(1984) 12 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11788 of 1984 & Civil Miscellaneous Writ Petition No. 11788 of 1984

Pankaj Dal Mill APPELLANT

Vs

The State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 04-12-1984

Acts Referred:
Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 6A, 6A(1), 6A(2), 6A(3)

Citation : (1985) AWC 123

Hon'ble Judges : S.K. Dhaon, J;P. Dayal, J

Bench : Division Bench

Advocate : R.R. Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—The Area Rationing Officer, Varanasi, on 5th July, 1984, conducted a raid on the premises of M/s. Pankaj Dal Mill, a partnership firm. On that very day the said officer lodged a first information report alleging, inter alia, that the provisions as contained in the U.P. Essential Commodities (Display of Price and Stocks and Control of Supply and Distribution) Order, 1977 (hereinafter referred to as the Order) had been contravened and, therefore, an offence u/s 3 read with Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) had been committed. The Area Rationing Officer, it appears, also seized the stock of Dal which was found at the premises of the said firm at the time of the raid. An order has been passed for the sale of the seized commodity. The Petitioner feels aggrieved, hence this petition under Article 226 of the Constitution.

2. The commodity seized was given in the Supurdagi of one Sri Lautu Ram, who has been arrayed as the Respondent No. 3 to this petition. A notice was issued purporting to be u/s 6-B of the Act direct (sic) the said firm to show cause as to why the commodity seized from it should not be confiscated. The officer

concerned fixed 31st July, 1984 for the appearance of the party concerned in proceedings initiated for the confiscation of the commodity. A reply was submitted by and on behalf of the firm on 14th August. 1984, stating therein, inter alia, that no offence whatsoever had been committed. It was prayed that the proceedings for the confiscation should be dropped and the commodity seized may be placed in the custody of the said firm. It appears that the proceedings for the confiscation of the commodity as contemplated by the provisions of Section 6A of the Act are still pending.

3. The Area Rationing Officer, on 16th July, 1984 passed an order purporting to be u/s 6A(2) of the Act directing that the seized commodity should be put to public auction as be felt that the commodity was subject to speedy and natural decay. He also recorded a finding that, even otherwise, it was expedient in public interest that the commodity should be sold. The officer directed that the notice should be issued and the matter may be placed before him on 31st July, 1984. It appears, a reply was given by one of the partners of the firm and it was pointed out that in fact no offence had been committed and the first information report had been lodged by the Area Rationing Officer on false allegations. It was also alleged that ''Dal'', the commodity which was the subject matter of the proceedings was not even weighed and without doing so it was just mentioned in the first information report that the quantity found at the spot was not in consonance with the entries made in the relevant registers. The firm also pleaded, that, if the commodity was put to sale, it would suffer an irreparable loss. It also gave an undertaking that it would not, in future, take the plea that the commodity had decayed or spoiled on account of the seizure. It was reiterated that the custody of the commodity should be given to the firm on its furnishing adequate security. The concerned officer, on 27th August, 1984, rejected the pleas raised and the prayer made by and on behalf of the firm.

4. In support of this petition Sri R.R. Yadav has made four submissions (SIC) They are: (1) The order dated 16th July, 1984, by which the commodity was directed to be sold by public auction is illegal and without jurisdiction as the Officer passing the same has not recorded his finding that he is satisfied that the provisions of the Order have been contravened, (2) In proceedings u/s 6A(2) of the Act it was incumbent upon the Officer to hold an enquiry on the merits of the case and record his findings thereon, (3) Proceedings for the confiscation of the commodity having been initiated u/s 6A of the Act, no order for the sale of the commodity can be passed u/s 6A(2) of the Act, (4) The defence of the firm will be seriously prejudiced, if a prosecution is launched before the Special Judge, in case the commodity is allowed to be sold as there was serious dispute regarding the quantum of the commodity seized at the spot.

5. The provisions of Section 6A empowered the Collector concerned to pass an order of confiscation of the essential Commodity seized. Section 6A provided for an appeal against an order of confiscation. Sub-section (2) of Section 6C provided that where an order u/s 6A was modified or annulled on appeal and

