(1989) 03 AHC CK 0052

In the Allahabad High Court

Case No : Criminal Revision No. 1909 of 1983

Singh and Company and Coal Agent — APPELLANT

Vs

State of Uttar Pradesh — RESPONDENT

Date of Decision : 27-03-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Essential Commodities (Amendment) Act, 1966 — Section 3
Essential Commodities Act, 1955 — Section 6A, 6B, 6C

Citation : (1989) 2 AWC 1216

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : C.L. Pandey, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Yadav, J.—The applicant has filed the present criminal revision u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short the Code), against the judgment and order dated 23-7-83 passed by the and Additional Sessions Judge, Varanasi, dismissing the appeal preferred by the applicant u/s 6-C of the Essential Commodities Act, (for short the Act), (as amended by Section 3 of the Essential Commodities (Amendment) Act, 1966), arising out of the Order dated 22-5-81 passed by the Additional District Magistrate (Administration), Varanasi.

2. It appears that a licence was obtained by the Petitioner for steam coal under Clause 4 of the U.P. Coal Control Order, 1977. A notice was given to the Petitioner u/s 6-A of the Act on the report of the Additional District Magistrate (Civil Supplies) to the effect that on the spot neither the stock board nor ''rate-board'' was available, nor any other document was made available, and the applicant did not return after assurance that he would furnish the requisite papers. Consequently, this inference was possible that he did not prepare any relevant document, and hence the proceedings for confiscation as contemplated

u/s 6-A of the Act be initiated and the coal of the Petitioner may be confiscated. A reply to the show cause notice was furnished by the Petitioner as required u/s 6-B of the Act, but the same was not found satisfactory. Consequently, the Additional District Magistrate (Administration), Varanasi, by order dated 22-5-81 directed the confiscation of 132 mt. of coal and auction of the same. The said quantity of coal appears to have been put to auction sale. Against that order the applicant preferred an appeal u/s 6-C of the Act, which failed, hence the present Revision under Sections 397/401 of the Code was filed.

3. Sri C.L. Pandey, Learned Counsel for the applicant urged that in view of Clause 4 of U.P. Coal Control Order, 1977, licence is granted to a person desirous of either importing coal or carrying on business as a coal agent. The Petitioner was dealer in steam coal. Second proviso (B) of Clause 3 of the said Control Order of 1977 provides that Clauses 4 to 10 would not apply to steam coal and hard coke for industrial consumption. It was further urged that depriving from a privilege of licence or imposing a fine of as forfeiture or awarding some other punishment under the Coal Control Order, 1977, make it substantially penal in nature. A penal statute must be strictly interpreted in favour of the subject, according to the cardinal rule of interpretation of statutes. Clause 4 deals with the licence and provides that no person shall import coal and carry on business as a coal agent or coal depot holder, or run a brick kiln with coal except and in accordance with the terms and conditions of licence. Clause 5 deals with the issuance of a licence. Clause 6 provides the period of licence and the fee chargeable. Clause 7 deals with the security, whereas Clause 8 deals with directions regarding import, purchase, sale, storage and distribution, Clause 10 deals with the display of stock position. The last two Clauses 9 & 10 and Clauses 4 & 5 appear to be relevant for the present case, whereas Clauses 14 and 16 deal with the power to call for information and effect of suspension or revocation of licence. But under Clause 3(B) of the Control Order, 1977, these clauses would not apply to steam coal or to hard coke for industrial consumption. It was next urged that in view of the provisions of Clauses 3 and 4 of the Essential Commodities (Display of Prices and Stocks and Control of Supply and Distribution) Order, 1977, (for short the Distribution Order), only for a scheduled commodity the price list etc. was required to be maintained. Only soft coke has been mentioned at serial No. 12 and hence the Distribution Order, 1977 applies to soft coke. The steam coal is conspicuous by its absence This Distribution Order, 1977, consequently, would not apply to the case of Petitioner. In other words, the Petitioner was neither required to obtain licence nor to maintain price list etc.

4. Sri N.S. Kulshreshtha appearing for the State on the other hand, urged that impugned orders are correct and in respect of the steam coal the licence was essential and the same having been obtained, the Petitioner was bound to comply with the terms of the said licence and to show the register etc. on the spot when they were required by the Inspector concerned, the impugned orders were perfectly correct.

