

(1975) 10 BOM CK 0014

In the Bombay High Court

Case No : Criminal Rev. Application No. 81 of 1975

State of Maharashtra

APPELLANT

Vs

Samrilal Chhaganlal Agrawal (Accused)

RESPONDENT

Date of Decision : 04-10-1975

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f), 258(1)
Criminal Procedure Code, 1973 (CrPC) — Section 10(1), 10(2)
Essential Commodities Act, 1955 — Section 3, 3(1), 5, 6A, 6B
Land Acquisition Act, 1894 — Section 5A
Maharashtra Land Revenue Code, 1966 — Section 10, 11, 13(4), 247(1), 4

Citation : (1976) MhLj 92

Hon'ble Judges : U.R. Lalit, J

Bench : Single Bench

Advocate : V.P. Salve Authorised for the Addl. Govt. Pleader, for the Appellant;
Maresh S. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

U.R. Lalit, J.—On July 23, 1974, the Sub-Divisional Officer, Gondia, seized 494 bags of cement belonging to the respondent on the ground that the respondent had committed breaches of the Maharashtra Cement (Licensing and Control) Order, 1973 (hereinafter referred to as the Order). On August 13, 1974, the Sub-Divisional Officer issued a show cause notice to the respondent u/s 6-B of the Essential Commodities Act (hereinafter referred to as the Act). By this notice the respondent was called upon to show cause as to why the stock of cement should not be confiscated u/s 6-A of the Act. The respondent filed his reply on August 22, 1974 and raised an objection to the show-cause notice on the ground that the Sub-Divisional Officer is not a properly authorised officer to issue such a notice. He also contended that the Sub-Divisional Officer also could not have powers to confiscate the cement bags. The defence raised was that as the Sub-Divisional Officer had no jurisdiction, the proceedings be transferred to the Collector, Bhandara, who alone has the powers to issue a show-cause notice and

to make an order of confiscation.

2. The Sub-Divisional Officer by his order dated August 29, 1974 held that he was empowered to confiscate the property. The Sub-Divisional Officer relied on section 13 (4) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the Code) and a Circular issued by the Food and Civil Supplies Department vide letter No. ECA-1169/274-F dated April 14, 1970. After having held that he had the jurisdiction in the matter, the Sub-Divisional Officer made an order confiscating 494 bags of cement. He ordered that the cement be sold in market at the prescribed rates and the money realised be deposited as confiscated amount.

3. The respondent filed an appeal being Criminal Appeal No. 45/1974 to challenge the order made by the Sub-Divisional Officer. That appeal was disposed of by the learned Additional Sessions Judge, Bhandara, on March 25, 1975. The learned Additional Sessions Judge held that the powers of confiscation could be exercised only by the Collector of the district. According to him this power of confiscation u/s 6-A of the Act was given only to the Collector of the District and the Sub-Divisional Officer was incompetent to exercise that power. The learned Additional Sessions Judge held that inspite of the provisions u/s 13 (4) of the Code, such a power could not be exercised by the Sub-Divisional Officer. The learned Additional Sessions Judge further held that the circular issued by the Food and Civil Supplies Department like-wise could not confer power on the Sub-Divisional Magistrate. The learned Additional Sessions Judge, therefore, allowed the appeal and set aside the order of confiscation. He further held that the respondent was entitled to the return of the cement bags. As, however, in the meanwhile the cement bags had been sold, the learned Additional Sessions Judge ordered that the respondent be paid the amount of sale-proceeds of the cement bags with 6 per cent interest thereon from the date of seizure till the date of payment.

4. The State of Maharashtra has filed the present revision application to challenge this order made by the learned Additional Sessions Judge. The question in the present case is whether the Sub-Divisional Officer has the power to make an order of confiscation u/s 6-A of the Act.

