

(1988) 04 CAL CK 0001
In the Calcutta High Court
Case No : Criminal Rev. No. 289 of 1983

Safikur Rahaman

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 22-04-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 41, 482
Essential Commodities Act, 1955 — Section 3, 6(A)(2)

Citation : 92 CWN 1189

Hon'ble Judges : S.P. Das Ghosh, J

Bench : Single Bench

Advocate : S.N. Tagore, S.K. Ghosal and S. Sinha, in both the Cr. Revn. Case and the Writ Petition, for the Appellant; S.S. Roy, Respondent No. 4 in both the CrI. Revn. Case and the Writ Petition, S. Majumdar for the State in the CrI. Revn. Case, S. Dutta and Samar Banerjee for the State, for the Respondent

Final Decision : Allowed

Judgement

S.P. Das Ghosh, J.—This order will govern the revisional application as well as the writ petition which have been heard together. It appears that before February, 1982 cement was a controlled commodity and nobody was entitled to purchase cement and use the same freely. By an order dated 28.2.82 entitled as the Cement Control (Third Amendment) Order, 1982, the Central Government, under the powers conferred by sections 184 and 25 of the Industrial (Development and Regulation) Act, 1951, ordered that cement produced in a Cement Plant would be of two categories viz., "Levy Cement" and "Non-levy Cement". It was enjoined by that Cement Control Order, 1982 that all cement producers would have to retain and dispose of 66.6% of the installed capacity as per Cement Control Order, 1967 and that as regards non-levy cement, i.e. cement produced in excess of 66.6% of the installed capacity the manufacturers and dealers would be entitled to sell, dispose of and deal with non-levy cement freely. There was thus virtually de-control of non-levy cement in excess of 66.6% of the installed capacity in a

cement plant. On or about 28.7.82, the writ petitioner as well as the petitioner in criminal revision, Safikur Rahaman, had in his godown at Malda town about 175 bags of cement. On that date, he was bringing from Calcutta another 240 bags of non-levy cement purchased by him for his own use and brought the same to his residence at Malda by Lorry No. BHI 8472. While the cement was in the process of being unloaded from that lorry at about 4.15 P.M. on 28.7.82, those 240 bags of cement as well as the 175 bags of cement in the godown were seized by one. M. Chatterjee, Sub-Inspector of English Bazar P.S. and the petitioner as well as the driver of the truck were arrested u/s 41 of the Code of Criminal Procedure. English Bazar P.S. C.D. No. 1069 dated 28.7.82 was made. On 29.7.82, the petitioner and the driver of the truck were produced before the learned Sub-Divisional Judicial Magistrate, Malda and were granted bail. The petitioner made a prayer on that date before the learned Sub-Divisional Judicial Magistrate for return of the seized cement to him. The learned Magistrate called for a report from the Investigating Officer. On 31.7.82, the prayer of the petitioner for return of the seized cement was rejected. The petitioner moved a revisional application before the learned Sessions Judge, Malda. The said revisional application, being Criminal Revision No. 46 of 1982, was admitted on 2.8.82. The operation of the impugned order of the learned Magistrate dated 31.7.82 was stayed till the hearing of the "revisional application. The revisional application was heard by the learned Sessions Judge on 9.8.82 and was allowed on 11.8.82. By that order dated 11.8.82, the learned Sessions Judge, Malda; directed the learned Magistrate to release the seized cement to the. petitioner as early as possible after obtaining a bond from his. In the meantime, before that order of release of the seized cement was passed by the learned Sessions Judge, Malda, there was an ex parte direction for sale of the seized 415 bags of cement by the learned, Collector, Malda, on 6.8.82 on the basis of a report from the Officer-in-Charge, English Bazar P.S. dated 29.7.82. By that order dated 6.8.82 the learned Collector, Malda, directed the Officer-in-Charge, English Bazar P.S. to sell the entire seized stock of cement to the Zilla Parishad, Malda, at controlled price. Subsequently, in pursuance of the order passed by the learned Sessions Judge, Malda on 11.8.82 in Criminal Revision No. 46 of 1982, the petitioner furnished requisite bond on 13.8.82. On 16.8.82, the petitioner filed a petition in the court of the learned Sessions Judge, Malda, for getting back the seized cement. The learned Sessions Judge called for an explanation from the Investigating Officer as it was alleged by the petitioner that the Officer-in-Charge, English Bazar Police Station, had flouted the order of the Court. The explanation was submitted by the Officer-in-Charge, English Bazar P.S. on 3.9.82 through the learned Public Prosecutor, Malda. to the effect that the order dated 2.8.82 passed by the learned Sessions Judge was not placed before him with the result that the entire stock of cement was delivered to the Zilla Parishad, Malda, on 10.8.82. On the basis of this explanation submitted by the Officer-in-Charge, English Bazar P.S., the learned Sessions Judge called for an explanation from the learned Sub-Divisional Judicial Magistrate, Malda, as to why the stay Order, as passed by him on 2.8.82 was not communicated by the office to the Officer-in-Charge, English

