(1996) 11 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15757 of 1994

Telangana Spinning and Weaving Mills Ltd. (Rotor unit) APPELLANT

Vs

The Commissioner (CS) (Appeals) and Ex-Officio Secretary to Govt. (A) Food and Civil Supplies (IV) Department and Another RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6B, 6C
Textiles (Control) Order, 1986 — Section 25(1)

Citation : (1997) 3 ALD 140 : (1997) 1 ALD(Cri) 346 : (1997) 1 ALT 558

Hon'ble Judges : T. Ranga Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : C.V. Nagarjuna Reddy, for the Appellant; Government Pleader, for the Respondent

Judgement

B. Subhashan Reddy, J.—The important question for consideration which arises in this case is regarding the power of the Government to entertain the appeal u/s 6-C of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") against the order passed by the Collector u/s 6-A of the Act for the violation of the provisions contained under Textiles (Control) Order, 1986.

2. The petitioner is running a spinning mill at Sadasiva Pet which was commissioned in the year 1984. Returns have to be submitted quarterly. In so far as the cotton yarn of hosiery variety is concerned, there is some exemption. Nevertheless, returns have to be submitted. But in the instant case, there was some delay. How the delay is explained is a question for consideration by the authorities. But, proceedings were initiated u/s 6-A of the Act pursuant to the inspection and search of the mill premises of the petitioner by the concerned Inspector of Police, Vigilance Cell, Civil Supplies and a show-cause notice was issued, which was replied to and ultimately the Collector, Medak, i.e., 2nd Respondent herein, passed an order on 23-5-1994 confiscating the seized stock of 21,620 Kg. of cotton yarn of hosiery variety packed in 380 bags. Statutory

appeal lies u/s 6-C of the Act to the Government. As such, appeal was filed. But the Government by its order dated 30-7-1994 rejected the same on the ground that under Clause 25(1) of the Textiles (Control) Order 1986, appeal lies to the Textile Commissioner

3. Mr. C.V. Nagarjuna Reddy, learned counsel for the petitioner, submits that when the action was taken u/s 6-A and the matter was decided by issuing a show-cause notice as contemplated u/s 6-B, the same is appealable to the authority u/s 6-C of the Act and the statutory appellate authority is the Government and the Government ought not have rejected the appeal. His contention is that rejecting the appeal invoking Clause 25 by the Government is untenable as Clause 25 does not relate to confiscation and may relate only to other matters than the confiscation. He also submits that there are no powers conferred on the Inspector of Police, Vigilance Cell, Civil Supplies as contemplated under Clause 24 of the Textiles (Control) Order, 1986, empowering him to inspect and seize and that there is a no notification conferring such power and that consequently proceedings u/s 6-A of the Act fall to ground as being without jurisdiction. This jurisdiction aspect will be considered before the appellate authority because it is a first appeal where both points of facts and law can be urged and in this case, the point of law with regard to want of jurisdiction is intricately connected with the factual aspect with regard to existence of the notification or otherwise in the context of Clause 24 of the Textiles (Control) Order, 1986. This issue shall be dealt with by the appellate authority and shall record its finding after making enquiry on this aspect as it touches the very jurisdiction for the initiation of the proceedings u/s 6-A of the Act.

4. The Act is a substantive one and so far as the confiscation aspect is concerned, that is occupied by Sections 6-A, 6-B and 6-C of the Act regarding the initiation, enquiry, order by the primary authority and the appeal thereof. These substantive provisions cannot be superseded by any other provisions contained under the Orders promulgated in exercise of powers contained u/s 3 of the Act. As such, the confiscation can necessarily be only under the provisions contained Under Sections 6-A, 6-B or 6-C of the Act and no other provision can be invoked for that purpose. Clause 25 of the Textiles (Control) Order, 1986, may deal with all other aspects of violation and consequences thereof but not matters touching upon the confiscation, which field is covered by Sections 6-A, 6-B and. 6-C of the Act. In view of what is stated supra, we set aside the order of the 1st respondent dated 30-7-1994 contained in its Memo No.2764/CS IV.I/94-1, and direct the 1st respondent to entertain the appeal, hear the parties dealing with the aspects including the aspect of jurisdiction mentioned supra and dispose of the same in accordance with law. The interim order which has been passed by this Court shall operate pending disposal of the appeal by the 1st respondent.

5. The writ petition is allowed to the extent indicated above. No costs.