
(2004) 04 AP CK 0036

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 348 of 2001

Shankar Lalmaniyar and Another

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Essential Commodities Act, 1955 — Section 6B

Citation : (2004) 2 ALD(Cri) 314 : (2005) CriLJ 356

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : A. Rajasekhar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—This Criminal Revision Case is directed against the judgment rendered by the Sessions Judge, Khammam, in CrI. A. No. 164 of 1998, dated 14.09.2000, confirming the order passed by the Joint Collector in M.C. No. 55 of 1996, dated 13.12.1996, ordering confiscation of the stock of 10 M.Ts of coal along with the vehicle seized at Julurpad to the Government and in lieu of the vehicle, ordering forfeiture of security deposit of Rs. 8,000/- to the Government and also ordering confiscation of 30 M.Ts of coal seized at Palwancha from the first petitioner herein to the Government.

2. The factual matrix that is required for consideration is briefly stated as follows: -

On 04.08.1996, the Vigilance Department of Singareni Collieries Company Limited, Kothagudem caught hold of one coal lorry bearing No.AP-9-T-2385 and handed over the case to the Vigilance cell, (CS) Department, for investigation on the ground that the subsidised S.C.C. coal was being mis-utilised and diverted by certain Coal Brokers instead of selling to the actual parties which amounted to violation of the provisions of Clauses-12-B, 12-E, and 12-C of Colliery Control

Order, 1945 (hereinafter referred to as "the Control Order") read with Section-6A of the Essential Commodities Act, 1955 (hereinafter referred to as "the E.C. Act"). The Inspector of Police, (VC-CSD), Khammam, seized the lorry bearing No. AP-9-T-2385. The Vigilance official also seized 10 M.Ts of S.C.C. coal under a cover of panchnama in the premises of his office at Khammam. He inspected the Carbon Products and Chemicals at Palwancha pertaining to Shankar Lalmaniyar i.e. the first petitioner herein and seized 30 M.Ts of S.C.C. coal. Thereafter, the Vigilance officer, (VC-CSD), Khammam, laid a complaint before the Joint Collector, Khammam-Sri Krishna Maniyar. The Joint Collector issued a show cause notice to the respondents under Section-6B of the E.C. Act after being satisfied with the material on record regarding commission of offence.

3. The petitioners herein have contended before the Joint Collector that the lorry along with the load was seized by the Vigilance Department of S.C.C. Limited, Kothagudem, and that they were not shown as the accused in the F.I.R. register. The second contention is that in continuation of the alleged seizure of 10 M.Ts of coal and lorry on 04.08.1996, the Vigilance officials visited the premises of the petitioners herein on 06.08.1996 and seized 30 M.Ts of coal and the names of the petitioners herein were not mentioned in those F.I.Rs. The third contention is that there is no rule showing that coal is to be transported only with the way bills issued by the S.C.C. Limited, which is a Central Government undertaking, but not on the other way bills. The fourth contention is that the stock register and the way bills clearly account for the coal dumped in the premises and the seizing of stock register, way bills, 30 M.Ts of coal without verifying the said registers is bad. The fifth contention is that the Vigilance officer has not verified the way bills at all and with regard to the way bills numbering 5434027, 028 and 029, the purchasers have brought the material to his premises and finished product are transported from his premises and the way bills are issued. The sixth contention is that the second petitioner being Proprietor of J.J. Corporation is entitled to do business in coal products and the transportation of the coal is not illegal. Insofar as the owner and driver of the seized lorry are concerned, they have contended that they have not violated any provisions of law and the goods are being transported under proper way bills and they have no knowledge or connivance with regard to the illegal transport. The last contention is that there is no contravention of Clause-12 of the Control Order and the same is not applicable.

4. After enquiry, the Joint Collector gave a finding that the charge of illegal transportation of S.C.C. coal into black market on invalid documents is held proved against the first petitioner herein, being the first respondent in M.C.No.55 of 1996, in violation of Clauses-12-B, 12-E and 12-G of the Control Order and Section-2 of the Act. He ordered confiscation of seized stock of 30 M.Ts of coal along with the vehicle seized at Julurpad to the Government. Thereupon, the 1st, 2nd and 3rd respondents in M.C.No.55 of 1996 preferred an appeal before the Sessions Judge, Khammam. The Sessions Judge, Khammam confirmed the order passed by the Joint Collector in M.C.No.55 of 1996, dated 13.12.1996, in Crl.A.No.164 of 1998, dated 14.09.2000.

5. Aggrieved by the same, the petitioners herein who are first and second respondents in M.C.No.55 of 1996 preferred this revision.

