
(2002) 02 CAL CK 0034

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No's. 18756 (W) and 18757 (W) of 1993

Ratan Kumar Sahu and Asit Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3(1)
General Clauses Act, 1897 — Section 6

Citation : (2002) 3 CALLT 391

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : J.N. Ram, for the Appellant; Sajal Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Banerjee, J.—The aforesaid two cases involve common question of fact and law and as such I intend to dispose of the aforesaid two matters by a common judgment.

The writ petitioners in both these matters were implicated in criminal cases on the basis of FIR lodged by the Enforcement Branch for irregularities found on surprise check in the shops and godowns belonging to the writ petitioners. It was alleged that there had been serious discrepancies of recording of stock. There had been seizure of 60 bundles of corrugated sheets in case of the first writ petition and 506 bags salt in case of second writ petitioner.

The short question raised in these two writ petitions are as to whether the respondent authority was empowered to lodge such FIR on the basis of West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977 (hereinafter referred to as the said Order, 1977) when the said Order of 1977 was not in force as according to the writ petitioner the said Order, 1977 was issued by the State in view of a Central Government notification No. GSR 316(E)

dated 20th June, 1972 which stood replaced by GSR 800 dated 9th June, 1978. According to the writ petitioners the seizure took place in the year 1993 on the basis of the said Order 1977 when GSR 316(E) stood replaced by GSR 800 and as such the State Government should have issued a fresh Control Order as the original Control Order, 1977, as a consequence thereof, as it stood repealed and was no longer in force. Relying on the said proposition of law the writ petitioners prayed for quashing of the FIRs as well as the criminal proceedings. There had been ad-interim stay granted by this Court in both the matters and as such the said criminal case had been kept in abeyance.

2. Mr. J.N. Ram, learned counsel for the petitioners, submitted that in accordance with the provision of Section 3(1) of the Essential Commodities Act, 1955 the Central Government has power to regulate or prohibit production, supply and distribution and trade and commerce of essential commodity. In terms of the said power vested on the Central Government u/s 3(1) of the said Act, 1955 the Central Government issued notification being GSR No. 316(E) dated 20th June, 1972 empowering the State to regulate and control the production and sale of certain commodities. On the basis of the said power delegated on the West Bengal Government in view of the GSR 316(E) dated 20th June, 1972 the West Bengal Control Order, 1977 was enacted. In accordance with the said Control Order, 1977 FIR was lodged by the concerned authority in the instant cases. The said Control Order, according to Mr. Ram, was issued by the West Bengal Government by virtue of the power conferred upon them by GSR 316(E) dated 20th June, 1972. Since the GSR 316 was replaced by GSR 800 in the year 1978 the West Bengal Government should have issued a fresh control order in place of control order of 1977 as the said order of 1977 would not have any binding effect after issuance of GSR 800.

3. Mr. Sajal Chakraborty, learned counsel appearing for the respondent authority, submitted that the Central Government by virtue of power conferred upon them u/s 5 of the Essential Commodities Act, 1955 delegated the power on the West Bengal Government vide notification No. GSR 316. After deriving power from the Central Government through GSR 316 the West Bengal Government issued the said Control Order of 1977. It is true that GSR 316 was superseded by GSR 800. However, that had nothing to do with the control order of 1977 inasmuch as when the control order was issued GSR 316 was very much in force. Mr. Chakraborty further submitted that on plain reading of the said two GSRs being GSR No. 316 and GSR No. 800 it appeared that the subsequent notification was in effect almost repetition of the earlier one. Hence, by the subsequent notification the power to issue control order was not recalled by the Central Government. It was nothing but reiterating the power delegated to the State by the Central Government. Mr. Chakraborty further argued that when the search and seizure was made and the FIR was lodged the State Government had in fact was empowered by the Central Government to take such steps. That was the relevant factor to be considered herein. In this regard Mr. Chakraborty relied on two decisions reported in 1989, Calcutta Criminal Law Reporter, Page 155 (Jindal

Oil Mills and Others and Somalal Nathji and Others Vs. Godhra Electricity Co. Ltd., .

4. Relying on the aforesaid decisions Mr. Chakraborty submitted that when an existing statute or regulation is repealed or same is replaced by a fresh statute or regulation unless the new statute or regulation specifically or by necessary implication affects the right created under the old law those rights must be held to be in force even after the new statute or regulation coming into force.

5. In the case of Bimal Kumar Bouri v. State, reported in 1989 C LR 155 (supra) the Control Order of 1977 was held to be valid and binding by the Division Bench.

6. In the case of Jindal Oil Mills and Others and Somalal Nathji and Others Vs. Godhra Electricity Co. Ltd., , of the said judgment is relevant herein and quoted below:

"In Mohar Singh's case this Court laid down that the provisions of Sections 6(c), (d) and (e) of the General Clauses Act, 1897, relating to the consequences of the repeal of a law applicable not only when an Act or Regulation is repealed simpliciter but also to a case of repeal and simultaneous enactment re-enacting all the provisions of the repealed law. In the course of its judgment this Court observed that when the repeal is followed by a fresh legislation on the same subject, the Court has undoubtedly to look into the provisions of the new Act but that only for the purpose of determining whether they indicate a different intention. The line of inquiry would be, not whether the new Act keeps alive the old rights and liabilities but whether it manifests any intention to destroy them. In Deepchand's case this Court was considering the effect of repugnancy between a State Act and Central Act. The observations made in that context, we think, have no bearing on the point in issue in this case. It is true that when an existing Statute or Regulation is repealed and the same is replaced by fresh Statute or Regulation unless the new Statute or Regulation specifically or by necessary implication affects rights created under the old law those rights must be held to continue in force even after the new Statute or Regulation comes into force. But in the cases before us there is no question of affecting any vested right. There is no dispute that the charges fixed can be altered. The controversy relates to the procedure to be adopted in altering them. That controversy does not touch any vested right. The procedure in question must necessarily be regulated by the law in force at the alteration of the charges."

7. Considering the aforesaid submissions and relying on the said two judgments of the Apex Court and Division Bench of this Court I hold that the Control Order of 1977 was valid and binding upon the parties on the relevant date and there was no infirmity in the FIR warranting interference of this Court.

In the result, writ petitions fail and are hereby dismissed. Interim orders passed earlier stand vacated.

There would be, however, no order as to costs.

Urgent xerox certified copy will be given to the parties, if applied for.