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(1996) 04 PAT CK 0011

In the Patna High Court

Case No : Cr.W.J.C. No. 810 of 1993

Parsuram Prasad @ Parsuram Mahto — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:
Essential Commodities Act, 1955 — Section 2, 3, 6A, 7

Citation : (1996) 2 BLJR 1636 : (1996) 2 PLJR 56

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Naresh Kumar Sinha, J.—Both these writ applications have been filed by Parsuram Prasad alias Parsuram Matho, one (Cr. W.J.C. No. 810/93) for quashing confiscation proceedings initiated u/s 6A of the Essential Commodities Act vide E.C. Case No. 59/93-94 pending in the Court of the Collector, Patna and the other (Cr. W.J.C No. 44/94) for quashing the entire criminal proceedings against the petitioner in Special Case No. 11/93 u/s 7 of the E.C. Act pending in the Court of the learned Special Judge (Rural), Patna.

2. The petitioner claims to be the owner of a Dal Mill, namely, M/s. Parsuram Dal Mill. He produces split pulses from the whole pulses and sells it to the wholesale dealers and/or through commission agents. An inspection was made in the Dal Mill premises of the petitioner by Block Supply Officer-respondent No. 2 on 31.7.1993 and different varieties of pulses were seized and criminal proceedings were initiated on the basis of a prosecution report lodged by respondent No. 2 for the alleged violation of the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as "the Unification Order") and the provisions of Bihar Essential Articles (Display of Prices and Stocks) Order, 1977 (hereinafter referred to as the ''Display Order'') Xerox copy of the seizure list and prosecution report have been enclosed as Annexures 1 and 2 of Cr. W.J.C. No 44 of 1994.

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3. From perusal of Annexure-2 which is addressed to the Officer--in--charge, Mokama Police Station by Sri Lallan Singh, Block Supply Officer on the basis of which Mokama P.S. Case No. 123 of 1993, dated 1.8.1993 u/s 7 of the E.C. Act was registered, it appears that under the verbal orders of the Sub-Divisional Magistrate, Sri Singh along with the Assistant District Supply Officer and Sub-Inspector of Police along with police force raided the business premises of M/s. Parsuram Dal Mill located at Goshala Road, Mokama. No sooner they reached the business premises, there was failure of electricity and as such the business premises as also two different godowns were kept under watch for the whole night. The search began in the morning on 1.8.1993. No stock register or price list were found displayed in any part of the business premises. The Mill was found in the rented premises of the house of Sato Singh and one Mithilesh Singh and while 62 baga of Masoor Dal and 73 bags of Masoor Dal were found in the portion of the house of Sato Singh, 114 bags of Masoor Dal were found in the portion of the house belonging to Mithilesh Singh. In course of search of another godown on the Goshala Road, in the house of one Sahligram Singh, 34 bags of Masooor, 8 bags of Arhar Khara and 28 bags each containing 20 kgs. of Arhar Dal were found. In the third godown of Goshala Road, from the house of Sri Rajiv Kumar, 52 bags of Masoor Dal were found. The articles were seized in the presence of the witnesses vide Seizure List (Annexure-1 series). Sri Prem Chand, said to be the Munsif of the petitioner''s firm, was found running away with certain papers. On being apprehended, the papers were recovered from him suggesting that the firm was also dealing with the purchase and sale of wheat. This arose the suspicion of the raiding party that the firm had entered into business transactions in fictitious name and was evading tax on a big scale.

4. Along with Cr. W.J.C. No. 810 of 1993, the petitioner has annexed copy of the seizure list in respect of 62 bags of Masoor Dal each containing 90 kgs. 73 bags of Khara Masoor each containing 80 kgs. A copy of the order dated 23.8.1993 passed by the Collector, Patna in E.C. Case No. 59/93-94 has also been filed directing issue of notice to the petitioner to show cause why the articles seized may not be confiscated.

5. Learned Counsel appearing in support of both the writ petitions argued that the criminal prosecution of the petitioner and the confiscation proceedings in respect of the articles seized were all illegal and without jurisdiction. He argued that the petitioner who was a Dal Mill owner, had not violated the provisions of any Order issued u/s 3 of the E.C. Act, namely, the provisions of Unification Order 1984 and the Display Order, 1977". It was also argued that the Block Supply Officer-respondent No. 2 was not competent to make the seizure in view of Clause 30 of the Unification Order and, the criminal proceeding initiated on the basis of such illegal seizure, is illegal and without jurisdiction. Learned Counsel, in support of his contention that the petitioner was a producer and not a dealer and the provisions of the Unification Order and Display Order were not attracted in his case as they were applicable and workable on dealers only, referred to relevant provisio of the Orders.