5. The proceedings arose as the Sub-Divisional Officer felt that the respondent had committed contravention of Clauses 8, 15, 16 and 21 of the Order. This Order has been issued by the Government of Maharashtra in exercise of the powers conferred on it by Clauses (c), (d), (e), (f), (h), (i), (ii) and (j) of sub section (2) of section 3 of the Essential Commodities Act, 1955, the show cause notice for confiscation has been issued u/s 6-B of the Act and the order of confiscation has been made u/s 6-A of the Act. The relevant provisions of section 6-A of the Act read as under:

6-A. Where any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto, it may be produced, without any unreasonable delay, before

the Collector of the district or the presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, if 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
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

Section 68 provides that no order of confiscation shall be made unless the owner thereof is given a notice in writing of the grounds for the proposed action and unless he is given a reasonable opportunity of making a representation and being heard in the matter.

6. Section 6A of the Act requires that whenever an essential commodity is seized, it has to be produced without any unreasonable delay before the Collector of the district, in which it is so seized, and the Collector, if satisfied, that there has been a contravention of the order, can make an order of confiscation. The Collector has the power to confiscate the commodity seized, any package, covering or receptacle in which such essential commodity is found; or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

7. The submission on behalf of the respondent is that the power u/s 6A is given only to the Collector. The authority before whom the goods have to be produced and the authority who can make an order of confiscation is the same, viz., the Collector, and no other officer is empowered u/s 6A to make an order of confiscation. It is submitted that in the present case, the show-cause notice was issued by the Sub-Divisional Officer and the order of confiscation also has been made by him. According to the respondent, the Sub-Divisional Officer is an Officer subordinate to the Collector and he is not empowered u/s 6A of the Act to make an order to confiscate.

8. In the Act, the word "Collector" has not been defined. It will, therefore, be necessary to go to the definition of a "Collector" in the General Clauses Act, 1897. It may be stated that the Essential Commodities Act is a Central Act. The General Clauses Act defines the "Collector" as follows:

3(11): "Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the Chief Officer in charge of the revenue administration of a district.

According to this definition, it is clear that there can be only one Collector in a district, as there can be only one person who can be styled as a Chief Officer in-charge of the district. If the Sub-Divisional Officer is an officer subordinate to the

Collector, on account of the definition under the General Clauses Act, he cannot possibly be called a Collector. However, heavy reliance has been placed on behalf of the State on section 13 (4) of the Code. It is argued that u/s 13 (4) the Sub-Divisional Officer can perform all the duties and functions and can exercise all the powers conferred upon the Collector by the Code, or by any law for the time being in force. It is, therefore, canvassed on behalf of the State that the Sub-Divisional Officer was a Collector for the purpose of section 6A of the Act.

9. In order to understand this contention, a reference will have to be made to some of the provisions of the Code. u/s 4 of the Code, it is provided that the State Government may by notification specify the districts (excluding the City of Bombay) which constitute a division. Similarly the State Government can notify the sub-divisions which constitute a district and the talukas which will constitute a sub-division. It is not necessary to go into the further provisions of section 4 of the Code. Suffice it to say that the scheme appears to be that one or more talukas will make a sub-division, one or more sub-divisions will go to constitute a district and one or more districts will form a division. Section 7 of the Code provides that the State Government shall appoint a Collector for each district, who shall be in-charge of the revenue administration thereof. That section further provides that a Tahsildar also will be appointed for each taluka and the Tahsildar will be the Chief Officer entrusted with the local administration of the taluka. There is a provision for the appointment of Assistant Collectors and Deputy Collectors and subsection (3) of section 7 of the Code provides that subject to the general orders of the State Government, the Collector may place any Assistant or Deputy Collector in-charge of one or more sub-divisions of a district, or may himself retain charge thereof. Such Assistant or Deputy Collector may also be called a Sub-Divisional Officer. The Code also provides for the appointment of one or more Additional Collectors for the districts. u/s 10 of the Code, it is provided that in case of a temporary vacancy in the office of the Collector, or in cases where the Collector is disabled from performing his duties, the Additional Collector and if there is no Additional Collector, then the Assistant or the Deputy Collector of the highest rank in the district shall succeed temporarily to the office of the Collector, unless other provision is made by the State Government. Section 11 of the Code provides for the sub-ordination of the officers and sub-section (2) of section 11 provides that all the revenue officers in the district shall be subordinate to the Collector. Then we come to section 13 (4) of the Code, which is the material provision. It reads as follows:

