

(1984) 02 AHC CK 0013

In the Allahabad High Court

Case No : Criminal Revision No"s. 1235 and 1236 of 1981

State of U.P.

APPELLANT

Vs

Sia Ram

RESPONDENT

Date of Decision : 27-02-1984

Acts Referred:

Essential Commodities Act, 1955 — Section 2, 3, 6A
Uttar Pradesh High Speed Diesel Oil Maintenance of Supply and Distribution Order,
1980 — Section 10, 2

Citation : AIR 1984 All 286

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : H.P. Tripathi, A.G.A, for the Appellant; P.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

N.N. Sharma, J.—Both these revisions are being disposed of by this common judgment as the legal points involved are the same.

2. It appears that there were two appeals; viz., Criminal Appeals Nos. 16 and 17 of 1981 which were disposed of by Sri B.K. Misra, learned III Additional Sessions Judge, Shahjahanpur on 12-5-1981 who accepted both these appeals and set aside the impugned orders of confiscation of articles detailed therein.

3. It appears that on 27-10-1980, Sri Vishwa Nath Singh, Tahsildar, Jalalabad searched the shop and godown of opposite party Sia Ram, situated in Mahajnan Street in Jalalabad town, district Shahjahanpur and found diesel oil, grease and mobil oil stored contrary to rules. Opposite party was prosecuted for the breach of Uttar Pradesh Essential Commodities Display of Price and Stock and Control of Supply and Distribution Order, 1977. The aforesaid commodities, after the seizure, were reported to the Collector concerned who, after pursuing the procedure laid u/s 6A of Essential Commodities Act, heard opposite party and ordered the confiscation of the said goods.

4. Learned Additional Sessions Judge, Shahjahanpur accepted both these appeals on two grounds. His first ground was that Tahsildar, Jalalabad was not competent to seize these goods and the seizure was illegal despite the fact that he was so empowered by the then District Magistrate, Shahjahanpur on 26-10-1980 in exercise of his power u/s 2(b) of Uttar Pradesh High Speed Diesel Oil, Maintenance of Supply and Distribution Orders, 1980. The second ground was that the order of confiscation was illegal inasmuch as the confiscation could be ordered by the Collector himself u/s 6A of Essential Commodities Act and not by Sri R. C. Bhardwaji, the then S. D. M. Jalalabad in exercise of his power as Assistant Collector First class, Shahjahanpur.

5. I have heard learned counsel for the parties and carefully perused the impugned orders and the aforesaid ground.

6. Learned A. G. A. invited my attention to Section 2(aa) of Essential Commodities Act, 1955 introduced by Act 36 of 1967 which reads as below: --

"(aa) "Collector" includes such officer not, below the rank of an Assistant Collector of the first class as may be authorized by the Collector to exercise the powers conferred on him by or under the provisions of this Act." (Vide U. P. Act 18 of 1975, published in the U. P. Gazette dt. 31st March, 1975 and omitted by U. P. Act 16 of 1978, published in the U. P. Gazette, Extraordinary, dt. the 27th April, 1978, w. e. f. 2nd September, 1976.)"

7. Thus, after the aforesaid amendment, Assistant Collector First Class could exercise the powers of confiscation of the aforesaid goods u/s 6A of Essential Commodities Act, 1955. So I find this contention weighty. The State legislature made this Act empowering any Assistant Collector of the first class to exercise the powers of Collector under the Essential Commodities Act, 1955. Such delegation of powers with respect to an essential commodity is valid as the Essential Commodities Act is an Act made under Entry 33 of list 3 of Schedule VII of the Constitution. Thus, it is a law within the meaning of the said Delegation Act. So the State Government had powers under the Delegation Act to delegate the powers of the Collector to a district revenue officer. The original notification No. 18 Untees Aa, Ba, 1 E, C, 56/76 dt. 7th Jan., 1976, issued by Sri G.C. Chaturvedi, Secretary in that behalf was laid before me. In view of the said notification, I find that the orders of confiscation recorded by Assistant Collector first class was within his competence. In this connection. I respectfully follow the observations made in a Division Bench case B. Seetharamayya Gupta v. District Revenue Officer, Chittoor, reported in AIR 1977 AP 103 which posited :--

"Section 6A of the Essential Commodities Act confers power on the Collector of the District to pass an order of confiscation of seized goods. The State Legislature made the Delegation Act in 1961 empowering the State Government to delegate to any officer not below the rank of a Revenue Divisional Officer the powers of the Collector under any law made in respect of items in Lists II and III. The Essential Commodities Act is an Act made under Entry 33 of List III of

Schedule 7 of Constitution. So, it is a law within the meaning of Section 2 of the Delegation Act. Consequently, the State Government has power under the Delegation Act to delegate the powers of the Collector to a District Revenue Officer, who is certainly not lower in rank than a Revenue Divisional Officer.

It is true that the State Government, while making this delegation, is acting u/s 3 of the Delegation Act. At the same time, it should also be borne in mind that the State Government has simultaneous or concurrent power to make legislation in regard to matters in List III. Even if there is any repugnancy between the Delegation Act of the State Legislature and Section 6A of the Essential Commodities Act, then Section 3 of the Delegation Act and the notification made thereunder should prevail over the provisions of Section 6A of the Essential Commodities Act, because the Delegation Act has been reserved for the consideration of the President and received his assent."

8-9. Sri Babu Ram, the then District Magistrate, Shahjahanpur, empowered all the Assistant Collectors of District Shahjahanpur to exercise their functions under the relevant provisions of Essential Commodities Act in his capacity as Collector Vide his order No. 131/J. A. XX-196 (78-80) dt. 26/27-11-1979. It appears that the aforesaid order was overlooked while allowing the appeal by Shri B. K. Misra.

10. Learned counsel for opposite party pointed out the definition of Section 2 (b) of Uttar Pradesh High Speed Diesel Oil (Maintenance of Supplies and Distribution) Order, 1980 which reads as below:--"(b) "Authorised Officer" means the Commissioner, Food and Civil Supplies, Uttar Pradesh and includes Additional Commissioner, Food and Civil Supplies, Deputy Commissioner Food and Civil Supplies, Assistant Commissioner, Food and Civil Supplies, Collector, Additional Collector, Sub-Divisionaa Officer and District Supply Officer authorised in writing by the Commissioner, Food and Civil Supplies, Uttar Pradesh to exercise all or any of his powers under this Order."

11. Thus, his contention was that no power of search or seizure was conferred on the Tahsildar by Commissioner, Food and Civil Supplies in writing.

12. Another relevant provision is Section 10 of the said Order which reads as below:--

"10. Power of entry, search and seizure--(1) The authorised officer, an executive magistrate, a police officer not below the rank of sub-Inspector or any officer of the Food and Civil Supplies Department, Uttar Pradesh, not below the rank of Supply Inspector authorised by the "authorised officer" in this behalf may with such assistant....."

13. Obviously, Tahsildar is an Executive Magistrate who could validly exercise the powers of entry, search and seizure of the aforesaid commodities. So the first ground laid in the impugned order by the learned Judge that Tahsildar was not authorised to seize the goods also falls to the ground.

14. On behalf of opposite party, one paper was filed before me today to show

that a final report has been accepted in this case on 5-3-1983. This paper at this stage is not acceptable to me for the simple reason that there is hardly any ground to accord such permission at this belated stage. However, if such original order is shown to the appellate court, it may be considered by him.

15. With these observations, I allow both the revisions, set aside the impugned orders and remand the same for rehearing the appeals and their disposal in accordance with law.