Bazar P.S. An explanation was submitted in the matter by the learned Sub-Divisional Judicial Magistrate-in-Charge, Malda. The explanation was that the copy of the stay order was communicated to the Officer-in-Charge, English Bazar P.S. on 7.8.82 and was received at English Bazar P.S. on that date. After getting this explanation, the learned Sessions Judge asked the Officer-in-Charge, English Bazar P.S. to show cause by 17.9.82 as to why he should not be appropriately proceeded against for making a false statement to the court about non-communication of the stay order to English Bazar P.S. Thereafter, another explanation was submitted by the Officer-in-Charge, English Bazar P.S. on 7.9.82. The explanation was that one home-guard had received the said stay order, which was not brought to his notice. In that explanation the Officer-in-Charge, English Bazar P.S. tendered unqualified apology. The explanation was accepted by the learned sessions Judge on 27.9.82. Subsequently on 27.9.82, the petitioner filed another petition in the court of the learned Sessions Judge, stating certain facts. The matter was fixed on 5.10.82 for hearing. On 5.10.82, the learned Public Prosecutor, Malda, filed a petition along with a letter issued by the District Engineer, Malda Zilla Parishad, stating that the major portion of the confiscated cement had already been consumed for construction of the Administrative Building of English Bazar Panchayat Samity, Malda. On the basis of this letter from the District Engineer, Malda Zilla Parishad, no further action in the matter was taken by the learned Sessions Judge, Malda. Thereafter, the petitioner moved this court u/s 482 of the Code of Criminal Procedure as well as under Article 227 of the Constitution for quashing the Confiscation Case No. 23 of 1982 along with the order dated 6.8.82 passed by the learned Collector, Malda, for sale of the seized cement. There were also some other prayers including a prayer for return of the seized cement or payment of the market value thereof to the petitioner.

2. The case of the petitioner "in the revisional application was that the Confiscation Case No. 23 of 1982 was being proceeded with without any authority of law. It was alleged that the explanation of the Officer-in-Charge, English Bazar P.S. about the sale of the seized cement on 10.8.82 was correct when 175 bags of cement were physically taken away from the custody of the father of the petitioner on 12.8.82 and could not be sold on 10.8.82.

3. In course of hearing of the revisional application, the petitioner filed the writ petition under Article 226 of the Constitution for issue of a writ in the nature of mandamus, directing the respondents to pay to the petitioner a sum of Rs.51,000/- as compensation for the losses suffered by the petitioner.