where a prosecution launched for the contravention of the Order in respect of which an order for confiscation had been passed u/s 6A ended in the acquittal of the person concerned, and in either case it was not possible to return the commodity seized, the person concerned was to be paid the price of the commodity on the footing that it (the commodity) had been sold to the Government. The provision also provided for the payment of reasonable interest to the person concerned from the date of the seizure of the essential commodity. The manner of determination of the price of the commodity was also laid down in that provision. Section 6D provided that the power of confiscation exercised by the Collector did not affect the power of the Court concerned to inflict any punishment on any person which was permissible under the Act. Section 7 provided for penalties to be awarded to any person who contravened any order made u/s 3. One of the penalities could be the forfeiture of any property in respect of which the Order made u/s 3 had been contravened. Thus, the Legislature had made it clear that the proceedings regarding the confiscation of an essential commodity were independent and distinct from the proceedings before a Court which was empowered to award the penalities enumerated in Section 7. It was not incumbent upon the State to launch a prosecution of a person for having contravened any Order made u/s 3 merely because the Collector had, in the exercise of powers u/s 6A, passed an order of confiscation of an essential commodity in respect of which a criminal prosecution could be launched. Likewise, criminal proceedings could be initiated before a competent criminal court and penalities awarded by it even without confiscation proceedings being taken u/s 6A. Further, confiscation proceedings and the criminal prosecution could go on simultaneously or the criminal proceedings could be initiated subsequent to the passing of the Order of confiscation u/s 6A. However, the fate of the confiscation proceedings was made dependent upon the success or failure of the prosecution, if launched. If the prosecution ended in a conviction the Order of confiscation, if not set aside or modified etc. u/s 6C(2), became final. On the contrary, if the prosecution ended in acquittal the Order of confiscation fell through automatically even if the same had been upheld in appeal.

6. The Legislature envisaged the normal rule that the commodity confiscated should be returned to the person concerned in the event that the Order was set aside etc. in appeal u/s 6C(2) or in the event the prosecution ended in the acquittal of the person concerned. In the event restoration of the commodity was not possible, the price of the said commodity was required to be paid to the person concerned. It is to be noted that the Legislature did not make any specific provision for the sale of the seized commodity at any stage particularly before the passing of the Order of confiscation.

7. Sub-sections (2) and (3) of Section 6-A were inserted by the Parliament by Act No. 92 of 1976 with effect from 22nd September, 1976. Sub-section (2) empowers the Collector to pass an order for the sale of the seized essential commodity if he is of the opinion that the same is subject to speedy and natural

decay or it otherwise expedient in the public interest to do so. Sub-section (3) provides for the payment of the sale proceeds of the commodity sold in pursuance of an order passed under Sub-section (2) to the owner of such a commodity or to the person from whom the same was seized. Such a course of action is mandatory upon the happening of certain contingencies, the first is where no order of confiscation is ultimately passed by the Collector. The second is, where an order on appeal filed under Sub-section (1) of Section 6C requires the payment of the sale proceeds. The third is, where the person concerned is acquitted in a prosecution instituted for the contravention of the Order in respect of which an order had been made. In Sub-section (2) of Section 6C the Legislature has made the corresponding change so as to bring the provisions contained therein in line with the provisions contained in Sub-section (3). It is thus clear that the Order of the sale of a seized commodity is rendered ineffective automatically in the happening of any one of the aforementioned three contingencies.

8. From a reading of the provisions contained in Sub-sections (1), (2), (3) of Section 6A it is apparent that no order for the sale of the commodity seized can be passed unless proceedings for the confiscation of the commodity seized have commenced under Sub-section (1) of Section 6A. In other words, the machinery as contemplated in Sub-section (2) of Section 6-A cannot be set in motion unless the ball has been set in rolling by proceedings u/s 6A(1). Section 6B provides the procedure for that purpose. It provides for the giving of a show cause notice to the dealer concerned by the District Magistrate as to why the commodity seized should not be confiscated. It follows that the proceedings under Sub-section (2) of Section 6A are dependent upon the proceedings under Sub-section (1) of Section 6A to a limited extent, that is, the proceedings under the later provision cannot commence unless the proceedings under the former provision have been initiated. Once that stage is arrived at, the two streams start flowing in different channels.

9. In contrast to the provisions contained in Section 6A that before passing an order of confiscation of any commodity the authority concerned has to be satisfied that there has been a contravention of the Order, no such duty has been cast upon the officer passing an order under Sub-section (2) directing the sale of the seized essential commodity. The reason is apparent. The power has been conferred upon the Collector to direct the sale of the seized commodity keeping in view the interest of the consumer public. The underlying object appears to be that prompt action should be taken for maintaining the supplies or increasing the supplies or for securing the equitable distribution of the essential commodity or making it available at fair prices. Essential commodities cannot be kept in storage for indefinite period. In that event the very purpose for which the Act has been enforced, namely, that the flow of the essential commodities to the consumers should not be interrupted, will be defeated. The danger of the commodities deteriorating in quality is kept in storage till such time as the proceedings u/s 6A culminate is meant to be avoided and that is why the

Collector is required to form an opinion as to whether the particular essential commodity is subject to speedy and natural decay or not. The Collector should also see that there should not be a short supply of the essential commodity in a given area or locality under his jurisdiction. It is for the Collector to consider whether the essential commodity seized should be sold or kept in storage until the completion of the proceedings u/s 6A. This will depend upon the supply or distribution position of the essential commodity concerned to the consumer public. That is why the Legislature has placed the matter entirely within the discretion of the competent authority to determine in a given case whether the essential commodity seized should be sold so as to make it available to the needy consumer public or whether that commodity should be kept in storage till such time when the proceedings u/s 6A conclude.