6. Sri A. Rajasekhar Reddy, learned Counsel appearing for the revision petitioners, mainly contended that there was no notification issued bringing the Colliery Control Order under the provisions of the E.C. Act. It is also contended by him that the Collieries Control Order has been issued in 1945, whereas Essential Commodities Act has come into force in 1955. As there is no notification issued bringing the said Control Order within the purview of the Act, it has no application. It is also further contended that there is no notification issued conferring the power of confiscation and seizure on the Vigilance officer by the Central Government to invoke the Act. In the absence of notification, Vigilance Officer has no jurisdiction to seize the properties. It is only the officials namely Coal Controller declared under the said Control Order will have jurisdiction as per clause-15 of the Control Order. It is further contended that there is no mens rea and confiscation cannot be made without mens rea and on mere suspension. Lastly, it is contended by the learned Counsel appearing for the revision petitioners that the confiscation of the entire stock is bad and reliance was placed on SAMUDRALA VENKATESWAR RAO Vs. GOVERNMENT OF INDIA 2002(6) ALD 389

7. On the other hand, the learned Public Prosecutor contends that on 04.05.1982, a notification was published in Gazette of India, dated 25.05.1982, bringing the provisions of Collieries Control Order, 1945 within the four corners of Essential Commodities Act, 1955 and hence the Vigilance Officer has got jurisdiction to confiscate and seize the properties and the seizure is valid. It is also contended by him that coal and its products are the essential commodities within the meaning of Section-2(a) of the Act and hence, the Vigilance officer rightly seized the same. The learned Public Prosecutor also supported the order of both the Courts below

8. Adverting to the said contentions, it is necessary to have a look at the notification said to have been issued bringing the Control Order within the purview of the Act. The prosecution is unable to place the original G.O. The said notification was found mentioned in the Law of Control Orders in Andhra Pradesh, 6th Edition by Sri Padala Rama Reddy at page No.39 published in 1995. Only a portion of the G.O. has been mentioned. The number is given as S.O. 348(E), dated 04.05.1982, published in Gazette of India on 25.05.1982. The relevant portion reads as follows:-

"In pursuance of clause-3 of the Colliery Control Order, 1945, as continued in force by Section-16 of the Essential Commodities Act, 1955 (10 of 1955), and as recommended by the Coal Conservation and Development Advisory Committee, the Central Government hereby prescribes that the classes and grades into which Ohurchas V Seam coal in thick zone shall be re-classified as "non-coking" with immediate effect."

9. The learned Counsel appearing for the revision petitioners contends that the said notification only makes a mention regarding prescribing classes and grades into which Ohurchas V seam coal in thick zone shall be classified. It is also contended by him that there is no specific mentioning in the said G.O. that the entire Control Order, has been brought within the purview of Section-6-A of the Act. If the above mentioned publication, extracted already, is taken into consideration it makes clear that Section-3 of the Control Order was in continued force by Section-16 of the Act and the entire S.O. reads as if that it is only issued with respect to the classification and grades of coal.

10. The learned Counsel for the revision petitioners has made a strenuous effort to show that a specific notification is required bringing the Control Order within the purview of the Act. Obviously, Section-2(a) of the E.C. Act defines essential commodities, wherein under Clause- (a)(ii) Coal including coke and other derivatives are mentioned as essential commodities. The coal thus seized is certainly an essential commodity. Section-6A of the E.C. Act reads as follows:-

"Confiscation of foodgrains, edible oil seeds, and edible oils:-

(1) Where any Essential Commodity is seized in pursuance of an order made under Section-3, in relation thereto a report of such seizure shall, without unreasonable, delay, be made to the Collector of the District or the Presidency town in which such essential commodity seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, may, if he thinks it expedient so to do, direct the essential commodity so seized, to be produced for inspection before him and if he is satisfied that there has been a contravention of the order, may order confiscation of -

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found and ; or

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity;

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oil seeds seized in pursuance of an order made under Section-3 in reaction thereto from a producer shall, if the seized foodgrains, or edible oil seeds have been produced by him, be confiscated under this Section.

Provided further that in the case of any animal, vehicle, vessel, or other conveyance, used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay in lie of its confiscation, a fine not exceeding the market price at the date of seizure, of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance."

