

(1998) 10 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous No. 4551 of 1992

Raj Kiran Das

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 09-10-1998

Acts Referred:

Essential Commodities Act, 1955 — Section 2, 3, 5, 7

Citation : (1998) 3 PLJR 911

Hon'ble Judges : Nagendra Rai, J;B.P. Sharma, J

Bench : Division Bench

Advocate : N.K. Agrawal and A.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The question, which has been referred to the Division Bench for decision, is as to whether the paddy is a foodstuff, which is an essential commodity as defined u/s 2(a)(v) of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") ?

2. The said question has arisen in the following circumstances. The Petitioner is a wholesale licensee under the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter referred to as "the Unification Order"). It carries a business in purchasing paddy from the agriculturists and selling the same to the Rice Mills owner in the districts of Buxar and Rohtas. On 5.4.1992 at about 5.30 P.M., the Block Supply Officer, Rajpur, along with other officers, inspected the premises of the Petitioner, verified the records and found that the closing balance on 4.4.1992 was shown as 12 quintals 75 kgs., whereas, the opening balance on 5.4.1992 was shown as 9 quintals 75 kgs. Thus, there was a shortage of 3 qtls. of paddy. Similarly on physical verification, it was found that there was an excess of 173 qtls. 25 kgs. of paddy, for which no document was produced, which showed that the aforesaid stock of paddy was kept in violation of the terms of the licence and for the purpose of black-marketing. On 7.4.1992, the aforesaid Block Supply Officer filed a written report with the Officer-in-charge

of Rajopur Police Station for prosecution of the Petitioner u/s 7 of the Act in violation of the provision of the aforesaid Unification Order. A copy of the said F.I.R. has been annexed as Annexure 1.

3. The Petitioner has filed the present application for quashing the First Information Report on the ground that the paddy is not foodstuff which is an essential commodity defined u/s 2(a)(v) of the Act. The Central Government has power to issue order for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. Section 5 of the Act empowers it to delegate the aforesaid power to the State Government or such officer or authority subordinate to it. The Central Government delegated the power to the State Government to make a law for regulating for prohibiting the production, supply and distribution of the foodstuffs etc., in pursuance of which the aforesaid Unification Order has been issued requiring for obtaining licence for dealing in the articles mentioned in the said Order. Paddy is also one of the items controlled by the aforesaid Unification Order and as the paddy is not an essential commodity, the State Government has no power to make a law for the regulation of the same. In other words, as the paddy is not an essential commodity, the State Government in exercise of the delegated power cannot regulate the sale etc. of paddy and as such any violation of the provisions of the aforesaid Unification Order with regard to paddy will not be an offence punishable u/s 7 of the Act and in that view of the matter, the prosecution of the Petitioner u/s 7 of the Act is an abuse of the process of the court.

4. Learned Counsel for the State combating the aforesaid submissions, submitted that the word "Foodstuffs" u/s 2(a)(v) of the Act has been used in the wider sense and as the paddy is only a stage in the produce of rice, it is a foodstuff and thus, an essential commodity and the State Government by virtue of delegated power u/s 5 of the Act is competent to regulate the sale etc. of paddy.

5. By virtue of Entry 33 of List III of the VIIth Schedule of the Constitution of India, the Parliament has enacted the Act to provide in the interest of general public for the control on the production, supply and distribution, trade and commerce in certain commodities. Section 2(a) of the Act defines the essential commodities. Section 3 of the Act empowers the Central Government to issue orders for regulating or prohibiting the production, supply and distribution etc. of the essential commodities and trade and commerce therein under the circumstances mentioned in the said section. Section 5 of the Act empowers the Central Government to delegate the power to the State Government and other authorities mentioned therein. In exercise of the delegated power, the State Government has issued Unification Order regulating the business of purchase, sale or storage for sale of trade articles mentioned in Schedule-I of the Unification Order. In Schedule-1, the paddy is also one of the trade articles, for which a licence is required for the business of purchase, sale or storage for sale etc. If the paddy is not an essential commodity as defined under the Act, then the State Government is not competent to make a law regulating sale etc. of the

paddy by virtue of delegated power for the simple reason that it can issue or notify an order only for regulating the production, sale, trade and commerce of essential commodities.