5. Before the points urged are discussed it would not be inappropriate if some elementary rules of construction of penal statutes are referred. Depriving a citizen from his privilege of licence or imposing punishment for violation of conditions of licence or violation of provisions of the Coal Control Order, 1972, impose criminal penalties. The rules imposing criminal penalties should be narrowly construed in favour of the person proceeded against. In London and Country Commercial Properties Investments Ltd. v. Attorney General (1953) 1 W.L.R. 312, at page 319, it was held:

The principle applied in construing a penal Act is that if in construing the relevant provisions, there appears any reasonable doubt or ambiguity, it will be resolved in favour of the person who would be liable to the penalty. In Tuck and Sons v. Priester (1887) 19 Q.B.D. 629 it was observed:

If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions, we must give the more lenient one. That is the settled rule for the construction of penal sections.

In Re H.P.C. Productions Ltd. (1962) Ch. 466 it was held as follows:

In every case the question is simply what is the meaning of the words which the statutes has used to describe the prohibited act or transaction. If these words have a natural meaning, that is their meaning, and such meaning is not to be extended by any reasoning based on the substance of the transaction. If the language of the statute is equivocal and there are two reasonable meanings of the language, the interpretation which will avoid penalty, is to be adopted.

6. I am reminded of two Latin maxims which appear to be pertinent: Nulla Poena Sine Lege, which connotes that no punishment except in accordance with the specific provisions of law, and the next is Nullum Crimen Nulla Poena Sine Lege which connotes that there is no crime and no punishment except striclty in accordance with the specific provisions of statutory law.

7. In State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , it was observed per Hon''ble Chandrachud, CJ. as follows:

Where a statute creates an offence and imposes a penalty of fine and imprisonment, the language of statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute and in case of doubt, the construction favourable to the subject should be preferred. The court must see that the thing charged is an offence within the plain meaning of the words used and it must not strain the words. But this role of strict interpretation of penal statutes in no way affects the fundamental principle of interpretation, that the primary test which can safely be applied is the language used in the Act and, therefore, when the words are clear and plain, the court must accept the expressed intention of the legislature.

8. I am of the view that depriving a person from a licence granted to him is to

deprive him from a privilege and to impose penalty, fine or punishment under the Coal Control Order, 1972 are penal in nature. The Coal Control Order, 1972 has to be strictly construed in favour of the person who is sought to be deprived from privilege or on whom some penalty is sought to be imposed. As the language employed by the legislature to express its intention is specific and precise, hence the provisions have to be construed assigning natural meaning to the words and such meaning need not be extended. These principles of interpretation are applicable while considering provisions of U.P. Coal Control Order of 1977 and the Distribution Order etc.

9. Under the provisions of second Proviso (B) of Clause 3 of the Control Order, 1977, Clauses 4 to 10 and 14 to 16 were not applicable. As indicated above, Clause 4 deals with licence, Clause 5 deals with the issue of licence, Clause 9 deals with the maintenance of accounts and Clause 10 deals with the display of stock position. But in fact, as the Petitioner was dealing in steam coal. Consequently, these clauses will not apply. He was not required to maintain the accounts as required by Clause 9 or display the stock position as required by Clause 10. Even in the Distribution Order 1977, in view of Clause 2(f) a schedule has been appended wherein at serial No. 12 soft coke has been mentioned and steam coal is conspicuous by its absence. Consequently, the Distribution Order, 1977 requiring display of prices and stock and other relevant registers would also not be applicable to the case of Petitioner as he was dealing in steam coal. In respect of steam coal these provisions would not apply. The impugned orders have been passed under the impression as if the provisions of U.P. Coal Control Order, 1977 and the Distribution Order, 1977 would apply. Applying posteriori and priori methods of reasoning, and interpreting the aforesaid provisions in view of plain meaning the impugned orders cannot be sustained and deserve to be set aside.

10. In the result, the revision succeeds and is allowed. The order dated 22-5-1981 passed by the Additional District Magistrate (Administration), Varanasi and the judgment and order dated 23-7-1983 passed by the IInd Addl. Sessions Judge, Varanasi, in appeal u/s 6-C of the Act are set aside. In case 132 tones of steam coal of the Petitioner was actually auctioned and the amount has been deposited, the said amount would be refunded to the applicant forthwith with interest at the rate of 12% per annum from the date of auction till the decision of this revision.