
(1996) 04 PAT CK 0025

In the Patna High Court

Case No : Criminal Miscellaneous No's. 2659 and 2693 of 1991 (R)

Raj B. Parikh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-04-1996

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1997) 1 ALT(Cri) 13 : (1996) 2 BLJR 1287

Hon'ble Judges : Lok Nath Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Lok Nath Prasad, J.—Heard both the parties.

2. Cr. Misc. No. 2659/91 (R) and Cr. Misc. No. 2693/91(R) were taken up together for convenient as both relates to Adityapur P.S. Case No. 71/90.

3. In Cr. Misc. No. 2659/91 (R) Raj B. Parikh is the petitioner who is Managing Director of Jameshedpur Beverage whereas in Cr. Misc. No. 2693/91(R) Gopal Rao, an employee of the said Beverage is the petitioner.

4. This case has been instituted on a written report of J.P. Choubey, Supply Inspector, Gamria who inspected the go down premises of the petitioner and found 224 quintals of sugar and it has been alleged that the petitioner got a retail storage licence bearing No. 42/87 and as such the petitioner can keep only to 50 quintals at a time under the terms and conditions of the licence. So the prosecution was lodged apparently for violation of the terms and conditions of Bihar Trade Articles (Licences Unification) Order ,1984.

5. It was contended on behalf of the petitioner that it is also the admitted position that the licences for storage of sugar was granted to Jamshedpur Beverage, a Company engaged in manufacturing of soft drink popularly known as Thums up, Limca, Gold Spot and thus it was contended that the sugar was

required not for sale rather for use of the Company itself in preparation of the Beverage and thus, the sugar was stored not for sale rather for domestic use and in that view of the matter no licence is necessary for retail or wholesale because the licence is only necessary under the said Order for sale and not for any other purposes. It was further contended that if at all licence is not necessary then in that view of the matter prosecution of the petitioners for violation of the Bihar Trade Articles (Licences Unification) Order 1984 (to be called hereinafter as the Order) is unwarranted and bad in law. In support of this contention the learned Counsel for the petitioner relied upon a decision of a Division Bench of our own High Court reported in 1996 (I) Eastern Criminal Cases page 398, Jamshedpur Beverages v. State of Bihar, The aforesaid writ application was preferred by the petitioners themselves and a plea was raised that as the petitioner used to store sugar not for sale rather for use and consumption and preparation of Beverages, and so licence, if any under the said Unification order is not necessary.

6. Considering all these facts it was held by a Division Bench of this Court that the petitioner's firm is not required to obtain any licence for storing sugar and if at all any sugar licence had been issued it will be more or less a surpluses.

7. Similar view was taken by a Bench of this Court in a case of Britannia Industries Ltd. and Another Vs. State of Bihar and Others and it was held that the storage of sugar by the manufacturing Company of Biscuit is not required to obtain a licence under the said order.

8. Thus, admittedly the petitioner though got a retail licence which is not at all necessary stored sugar not for sale rather for domestic use for preparation of Beverages. In that view of the matter if licence is not necessary then apparently the prosecution u/s 7 of the E.C. Act for violation of terms and conditions of the licence is also not attracted and thus, the prosecution apparently is bad in law.

9. In the result both these applications are allowed and the criminal prosecution of both the petitioners in Adityapur P.S. Case No. 71/90 pending before the Special Judge, E.C. Act, Singhbhum West at Chaibasa is hereby quashed.