
(2002) 09 BOM CK 0025

In the Bombay High Court

Case No : Criminal Application No's. 174, 213 and 214 of 1999

Pradeep Bhanose and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (2003) BomCR(Cri) 706 : (2003) 1 MhLj 40

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : M.S. Gupta, for the Appellant; N.S Khubalkar and K.S. Dhote, A.P.Ps., for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—In all these applications, the applicants have been prosecuted under Sections 3 and 7 of the Essential Commodities Act, 1955 read with Clauses 12B and 12E of Colliery Control Order, 1945. In all these cases, the Police had seized Trucks carrying steam coal. According to the learned Advocate for the applicants, the Colliery Control Order, 1945 was modified by the Central Act vide Notification dated 24th July, 1967 published in Part II section Sub-section (ii) of The Gazette of the India, Extraordinary dated The 24th July, 1967. The said Notification reads as under :

"S. O. 2464 - In pursuance of Clauses 12B and 12E of the Colliery Control Order, 1945 as continued in force by Section 16 of the Essential Commodities Act, 1955 (10 of 1955) the Central Government hereby authorises a person -

(a) to acquire or purchase or agree to acquire or purchase, or

(b) to dispatch or agree to dispatch or transport, or

(c) to divert or transfer,

without any order of allotment or written authority, non-cooking coals of all

grades produced in all coal fields, cooking coals not required for metallurgical consumers and coal produced in Assam. Provided that such coal shall be consumed within India."

No. C5-12(29)/66-III Sd/N.D. Gupta, Joint Secretary to the Government of India.

Sd/True copy.

2. According to the learned advocate for the applicants, the non cooking coals of all grades produced in all coal fields, cooking coals not required for metallurgical consumers and coal produced in Assam, does not now require any order of allotment or written authority provided such coal is consumed within India. Therefore, according to him, the seizure of steam coal meant for use in Factories etc. now does not fall within the restrictions contained in Clause 12B and 12E of the Colliery Control Order, 1945. Therefore, according to him, the prosecution of the petitioners is required to be quashed. In support of his submission, he has placed reliance on the Judgment of this Court in Sanjay Kumar Agrawal and Anr. v. State of Maharashtra and Ors. (Criminal Application No. 9498/89 which was decided on 19-7-1989). According to the learned advocate for the applicants, in that case in similar circumstances, an investigation was quashed and set aside as also the seizure of the Trucks. He, therefore, seeks quashing of the proceedings in all these applications.

3. The State has filed Return in Criminal Case No. 174/99 wherein it was stated that the coal is an essential commodity u/s 2(a)(ii) of the Essential Commodities Act, 1955. The Colliery Control Order, 1945 makes provision for regulating the production supply and distribution of the coal. The said order postulates that coal shall be supplied by the Colliery owners to the persons engaged in the business of production supply and distribution of or trade or commerce in coal on the basis of the order of allotment issued by the coal controller. Then reference has been made to Clause 12B of the said Control Order. It is further stated that the Truck in question was seized carrying coal since there was no authorisation or any receipt authorising transport of the coal nor there was any transport permit. It was further contended in the Return that the copy of Judgment upon which reliance has been placed, has not been enclosed. Learned A.P.P. urged before me that the Colliery Control Order, 1945 is saved u/s 16 of the Essential Commodities Act, 1955 but was not able to get out of the Notification dated 24th July, 1967. The learned A.P.P. did not dispute that the coal which was seized in question was non cooking coal.

4. The Colliery Control Order, 1945 was issued by the Central Government in exercise of powers conferred by Sub-rule 2 of Rule 81 of the Defence of India Rules. When the Essential Commodities Act, 1955 was brought into force, coal including coke and other derivatives were included in the definition of Essential Commodity u/s 2(a)(ii) of the Essential Commodities Act, 1955. Section 3 of the said Act empowers the Central Government to provide for regulating or controlling the production, supply and distribution thereof and trade or

commerce therein of any essential commodity under the Act. If any person contravenes any orders made u/s 3, the same is punishable u/s 7 of the said Act. The applicants are sought to be prosecuted under Sections 3 and 7 read with Clauses 12B and 12E of the Colliery Control Order, 1945. Clauses 12B and 12E of the said orders reads as under:

"12B. A person who has been allotted coal under this order shall not use it otherwise than in accordance with the conditions contained or incorporated in the document containing the order of allotment and shall not divert or transfer any such coal to any other person except under a written authority from the Central Government and at such price as may be fixed by that Government and in fixing such price, the Central Government shall have due regard to the price fixed under Clause 4 of this order and the freight, cesses, taxes, middleman's commission and other incidental charges, including supervisory and storage charges, paid by the original allottee."

12E. No person shall acquire or purchase or agree to acquire or purchase any coal from a colliery and no colliery owner or his agent shall dispatch or agree to dispatch or transport any coal from the colliery except under the authority and in accordance with the conditions contained in a general or special authority of the Central Government."

By a Notification dated 24th July, 1967 referred to above, restrictions imposed under the Colliery Control Order, 1945 have been modified by the Central Government insofar as non cooking coal of all grades, produced in all coal fields, cooking coals not required for metallurgical consumers and coal produced in Assam do not now required any order of allotment or written authority provided such coal is consumed within India. In view of this Notification, no written order or order of allotment or written authorities are required for non cooking coal of all grades, produced in all coal fields. Therefore, the prosecution of the applicants under Sections 3 and 7 of the Essential Commodities Act, 1955 read with Clauses 12B and 12E of the Colliery Control Order, 1945 cannot be sustained and the prosecution is required to be quashed.

5. For the aforesaid reasons, the prosecution of the applicants under Sections 3 and 7 of the Essential Commodities Act read with Clauses 12B and 12E of the Colliery Control Order, 1945 are quashed. The learned advocate for the applicants stated that the trucks have already been released on furnishing security. The said security shall, therefore, stand cancelled. The learned advocate for the applicants states that the coal was seized and is kept with the W.C.L. The applicants shall be entitled to return of the coal. The applications u/s 482 of Criminal Procedure Code are accordingly allowed in the aforesaid terms.