The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge:

Provided that, the Collector may whenever he may deem fit direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy

Collector subordinate to the Collector:

Provided further that, to such Assistant or Deputy Collector who is not placed in charge of a sub-division, the Collector shall, under the general orders of the State Government, assign such particular duties and powers as he may from time to time deem fit.

Chapter XIII deals with Appeals, Revision and Review. Section 247 (1) of the Code provides as follows:

In the absence of any express provision of this Code, or of any Law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column 1 of the said Schedule.

Schedule "E" entry No. 2 shows that from the orders of the Sub-Divisional Officer, Assistant or Deputy Collector, an appeal lies to the Collector or such Assistant or Deputy Collector who may be invested with powers of the Collector by the State Government in this behalf. It is, therefore, clear from the scheme and the provisions of the Code that primarily the Collector is the officer in-charge of the revenue administration in the district. The Assistant and the Deputy Collectors are his subordinate officers. They can also be called as Sub-Divisional Officers. The District is normally divided into a number of subdivisions and the Sub-Divisional Officer is normally in-charge of one or more of such subdivisions. The Sub-Divisional Officer is subordinate to the Collector and the Collector is also normally the appellate authority against the decision of the Sub-Divisional Officer. The Collector is in-charge of the administration of the entire district, whereas the Sub-Divisional Officer can exercise authority only in relation to the sub-division in his charge.

10. We shall now, proceed to consider whether on account of section 13 (4) of the Code the Sub-Divisional Officer can be called a Collector for the purposes of section 6A of the Act. The argument of Mr. Salve, learned Advocate appearing on behalf of the State, is that as u/s 13 (4) of the Code the Sub-Divisional Officer has the powers of the Collector under the Code or any law for the time being in force, it shall be deemed that the Sub-Divisional Officer is a Collector empowered to exercise the powers u/s 6A of the Act.

11. Mr. Gupta, the learned advocate who appears on behalf of the respondent, submits that the Essential Commodities Act is a special Act. It is in the nature of an emergency legislation. The power given to the Collector u/s 6A of the Act is a very wide and drastic power. The nature of the power given to the Collector is of a serious nature and that the Central Legislature thought that only a person of high official status and experience should exercise such a power. According to Mr. Gupta, this power is essentially of a judicial nature and the intendment was that

it should be exercised by a person with a high sense of responsibility. Besides as the Essential Commodities Act was to be administered throughout the country, it was felt that the administration in all the parts of the country should be uniform in the hands of the highly responsible officers. The Collector is recognised throughout the country as a person of the requisite high status. Therefore, u/s 6A the powers are intended to be exercised only by the Collector and not by any other subordinate officer. He submits that even though there might be a provision u/s 13 (4) of the Code, that provision will not clothe the subordinate officer like the Sub-Divisional Officer to exercise such extreme and drastic powers. In order to support this contention, Mr. Gupta has drawn my attention to some reported decisions.