10. The Legislature has also kept in view the interest of the dealer while enacting Sub-section (2) in Section 6A. The sale of the commodity seized will safeguard the rights of a dealer in the event it is ultimately found that no contravention or violation of any control order had taken place. We have already seen that the proceedings for the sale of the commodity u/s 6A(2) will stand or fall not only by the fate of the proceedings taken u/s 6A(1) but also by the ultimate decision of the criminal Court, if a prosecution is launched. The position, therefore, is that the State retains the sale proceeds of the commodity sold in proceedings u/s 6A(2) as the trustee of the owner of that commodity and it is under a legal obligation to hand over the amount to the dealer concerned if the situation so arises, as is contemplated by the provisions contained in Section 6A(1).

11. The scheme as formulated by the Legislature in Section 6A(2) clearly negatives the idea that even at the stage when the Collector is passing an order directing the sale of an essential commodity seized, he should record a finding or satisfaction that there has been a contravention of the Order. It is to be noted that both in Sub-section (1) and Sub-section (2) of Section 6A the Collector of the district concerned or the Presidency Town concerned, is the officer empowered to act. As already mentioned, the object and purpose for enacting Sub-section (2) in Section 6A is to not only secure the interest of the consumer public out also to safeguard the interest of the dealer. The Legislature could not and did not intend that the Collector should perform the same/exercise twice over, namely, at the stage of Sub-section (1) and again at the stage of Sub-section (2). The first submission, therefore, fails.

12. We have already emphasised that the proceedings, u/s 6A(2) are independent of the proceedings u/s 6A(1). Both the proceedings can go on simultaneously. Apart from the fact there is neither any express nor any implied prohibition in the Act in that regard, the words used in Clause (a) of Sub-section (3) of Section 6A indicate a different legislative intendment. The words used therein are "Where no order of confiscation is ultimately passed by the Collector" (emphasis supplied by us). In the word emphasised by us it is implicit that proceedings for confiscation of the commodity seized have commenced, and

a show cause notice as contemplated by the provisions in Section 6B has been given to the person concerned and thereafter the Collector decides not to pass an order of confiscation. This shows that the Legislature clearly intends that the proceedings for the confiscation of an essential commodity seized and the proceedings for the sale of such a commodity may go on simultaneously. The third submission is, therefore, devoid of any merits.

13. In view of what has been stated above, the remaining two submissions too must fail. In view of the observations made by us above, the question of the Collector making an enquiry on the merits of the case while proceeding u/s 6A(2) does not arise. We have already emphasised that in proceedings under 6A(2) the Collector is merely concerned with the interest of the consumers. The Collector is authorised under Sub-section (2) of Section 6A to direct the sale of the commodity which has been seized, A recovery memo of the commodity seized, in the instant case, must have been prepared and in that memo the quantity of the Dal seized must have also been mentioned. However, we may make it clear that the proceedings u/s 6A(2) regarding the sale of the commodity shall have no bearing whatsoever on the defence which the Petitioner may ultimately take regarding the actual quantum of the Dal which was physically found in the premises of the firm at the time of the raid. If a prosecution is launched, the Court concerned shall adjudicate upon all the pleas raised by and on behalf of the firm including the plea that the quantity as shown in the recovery memo did not represent the correct picture. The Court shall ignore altogether the effect, if any, of the sale of the quantity of Dal as a result of the Order dated 16th July, 1984, passed by the Additional District Magistrate (Supplies) Varanasi. We also make it clear that we are expressing no opinion whatsoever on the merits of the case and it will be open to the State to launch or not to launch a prosecution of either the firm or all or any of its partners.

14. Though the writ petition has not been formally admitted as yet, a counter-affidavit has been filed by and on behalf of the State and a rejoinder affidavit has been filed by and on behalf of the Petitioner. We are, therefore, deciding this petition finally.

15. The writ petition lacks merits and is accordingly dismissed. However, there shall be no order as to costs.

Petition dismissed.

