

(1998) 01 CAL CK 0021
In the Calcutta High Court
Case No : Criminal Appeal No. 344 of 1986

Tushar Kanti Ghosh

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 27-01-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251
Essential Commodities Act, 1955 — Section 12, 16, 16(1), 16(2), 3
West Bengal Soft Coke Licencing Order, 1965 — Section 4

Citation : (1998) 1 ILR (Cal) 157

Hon'ble Judges : D.P. Sircar-I, J

Bench : Single Bench

Advocate : D.K. Dutta, Pradip Roy and Arup C. Chatterjee, for the Appellant; Sudipta Moitra and Krishna Ghosh, for the Respondent

Final Decision : Allowed

Judgement

D.P. Sircar-I, J.—This is an appeal challenging the order of conviction passed by learned Judge, Special Court (E.C. Act), Hooghly u/s 7(1)(a)(ii) of E.C. Act in Special Case No. 37 of 1985 of that Court.

2. A charge sheet was filed against the Appellant alleging that on March 25, 1985 at about 8.30 hours the complainant police officer and his team found the Appellant running a coal depot at the western side of a hotel by Delhi Road, recovered 450 kgs. of soft coal, balance and weights and other weighing equipments from his possession. But as he did not display any stock and price board for soft coal and thereby violated page 3(2) of West Bengal Declaration and Stock and Prices of Essential Commodities Order, 1977, thereby he committed offence u/s 7(1)(a)(ii) of Act, (10 of 1955). But the accused was examined u/s 251 Code of Criminal Procedure alleging offence for contravention of para. 4 of West Bengal Soft Coke Licencing Order, 1965, which constituted an offence u/s 7(1)(a)(ii) of the said Act. The accused Appellant pleaded not guilty.

3. The prosecution examined six witnesses including the I.O. The accused did not

examine any.

4. The learned Judge found the accused guilty u/s 7(1)(a)(ii) of the E.C. Act, convicted and sentenced him to suffer R.I. for four months and also to pay fine of Rs. 2,000.00 i.d. to suffer R.I. for one month.

5. The learned advocate for the Appellant produces a xerox copy of S.O. No. 2181 of the Government of India, stated to be published in Annex. 10 (Colly.) in Part-II Section 3(ii) of the Gazette of the India Extraordinary dated June 18, 1964 under the authority of Ministry of Steel & Mines, Department of Mines & Metals and argues that by this order the Central Government authorised since that date any person to acquire, purchase or agree to acquire or purchase and any person to dispose of or agree to dispose of or divert or transfer without any order of allotment of written authority, soft coke among certain other classes of coal, and, as such, this being the order of the Central Government framed and enforced under Colliery Control Order, 1945, it must be held that since June 18, 1964 there was no restriction on acquiring, purchase or movement of soft coke among other classes and grades of coal, and, as such, West Bengal Soft Coke Licencing Order, 1965 cannot have any effect, as the Government of West Bengal promulgated the order on the authority of the Central Government, as empowered u/s 3 of the E.C. Act and the delegated power of the State Government cannot override the control order promulgated by the delegator, Union of India. Consequently, the restriction imposed in terms of the Control Order passed by the State Government in 1965 imposing restriction on the sale or trade of soft coke without licence does not have any lawful effect and nobody can be convicted for failure to comply with this order. On the point of fact also he argues that the prosecution failed hopelessly to adduce sufficient evidence to show that the Appellant dealt with the soft coke at any material time and as such allegation of dealing in soft coke without licence does not have any leg to stand upon.

6. The learned advocate for the State argues that the prosecution adduced sufficient evidence to show that the Appellant was found dealing in soft coke and as such the conviction must uphold. As to the point of law he argues that the xerox copy of the Control Order produced by the Appellant relates to Colliery Control Order and has no bearing on the control order promulgated by the State Government under the E.C. Act for the violation of which the prosecution lodged a complaint against this accused. He relies on the ruling reported State of Andhra Pradesh and Another Vs. Potta Sanyasi Rao and Others, As the State Government was empowered duly to promulgate the control order it exercised the right and the delegation to the State Government u/s 5 being a general delegation the State Government does have lawful authority to pass control order as is required in respect of the articles declared essential under the E.C. Act and as such West Bengal Soft Coke Licencing Order is not affected by the order relied upon by the learned advocate for the Appellant.