12. The first decision in point of time is reported in AIR 1944 84 (Nagpur) . In that case an order of detention was made by the Additional District Magistrate, Raipur, under Rule 26, of the Defence of India Rules, framed under the Defence of India Act, 1939. The powers under Rule 26 were primarily with the Provincial Government. However, u/s 2 (5) a delegation of authority was possible. A notification regarding the delegation of these powers was issued by the Provincial Government which provided inter alia that the powers could be used by the District Magistrates. Shri Dave, who had issued the Impugned order, was then the Additional District Magistrate and a question arose as to whether he was a competent authority to make the order of detention. On behalf of the State it was argued that u/s 10 (2) of the Code of Criminal Procedure, 1898, the Additional District Magistrate had all the powers of a District Magistrate under the Code of Criminal Procedure, or under any other law for the time being in force and on account of this provision, the Additional District Magistrate was competent to make the order of detention. This plea raised on behalf of the State was negatived by the Division Bench of the Nagpur High Court and the Court held that section 10(2) of the Code of Criminal Procedure could not be taken assistance of, to give powers to the Additional District Magistrate. It held that the powers under the Defence of India Act could be exercised by the District Magistrate alone and even though the Additional District Magistrate had otherwise all the powers of a District Magistrate, he could not be called a District Magistrate as such. The view of the Court was that in the case of an Act which creates a new jurisdiction, a new procedure, new forms and new remedies, the procedure, forms and remedies there prescribed must be followed. As the Defence of India Act was a special law, the authorities not empowered under the Act had no power to enforce the special provisions of the Act. The nature of the powers which the District Magistrate was to exercise was such that there was an implied prohibition against the exercise of such powers by any subordinate officers and as the Additional District Magistrate was subordinate to the District Magistrate, he could not exercise the powers notwithstanding the provisions of section 10 (2) of the Code of Criminal Procedure. I may only quote some of the observations from this decision which are to the following effect:

""The Defence of India Act and Rules made thereunder are special laws enacted

to meet an emergency and they confer extraordinary and drastic powers on the executive whose acts performed under those powers are not liable to be challenged in any Court of law. Rule 26 confers very wide almost autocratic, powers on the Provincial Government, and precisely for that reason it is imperative that they must be exercised with a due sense of responsibility and with circumspection by an officer or an authority of a certain status and experience

The object of section 10 (2), Criminal Procedure Code, is only to relieve the pressure of work falling on the shoulders of the District Magistrate in the course of the performance of his normal duties under the Criminal Procedure Code or any other ordinary law. The Additional District Magistrate who is invested with powers of a District Magistrate, does not thereby attain the status of the District Magistrate.

* * * * *

The District Magistrate is an authority in the district who must be contradistinguished from all those officers who are not District Magistrates notwithstanding that there may be an Additional District Magistrate exercising the powers of the District Magistrate. The Provincial Government, when it conferred the power on the District Magistrate u/s 2 (5), Defence of India Act, conferred the power on the officer actually holding the office of the District Magistrate and on no one else.

In *Ajab Singh v. Gurubachan Singh and others* A I R 1965 S C 1619, again the question was as to the validity of a detention order under rule 30 (1) (b) made under the Defence of India Rules, 1962. Here also the detention order was made by the Additional District Magistrate and the question was whether he could exercise those powers which were given to the District Magistrate. This decision however turned on the express provision that the authority empowered to detain was not to be lower in rank than that of a District Magistrate. On a consideration of the relevant provisions, the Supreme Court held that as the Additional District Magistrate was subordinate in rank to that of the District Magistrate, he could not exercise the powers of detention as the express provision required that no officer subordinate in rank to that of a District Magistrate was to exercise them. This decision cited by Mr. Gupta is, therefore, clearly distinguishable and cannot be made applicable to the present case. In the present case, it is not possible to find any such express prohibition.