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6. The relevant provisions of the Unification Order and Display Order, therefore, needs to be noticed. The Bihar Trade Articles (Licenses Unification) Order, 1984 defines ''dealer'' under Clause 2(e) ''producer'' under Clause 2(n) which are as follows:

2.(e) "dealer" means a person, a firm, an association of persons or a Cooperative Society other that a National and State level Co-operative Society, engaged in the business of purchase, sale or storage for sale of any trade articles whether or not in conjunction with any other business, includes his representative or agent but does not include-

(i) A person who holds or is in possession of agriculture land under any tenure of any capacity and on which he raises or has raised crop of food grains, oilseeds or whole pulses;

(ii) A manufacturer of sugar;

(iii) Hawkers engaged in the purchase and sale of non-controlled cloth.

2.(n) "producer" means a person carrying on the business of milling any of the pulses or expelling, extracting or manufacturing or refining any edible oil:

(i) By buying pulses or oilseeds for being proceed by himself and selling the finished products to a wholesaler or through a Commission Agent, or

(ii) By doing any of the processes of milling, expelling, extracting of manufacturing or refining on behalf of another.

Under the Bihar Essential Articles (Display of Prices and Stocks) Order, 1977, the definition of ''dealer'' is contained in Section 2(c) which reads as follows:

2(c) "Dealer" means a person who deals in the sale or storage for sale either wholesale or retail of any of the articles mentioned in Schedules I and II and includes agent of representative or Arhatiya.

The charging provisions of the Unification Order Clause 3 and charging provision of the Display Order under Clause 3 cast an obligation upon a dealer to follow the provisions of the Unification Order and Display Order but no such obligation is cast upon the producer either under the provisions of Unification Order or the Display Order. Clause 3 of the Unification Order says that no dealer shall after the commencement of the Order carry on business of purchase, sale or storage for sale of any the trade articles mentioned in Schedule I except under and in accordance with the terms and conditions of licence issued in this behalf by the Licensing Authority under the provisions of this order. Clause 3 of the Display Order says that every dealer shall before commencement of the order carry on business displaying at a conspicuous place near the entrance of his business premises the following which includes a list of prices and stocks of all articles mentioned in Schedule Tin which he deals.

7. Learned Counsel for the petitioner, in support of his contention that the

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petitioner who was a producer and not a dealer was not required to take licence or display the stock and the relevant provisions of the Unification Order and Display Order were not attracted in his case as he was not a dealer has referred to a decision of Allahabad High Court. Learned Counsel for the petitioner submitted that the definition of producer and dealer in the U.P. Essential Commodities (Display of Prices and Stocks and Control of Supply and Distribution) Order, 1977 and U.P. Oilseeds (Product Control) Order, 1966 (Licensees Order) were similar to those contained in the Unification Order and Display Order and a Division Bench of Allahabad High Court has occasion to consider a similar question in the case of Hari Oil and General Mills and Ors. v. The State of U.P. and Ors. reported in 1987 EFR 211. The photo copy of the aforesaid decision was filed in course of hearing. The Court came to the conclusion that the provision of the aforesaid Orders were not applicable to and workable on the producers. The judgment of the Allahabad High Court was challenged before the Hon''ble Supreme Court in SLP No. 14242 of 1986 and Special Miscellaneous Writ Petition No. 6288 of 1986 and other cases and the SLP was dismissed.

8. Another ground urged on behalf of the petitioner is that the provisions of the Unification Order, 1984 are unworkable and unenforce--able so far trade articles pulses are concerned on account of the State Government''s failure licensees fee as required under Clause 4(1) read with Schedule IV of the Unification Order, 1984. It was pointed out that till this date, no licence fee has been prescribed by the State Government for trade articles pulses. No counter-affidavit was filed on behalf of the State in either of the two writ petitions and learned Counsel appearing for the State has not been able to controvert the aforesaid stand taken on behalf of the petitioner. Learned Counsel for the petitioner referred to a number of decisions of this Court including one in Om Prakash Bhartia v. The State of Bihar and Ors. Cr. W.J.C. No. 412 of 1991, disposed of on 19.2.1992 by a Division Bench of this Court, copy of which is Annexure-3. The Division Bench referred to an earlier decision of this Court reported in 1988 PLJR 502 and held that "in the absence of licenses fee having been prescribed under the Unification Order, 1984, the pulses cannot he said to have been brought within the purview thereof." In the circumstances, the Court quashed the criminal investigation against the petitioner initiated on the basis of a first information report alleging certain irregularities committed by the petitioner in relation to pulses.

