

(1987) 08 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 3395 of 1987

Rajesh Trading Company	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 25-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 3, 6, 6A, 6C

Citation : (1988) 36 BLJR 769 : (1988) PLJR 463

Hon'ble Judges : S.S. Hasan, J; B.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.S. Hasan and B.N. Sinha, JJ.—In the circumstances of this application and in view of the fact that the matter has been languishing since 1984, we felt that the matters should be heard and disposed of with the consent of the parties, at the admission stage itself. Consequently, adequate opportunity was granted to the State and other opposite party to file a counter affidavit, if any, which was filed only by Respondent No. 2. The matter has thus been heard and is being disposed of.

2. The petitioner firm seeks the protection of this Court against what has been described by it, as a completely illegal and unwarranted action of Respondent No. 2, the consequence of which is that it has suffered a heavy pecuniary loss and obstruction in its day to day business. The petitioner in response to the notice inviting tenders issued by the Bihar State Cooperative Marketing Union Limited (BISCOMAUN) for supply of gram seeds and peas seeds, submitted its offer which was accepted and contract was entered into between the petitioner and the BISCOMAUN and the petitioner was ordered for supply of 2000 quintals of gram seeds and 450 quintals of peas seeds by the BISCOMAUN by their letter dated 30-9-1984 (Annexure 1). In pursuance of this contract, over 1100 quintals of gram seeds is said to have been supplied to the BISCOMAUN and accepted

and only 968.90 quintals remained to be supplied. These gram seeds, according to the petitioner, were purchased from various places in Uttar Pradesh and were being packed in bags of sizes and in the manner prescribed by the BISCOMAUN. While they were lying in the godown of the petitioner firm awaiting their delivery to BISCOMAUN, the premises of the petitioner was raided by the authorities of the Supply Department on 28-10-1984 and the entire stock of 968.90 quintals of gram seeds were seized on the allegation that they were not suitable for seeds and the supply amounted to violation of the Bihar Foodgrains Dealers' Licensing Order, Usual steps then followed and criminal prosecution was launched and a confiscation proceeding was initiated against the petitioner firm.

3. In the midst of the confiscation proceeding, the petitioner firm moved this Court in C.W.J.C. 258 of 1984 which was disposed of by a Bench of this Court constituted by Hon"ble Nagendra Prasad Singh and Hon"ble P. B. Prasad, JJ. on 14-12.1984 with the following observations :-

Having heard the parties we are of the opinion that it is only just and proper that the grams seized from the custody of the petitioners should be supplied to the Biscomaun to whom the petitioners were to supply and Biscomaun shall get the seeds properly examined by a competent authority before it is distributed to the farmers. We direct that during the confiscation proceeding the price of the 968.90 quintals of gram shall not be paid to the petitioners by the Biscomaun without an order from the District Magistrate, Patna passed in the confiscation proceeding. We further direct the petitioners to file that show cause before the District Magistrate, in pursuance of the notice u/s 6-A of the Essential Commodities Act by the 5th of January, 1985. It is expected that the learned District Magistrate, Patna, after hearing the petitioners shall dispose of the aforesaid confiscation proceeding at an early date.

It is made clear that if the Biscomaun finds the gram which have been seized unfit for supply to the terms then it shall keep the same in its godown and ultimately to be disposed of in accordance with the direction given by the learned District Magistrate in the confiscation proceeding.

4. Consequently, it now appears that the seized articles were handed over to BISCOMAUN and then a sample of the article was then sent to the Seed Analyst, State Laboratory, Bihar Patna, who reported vide Annexure 5/1 as follows :-

S. No. Lot No. Germina- % Fresh/ Dead or Decay Lab. Test Normal/ tion Hard
ungerminated Abnormal seed

(1) 1069 Big gunny. 90 4 - - 6 bags 641 94 4 - - 2 (2) 1070 (illegible) 125
Cloth bags.

Purity % Pure seed Inert Other crops Weed seed matter seed

99.95 0.05

Remarks Conform to certification standard.

5. From this report, it became apparent that the article seized was pure seed 99.95 per cent and conformed to the certification standard. It is also patent from this that the seizure was void ab initio because no licence is required for dealing in seeds. But in spite of this report, the Collector (Respondent No. 2) passed a confiscation order by his order as contained in Annexure 4.

6. The petitioner firm appealed against the order of confiscation before the Secretary, Food Supply and Commerce Department, Bihar, Patna, and the appellate court, while remanding the case, made the following observations : - "

It appears that the learned Collector in the order dated 12-8-86 has not followed the procedure prescribed in the order of the Hon'ble High Court....

7. Apart from this direction, the appellate authority further recounted the direction of this Court and stated that the District Magistrate should have acted in accordance with this direction but the learned District Magistrate, after the remand order, passed the impugned order by which he has ordered the confiscation of the seized article on the ground that the seized article was not analysed at the time it was purchased by the petitioner and it is now fit for human consumption by lapse of time, and, therefore, the provisions of the Bihar Foodgrains Dealers' Licensing Order stood violated as the petitioner did not possess the required licence.

