
(1999) 05 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 1807 of 1999

Pooja Engineering Pvt. Ltd. and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Essential Commodities Act, 1955 — Section 6A

Citation : AIR 1999 Patna 157 : (2000) 3 PLJR 686

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Navaniti Pd. Singh, for the Appellant; J.C. to S.C.-I, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The petitioner No. 1 is a company incorporated under the Companies Act, 1956. The petitioner No. 2 is one of its Directors. They seek a declaration that the provisions of the Bihar Trade Articles (Unification of Licences) Order, 1984 are not applicable to the petitioner, and the respondent Collector has no authority under the provisions of the said Order to direct them to shift their place of business to the Principal Market Yard of the Market Committee at Katra, Patna City.

2. The petitioners are engaged in the business of manufacture, sale and distribution of bread, known by its brand name "Shakun Bread". For manufacturing bread, they purchase and store flour (maida), sugar and edible oil, such storage is not for sale but for the purpose of consumption for manufacturing another commodity i.e. bread which is not a specified commodity in Schedule I of the Control Order. The petitioners contend that not being engaged in the business of purchase, sale or storage for sale of a specified trade article, they cannot be called "dealer" within the meaning of said Control Order. Petitioner No. 1, however, applied for a licence under the said Order in the year 1987 when it was establishing its industry, under a wrong advice. A provisional

wholesale licence, being licence No. 3/89, was granted on 16-5-89 with respect to food grains and edible oils. A provisional retail licence being licence No. 8/89 was also granted on the same day with respect to coal and sugar. In the body of the licence it was mentioned that the commodities specified therein were meant only for storage. According to the petitioner the commodities in question being essential to the manufacture of bread, it is necessary to purchase and also store the same but such storage not being for the purpose of sale, it does not come within the purview of Clause-2(e) of the Control Order. Not being a dealer and the said Control Order not being applicable to them, the Collector had no jurisdiction to issue any direction under the Control Order, asking them to shift their business to another place.

3. Counsel for the petitioners while reiterating the petitioners' case as made out in the petition submitted that the issue is covered by two Bench decisions of this Court in *Jamshedpur Beverages v. State of Bihar* 1996 (1) ECC 389 and *Britannia Industries Ltd. and Another Vs. State of Bihar and Others* .

4. The respondents have filed counter-affidavit in which it has been stated that the petitioner No. 1 is a wholesale dealer in foodgrains and edible oils and comes within the purview of the said Control Order and the action of the Collector, Patna, therefore, is in accordance with law. It has further been stated that as the petitioners failed to shift their business and, thus, comply with the direction of the Collector, their wholesale licence has been cancelled on 3-2-99. It is said that the petitioners have an alternative remedy by way of appeal under Clause 28 of the Control Order before the Divisional Commissioner.

5. Having gone through the aforementioned two decisions of this Court, I find that the point of issue is squarely covered by them. In *Jamshedpur Beverages v. State of Bihar* 1996 1 ECC 389 (supra) this Court held, after noticing the various provisions of the Control Order, that the scheme of the Order discloses that the requirement of the licence under the Order is applicable only to such persons who carry on business of purchase/sale and storage for sale of any trade article. If the particular trade article is consumed by the concerned person in the sense that he has utilised it for the manufacture of any other commodity, such a person cannot be said to be carrying on business in the purchase/sale of that trade article, nor does he store for sale such article. He is neither retailer nor a wholesale dealer. Indeed, he is not a dealer at all. Having regard to the scheme of the Order and the terms and conditions contained in the licences issued to a dealer under the said Order, such person is not required to apply for licence under the said Control Order.

6. It would appear that this Court in coming to the aforesaid conclusion relied on a Full Bench decision of this Court in *Steel Authority of India Ltd. Vs. Bihar Agricultural Produce Market Board and Others*, and a decision of the Supreme Court in *State of U.P. and others etc. Vs. Janta In. Udyog and others etc.*, . In the former case the point at issue was whether by reason of the fact that wood was utilised by the petitioner for manufacturing steel, it was required to take licence

under the provisions of the Bihar Agricultural produce Market Act treating it as a trader under the Act. The Full Bench held that though the wood which is an agricultural produce, is utilised by the petitioner-company in manufacturing steel, it could not be considered to be a trader in that commodity within the meaning of that Act. In the latter case the Supreme Court upheld the decision of the Allahabad High Court which had held that brick not being a notified commodity under the U. P. Coal Control Order, 1977, the petitioner could not be compelled to take licence under that Order merely on the ground that it was purchasing coal, which was the notified commodity for manufacturing bricks,

7. While the above mentioned three cases were cases relating to Beverages (soft drink) steel and brick respectively,. Britannia Industries Ltd. and Another Vs. State of Bihar and Others was a case of bread itself, the commodity which is subject matter of the present case. In that case, edible oils, wheat flour and sugar had been seized on the ground of violating of the Unification Order. The seizure was challenged on the ground that the provisions of the said Order were not applicable as the petitioner was not a dealer. This Court, following the decisions in the above-noted three cases, upheld the contention.

8. It would thus appear that the point at issue is not *res integra* and is squarely covered by aforesaid decisions. It appears to be a well settled legal position that where the consumption/utilisation of a commodity results in manufacture of another commodity and such commodity (and produce) is not a notified commodity under the Control Order, the person concerned cannot be said to be "dealer" merely on the ground that it purchases some notified commodities and stores them for the purpose of consumption in the manufacture of a new commodity.

9. A vain attempt was made by the counsel for the respondents to submit that "bread" has been specified in Schedule-II of the Unification Order. Counsel for the petitioner, rightly pointed out that the requirement to take licence under clause-3 of the Unification Order relates to only such commodities/trade articles which are mentioned in Schedule-1, and so far the commodities mentioned in Schedule-II are concerned, the only relevance is that storage limit can be fixed for them. In View of the clear provision, of Clause-3, the submission of the counsel for the petitioners appears to be well founded.

10. In the above view of the matter, I have no difficulty in holding that the petitioner No. 1 is not a "dealer" within the meaning of the Bihar Trade Articles (Licences Unification) Order, 1984 and, therefore, provisions thereof are not applicable to it. That being the position, the Collector, Patna had no jurisdiction to issue any direction within framework of that Order, to shift its business to another place. Any consequential action such as cancellation of the licence, therefore, must also be held to be illegal--

In the result, the order of the Collector, Patna dated 3-2-99 as contained in Annexure-4 is quashed and this application is allowed.