

(1989) 08 GUJ CK 0005
In the Gujarat High Court

Case No : Special Criminal Application No. 1479 of 1982

State of Gujarat and Another

APPELLANT

Vs

Mulchand Lakhansinh Shah

RESPONDENT

Date of Decision : 07-08-1989

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6B, 6B(1), 6C, 6C(2)

Citation : (1990) CriLJ 2399 : (1990) 1 GLR 195

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Advocate : D.K. Trivedi, app, for the Appellant; S.N. Shelat, for the Respondent

Judgement

K.J. Vaidya, J.—The above Special Criminal Application arises out of the judgment and order dated, 13th May, 1981, rendered in Criminal Appeal No. 14 of 1982 by the learned Sessions Judge, Valsad, (hereinafter for short referred to as the learned Judge), whereby he allowed the said Appeal filed by Shri Mulchand Lakhansinh Shah (for short referred to as, opponent) quashing and setting aside the order dated 6th February, 1982, passed by the District Supply Officer, Valsad, (for short referred to as D.S.C. Valsad), confiscating 74 tins of Pamoline edible oil (for short referred to as M. M. oil tins).

2. Briefly speaking, on the secret tipoff on 13th May 1981, the Chief Supply Inspector, Valsad, alongwith Deputy Mamlatdar, Supply Branch, Pardi, raided a cabin No. 5 of one Shivbhalsinh Rajbahadursing and seized 74 oil tins of the ownership of the opponent.

3. After necessary inquiry, the Chief Supply Inspector submitted a report on 16th November, 1981, alongwith relevant papers to the Collector, Valsad, for taking appropriate action against the opponent under the provisions of the Essential Commodities Act, 1955 (for short referred to as the said Act). Thereafter, it appears that the said proceedings came to be transferred to the D.S.O. Valsad and he on going through the relevant material, feeling satisfied that the

opponent had committed breach of Section 3 of the said Act and certain provisions made under The Gujarat Essential Commodities (Licensing & Stock Declaration) Order, 1981, thought it proper to confiscate the same to the State. In this view of the matter, as warranted u/s 6-B of the said Act, he issued a show cause notice dated 2nd December, 1981, to the opponent which is produced at page-41 of the record of the case. The reading of this notice shows that (a) that the same was given in writing informing the opponent the grounds on which it was proposed to confiscate the M.M. oil tins; (b) that the same also gave an opportunity to opponent of making a representation in writing on or before 14th December, 1981, against the proposed grounds of confiscation; and (c) that it further discloses that the opponent was also given an opportunity of being heard on 14th December, 1981, at 11-00 hours in Collector Office. The record further shows that pursuant to the aforesaid show cause notice, one Mr. R. S. Kapadia, the learned advocate had appeared on 14th December, 1981, before D.S.O. Valsad, and filed Vakalatnama on behalf of the opponent and submitted an application for adjournment of the case to some future date. The said adjournment application is found at page 45 of the record, wherein on behalf of the opponent, it has been submitted that he (the opponent) desires to make a written representation against the proposed confiscation of M.M. oil tins and also wants to argue his case through his advocate. It is further stated in the said application that as the marriage of the opponent was fixed on 21st December, 1981, due to the same, he could not instruct his advocate in time for filing the written representation. Under the circumstances, it was prayed that the case may be adjourned on any date in January. This application for adjournment was granted by the D.S.O. Valsad and the case was adjourned to 18th January, 1982 for submitting a representation in writing and also for hearing the opponent. Thereafter, the opponent had submitted his written representation dated 11th January, 1982 to the D.S.O. Valsad. On 18th January, 1982 the learned advocate Mr. Kapadia appeared on behalf of the opponent before D.S.O. Valsad and made submissions against the proposed order of confiscation of M.M. oil tins to the State. It may be re-called at this stage that earlier when the application for adjournment on 14th December, 1982 was submitted, it was specifically mentioned therein that the opponent desired to be heard through his advocate. Accordingly, after taking on record the representation in writing and oral submissions made by opponent through his learned advocate Mr. Kapadia, the D.S.O. Valsad, by a judgment and order dated 6th February, 1982 was pleased to order the confiscation of M.M. oil tins to the State.

