
(1986) 04 RAJ CK 0055
In the Rajasthan High Court
Case No : Criminal Appeal No. 285 of 1976

State of Rajasthan	Vs	APPELLANT
Son Singh		RESPONDENT

Date of Decision : 11-04-1986

Acts Referred:

Constitution of India, 1950 — Article 254
Essential Commodities Act, 1955 — Section 3, 6, 6A, 6B

Citation : (1986) 2 WLN 477

Hon'ble Judges : Shyam Sunder Byas, J; Jasraj Chopra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jas Raj Chopra, J.—This is an appeal against the judgment of the learned Sessions Judge, Jodhpur dated October 11, 1975 where by the learned lower court has set aside the order of the Collector, Jodhpur dated September 3, 1974 by which the Collector, Jodhpur ordered for the confiscation of 14 bags of wheat belonging to respondent Son Singh.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are that, the Government of Rajasthan promulgated the Rajasthan Wheat (Regulation of Trade) Order, 1973 (here in after referred to as the "Order") which was published in the Rajasthan Gazette (Extraordinary) dated March 31, 1973 where in it was provided that after 30th June of each year, no producer shall hold stocks of wheat in quantity exceeding 20 quintals at any time. This Order was later amended on May 28, 1973 and it was provided that no producer will hold the stocks of wheat in quantity exceeding 20 quintals after 31st May of each year. It is alleged that on June 3, 1974 at about 11.30 a.m., one Lachhi Ram was found selling wheat in Manak Chowk, Jodhpur. On enquiry, it was revealed to the Enforcement Inspector that these 34 bags of wheat belonged to Son Singh who was present there. As the possession of these 34 bags of wheat was against the Clause 15(2) of the Order, 14 bags of wheat were seized by the Enforcement

Inspector Shri M.R. Choudhary vide seizure memo dated June 3, 1974.

3. A notice was issued to the respondent Son Singh to show cause why these 14 bags of wheat may not be confiscated u/s 6(1) of the Act on August 5, 1974. In reply to this notice, the respondent filed his reply on August 26, 1974 pleading inter alia that he and his two brothers are producers of wheat in village Badai and out of these 34 bags, 14 bags of wheat belonged to the respondent Son Singh and 10 bags each of wheat belonged to his brother Bane Singh and Poonam Singh. They both delivered these bags to him for the purpose of sale at Jodhpur and, therefore, he brought these 34 bags to Jodhpur and so, they should not have been seized.

4. In support of its case, nobody was examined on behalf of the State. However, from the side of respondent Son Singh, PW 1 Son Singh and PW 2 Bane Singh were examined. Both of them have stated that although they are in joint cultivation of fields bearing Khasra No. 55, 136 and 137 of village Bada but they are living separately and their kitchens are also separate. PW 1 Son Singh has stated that all three brothers live separately two brothers lived in the same house where as third brother lived separately. PW 2 Bane Singh has, however, stated that he is living separately from his two brothers and his two brothers are living jointly although their cultivation is joint. Nobody has been examined on behalf of the State to controvert these facts. However, the learned Collector has held that as the cultivation of these three brothers was joint & they have also paid the by jointly and Son Singh has not stated at the time of the seizure that out of these 34 bags, 20 bags belonged to his two brothers and he has also avoided to mention this fact in his registered letter and so, it was concluded that these three brothers were living jointly and, therefore, the wheat found in excess of 20 quintals was liable to be confiscated in favour of the State. Aggrieved against this order, an appeal was preferred before the learned Sessions Judge, Jodhpur, who by his Judgment dated October 11, 1975 held, that the provisions or Clause 24(2) of the Order are repugnant to the provisions of Section 6A of the Essential Commodities Act (for short "the Act") and, therefore, these 14 bags were not liable to be confiscated. It was further held that no notice as provided by Section 6B of the Act has been issued to the respondent and no body has been examined on behalf of the State to support the seizure memo and, therefore, neither those documents can be considered in evidence nor in absence of a notice, confiscation could have been ordered. In the result, the appeal was accepted and the order passed by the learned Collector was set aside and it was ordered that these bags cannot be confiscated at all u/s 6A of the Act and under Clause 24(2) of the Order. It was, however, observed that it is open to the authorities to take any other action against the appellant under the law as may be open to them.