7. Points for determination, therefore are:

(1) whether West Bengal Soft Coke Licencing Order, 1965, para. 4 had its lawful effect despite the control order issued by the Central Government in respect of certain grades of coal including soft coke as published in Part-II Section 3(ii) of the Gazette of India Extraordinary dated June 18, 1964 under the authority of Government of India in the Ministry of Steel and Mines, Department of Mines and Metals as produced by the learned advocate for the Appellant,

(2) whether the prosecution has established satisfactorily that he Appellant dealt in soft coke in contravention of Section 4 of West Bengal Soft Coke Licencing Order, 1965,

(3) whether the conviction and the sentence are lawful and justified.

8. u/s 12(a) of the E.C. Act the Courts are empowered to try offences alleged to have been committed for violation of any provision of the E.C. Act by adopting summary procedure.

9. The Amended Control Order relied upon by the Appellant by way of amending of Colliery Control Order, 1945 under S.O. No. 2181 published on June 18, 1964 was in exercise of the powers conferred by Clauses 12A, 12B and 12C of the Colliery Control Order, 1945 as continued in force by Section 16 of the Essential Commodities Act, 1955. Under Sub-section (1) of Section 16 by enforcement of E.C. Act, 1955 certain laws existing since before by the E.C. Act, 1955 was repealed; namely the Essential Commodities Ordinance, 1955 and any other law in force in State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of trade and commerce in any essential commodity. By the saving Clause as provided under Sub-section (2) notwithstanding such repeal any order made under any such law about appointment made, licence or permit granted or direction issued under such order and in force immediately before such commencement would continue to remain in force till superseded by any appointment made, licence or permit granted or direction issued under E.C. Act, 1955. It appears that after promulgation of the E.C. Act, 1955 the Colliery Control Order, 1945 outlives its existence only so far as the provisions of Clauses 12A, 12B and 12C of the Colliery Control Order, that is, in respect of the appointment made, licence or permit granted and direction issued under such order. As by this Amended Control Order of Colliery Corporation 1945 relied upon by the Appellant it appears that the restriction on acquisition, purchase, disposal, diversion or transfer without any order of allotment of the written authority in respect of certain grades of coal including soft coal was removed, the said order having its history from before promulgation of E.C. Act, 1955, it must be held that this amended order was restricted only to acquisition, purchase etc. as already empowered by appointment, licence, permit, under Clauses 12A, 12B and 12C of the Colliery Control Order, 1945. Beyond such license etc. it has no further effect on the present administration of laws. The West Bengal Soft Coke Licencing Order, 1965 having its origin on the basis of the E.C. Act, 1955 and the West Bengal Soft Coke Licencing Order, 1965 having been promulgated under the

lawful authority in terms of Section 3 read with Section 5 of the E.C. Act must be held to have lawful effect controlling the area of dealing, distribution etc. of soft coke in West Bengal. The aforesaid Amended Order relied upon by the Appellant does not, in any way, affect West Bengal Soft Coke Licencing Order, 1965 under the power delegated by the Central Government under E.C. Act. The State Government has a sphere of his own power to make appropriate provision for control and regulation of articles declared as essential under the E.C. Act, 1955 and the amended provision of the Colliery Control Order as relied upon by the Appellant does not undo that right or legal effect of the control order promulgated by the State. The law point is thus answered in favour of the prosecution.

10. But the prosecution hopelessly fails to prove that the accused committed the contravention of the order and the relevant provision of the Act. It is found that the charge sheet was submitted alleging violation, not of the para. 4 of West Bengal Soft Coke Licencing Order, 1965, but of para. 3(2) of West Bengal Declaration of Stock and Price of Essential Commodities Order, 1955. There was no allegation in the charge sheet that dealer failed to produce any licence. Charge was framed, however, for his failure to produce licence. No sufficient evidence was adduced to show that the Appellant actually was found dealing in the article seized as soft coke. There was nothing to show that the accused had any domain over the property or that anybody saw him selling the same. Under this circumstance the second point must be decided against the prosecution.

11. Consequently the point No. 3 also must be decided against the prosecution and the appeal must be allowed and conviction set aside.

12. The appeal is allowed and the impugned order of conviction and sentence is set aside. The Appellant is acquitted and be released from the bail bond. The seized article be forfeited to State and sold in public auction, if not disposed of already in terms of any order of any appropriate authority.