8. In assailing the impugned order, the learned counsel for the petitioner has raised two points of significance. The first point is that once the article seized has been found to be gram seed, there is no order u/s 3 of the Essential Commodities Act that covers it and the seizure and the consequent confiscation proceeding as also the impugned order is entirely misconceived and bad in law. His second submission is that even if the seized article was found to be gram, on the date the seizure took place, i. e., 28-10-1984, there was no order operational to cover gram or any other foodgrains because the Government had not issued any notification as required by clause 2 (n) of the Bihar Trade Articles (Licences Unification) Order, 1984, which order had come into operation by then. There was a vacuum for some time and this seizure occurred during that interregnum.

9. Taking up the second point first, it is not necessary for us to go into any great detail because the matter had received finality on the concession being made by the Advocate General himself in Cr. Misc. No. 3284 of 1985 where it was found that no notification fixing storage limit under clause 2 (p) and 2 (u) defining wholesale and retail dealer was issued by then.

10. The first point is also of considerable merit. Once it was found that the article seized was gram seed and not gram then, even though the petitioner did not get it analysed at the time of purchase, a step which was not required to be taken in law, it cannot be treated as gram by juristic interpretation of the District Magistrate and once it is found to be gram seed, it could not be seized and the confiscation proceeding started in the manner done and for the reasons stated by the District Magistrate. If the seeds were not distributed by the BISCOMAUN to

the farmers due to the delay in receiving the analyst report, it is only the BISCOAUN and the authorities who are to blame for it. The petitioner can hardly be held responsible for the lapses on the part of the BISCOAUN or the Collector, If the seeds by lapse of time became foodgrains and they according to the Collector come within the description of edible grains then the petitioner cannot be subjected to the penalty of confiscation because the situation created was entirely due to the negligence of the authorities and the institution and not the petitioner. It is even more ridiculous to saddle the petitioner with the confiscation of the articles for no fault of it.

11. The learned counsel for the State submitted that the petitioner should have availed the alternative remedy of appeal and relied on a Full Bench decision of this Court reported in the case of Ramesh Kumar Ravi & Ram Prasad v. The State of Bihar and Ors. 1987 B.B.C.J. 424 : 1987 P.L.J.R. 650, which has held that an application under Articles 226 and 227 of the Constitution of India in presence of an alternative remedy is not maintainable. No body can doubt the validity of this decision but when the proceeding is void ab initio and when the authority is not invested with the jurisdiction to act in the manner done, under Articles 226 and 227 of the Constitution, this Court is not precluded from interfering in view of the decisions of the Supreme Court which need not be cited as the law is fully crystalised. We have no hesitation in holding that the objection of alternative remedy of the learned counsel for the State is insignificant. This apart, the petitioner has already availed of the alternative remedy once which authority had, in its remand order, given certain directions but the District Magistrate failed to follow the same. We fail to understand what further benefit would accrue to the State in sending the petitioner back to the appellate authority when the matter has been languishing for the last four years now. It involves a massive quantity of gram seeds of considerable value and everyday the petitioner is facing heavy financial loss. We, therefore, do not feel inclined to refrain from interfering with the matter and directing the petitioner on a dilatory quest to the appellate authority. It was also submitted that some seized counterfoil indicated that the petitioner was required to obtain a licence and further he was required to act in accordance with the provisions of the Bihar Essential Articles (Display of Stocks and Prices) Order, 1977. This objection has already been answered while dealing with the second point above and this argument is now only to be stated to be rejected. Firstly, there is nothing to indicate that the articles seized were gram and secondly the impugned order itself does not state that display order has been violated.

12. We, therefore, feel that the order of the District Magistrate (Annexure 60) was entirely without jurisdiction, misconceived and untenable in law and is accordingly set aside.

13. Consequent upon the above decision, on what we have decided above, Section 6(2) of the E. C. Act immediately comes into play in favour of the petitioner. It is not disputed that the articles were handed over to the

BISCOMAUN. The BISCOMAUN, however, were prohibited from making payment to the petitioner till the District Magistrate passed such an order. Therefore, in view of this clause the petitioner is entitled to get back the articles seized. Since the articles had been handed over to the BISCOMAUN and payment thereof, however, was, in view of the direction of this Court in C. W. J. C, 258 of 1984, subject to the direction of the District Magistrate and hence not made, the BISCOMAUN (Respondent No. 3) is liable to pay the price of the seeds as per the contract entered into between the BISCOMAUN and the petitioner. This payment must be made to the petitioner by the BISCOMAUN within fifteen days from today. If, however, the BISCOMAUN has already paid the money to the Collector or has deposited the same in the treasury, the Collector will pay the price at the rate mentioned in the contract within the same fifteen days as the BISCOMAUN would have paid. The petitioner is also entitled in terms of Section 6-C(2) of the Act to get interest. We feel that an interest at the rate of 10% per annum of the price fixed by the contract would be allowed to the petitioner to cover the loss caused to him particularly when it is submitted at the Bar that the petitioner had taken loan and met expenses in performing the contract. This amount of interest will be calculated from the date of the seizure of the seeds in question till the date of the payment of price as directed by us. This payment must be made by State Government through the District Magistrate within one month from today.

14. This application is allowed and the impugned order is quashed with the aforesaid orders and directions.