9. Learned Counsel for the petitioner referred to the provisions of Clause 30(1) of the Unification Order, 1984 in support of his contention that the Block Supply Officer, the informant of the criminal case, was nor competent to raid the Dal Mill of the petitioner and seize the stock of pulses. Clause 30 vests Block Supply Officer, Assistant Marketing Officer Supply Inspector and any police Officer not below the rank of Sub-Inspector or any other person empowered by the Government amongst other with powers of entry, search and seizure etc. but as provided by G.S.R 47, dated 7.10.1985, such power in respect of roller flour mills (rice mills, pulses mills and oil mills) is not vested to any one below the rank of

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Executive Magistrate. These is no evidence on the record of that the Block Supply Officer-respondent No. 2 or the Assistant District Supply Officer were of the rank of Executive Magistrate or above. The premises of the petitioner were admittedly of a Dal Mill and under Clause 30(1) of the Unification Order, 1984, no person below the rank of Executive Magistrate could have been entered it for the purpose of search and seizure. In the circumstances, it was argued that the criminal prosecution of the petitioner and the confiscation proceedings in respect of the stock of pulses seized, were bad and illegal. On behalf of the State, nothing was produced to show that the Block Supply Officer or the Assistant District Supply Officer were not below the rank of Executive Magistrate. It being so, the raid in the Dal Mill and seizure of the articles were bad, illegal and without jurisdiction and no criminal, prosecution or confiscation proceedings on the basis of such illegal seizure can be held to valid.

10. Learned Counsel appearing for the State, in course of argument, referred to the provisions of Bihar Edible Oil and Pulses (Procurement and Proceeding) Order, 1977. Clause 2(b) of the said Order defines "dealer" to mean a person who whether for commission, remuneration or otherwise, carries on the business of purchase, sale or storage for sale of any one or more varieties of edible oil and pulses in question exceeding five quintals at any one time and includes any person who carries on the business of purchase or storage of any one or more of schedule oil seeds, scheduled pulses for crushing or processing them in quantities exceeding five quintals at any one time; Clause 2(e) is to the effect that the ''pulses'' mean Urad, Moong, Arhar, Massor, Laobia, Rajmaha, Gram or any other Daal whether whole or split with or without husk. It was argued on behalf of the petitioner that the written report alleged contravention against the petitioner of the provisions of the Unification Order, 1984 and Display Order, 1977 and not a the provision of any Control Order including the Bihar Edible Oil and Pulses (Procurement and Processing) Order, 1977. Otherwise also, it is not the case of the prosecution that the petitioner would be described as a ''dealer'' under Clause 2(d) of the aforesaid Order.

11. There was some argument at the bar on the question whether on the allegations made, the petitioner had committed any contravention of any Order in respect of wheat. Counsel for the petitioner vehemently denied the contention put forward on behalf of the State that the written report also discloses that the petitioner was dealing in the sale and purchase of wheat. Admittedly, not a single bag of wheat was recovered and seized in course of the raid of the business premises and godowns. According to the written report, some papers had been seized suggesting deals in the fake name of the firms in respect of wheat and the written report specifically alleged that evasion of tax on big scale had been committed. There is no dispute that the criminal case in question has been registered against the petitioner for violation of Orders issued u/s 3 of the E.C. Act. If the petitioner was alleged to be evading tax on large scale on account of sale, that would be a subject-matter of another case and covered by the written report of the present case on the basis of which criminal investigations are

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pending, In this view of the matter, it is not necessary to consider the arguments advanced on behalf of the parties with regard to fixing a storage limit for food grains such as rice and wheat by the State Government in respect of Cities described as Clause A, B and C. In that connection, Counsel for the petitioner referred to a decision of Ranch! Bench of this Court in M/s Banarsilal Jhunjhunwala and Sons Vs. The South Bihar and Chotanagpur Area Electricity Board, Ranchi and Others, . The Court while dealing with a case in which 467 bags of rice were found in the business premises of the petitioner, had referred to Clause 2(u) of the Unification Order, 1984 which refer to storage limit fixed by the Government from time to time. The Court, in view of the fact that no storage limit had been fixed by the State Government, had quashed the criminal proceedings against the petitioner despite the allegation made that he was found strong 467 bags of rice in his business premises. As already observed earlier, it is not necessary to decide this question for the petitioner does not appear to have been prosecuted for violation of the Unification Order or Display Order in respect of wheat.

12. In view of what has been stated above, it appears that the petitioner was a Daal Mill owner and hence producer and not dealer within the meaning of the Unification Order, 1984 and Display Order, 1977 and hence no case of contravention of the provisions of the said Orders can be made, against him. Moreover, respondent No. 2 had no authority to raid and seized the bags of pulses and hence the criminal prosecution of the petitioner as also the confiscation proceedings in respect of the articles seized are not in accordance with law and are abuse of the process of Court Both the writ applications are, therefore, allowed and the criminal prosecution as also the confiscation proceedings are hereby quashed.

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