4. After hearing the learned Advocates for the petitioner, the Opposite Party No. 4 as well as for the State, I have no hesitation to say that the Confiscation Cases No. 23 of the 1982, started on the basis of the report of the Officer-in-Charge, English Bazar P.S. dated 29.7.82, as well as the order of the learned Collector, Malda, dated 6.8.82 for sale of the seized cement should be quashed. It was found by the learned Sessions Judge in the order dated 11.8.82 passed by him in

Criminal revision No. 46 of 1982 that the cement found in the possession of the petitioner was non-essential and that none of the Cement Control Orders of 1979 or of 1982 had manner of application. The learned Sessions Judge also held that there had not been any contravention of any order made u/s 3 of the Essential Commodities Act, 1985 (hereinafter called the "Act" for the sake of convenience) by the petitioner and as such, no reference for disposal of the seized cement could be made to the learned Collector, Malda. The learned Advocates for the Opposite Party No. 4, Zilla Parishad, Malda and for the State do not challenge these observations of the learned Sessions Judge. As already stated, cement was a controlled commodity but not an essential commodity prior to February, 1982. The Cement Control Order, 1967, issued by the Central Government in exercise of power conferred by section 18G and section 25 of the Industries (Development and Regulation) Act, 1951 provided for supply, distribution and availability of cement at fair prices. The effect of the Cement Control (Third Amendment) Order, 1982, was virtual decontrol of non-levy cement, i.e. cement, produced in excess of 66.6% of the installed capacity in any cement plant, though the West Bengal Cement (Licensing and Control) Order, 1979 was promulgated by the State Government in exercise of powers conferred by Section 3 of the Act, it related to regulation of business in cement, keeping intact the provisions of the Cement Control Order, 1967. Subsequently, there was another order, the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982, by the Government of West Bengal. By this order of 1982, the previous order of 1979, i.e. the West Bengal Cement (Licensing and Control) Order, 1979 was repealed. The effect of all these orders, passed by the Central Government or State Government, is that non-levy cement was not an essential commodity as defined in section 2(a) of the Act. The case of the petitioner is that the 175 bags of cement, that he had in his godown, were non-heavy cement. The further case of the petitioner is that he had purchased 240 bags of non-levy cement as non-levy cement was not an essential commodity and as the petitioner had also papers with him to show the purchase of the non-heavy cement by him, there ought not to have been any order for sale of the seized 415 bags of cement by the learned Collector Malda, on 6.8.1982. In view of the Division Bench decision of this Court reported in 1980(1) CHN 338 (In re Swadeshi Sugar Supplies Pvt. Ltd. & Anr.) the learned Collector, Malda, ought to have given an opportunity to the petitioner of being heard before passing the order for sale of the seized cement u/s 6(A)(2) of the Act. Moreover, as the seized cement is not an essential commodity, the order for sale of the seized cement, as passed by the learned Collector, Malda, is without jurisdiction and the entire proceedings in the Confiscation Case No. 23 of 1982 are to be quashed.

5. The question is whether any order for compensation for sale and/or delivery of the seized cement by the Officer-in-Charge, English Bazar P.S. can be passed either in the revisional application or "in the writ petition. No order for payment of compensation can be passed u/s 482 Criminal Procedure Code when the order was passed by the learned Collector, Malda. No order for payment of