6. The word foodstuff is an essential commodity under the Act and includes edible oil and oil seeds. Its meaning has to be gathered with due regard to the background and context. The word "foodstuff" has a narrow meaning and a wider meaning. If the foodstuff means only the articles of food to be consumed by human being, then that would be a narrow meaning of the word and that will not serve the purpose, for which the word has been incorporated in common parlance, the word "foodstuff" means materials used as a food. It does not mean that the material, which is immediately fit for human consumption, is the only foodstuff. Even material, which can be used as foodstuffs after processing, grinding and husking is also a foodstuffs. The apex court and different High Courts have interpreted the word "foodstuff" under the Act. The word "foodstuff" has been used in a wider sense. It is not necessary that the thing used as food by human being is only a foodstuff. Even the cattle-feed and poultry-feed are held to be food-stuffs for the reason that the cattle and poultry are living components of the natural environment and what they eat is also a foodstuffs.

7. In the case of Atulya Kumar De and Others Vs. The Director of Procurement and Supply and Others, , the question for consideration before the Calcutta High Court was as to whether, the paddy was a foodstuff as defined under the Essential Supplies (Temporary Powers) Act, 1946 and the court held as follows.

The first point taken is that the power conferred by the Act (read with the notification) upon the State of West Bengal is only in relation to foodstuffs and that paddy is not foodstuff. It is stated that the description of paddy as "rice in the husk" is a colourable attempt to avoid the difficulty. In *The State of Bombay Vs. Virkumar Gulabchand Shah*, , it was held that turmeric is "foodstuff" within the meaning of the Spices (Forward Contract Prohibition) Order, 1944" read with Section 2(a) of the Act. It was held that the term "foodstuff" is ambiguous and may have a wide meaning or a narrow one. Whether the term is used in a particular statute in its wider or narrower sense cannot be answered in the abstract but must be answered with due regard to the background and context. Thus in-*James v. Jones* (1894) 1 QB 304, baking power was held to be an article of food while in-"*Hinde v. Allmond*" (1918) 87 LJKB 893, it was held that tea was not. Now the Act has been passed to control the production and distribution of essential commodity. What can be looked upon more of an essential commodity than both rice and paddy? In West Bengal, the two things most essential for the sustenance of human life are rice and paddy. Mr. Mukherjee admits that rice is an essential commodity and a foodstuff, but he says that paddy is not because no body can eat paddy. But that is a very narrow view to say. Paddy is only a stage in the production of rice and the one cannot be food without the other being food as well. No body eats the husk in paddy; but nobody eats the skin of mango or the shell of an egg and yet they are unquestionably articles of food. In my

opinion, paddy is foodstuff within the meaning of that expression as used in the Act and the notification.

8. The same question was considered by a Division Bench of Orissa High Court in the case of Bijoy Kumar Routrai and Others Vs. State of Orissa and Others, and it was held that the paddy is a foodstuff and as such comes within the ambit of the Act.

9. In the The State of Bombay Vs. Virkumar Gulabchand Shah, , the question for consideration was as to whether the turmeric was a foodstuffs in a case arising under the Essential Commodities Act, 1946 and it was held that the turmeric falls within the wider meaning of the word "foodstuffs".

10. In K. Janardhan Pillai and Another Vs. Union of India (UOI) and Others, , the question for consideration was as to whether raw cashewnut was a foodstuffs within the meaning of Section 2(a)(v) of the Essential Commodities Act, 1955 and it was held as follows:

Section 2(a)(v) of the Central Act reads: "foodstuffs" including edible oilseeds and oils. It is a well known rule of interpretation that associated words take there meaning from one another and that is the meaning of the rule of statutory construction, *noscitur a sociis*. When "foodstuffs" are associated with the edibie oil-seeds which have to be processed before the oil in them can be consumed, it is appropriate to interpret foodstuffs in the wider sense as including all articles of food which may be consumed by human beings after processing. It is in this wider sense that the said term has been understood by Indian Courts as can be seen from some of the decisions to which we shall presently refer. Secondly, having regard to the history of legislation relating to foodstuffs dealt with above and the object of the Central Act, which regulates the production, supply and distribution of essential commodities amongst the poverty stricken Indian people, the expression "foodstuff" should be given a wider meaning as including even raw materials which ultimately result in edible articles, any interpretation that may be given in this case should not be governed by its consequence on the impugned order but in the light of the importance of the Central Act in the context of the national economy. A narrow interpretation may result in the exclusion of several articles from the purview of the Central Act although no body has entertained any doubt so far about their being essential commodities.

