(1984) 05 AHC CK 0010

In the Allahabad High Court

Raghunath Prasad APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

Date of Decision : 16-05-1984

Acts Referred:

Essential Commodities Act, 1955 — Section 2, 3, 6A, 6B, 6E

Citation : (1984) 05 AHC CK 0010

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Judgement

K.C. Agarwal, J.—On October 6, 1980, a raid was made at the shop of the applicant Raghunath Prasad at C-33/265, Chhittupura, Varanasi, in the presence of the applicant and other witnesses where seven tonnes of soft coal was found. The applicant neither furnished any account books nor the licence. On enquiry, the applicant told, the raiding party that he had purchased 13 tones of coal from Lala Coal Depot, Chandausi, out of which a portion had been sold.

2. The Additional Collector, who was also Additional District Magistrate (Civil Supplies), issued a notice on the request of the-District Supply Officer u/s 6B, Essential Commodities Act (hereinafter referred to as the Act) calling upon the applicant Raghunath Prasad to explain as to why was coal found at his shop on 6.10.1980 not likely to be confiscated. The notice was received by the applicant on 16.10.1980.

3. The applicant submitted a reply stating that the coal did not belong exclusively to him but also to Sukhu Prasad, Badri Prasad, Muttur Prasad and Shanker Prasad, who were his relations. The applicant stated that the aforesaid four persons had no separate land to stock coal and, therefore, the same had been kept at his shop. The applicant asserted that the total quantity of coal found at his shop was 5 tonnes and not 7 tonnes. The applicant denied that he had committed breach of any order and, as such, he alleged that the coal seized was not liable to be confiscated u/s 6A of the Act.

4. Badri Prasad, Sukhu Prasad and Muttur Prasad also filed an application stating that the coal belonged to them jointly with Shanker Prasad. Their plea was that on account of shortage of space, the coal was placed at the shop of the applicant Raghunath Prasad. By means of another objection, Shanker Prasad took the same plea and supported the applicant Raghunath Prasad.

5. On being satisfied that the coal was a commodity regarding which an order, u/s 3 of the Act had been issued and, for storage or sale of which the applicant had no licence, the Additional Collector I confiscated the entire quantity of coal found at the shop of the applicant on 6.10.1980. The Additional Collector held that Badri Prasad, Muttur Prasad, Shanker Prasad and Sukh Prasad did not have anything to do with the coal and they had set up an incorrect case to save confiscation. Against this order of the Additional Collector dated 17.8.1981 Raghunath Prasad filed Criminal Appeal No. 311 of 1981. The other four persons did not prefer any appeal against the same and permitted the order to become final. The appeal of Raghunath Prasad was dismissed on 13.11.1981.

6. Aggrieved, Raghunath Prasad has filed the present revision. The applicant has alleged not to have committed any breach of U.P. Coal Control Order, 1977, which was issued by the U.P. Government in exercise of the powers conferred by Section 3, Essential Commodities Act. Clause 4 of the aforesaid Order laid down that no person shall import coal and carry on business as a coal agent, carry on business as a coal depot holder, except under and in accordance with the terms and conditions of the licence issued under this order. Clause 5 deals with the grant or renewal of a wholesale or retail licence for running the business. This clause gives different types of licences which are obtainable for running different businesses. Clause 2(d) defines ''dealer'', whereas Clause 2(j) defines a ''retail'' which means sale of coal not exceeding ten quintals on a day to any one consumer.

7. In the instant case, the Additional Collector held that possession of about seven tonnes of coal at the shop of the. applicant was indicative of the fact that the same was kept by the applicant for the purpose of sale and that he had stored the coal for the same purpose. The Additional Collector found that as, the applicant neither had any evidence of purchase of coal nor had he maintained any account books showing its sale, he was guilty of contravention of U.P. Coal Control Order, 1977, referred to above. The Additional Collector also found that the applicant had no licence which was necessary to be obtained under the U.P. Coal Control Order, 1977. In this view of the matter, the Additional Collector was satisfied that there had been a contravention of U.P. Coal Control Order, 1977, hence, he ordered for confiscation of the coal.

8. The appeal preferred before the learned Session Judge was rejected. The only plea taken in the appeal was that coal was the property of five persons and as notice u/s 6B of the Act had been issued to Raghunath Prasad alone and not to others, the entire proceedings of confiscation were invalid. Just as the Additional Collector, so also the learned Sessions Judge, found no substance in this plea of

coal belonging to five persons aforesaid. In this view of the matter, the learned Sessions Judge held that the notice u/s 6B was not required to be given to Badri Prasad, Shankar Prasad, Muttur Prasad and Sukhu Prasad. No other point had been raised before the learned Sessions Judge.

9. Before me, the first argument was that the power of confiscation could either be exercised by the Collector or by any such officer who has been authorised by the Collector to perform the functions and exercise his powers under the Essential Commodities Act, and since, in the instant case, the order had been passed by the Additional Collector, who had not been authorised by the Collector to perform his functions and exercise the powers under the Act on behalf of the Collector, the, confiscation order was invalid.