13. Mr. Gupta then strongly relied upon a decision of the Supreme Court reported in *Hari Chand v. The Batala Engineering Co. Ltd. and others* A I R 1969 S C 4831. In this case there was a notification u/s 40 of the Defence of India Act, 1962, which empowered the District Magistrate to exercise the powers u/s 29. The order in question was one of requisitioning certain shop premises. That order was made by an Additional District Magistrate. It was claimed on behalf of the State that on the notification issued by the Central Government, the powers u/s 29 of

the Defence of India Act were conferred on all District Magistrates and the concerned Additional District Magistrate could exercise those powers of the District Magistrate on account of section 10 (2) of the Criminal Procedure Code. While negating this contention, the Supreme Court observed:

It has not been disputed that the powers of requisitioning are of a very drastic nature and involve the fundamental rights in respect of property guaranteed under Article 19(1) (f) of the Constitution. The Central Government while making the delegation of its power u/s 29 of the Act must ordinarily be presumed to be fully conscious of this aspect of the matter and it was for that reason that an officer or authority of the high status of a District Magistrate in the district was empowered to exercise that power.

Apart from these considerations we see no reason to deviate from the normal rule that the expressions or words which have been used in the notification must be read as such and not in any other manner unless the context requires that the latter course should be followed. In the present case, the words "District Magistrate" could not possibly be read as Additional District Magistrate and it is only by resorting to the notification issued u/s 10 (2) of the Code that the Additional District Magistrates can be said to have been empowered to exercise the powers of the District Magistrates....

In this decision the Supreme Court affirmed the decision in *Prabhulal Ramlal Kabra v. Emperor*. The effect of the Nagpur decision could be summarised as follows:

... These reasons may be summarised as follows :

- (i) Very wide, almost autocratic, powers are conferred on the Government in the matter of detention and therefore they must be exercised with a due sense of responsibility and circumspection by an officer of a certain status and experience;
- (ii) When the Government delegates its power to an officer or authority subordinate to it, it is not unreasonable to assume that it fully considers the fitness of the delegate before making the order in respect of delegation;
- (iii) (he Additional District Magistrate who is invested with the powers of a District Magistrate does not thereby attain the status of a District Magistrate as there can be only one person in the district who can be a District Magistrate, and
- (iv) the Government when it conferred the power of the District Magistrate conferred it on the officer actually holding the office of the District Magistrate and no one else.

Their Lordships of the Supreme Court also further held that unless a person is appointed u/s 10 (1) of the Code of Criminal Procedure, he could not be called a District Magistrate and the Additional District Magistrate is below the rank of the District Magistrate. According to me, this decision of the Supreme Court clearly applies in the present case. Unless a person is Collector u/s 7 of the Code, he

cannot be called a Collector as such. The scheme of the Land Revenue Code also clearly shows that the Sub-Divisional Magistrate is subordinate to a Collector. The express words used in section 6A of the Act show that the authority is given only to the Collector and the normal rule is that this expression will have to be read as such and not in any other manner. It is not possible even on consideration of section 13 (4) of the Code to say that the Sub-Divisional Officer is a Collector. The powers of confiscation are drastic. In conceivable cases the vehicles, ship or any other conveyance in which the commodity is transported can be confiscated u/s 6A of the Act. The powers being of a special nature are necessarily intended to be exercised by a person of high experience of a high status. Such powers being intended to be used with extreme care, can be exercised only by a superior officer like a Collector. According to me, the intendment of section 6A is that the Collector alone and no other subordinate officer could exercise such powers. Though the Sub-Divisional Magistrate may, so far as his sub-division is concerned, exercise the powers of a Collector, he cannot attain the status of a Collector. Considering the nature of the powers and the express words used in section 6A, it appears to me that the Collector alone has the powers of confiscation u/s 6A and, as such, the power cannot be exercised by the Sub-Divisional Officer.