4. Feeling aggrieved and dissatisfied by the impugned order of confiscation of M.M. oil tins to the State, the opponent preferred an appeal being Criminal Appeal No. 14 of 1982 under the provision contained in Section 6-C of the said Act before the learned Sessions Judge, Valsad at Navsari, which ultimately came to be allowed by a judgment and order, dated 13th May, 1982, quashing and setting aside the impugned order of confiscation of M.M. oil tins passed by the D.S.O. Valsad, with a further direction to the said D.S.O. to comply with the

provision of Section 6-C(2) of the said Act in relation to M.M. oil tins.

5. Feeling aggrieved and dissatisfied by the impugned judgment and order passed by the learned Judge, the State of Gujarat had initially preferred Criminal Revision Application No. 397 of 1982, which thereafter with the permission of this court was converted into the above Special Criminal Application No. 1479 of 1982.

6. Mr. D.K. Trivedi, the learned Addl. P.P. for the petitioner State has made following two submissions:

(1) That the impugned judgment and order is patently illegal inasmuch as the learned Judge has committed a serious error apparent on the face of the record by holding that the provision contained in Section 6-B(1)(c) of the said Act has not been complied with. Submits Mr. Trivedi that this finding of the learned Judge is not only legally wrong but is contrary to the evidence on record.

(2) That in the alternative, assuming without admitting that the learned Judge was right in holding that the provision contained in Section 6-B(1)(c) of the said Act was not duly complied with, then it was the duty of the learned Judge to remand the matter to the D.S.O. Valsad with a specific direction to comply with the said Section 6-B(1)(c) of the said Act, by giving the opponent an opportunity of being heard, but under no circumstances, the learned Judge was justified in directing D.S.O. Valsad to act in accordance with Section 6-C(2) of the said Act in relation to M.M. oil tins.

7. As against the above, Mr. S. N. Shelat, the learned counsel appearing for the opponent in the first place has made faint efforts to support the impugned judgment and order passed by the learned Judge. However, he also in the alternative submitted that if this court was to come to the conclusion that the provision contained in Section 6-B(1)(c) of the said Act is duly complied with, then in that case, since the learned Judge had decided a matter piecemeal, that is to say, only on legal submissions without dealing with the factual aspect of the case, the case deserved to be remanded with a direction to the learned Judge to dispose of the same on merit after furnishing opponent an opportunity of being heard on the question of fact.

8. Mr. Trivedi in order to substantiate his aforesaid contentions has first of all taken me through the relevant paragraph No. 7 of the impugned judgment of the learned Judge and then to the judgment of the D.S.O. Valsad and the file pertaining to the case. Reading through all this, what surfaces is that an illegality of not giving reasonable opportunity of being heard in the matter to the opponent and thereby Section 6-B(1)(c) of the said Act remained not complied with which has been attributed to the D.S.O. Valsad, does not find any place anywhere. As a matter of fact, on the contrary, the history of proceedings set out in foregoing paragraphs 2 and 3 clearly shows that all the three mandatory requirements as contained in Section 6-B(1)(a)(b)(c) of the said Act is duly complied with. We have already seen that the opponent had appeared through