compensation for sale of the seized cement should be passed under the discretionary power under Article 227 of the Constitution when the seized cement was not an essential commodity within the meaning of the Act, and the learned Sessions Judge accepted the explanation of the Officer-in-Charge, English Bazar P.S. by his order dated 27.9.82 in Criminal Revision No. 46 of 1982. Even the Act contains provisions for payment of price in the case of sale of essential commodity. These provisions are contained in sections 6-C(2), and 6-A(3) of the Act. u/s 6-C(2) of the Act, there can be payment of price of an essential commodity along with reasonable interest calculated from the date of seizure of the essential commodity. When the seized cement has already been delivered to the Opposite Party No. 4 and no order for compensation for value of the cement can be passed either u/s 482 Cr.P.C or under Article 227 of the Constitution, we are left only with Article 226 of the Constitution to find out whether any compensation can be paid to the petitioner for illegal seizure of cement, which was not an essential! commodity and non-levy cement, and illegal disposal of the same by the Officer-in-Charge, English Bazar P.S. in spite of the order for stay, passed by the learned Sessions Judge, Malda, in Criminal revision No. 46 of 1982 on 2;8.82, which was received at English Bazar P.S. on 7.8.82. Moreover, the contention of the petitioner that the entire seized cement cannot be sold and delivered on 10.8.82, cannot be brushed aside. Out of the 415 bags of cement, 175 bags of cement were in the custody of the father of the petitioner and were physically taken away from the custody of the father of the petitioner by the Officer in-Charge, English Bazar P.S. on 12.8.82. As such, there cannot be delivery of the entire seizure cement including 175 bags of cement to the Zilla Parishad, Malda, on 10.8.82, as stated by the Officer-in-Charge, English Bazar P.S. Monetary compensation by way of exemplary cost or otherwise can be awarded under Article 32 of the Constitution in case of invasion of a person's constitutional or legal right (Rudul Shah v. State of Bihar AIR 1983 SC 1086; Sebastian M. Hongray v. Union of India AIR 1984 SC 1026 and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others,). In the facts of this case, it cannot be stated that the petitioner has been deprived of his fundamental rights under Articles 14, 19, 20 and 21 of the Constitution, as contended by Mr. Thakur, the learned Advocate for the petitioner. Even then, in a case of this nature compensation, in lieu of deprivation of a person's legal right to use and purchase non-levy cement, though non-fundamental right, should be awarded; also there would be serious miscarriage of justice. If non-levy cement of a person, which ought not to have been seized and ought not to have been sold, be sold away and/or delivered by an order of the learned Collector, Malda, and if the owner of the seized cement be deprived of his legal right to recover the value of the seized cement, since sold out or delivered, on the ground that the sale and/or delivery were effected by virtue of the order of the learned Collector, Malda, there would be miscarriage of justice. I am, accordingly, of the opinion that the petitioner should be paid the value of the seized cement along with interest. I am told by the learned Advocate for the petitioner that at the relevant time in August, 1982, the price of non-levy cement per bag was Rs.65/-. At this rate the value of 415

bags of non-levy cement comes to Rs.26,975/- as mentioned in the writ petition. Though the petitioner has prayed for recovery of interest on the value of cement at the rate of 14%, I think that interest at the rate of 12% per annum from August, 1982 till date, amounting to Rs.18,613/-, will meet the ends of justice. The petitioner will thus be entitled to recover from the State of West Bengal, the respondent No. 1 in the Writ petition, a sum of Rs.45,588/- including interest as compensation for illegal sale and/or delivery of the illegally seized 41.5 bags of cement to Zilla Parishad, Malda.

6. The respondent No. 1, the State of West Bengal, is accordingly, to be directed to pay to the writ-petitioner, Safikur Rahaman, a sum of Rs.45,588/- as compensation within three months from this date. The money is to be deposited by the respondent No. 1 with the Registrar, Appellate Side of this Court and is to be paid back to the writ-petitioner.

7. In the result, the revisional application as well as the writ petition are allowed. The proceedings in Confiscation Case No. 23 of 1982 including the order dated 6.8.82, passed in that confiscation case by the learned Collector, Malda, are quashed. The respondent No. 1 is directed by a writ of mandamus to deposit within three months from this date in favour of the writ-petitioner a sum of Rs.45,588/- with the Registrar, Appellate Side of this Court, who will disburse the amount to the Writ-petitioner.

8. Let the records of the Confiscation Case and the lower court-record be sent down as early as possible.

9. Mr. Samar Banerjee, the Learned Advocate for the State, verbally prays for stay of operation of this order for a period of four weeks. Let the operation of this order be stayed for four weeks. Let a copy of the operative part of this order duly counter-signed by the Assistant Registrar (Court) be handed over to Learned Advocate for the State.