."

On the basis of this announcement the wagons containing maize and bazra from various stations in the State of Haryana during the period between 12th October, 1967 to 16th October, 1967 were despatched and it was duly booked by the Railway authorities at the despatching stations and the movement was allowed by the Railway authorities without any objections whatsoever. Further in view of the lifting of the ban on export of maize and bazra by the Haryana Government, the District Food Controllers in the State of Haryana under whose jurisdiction the respective despatching Railway Stations referred to in the said Railway Receipts are situate duly authorised the despatch of the goods under the said Railway Receipts and endorsements of such authorisation were also made by the appropriate authorities of Food Department of the State of Haryana. Such authorisation of the export of foodgrains outside the State of Haryana also appears from the memo dated 28th October, 1967 written by the Secretary to the Government of Haryana to the Chief Commercial Superintendent, Eastern Railway wherein it has been stated that though the Government of Haryana allowed to despatch the maize and bazra at Howrah but when it reached at Howrah the delivery was wrongfully refused. It is stated also that the Railway Receipts presented by the representatives at this office did not bear any export permit numbers and as such this office was not in a position to arrange delivery of the goods unless the petitioners can produce any permit from the Regional Director (Food), Government of India, 8, Esplanade East, Calcutta.

It is alleged that the similar consignment of maize despatched from Haryana to Delhi and other stations were duly released. It is also alleged that such delivery was effected in different stations of West Bengal. Be that as it may, the Railway authorities of Howrah refused to deliver the maize to the petitioner. Thereafter the Collector of Howrah issued a notice on the petitioner u/s 6-B of the Essential Commodities Act, 1955 to make representation in writing against the maize exported by the petitioner. It is alleged that the petitioners have abetted the export of or exported 229 bags of maize from Karnal to Howrah without any permit. Being aggrieved by the said notice the petitioner moved this Court and obtained the present rule. Under the order of the Court the maize etc. imported by the petitioner was allowed to be sold by the Joint Receiver appointed by this

Court and after deducting their remuneration and also other expenses, the balance of sale proceed was directed to be deposited in Court.

2. Mr. R. C. Deb on behalf of the petitioner contended firstly that the maize was imported in accordance with law, inasmuch as, Haryana Government withdrew the ban for importation. Secondly Mr. Deb contended that by the notice in Annexure "B" to the petition, the authorities concerned have already made up their mind before the issue of the notice, about the confiscation and as such the officer concerned had no open mind which is essential in a matter of a quasi-judicial proceeding.

3. Mr. Sankar Das Banerjee on behalf of the respondent contended that there was no order made under the Essential Commodities Act withdrawing the ban imposed under Clause (3) of the Maize Control Order. Secondly it is contended by Mr. Banerjee that as the respondent invited the representation from the petitioner it cannot be said that the said respondent had already a closed mind in regard to the matter.

4. Under the Northern Inter Zonal Maize (Movement Control) Order, 1967, it is incumbent on the part of the exporter to take out a permit either from the Central Government or from the State Government. It appears that no statutory form of permits have been prescribed by the said order at the relevant time. Clause (3) of the Northern Inter Zonal Maize (Movement Control) Order, 1967 runs as follows:--

"3. Prohibition of Export and Import of Maize.--

(1) No person shall export or attempt to export or abet the export of maize except under and in accordance with a permit issued by the Central Government or by the Government of the State from which such maize is to be exported or by an officer authorised in that behalf by the Central Government, or, as the case may be, by the Government of that State.

(2) No person shall import or attempt to import or abet the import of maize except under and in accordance with a permit issued by the Central Government or by the Government of the State into which such maize is to be imported or by an officer authorised in that behalf by the Central Government or, as the case may be, by the Government of that State:

Provided that nothing contained in Sub-clause (1) or Sub-clause (2) shall apply to--

(a) the export or import of maize--

(i) not exceeding one kilogram in weight in the aggregate by a bona fide traveller as part of his luggage;

(ii) on Government account;

(iii) under and in accordance with Military Credit Notes;

(iv) by or under the authority of the Food Corporation of India established under the Food Corporations Act, 1964 (37 of 1964);

(b) the export of maize from any place within the State of Haryana or Punjab to any place within the Union Territory of Chandigarh;

(c) the import of maize from any place within the State of Haryana or Punjab into any place within the Union Territory of Chandigarh."

It is quite clear therefore that no exportation of maize can be made without a permit from the prescribed authorities. In this case, the dispute is that though Haryana Government or its Chief Minister by public meeting or by a Press Note stated that the ban is withdrawn but no order under the statute was however passed. It is argued that the Railway Receipts were signed by the authorities of the Food Department but it does not appear that the authority which might have counter-signed the Railway Receipts was authorised person within the meaning of Clause (3) of the Northern Inter Zonal Maize (Movement Control) Order, 1967. At the point of time, therefore, the ban as contained in Clause (3) was in force and therefore it must be said that the permit is necessary for the exportation of the goods outside the State. It is very unfortunate, however, because of the statement made by the Chief Minister of Haryana and/or Press Note issued by the Haryana Government, the petitioner or the consignor has been caught on the wrong foot, though prima facie it does not appear that the consignor was wrong and in fact he acted in the bona fide belief that the order has been withdrawn. It is the Haryana Government who is to be blamed for the petitioner's difficulties.

