
(1995) 08 PAT CK 0020

In the Patna High Court

Case No : Criminal W.J.C. No. 51 of 1989 (R)

Ram Kumar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Essential Commodities Act, 1955 — Section 2, 3, 6A, 7

Forest Act, 1927 — Section 33

Penal Code, 1860 (IPC) — Section 414

Citation : (1996) 1 BLJR 222

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—The petitioner who is the owner of the truck has moved this Court with a prayer to quash the order dated 4.10.89 by which the truck of the petitioner has been ordered to be confiscated u/s 6A of the Essential Commodities Act (shortly the E.C. Act), 1955. He has also prayed for quashing the notice dated 27.1.89 initiating a proceeding under the E.C. Act.

2. The facts of the case lie in a narrow compass. In the written report of the Forest Ranger, Balumath, it was alleged that on receiving the confidential information he apprehended truck No. BHH 645 which was carrying "katha" for illegal purposes/business. Further allegation is that when the petitioner and the khalasi failed to escape with the truck, started throwing some plastic bags containing katha from the truck. The D.F.C. could not arrest him as the petitioner and the khalasi fled away. The said katha along with the truck were seized. On such allegation being made initially a case u/s 414 of the I.P.C. read with Section 33 of the Indian Forest Act and u/s 7 of the E.C. Act was instituted. However, the Special Judge who was authorised to try the cases under the E.C. Act, on receiving the FIR, held that no case u/s 7 of the EC Act was made out and, as such, the same was not triable by him. He transferred the records of the case to

the court of the Sub-divisional Judicial Magistrate, Latehar for disposal in accordance with law. Notice was issued to the petitioner to show cause as to why the truck of the petitioner should not be confiscated. The said notice is Annexure 1. The petitioner came to know about the notice on 4.2.89 and, as such, he could not file his show cause on 6.2.89 for paucity of relevant papers with him. On that date a prayer was made before the Deputy Commissioner for extension of time for filing show cause. However said petition was rejected . Subsequently on 9.2.89 show cause was filed by the petitioner which is Annexure 2/1 to this application.

3. By the impugned order dated 4.3.89 the Deputy Commissioner passed an order for confiscation of the truck of the petitioner and also the katha which was seized by the D.F.O. One of the grounds, it appears, assigned by the Deputy Commissioner in his order was that as no show cause was filed within time, it can be presumed that the petitioner had nothing to say.

4. Mr. V.P. Singh learned Counsel for the petitioner has raised a simple point in support of his contenting that the notice itself is bad inasmuch as the "katha" not being the essential commodity, cannot be the subject matter of any confiscation case under any of the provisions of the E.C. Act. secondly, it is contended that the confiscation order does not show as to which particular order has been violated by the petitioner who is only the owner of the truck, a public carrier.

5. Mr., V. Shivnath learned G.P.I. on the other hand, contended that as the Deputy Commissioner passed the impugned order of confiscation without perusing the show cause filed by the petitioner, the order may be set aside and the matter may be remitted to the Deputy Commissioner for a fresh order after considering the show cause filed by the petitioner. Alternatively it is contended that in view of Section 2(a)(v) of the E.C. Act "katha" can be said to be a food stuff and, as such, the order of confiscation cannot be said to be illegal.

6. In order to appreciate the contention of the learned Counsel for the parties, some of the provisions of the Act may be considered Section 6A empowers the Collector to make an order for confiscation where any essential commodity is seized in pursuance of an Order made u/s 3 in relation thereto. This provision clearly indicates that the Collector can exercise his power under this section only when an essential commodity which has been provided for regulating or prohibiting the production, supply and distribution thereof and trade and commerce by an order of the Central Government, has been seized.

Section 2(a) defines "essential commodities as thus : " "essential commodity means any of the following classes of commodities : (i) cattle fodder, including oil cakes and other concentrates; (ii) coal, including coke and other derivatives; (iii) component parts and accessories of automobiles (iv) cotton and woollen textiles (iv-a) drugs."

Sub-clause (v) of Clause (a) of Section 2 of the Act contemplates food-stuffs

including edible oil and oil seeds and oils as essential commodities.

Section 2A(xi) reads thus : "any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity ? for the purposes of this Act, being a commodity with respect to which the Parliament has power to make law by virtue of Entry 23 in List III in the Seventh Schedule to the Constitution."

7. The argument of Mr. V. Shivnath that "katha" is food-stuff, in my opinion, cannot be accepted as valid. In the case of Razzaque Khan v. State a of Bihar reported in 1990 (1) BLJR 597 this Court has held that katha is not essential commodity or notified, as such, the provisions of the E.C. Act would not apply to it.

8. No material could be produced by Mr. Shiv Nath which can suggest that "katha" has been notified or declared to be essential commodity by the Central Government for the purposes of this Act. Under this circumstances, it is clear that "katha" is not essential commodity and the truck of the petitioner could not have been confiscated for violation of any Order under the E.C. Act. Even assuming that food-stuff includes "katha" in absence of any order as required u/s 3 of the Act, the Collector could not have exercised his jurisdiction u/s 6A of the E.C. Act because he has been authorised to pass an order of confiscation in respect of food-stuffs which have been included by an order made u/s 3 of the Act.

9. Another striking feature of the case is that the Special Judge under the Act by his order dated 27.9.89 has already held that as no case u/s 7 of the Act could be made out, he was not entitled to try the same. The impugned order shows lack of judicial approach by the Deputy Commissioner. The Deputy Commissioner not only refused to consider the show cause filed by the petitioner belatedly but by not appreciating the allegation against the petitioner, has passed the order confiscating the truck in question in exercise of his power under the E.C. Act. In my view if the Collector would have considered the allegation made against the petitioner he would not have issued the notice as contained in Annexure 1 mechanically. Secondly, the Collector, without applying his judicial mind and averting to the question as to whether "katha" is essential commodity or not, has passed the impugned order and in such view of the matter, in my opinion, the impugned order cannot be sustained in law and has to be set aside.

10. In the result, this application is allowed. The notice as contained in Annexure 1 as well as the order of confiscation as far as the truck is concerned, are hereby quashed.