It was further held that the foodstuffs need not necessarily mean only the final food product which is consumed. It also includes raw food articles which may after processing be used as food by human beings, and as such raw cashewnut is also a foodstuffs within the meaning of Section 2(a) (v) of the Act.

11. In Sat Pal Gupta and Another Vs. State of Haryana and Others, , the question for consideration was as to whether rice bran is a foodstuffs within the meaning of the aforesaid provision of the Act and it was held as follows:

The word "foodstuffs" which occurs in Clause (v) of Section 2(a) is not defined in

the Act and therefore it must receive its ordinary and natural meaning that is to say, a meaning which takes account of and accords with the day-to-day affairs of life, cattie and poultry are living components of the natural environment and there is no reason to exclude that which they eat or feed upon, from the meaning of the word "foodstuffs". If, what the human beings eat is food, so is what the other living being eat. "Cattle fodder" is expressly brought within the compass of essential commodities by Sub-clause (1) of Section 2(a). It would be illogical if, in that context, rice bran is excluded from the purview of essential commodities on the ground that it is eaten by the poultry and not by Homo Sapiens.

12. In Raghu Seeds and Farms and others Vs. Union of India and others, , the Petitioners challenged the declaration of seeds of foodcrops and seeds of fruits and vegetables as the essential commodities as well as the validity of the Seeds (Control) Order, 1983. The Central Government by notification dated 24.2.1983 declared the seeds of the description mentioned therein as essential commodities in exercise of power conferred by sub-clause (xi) of Clause (a) of Section 2 of the Act. Seeds of food-crops and Seeds of fruits and vegetables were also notified as essential commodities. Thereafter, the Central Government issued Seeds (Control) Order," 1983 in exercise of the power conferred u/s 3 of the Act, providing for obtaining of licences by the persons carrying on business of selling, exporting or importing seeds. The challenge was made on the ground that the seeds of foodcrops and seeds of fruits and vegetable could not be declared as essential commodities as the Parliament has no power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution of India. Clause (b) of the said Entry mentions "foodstuffs" as a class of commodity, which includes edible oilseeds and oils. It was held that the seeds are a vital commodity having direct connection with the production of the foodstuffs to which it relates. Paragraph 6 of the said judgment runs as follows:

6. It is clear that the aforesaid Entry 33 deals with not merely trade and commerce in, but also in the production, supply and distribution of, various products and articles mentioned in Clause (a) to (e) thereof. Clause (b) of Entry 33 mentions "foodstuffs" as a class of commodity which includes edible oilseeds and oils. The main thing to be noticed is that the Entry deals with not merely trade and commerce in foodstuffs but also in relation thereof in production, supply and distribution as well. Once it is clear that Entry 33 also deals with production, it is obvious that the seeds are a vital commodity having direct connection with the production of the foodstuffs to which it relates. Therefore seeds of foodstuffs is an item which has direct bearing with the production of the foodstuffs and consequently it is competent for the Parliament as well as States to make law in relation to seeds of foodstuffs. Surely seeds of foodcrops and seeds of fruits and vegetables relate to foodstuffs.

13. Thus, it is clear from the aforesaid judgment of the apex court that the word "foodstuff" has to be interpreted in wider sense and it does not mean only the

product or stuff to be immediately used for consumption by the human being. It includes the raw material also, which can be used by human being after processing, grinding, husking etc. Even the stuffs used by cattle-feed and poultry-feed as rice bran have also been held to be foodstuffs u/s 2(a)(v) of the Act. The rice is prepared by husking of paddy. Though, the paddy cannot be consumed by human beings, but on that ground, it cannot be excluded from the word "foodstuffs", the paddy is used as food after subjecting it to husking. Thus, there is no force in the submission advanced on behalf of the Petitioner that the paddy is not a foodstuffs and as such it is not an essential commodity as defined under the Act.

14. As the paddy has been found to be foodstuff, the same is an essential commodity as defined under the Act and the State Government is competent to notify the order in question by virtue of being a delegatee of the Central Government even with regard to paddy and in case of violation of the provisions of the order with regard to paddy, the person concerned is liable to be punished u/s 7 of the Act.

15. Coming to the merits of the case, I find that the allegation made in the F.I.R. make out a prima-facie case against the Petitioner u/s 7 of the Act. Accordingly, I find that no case for quashing the F.I.R. is made out.

16. In the result, there is no merit in this application and the same is dismissed.

B.P. Sharma, J.

16. I agree.