14. Mr. Gupta also relied on a decision in *Sambhu Nath v. State of West Bengal*⁴. This is a decision under the Essential Commodities Act, though I must observe that it is not a decision u/s 6A of that Act. Here again the powers u/s 3 (1) were delegated by a notification u/s 5 to the District Magistrates. The order in question was made by an Additional District Magistrate and the Calcutta High Court, relying primarily on the decision in *Prabhulal Ramlal Kabra v. Emperor* and the decision of the Supreme Court in *Ajab Singh's* case, held that the Additional District Magistrate was not competent to make an order. The notification on which the State relied gave the power to the District Magistrate. It was held, notwithstanding section 10 (2) of the Code of Criminal Procedure, that the Additional District Magistrate was incompetent to exercise the powers. I have already indicated that the decision in *Ajab Singh's* case would be clearly distinguishable so far as the present case, is concerned. However, the decision of the Nagpur case in my view clearly applies. That decision has been affirmed by the Supreme Court in *Hari Chand's* case. This decision of the Calcutta High Court relies considerably on the Nagpur decision and is in support of the contention of the respondent. These decisions have considered section 10 (2) of the Criminal Procedure Code which is similar to section 13 (4) of the Maharashtra Land Revenue Code.

15. Mr. Salve relies on a decision in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, . This case in my view has no bearing with the question with which we are required to consider. The question in that case was whether a notification issued under Article 258 (1) of the Constitution could have the force of law. There by a notification under Article 258 (1) a Commissioner had been appointed and that Commissioner had appointed an Additional Land Acquisition Officer as a

Collector for the purposes of section 5A of the Land Acquisition Act. In that case the main question was about the powers of the President to issue a notification under Article 258 (1) of the Constitution and whether it had the force of law. The Supreme Court held that the President had such a power and the notification issued in that case had the force of law as such. The Commissioner appointed under that notification exercising the powers of the appropriate Government under the Land Acquisition Act was competent to appoint an Additional Special Land Acquisition Officer as a Collector. In my view, this decision has no bearing on the present case.

16. Mr. Salve, however, has argued that the basis of the Nagpur decision was that the powers to be exercised by the District Magistrate under the Defence of India Act were drastic and were not subject to any appeal further He says that under the Essential Commodities Act there is a provision for filing an appeal against the order of confiscation. According to Mr. Salve the powers of confiscation cannot be compared with the powers of detention which fell for consideration in the Nagpur decision. According to him, the Nagpur decision, therefore, cannot help the respondent in the present case. It is not possible for me to accept the submission of Mr. Salve. It is true that the power of confiscation cannot stand on the same as the power of detention. However, it is clear to me that the power of confiscation itself is very serious and drastic. The power u/s 6A of the Act is so wide as to include the power of confiscation of a vehicle, animals, or other conveyances used in carrying such essential commodities. In certain cases there can be confiscation of a ship also. In Hari Chand's case the Court considered the power of requisitioning of premises as a drastic power. Therefore, it has to be held that even the power of confiscation is so drastic that the intendment was that it should be exercised only by the responsible officer of a rank of the Collector. It is true that an appeal is available against the orders of the Collector under the Essential Commodities Act. But that fact in my opinion will not make any material difference. If the powers are themselves drastic in their nature, the fact that an appeal is provided will not necessarily alter the result. On account of the drastic nature of the power u/s 6A, it is clear that this power is intended to be exercised by the Collector only. The fact that an appeal is provided does not show that the power was intended to be exercised by any other Oliver subordinate to the Collector.

17. Lastly, I would observe that if section 13 (4) of the Code cannot give the authority to the Sub-Divisional Magistrate, the same result must follow in respect of the circular on which the Sub-Divisional Magistrate has relied. That circular dated April 14, 1970 is only in the nature of a letter issued by the Food and Civil Supplies Department. It cannot improve upon the position and if section 13 (4) of the Code cannot give power to the Sub-Divisional Magistrate, I do not see how a power can be claimed on the basis of such a circular.

18. It is, therefore, clear to me that u/s 6A of the Essential Commodities Act the essential commodity has to be produced before the Collector of the district a

show-cause notice u/s 68 of the Act has also to be issued by the Collector and the ultimate order of confiscation also has to be made only by the Collector. The power of confiscation cannot be exercised by the Sub-Divisional Officer. The view taken by the learned Additional Sessions Judge appears to be correct.

19. The result is that this revision application will have to be dismissed. The rule is discharged.