5. Be that as it may, under the law it is necessary to have a permission for the exportation of goods and if no person is authorised by the said Government, for issuing permit it is for the petitioner to apply either to the Central Government or to the State Government for the permit.

6. The next question, Mr. Deb contended, is on the basis of the show cause notice as issued under Sections 6-A and 6-B of the Essential Commodities Act, 1967. Sections 6-A and 6-B of the said Act make the following provisions:--

"6-A. Where any foodgrains, edible oilseeds or edible oils are seized in pursuance of an order made u/s 3 in relation thereto, they may be produced, without any unreasonable delay, before the Collector of the District or the Presidency-town in which such food grains, edible oilseeds or edible oils are seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been a contravention of such order, may order confiscation of the food grains, edible oilseeds or edible oils:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no food grains or edible oilseeds seized in pursuance of an order made u/s 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section.

6-B. No order confiscating any food-grains, edible oilseeds or edible oils shall be made u/s 6-A unless the owner of such articles or the person from whom they are seized--

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the articles;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter."

Under Section 6-B of the Essential Commodities Act the authorised Officer in the present case is the Collector who is empowered to confiscate the maize exported if he is satisfied that the same has been done in contravention of any order under the Essential Commodities Act or orders made thereunder. In my opinion, Section 6-B of the Essential Commodities Act makes it clear that no confiscation should be made unless the competent authority hears a representation from the person affected. After hearing the matter and after that if the respondent Collector is satisfied that there was such a contravention, then the confiscation can be ordered. Before the stage of hearing, the authorities concerned must have an open mind in regard to the matter. If the authorities do not have the open mind before hearing, the provision for hearing under the statute becomes an idle formality. In this case unfortunately, it appears to me, that even at the stage of issuing notice for hearing u/s 6-B of the Essential Commodities Act, the Collector of Howrah was himself satisfied that a contravention has been made. In my opinion, this cannot be done. The satisfaction can come only after hearing the petitioner and not before that. The respondent in the impugned notice has stated as follows:--

"NOTICE.

To M/s. Manilal Bhagat Saran, 7, Baikuntha Sen Lane, Calcutta.

Under Section 6-B of the Essential Commodities Act, 1955 (Act X of 1955).

Whereas information has been received that you have abetted the export of/ exported 229 bags of Maize from Haryana to West Bengal in Wagon No. SE 47066 from Karnal Railway Station on 17-10-67 without any permit in violation of Rule 3 of the Northern Inter-Zonal Maize (Movement Control) Order 1967 which is an offence u/s 7 of the Essential Commodities Act, 1955.

Whereas I am empowered u/s 6-A of the Essential Commodities Act for ordering the confiscation of the food-grains (Maize) which has been exported in contravention of the above order.

Whereas I am satisfied on perusal of the documents produced before me and hearing that a contravention has been made by you of the Provisions of Rule 3 of the Northern Inter-Zonal Maize (Movement Control) Order 1967.

You are therefore given (his notice to make your representation in writing by 18-12-07 against the ground for confiscation of the Maize exported by you.

Sd/- Illegible

27-11-67.

Collector."

From a perusal of the said annexure, it appears to me, that the respondent Collector has come to a finding that the petitioners have abetted the export of/ exported 229 bags of Maize from Haryana to West Bengal without any permit and secondly he was satisfied that a contravention has been made under the provision of Rule 3 of the Northern Inter-Zonal Maize (Movement Control) Order 1907 and thereafter he has given notice to show cause against the ground of confiscation of maize exported. If the Collector of Howrah has already made up his mind that there is exportation of maize without a permit, the Collector has no other option but to confiscate the maize. Before the hearing given in the representation against the allegation under Sections 6-A or 6-B it is incumbent on the part of the Collector to keep an open mind and give the opportunity to the petitioner for making representation that there has been no contravention under Rule 3 of the Northern inter-Zonal Maize (Movement Control) Order 1967, but reading the terms of the notice it is clear that the Collector was already satisfied that there is such a contravention.

7. Mr. Banerjee contended that as it has been stated that the Collector of Howrah heard the representation against the ground for confiscation it cannot be said that the Collector did not have an open mind which was necessary. Reading the show cause notice, I however, cannot accept Mr. Banerjee's contention. In my opinion, the notice read as a whole makes it clear that the Collector was satisfied that there was a contravention and show cause notice only given for the confiscation, should not be allowed to stand. In my opinion, such notice cannot be sustained and must be quashed.

8. The Rule is therefore made absolute to the extent that the notice u/s 6-B of the Essential Commodities Act, 1955 is set aside.

9. There will be no order as to costs.

10. Let operation of this order remain stayed for six weeks from today as prayed for by Mr. Mukherjee.