

(1993) 06 PAT CK 0006
In the Patna High Court
Case No : Criminal W.J.C. No. 94 of 1989

Shyamsundar Agrawal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 6A

Citation : (1993) 2 BLJR 1443

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Om Prakash, J.—This application under Articles 226 and 227 of the Constitution of India has been filed for quashing of confiscation order dated 31-3-1989 passed by the Collector, Bhagalpur, in E. C. Act Case No. 82/88-89 exercising power u/s 6A of the Essential Commodities Act confiscating rice, wheat, pulses, etc. seized from the business premises of the petitioner on 30th July, 1988 alleging violation of the provisions of Bihar Essential Articles (Display of Stocks and Prices) Order, 1977 and Bihar Trade Articles Licences (Unification) Order, 1984.

2. It appears that on 30th July, 1988, a D. S. P., C. 1. D. (Food) led a raiding party comprising of a number of Inspectors of Police, C. I. p. (Food) raided petitioner's business premises and sensed certain quantities of rices, wheat, pulses etc., on the ground of violation of the provisions of the orders referred to above. In due course F.I.R. (Annexure 2) was lodged by one of the Police Inspector, C. I, D. (Food), Bhagalpur, who was member of the raiding party. Subsequently, Confiscation Case No. 82/88-89 was initiated against the petitioner and by order dated 31st March, 1989, the seized foodgrains were confiscated (Annexure 4).

3. Learned Counsel for the petitioner has challenged such confiscation order on the ground that the entire seizure by a D.S.P., C.I.D. (Food) or an Inspector of

Police, C.I.D. (Food) is Illegal and without jurisdiction. Neither the D.S.P., C.I.D. (Food) nor Inspector of Police, C.I.D (Food), who lodged F.I.R. was legally competent to make search and seizure as none of them was empowered to do so on 30th July, 1988, by the State Government before 28th July, 1992. Inviting Court attention to Bihar Gazette (Extraordinary) dated 28th July, 1992 he has submitted that the Deputy Superintendent of Police, C.I.B (Food) and Inspector of Police, C.I.D. (Food) have been empowered to make search and seizure under G.S.K. 31, dated 28th July, 1992.

4. It has not been challenged by the learned Counsel for the State before me that the D.S.P., C.I.D. (Food) or Inspector of Police, C.I.D (Food) was not empowered to make search and seizure in question on 30th July, 1988 and they have been empowered to make search and seizure only on 28th July, 1992 under the said G.S.R. 31 dated 28th July, 1992.

5. A copy of Bihar Gazette (Extraordinary), dated 28th July, 1992 has been produced which shows that under G.S.R. dated 28th July, 1992 Deputy Superintendent of Police, C.I.D. (Food) and Inspector of Police, C.I.D. (Food) have been conferred such powers by amending the Bihar Trade Articles (Licenses Unification) Order, 1984 published under Food, Supply and Commerce Department, Government of Bihar Notification No. G.S.R. 9, dated 9th April, 1984.

6. Thus, it is crystal clear that neither the D.S.P., C. I. D. (Food), who led the raiding party and held inspection nor the Inspector of Police, C.I D (Food), who lodged, F.I.R. against the petitioner, had any power under the law to make search and seizure of the foodgrains in question. In this view of the matter, the order of confiscation dated 31-3-1989 (Annexure 4) is unsustainable and illegal as the search and seizure had no legal sanction.

7. In the case of Roshan Lal Arjun Lal Vs. State of Bihar and Others, ., C.I.D. (Food) had made seizure on 3rd December, 1990. But he was not competent under the law to make seizure on that date. Then it was held that the search and seizure made by D.S.P., C.I.D (Food) was illegal and confiscation proceeding before the Collector was quashed.

8. In view of the above, the application succeeds and is hereby allowed. The order dated 31st March, 1989, passed by the Collector, Bhagalpur, in Confiscation Case No. 82/88-89, State v. Shyamsundar Agrawal. is hereby quashed.

9. The Court has been informed that the seized foodgrains have already been released against proper security by order dated 21-4-1988. In such case, sureties shall stand discharged.