his learned advocate Mr. Kapadia before D.S.O. Valsad and had expressed his desire to be heard through his said learned advocate. Further, in fact, the D.S.O. Valsad had heard the learned advocate Mr. Kapadia on 18th January, 1982 and it was thereafter only that the impugned order confiscating M.M. oil tins to the State came to be passed. In this view of the matter, the learned Judge seems to be patently wrong in holding that the provision contained in Section 6-B(1)(c) of the said Act has not been complied with. Rather, it is indeed a matter of surprise as to on what material the learned Judge could arrive at such a conclusion. There is not a word to suggest in the judgment as to how and in what manner and basis the said Section 6-B(1)(c) of the said Act has not been complied with. When this aspect was pointed out to Mr. Shelat, he had no answer to further support the impugned judgment and order passed by the learned Judge. In substance, when opponent himself had desired to be heard through the learned Advocate and when the learned advocate in fact was heard by the D.S.O. Valsad, it clearly means that opponent was heard and the provision contained in Section 6-B(1)(c) of the Act has been complied with.

8. In this view of the matter, I have no difficulty in holding that the said finding of the learned Judge viz., Section 6-B(1)(c) of the Act has not been complied with, is patently erroneous being contrary to the evidence on the record and hence the same deserves to be set aside.

9. This takes me to the second and alternative submission of Mr. Trivedi. Mr. Trivedi is perfectly right when he submits that if the learned Judge felt that the opponent was not given an opportunity of being heard as per the provisions contained in Section 6-B(1)(c) of the said Act, then in that case, there was no alternative left for him but to remand the case to the D.S.O. Valsad, with a direction to give a reasonable opportunity of being heard to the opponent, but under no circumstances the learned Judge could have directed the D.S.O. straightway to comply with the provision contained in Section 6-B(1)(c) of the said Act. I agree.

10. Now let me advert to the second submission of Mr. Shelat viz. that as the learned Judge has refrained from touching the factual aspect of the case, the appeal must be remanded to him to consider the same on merits. In this regard, Mr. Shelat specially invited my attention to the relevant observation made by the learned Judge at bottom of para 7 of his judgment, which reads, to quote the same, "consequently, it is not necessary for me to enter into the factual aspects of this case". Mr. Trivedi, learned Addl. P.P. on this point had frankly conceded that he was not in a position to straightway reply to this part of the argument of Mr. Shelat and hence the matter deserves to be remanded.

11. However, with due respect to the learned Judge, it has got to be stated that he ought not to have rest contented (may be inadvertently) by just stopping at deciding two legal submissions, leaving other submissions on factual aspects untouched. All subordinate courts having appellate jurisdiction, are supposed to know that they are duty bound to hear, appreciate and decide the whole

controversy at large between the parties and every question of fact and law that has been submitted for consideration to be determined in their favour. Not only that, but all those points should also be reflected finding place in the judgment. It is only when the concerned litigating parties before the court specifically and in unmistakable terms in writing does not press any particular point or points, that the courts are at liberty not to take into consideration the same. Further all appellate courts are expected to keep before their mental eye the consequences of a lopsided and a piecemeal judgments like the present one, which unwittingly carries the germs of off-shooting multiplicity of proceedings causing great hardship, embarrassment and inconvenience to the litigating public and costing waste of precious public time and money. Such casual approach of piecemeal judgment does come in the ways or the fresh litigations as the same gets obstructed and delayed when the matters are remanded for rehearing. Therefore, a stock of the situation which requires to be taken from this case is that a little haste of beating the clock and calendar behind, results into unnecessary protraction of the proceedings. This should never happen. If in the instant case had the learned Judge been little discreet while disposing of the appeal by considering the submissions of the opponent on factual as well as legal aspects, it would not have been necessary to remand the case after seven years and that too to the worst predicament of all concerned. Thus, examining the problem from all angles, it appears to me that in future care requires to be taken by all concerned by not resorting to such short cut methods in order to serve the cause of justice in still better way.

12. In the result, the above Special Criminal Application is partly allowed. The impugned judgment and order passed by the learned Judge is quashed and set aside. The case is remanded to the learned Judge with a clear direction to him that the opponent be heard regarding his submissions on the question of the factual aspect only and to decide the same on merits on or before 30th November, 1989. Rule made absolute to the aforesaid extent.