5. Aggrieved against this judgment, the State has preferred this appeal before this Court. Mr. L.S. Udawat learned Public Prosecutor has frankly conceded that actually a revision ought to have been filed but an appeal has been filed and

more over, it has also been admitted as an appeal but it hardly matters whether it is now treated as an appeal or a revision.

6. We have heard Mr. L.S. Udawat, learned Public Prosecutor appearing for the State and Mr. R.K. Soni, learned counsel for the respondent.

7. The Government of Rajasthan promulgated the Rajasthan Wheat (Regulation of Trade) Order, 1973 vide Rajasthan Gazette Extraordinary dated March 31, 1973. It has been mentioned in the Gazette that this Order has been issued by the State Government with the prior concurrence of the Central Government. The learned Collector was, of course, alive to the fact that the provisions of Clause 24(2) of the Order are repugnant to the proviso to Section 6A(1) of the Act. The proviso to Section 6A(1) of the Act provides that no foodgrains or edible oilseeds seized in pursuance of an order made u/s 3 in relation thereto from a producer shall be confiscated under this section i.e. Section 6A of the Act. Clause 24(2) of the Order provides that if any producer is found to possess stock of wheat in excess of the quantity permitted under this Order, the District Supply Officer or the Tehsildar or any other Officer empowered by the State Government in this behalf shall seize such stock and the same shall be confiscated to the State Government without prejudice to other action that may be taken against the producer, with regard to the contravention of the provisions of this order. Definitely, the provisions of Clause 24(2) of the Order are repugnant to the proviso to Section 6A(1) of the Act. In such cases of repugnancy, Article 254(2) of the Constitution provides that such a repugnancy in the State Law can only be maintained if such an Order or Law has been reserved for the consideration of the President and has received his assent otherwise as per Article 254(1) of Constitution. The Parliamentary legislature will prevail over the State Law whether made before or after the law made by the Parliament. The Order was promulgated in the Rajasthan Gazette Extra Ordinary dated March 31, 1973 and it only says that this Order had been issued with the prior concurrence of the Central Government. It does not say that this Order which contains a provision i.e. Clause 24(2) of the Order which is repugnant to the proviso to Section 6A(1) of the Act has been reserved for the consideration of the President and has received his assent and when it has not been done, the Act of the Parliament shall prevail over the Order of the State legislature and hence, the learned lower court was perfectly justified in arriving at the conclusion that these bags of wheat belonged to the producer and, therefore, proceedings u/s 6A(1) of the Act could not have been initiated and these bags were not liable to be confiscated as per proviso to Section 6A(1) of the Act.

8. We have perused the record and we find that in this case, actually notice u/s 6B of the Act has been given to the respondent. The notice served on Sonsingh on August 5, 1974 provides that "issue show cause why these 14 bags of wheat should not be disposed of as per Section 6(1) of the Act". Actually, there is no Section 6(1) in the Act. Even if this notice is treated to have been issued u/s 6B of the Act then too, it does not say that the goods are liable to be confiscated u/s

6A of the Act. When Section 6A of the Act cannot be applied then the entire proceedings taken u/s 6A and 6B of the Act are misconceived.

9. Respondent Sonsingh and his brother Banesingh have entered in the witness box and they have categorically stated that although their cultivation is joint but they are separately living and as soon as they cut the crop, they distributed it in three equal parts and then each one becomes the owner of that particular part of the crop. No body has been examined on behalf of the State to controvert these statements given by Shri Sonsingh and Banesingh on oath before the learned lower court. Under these circumstances, there appears no reason to disbelieve their testimony. PW 1 Sonsingh had stated that only 14 bags belonged to him and the rest 20 bags belonged to his two brothers. In any case, when there are two house-holds, they being producers could keep 40 bags of wheat with them and so, these 14 bags should not have been confiscated. We therefore, entirely agree with the finding of the learned lower court that these 14 bags of wheat are not liable to be confiscated either according to the provisions of Section 6A of the Act or under Clause 24(2) of the Order.

10. In this view of the matter, we find no force in this appeal (revision) and it is hereby dismissed.