(1988) 02 PAT CK 0031

In the Patna High Court

Case No : Cr.W.J.C. No. 95 of 1985

Shanti Trading Co. and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 05-02-1988

Acts Referred:
Essential Commodities Act, 1955 — Section 6

Citation : (1988) 36 BLJR 508 : (1988) PLJR 732

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—This is an application for quashing Annexures 2 and 3 by which the Collector, Bhagalpur, and the Food Commissioner, Patna, who have passed Orders u/s 6(A) of the Essential Commodities Act confiscating the entire goods loaded in Truck No. W.B.I. 3445 near Aliganj Check post on 10-11-1976.

2. The only allegation for the said seizure was that the driver and Khalasi failed to produce papers relating to the goods loaded on the truck.

3. The two courts below have merely passed the order of confiscation because even though the goods were seized in November 1976, the claimants appeared before the authorities on 2-12-1976 claiming the goods. The two courts, therefore, held that since there was belated claim of the goods, they are not the owner of the goods and by so saying passed an order of confiscation. In the last paragraph of its order it has, however been stated that there has been a violation of Bihar Edible Oil Wholesale Dealers Licensing Order, 1966, and Bihar Vanaspati Dealers Licensing Order 1967. The two courts below have completely misdirected themselves in passing an order of confiscation. The courts below were required to record a clear finding as to what provisions of the Bihar Edible Oil Wholesale Dealers Licensing Order and/or Bihar Vanaspati Dealers Licensing Order was contravened. They have not referred to any provisions in the two orders which

require a driver of the truck to move on the road with the papers relating to the stock loaded in the truck. It is not a case that the goods loaded in the truck were stolen asticles. No other claimant has come forward to claim the goods which were on the truck. A delayed claim of the goods seized is entirely irrelevant till such lime the authorities are able to establish that there has been a contravention of any of the provisions of the said two Orders. Absence of papers may only raise a reason to believe that some provisions of the Order is being violated but for the purposes of passing an order of confiscation the authorities must be able to establish what provision of the Order has been contravened. By going through all the Orders 1 find that the authorities have confiscated the goods because the claim of the petitioners did not appeal to the authorities. Power to confiscate does not flow even if there is an inter-se dispute as to the ownership of the property, though in this case there is no other claimant than the petitioners of the case in question. The two orders, Anuexures-2 and 3, are wholly without jurisdiction and are being quashed.

4. I am told that the goods have already been sold and the value thereof lies in deposit with the authorities. The authorities are directed to refund the amount along with the interest thereon u/s 6 (C)(2) of the Essential Commodities Act forthwith within two months of the filing of this judgment before the authorities.

5. In the result, the writ petition is allowed with the above observations. Hearing fee is assessed at Rs. 250/-.