10. The submission made has no substance. The definition of the word ''collector'' given in Section 2(ia) is a complete answer to the submission of the learned Counsel. The definition of the word ''Collector'' includes an Additional Collector, The Additional Collector, therefore, for the purposes of exercising the powers under the Act would have the same powers as those of the Collector. The expression ''includes'' is comprehensively intended to give an extended meaning to the expression ''Collector''. In Dilworth v. Commr. or Stamps (1899) A.C. 99, at pages 105-106, Lord Watson observed that when the word ''includes'' is used in an interpretation clause, to enlarge the meaning of the words or phrases in a statute, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

11. The Supreme Court has agreed with the above decision in Dadaji alias Dina Vs. Sukhdeobabu and Others, .

12. The learned Counsel for the applicant, however, emphasised that the subsequent part of this definition that is such other officer not below the rank of the Sub-Divisional Officer who may be authorised by the Collector to perform the functions and exercise, the powers of the Collector under this Act'' would apply not only to the Sub-divisional Officer but also to Additional Collector. According to the learned Counsel Additional Collector must have been specifically authorised by the Collector.

13. The submission made by the learned Counsel is not tenable. The definition given first includes Additional Collector and makes him entitled to exercise the powers conferred by the Act, and further lays down that in a case of Sub-Divisional Officer, the authorisation would be necessary from the Collector. These two clauses will have to be read separately. The expression ''such'' represents the object as already particularised in terms which are not mentioned. The object is the Sub-Divisional Officer and for entitling him to function as Collector, an authority is required, and not for Additional Collector.

14. The second submission of the learned Counsel for the applicant was that the learned Sessions Judge committed an error in holding that no notice u/s 6E was

required to be given to the four persons named above. According to him, they were the owners, and in the circumstances, it was necessary to issue them notices also u/s 6B calling upon them to show cause as to why was the coal not liable to be confiscated. In the absence of the notice u/s 6B, the confiscation was invalid. It has come in evidence that the coal was seized from the possession of Raghunath Prasad. The Additional Collector as well as the Sessions Judge both have concurrently found that Raghunath Prasad was the owner of the coal and other persons had nothing to do with the same. In this view of the matter, Raghunath Prasad alone was entitled to be given the notice which was done in the instant case. The complaint of the learned Counsel for the applicant that omission to give notice to other persons was fatal, has no legs to stand.

15. The third submission of the learned Counsel for the applicant was that as the prosecution failed to establish that the applicant had committed contravention of U.P. Coal Control Order, 1977, and no such finding having been recorded, the confiscation was invalid.

16. Section 6A entitles a Collector to pass an order of confiscation, if he is satisfied that there has been a contravention or breach of any order issued u/s 3, Essential Commodities Act. u/s 6A, the words are "when the Collector is satisfied that a contravention has taken place", and not "when it is proved". However, that difference, would not entitle the Collector to proceed arbitrarily and make an order of confiscation even though no case for the same had been made out. He has to be satisfied with the materials on record that contravention of an order for the breach of which the goods have been seized, has taken place.

17. In the instant case, the applicant was found in possession of huge stock of coal which was a controlled commodity for the purpose of sale which could not be done without obtaining a licence under the U.P. Coal Control Order. In this case, the applicant himself admitted that he had purchased 13 tonnes of coal from Chandausi and had sold six tonnes out of the same. This admission apart, in the facts and circumstances, when the explanation given by the applicant was found to be false, it could be reasonably inferred that coal was meant for sale for which the applicant had no licence. Clause 4, U.P. Coal Control Order, 1977, made it mandatory for any one dealing in coal as a retail seller or carrying on business as a coal agent, to obtain a licence. Clause 9 of the said Order requires every dealer to maintain true account of daily receipt and disposal of coal and keep it up to date. Under Clause 15, any one who infringes the provision of U.P. Coal Control Order, is liable to be convicted under the U.P. Essential Commodities Act, 1955. Taking these things into account, one is irresistibly led to hold that the prosecution had made out a case which was required to be established u/s 6A for confiscation. It may be noted here that if the applicant is ultimately acquitted of the charge for '' which he will be prosecuted, the coal or its price would be liable to be refunded to him.

18. In Hari Ram Gupta v. State of U.P. 1979 ACC 201, a Division Bench held:

where a statute forbids an act, doing of that act itself supplies mens rea. In such case, the prosecution need only prove commission of the prohibited act by the person concerned and it is for him to bring himself within a statutory defence.... The Collector, Gonda, performed all the requisite formalities of issuing notice and giving opportunity of being heard to the revisionist before passing the impugned order of confiscation, seized Gur. That order does not suffer from any illegality or impropriety.

19. In the aforesaid case, the confiscation of Gur in respect of which the applicant was found doing business without licence, was held to have been rightly done.

20. It may be noted here that Section 6A is no doubt a penal provision, but the Collector does not act as a Court of law when he exercises the power of confiscation. His satisfaction will affect the owner or the person from whose custody the article was seized, but it will not determine his liability. It is just a part of the process of the prosecution. The Collector has to act judicially, but that does not make him a Court of law. The fact that he has to act judicially means, as Fry, L.J. said in Royal Acquarium and Summer and Winter Garden Society Ltd. v. Parkinson 18914 All ER 429 , that its proceedings must be conducted with the fairness and impartiality which characterised proceedings in courts of justice and are proper to the functions of a Judge and not though established by law, that it is a court of law and part of the judicial system of the country.

21. For what I have said above, I find that the learned Sessions Judge was justified in dismissing the appeal of the applicant Raghunath Prasad and in holding that the Additional Collector had concurrently found the applicant to be guilty of having contravened the U. P. Coal Control Order, 1977.

22. For these reasons, the revision fails and is dismissed. The stay order dated 24.12.1981 is discharged.