11. It is clear from Section-6A of the Act that there shall be an order made under Section-3 of the Act in respect of essential commodities which are brought under the control of the aforesaid provision. The learned Public Prosecutor is unable to show that all the provisions of Control Order have been brought within the purview of Section-3 of the Act by issuing a notification. The notification which is brought to the notice of the Court is only with respect to classification and grades of coal and not with reference to the seizure and confiscation. Unless there is a notification mentioning the fact of bringing the Control Order within the purview of Section-3 of the Act, it cannot be said that the Control Order has been brought within the purview of the provisions of the Act. I am of the considered view that there is no notification under Section-3 of the Act bringing the Control Order within the purview of the Act and making its provisions applicable and that S.O.348 (E), dated 04.05.1982, do not indicate at all that the provisions of the Control Order have been brought within the purview of the Act. I am also of the considered view that in the absence of specific notification bringing the Control Order within the purview of Section-3 of the Act, the Essential Commodities Act, 1955 cannot be invoked except to the extent of applicability under the above said S.O. No. 348 (E). There is also sufficient force in the contention of the learned Counsel for the revision petitioners that Vigilance Officer under the Act cannot seize or confiscate the goods since the E.C. Act is not totally made applicable to the Control Order. I am also of the considered opinion that the authorities mentioned in the Control Order are competent to search and seize the goods transported in violation of the Control Order and not the Vigilance Officers mentioned under the Act and in that view of the matter, Section-6A of the Act cannot be invoked, and search and seizure appears to be not valid for want of jurisdiction. There is also sufficient force in the contention of the learned Counsel for the revision petitioners that Vigilance Officer has been appointed by the State Government and the Central Government has not vested any power on him to search and seize the goods under the provisions of the Colliery Control Order. Since no notification has been produced by the learned Public Prosecutor, his contention that the Vigilance Officer gets automatically the jurisdiction to proceed under the Act cannot hold water for the fact that no notification was issued bringing the Control Order within the purview of the Section-6 or Section-3 of the Act. Obviously, the search and seizure was not conducted by the officials mentioned under Clause-15 of the Control Order.

12. Coming to the fact of seizure of goods are concerned, they are being transported under way bills. The Vigilance officer of S.C.C. Limited cannot search and seize the goods, as he is not empowered to do so under the Control Order. Viewed through this angle also, the search and seizure is bad. Moreover, the learned Counsel appearing for the revision petitioners contends that there is no mens rea on the part of the revision petitioners and mere suspicion cannot take the place of proof. It is contended that the first seizure has nothing to do with the revision petitioners. The stocks found were entered in the registers and the Vigilance Inspector did not verify the stock properly. In view of the above

findings, it is held that the Vigilance officer under the Act has no jurisdiction to search and seize the goods. It is not the case of the Vigilance officer that the revision petitioners were present at the time of search and seizure on 03.08.1996. The way bills found by the Vigilance officer on his search and seizure on 06.08.1996 were accounted for in the registers, and hence no illegality was shown regarding the maintenance of accounts. Hence that charge is also not made out.

13. Lastly, it is contended by the learned Counsel for the revision petitioners that even assuming that there is illegality and the Vigilance Official has got jurisdiction, seizing of entire stock is unwarranted and in support of his contention he has placed reliance in SAMUDRALA VENKATESWAR RAO Vs. GOVERNMENT OF INDIA.

The relevant portion is at para No.20 which reads as follows:-

"After considering the nature of the contraventions and in the light of the decisions, where it was held that confiscation of the entire seized stock is not proper and just for any and every contravention; in the instant case, though the inspecting authorities inspected the premises on the allegation that the petitioner was carrying on clandestine business, there is absolutely no reference to any such clandestine business being carried on by the petitioner. In fact, the learned Counsel contended that when there is no such clandestine business being carried on by the petitioner, the entire proceedings are liable to be quashed. In any case, as the petitioner's stocks were seized, as early as on 15.04.1995 and finally they were disposed of and sale proceeds were kept with the respondent authorities and denied the said amount to the petitioner for all the seven years. That itself would be sufficient punishment to the petitioner and therefore, it would not be proper to impose any further confiscation of the stocks seized or its value to the Government."

14. I am of the view that the discretion has to be exercised regarding ordering seizure of the stocks depending upon the facts of each case and the charge made out. No hard and fast rule can be laid down regarding the seizure of the stock. It must be left to the concerned authority to exercise his discretion on sound principles, justice, equity and conscience while keeping in view the fact that there is violation of provisions of certain orders which are declared to be an essential commodities and whose black marketing is prohibited with an intention to prevent scarcity of the commodity in the market. In that view of the matter, the seizure of the stock cannot be said to be proper.

15. In view of accepting the contention of the learned Counsel for the revision petitioners that no notification was issued under Section-3 of the Act bringing all the provisions of the Control Order within the purview of the Act and in view of the fact that the Vigilance official under the Act has no jurisdiction to search and seize, the confiscation cannot be upheld. The search and seizure is bad for want of jurisdiction. Consequently, the order of seizure is also considered as bad.

16. For the aforesaid reasons, I find that the order of the lower appellate Court as well as the order passed by the Joint Collector are liable to be set aside. I accordingly, set aside the same. The revision petitioners are entitled to refund of the goods seized or its value.

17. Accordingly, the Civil Revision Case is allowed. No costs.