
(1995) 10 KL CK 0032
In the High Court Of Kerala
Case No : W.A. No. 106 of 1991

P. Rajagopalaswamy

APPELLANT

Vs

Govt. of Kerala and Another

RESPONDENT

Date of Decision : 16-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 6A, 6A(1), 6C

Citation : (1995) 10 KL CK 0032

Hon'ble Judges : K.T. Thomas, Acting C.J.; P. Shanmugam, J

Bench : Division Bench

Advocate : S. Sankarasubban, for the Appellant; Lal George), for the Respondent

Final Decision : Allowed

Judgement

K.T. Thomas, Ag. C.J.

1. Appellant stocked some bags of cement in his shop room which were seized by an official on 4-2-1989 alleging that such stocking of cement was in contravention of the provisions of the Kerala Cement Distribution (Licensing and Regulation) Order, 1974 (for short "the Cement Order"). The matter was reported to the District Collector and he initiated confiscation proceedings. By Ext.P3 order the District Collector confiscated the entire, stock of cement seized from the shop as per S.6A of the Essential Commodities Act (for short "the E.C. Act") read with the provisions of the Cement Order. Appellant preferred an appeal before the Government under S.6C of the E.C. Act, but the Government dismissed the appeal as per Ext.P5 order. Appellant challenged Exts.P3 and P5 orders in the Original Petition filed under Art.226 of the Constitution. Learned single Judge dismissed the Original Petition and hence this appeal. In Ext.P1 notice issued to the appellant he was asked to show cause why the cement seized from his shop room should not be confiscated. In the reply (Ext.P2) appellant has said that he purchased the cement for construction of a building

and it was for that purpose he kept the bags in his shop building. The confiscating authority found that storage of the cement in the shop room could only have been for sale.

2. Learned single Judge found that appellant has failed to show that the storage of cement was for his personal use. Learned single Judge relied on a report which the Sub Collector has forwarded stating that the stock was meant for sale.

3. It must be remembered that nobody has a case that the cement seized was levy cement. Nor has anyone a case that appellant was a stockist in cement. Learned counsel contended that the cement seized could not have been confiscated under law since appellant has not sold the cement to any other person.

4. Power of the Collector to confiscate contraband articles is vested in S.6A(1) of the E.C. Act. The seized articles can be confiscated only if the Collector is satisfied that there has been contravention of the order made under S.3 of the E.C. Act. The Cement Order is one of the orders made under the said provision.

5. As per Clause 3 of the Cement Order, no person shall have in his possession more than twenty bags of "levy cement". We need not vex our mind as to whether Clause 3 has been contravened since nobody has a case that the seized article is levy cement. As per Clause 4 of the Cement Order "no person shall, on or after the commencement of this Order, sell cement or carrying on business as a stockist, except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority". According to the Government Pleader, the appellant has contravened Clause 4 of the Cement Order.

6. "Stockist" is defined in Clause 2(j) of the Cement Order as a person "engaged in the business of purchase, sale or storage for sale of cement". This shows that one can become a stockist only if he engaged himself in the business of cement. A single instance of sale of a commodity is not sufficient to depict him as a businessman dealing in that commodity. To engage himself in the business of that article he should have carried on at least a few deals in that article or should have openly pronounced that he was dealing in that article. Here no body has a case that appellant had at any time "engaged in the business of cement". It is pertinent to note that Clause 4 prohibits a person to "carry on business as a stockist". Even to be a stockist one should have engaged in the business of purchase and sale of cement. Unless such a stockist carried on business as a stockist he is not contravening the clause. The clause involves combination of two processes. He must be a stockist first, which means he should have engaged in the business of purchase and sale of cement. In such capacity he should have carried on the business. It is not enough that a person has sold some cement once to make him a stockist in cement. A single swallow does not make a summer.

7. In Manipur Administration Vs. M. Nila Chandra Singh, Supreme Court dealt

with a case involving provisions in the Manipur Foodgrains Dealers Licensing Order, 1958 in which the definition of "dealer" is that person who is carrying on the business as a dealer. Gajendragadkar, J. (as His Lordship then was) has observed thus: The said definition shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 mds. or more at any one time. It would be noticed that the requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale, or storage; and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single casual or solitary transaction of sale, purchase or storage that would make a person a dealer. It is only where it is shown that there is a sort of continuity of one or the other of the said transactions that the requirements as to business postulated by the definition would be satisfied.

The above observations are apposite in this case also. We are, therefore, not satisfied that appellant has engaged in the business of purchase, or sale of cement.

De hors a stockist, the rule in Clause 4 of the Cement Order could be contravened only if one actually sells cement. It is not enough that he made preparation for sale of cement. Actual sale is sine qua non to attract the vice in the clause, if he is not a stockist. Here nobody has a case that appellant had, in fact, sold cement to any one. For the above reasons, we quash Ext.P3 order and direct the respondents to pay the price of the cement seized from the appellant within three months from the date of receipt of a copy of this judgment. Appeal is, accordingly, allowed.