
(1980) 10 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1478/80

Shambu Dayal Girraj Prasad, Mahajan	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 09-10-1980

Acts Referred:

Rajasthan Cement (Licensing and Control) Order, 1974 — Section 6

Citation : (1981) WLN 271

Hon'ble Judges : D.P. Gupta, Acting C.J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, Actg. C.J.

1. The petitioner is a dealer engaged in the retail sale of cement. He was a stockist within the meaning of the Rajasthan Cement (Licensing and Control) Order, 1974 (hereinafter referred to as "the 1974-- Order") and made a deposit of Rs. 1000/- in accordance with the provisions of Section 6 of the 1974 Order. A notice was given by the District Supply Officer on 5-12-75. alleging that the petitioner had wrongfully taken possession of the 220 bags of cement from the Superddar which had earlier been seized from the petitioner and had thereby contravened the provisions of the Cement Distribution Order. The petitioner was called upon to show cause why action should not be taken against him. The District Supply Officer considered the reply filed by the petitioner and directed the forfeiture of the deposit of Rs. 1,000/-. This order was passed on May 12, 1976. The petitioner filed an appeal before the Collector, Sawai Madhopur, which was dismissed on May 3, 1977. The Collector, Sawai Madhopur came to the conclusion, on the basis of the admission of the petitioner, that the cement bags were kept by the petitioner after obtaining possession thereof from the Superddar at a place which was not specified in the licence issued to the petitioner under the 1974, Order and thereby the conditions of the licence were contravened. The petitioner feeling aggrieved against the aforesaid order, filed a

further appeal before the Food Commissioner. The Food Commissioner by the order dated September 19, 1979 held that no further appeal lay against the order of the Collector passed on an appeal under the 1974 Order. Under Clause 24 of the 1974 Order, an appeal against an order issued by an officer lower in rank to the Collector lay to the Collector. As the order of confiscation was passed by the District Supply Officer, the petitioner had himself filed an appeal before the Collector under Clause 24 of the 1974 Order. That appeal was considered and decided by the Collector on May 3, 1977 as mentioned above. Thereafter, there could be no further appeal under the 1974 Order. The Food Commissioner held that the appeal was incompetent and that there was no provision for second appeal or review under the 1974 Order. Therefore, the appeal filed by the petitioner was rejected by the Additional Food Commissioner.

2. Learned Counsel for the petitioner candidly conceded that no second appeal or review was provided under the 1974 Order. His contention, however, is that the petitioner could challenge the order of the Collector dated May 3, 1977 before this Court. The present writ petition was filed on 24th September, 1980, more than three years after the Collector passed his order dismissing the appeal of the petitioner under the 1974 Order. As it is not in dispute that neither a second appeal nor review petition was maintainable against the order passed by the Collector on appeal, it cannot be held that there was any mistake of law, which could be termed as bonafide. The order of the Collector passed on May 3, 1977 became final and as the petitioner did not challenge that order soon thereafter or within a reasonable time, the present writ petition cannot be entertained after a lapse of more than three years. Merely because the petitioner filed on appeal before the Food Commissioner, which was not provided by law and which become infructuous on this very ground, the petitioner cannot be heard after a delay of more than three years. It is difficult to understand as to why the petitioner went before the Food Commissioner as no appeal, revision or reference lay before that authority against the appellate order of the Collector and the petitioner cannot get benefit of such an infructuous proceedings. In these circumstances, I am unable to entertain the writ petition against the appellate order passed by the Collector on May 3, 1977 on merits, moreover, having looked into the order of the Collector, it appears that the same is based on an admission made by the learned Counsel appearing for the petitioner, to the effect that the cement bags were kept by the petitioner at a place different from the place mentioned in the licence of the petitioner as the place where the stock was to be kept.

3. In this view of the matter, there is an obvious contravention of the condition of the licence, which requires that the goods should be kept at the place specified in the licence. I, therefore, do not find that there is any substantial basis for interference with the order passed by the Collector.

4. Consequently, the writ petition is dismissed.