

(1978) 11 MAD CK 0018

In the Madras High Court

Case No : Criminal R.C. No. 647 of 1976 and Criminal R.P. No. 836 of 1976

U. Balu Chettiar

APPELLANT

Vs

The District Collector of Ramanithapuram at Madurai

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6B

Citation : (1979) LW(Cri) 62

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : P. Vedavalli, for the Appellant; M. Karpagavinayagam, Government Advocate No. III (Crl. Side) for the State, for the Respondent

Final Decision : Allowed

Judgement

Suryamurthy, J.—This is a Criminal Revision Petition against the judgment of the learned Sessions Judge, Ramanathapuram Division at

Madurai dismissing C.A. No. 377 of 1976 on the file of his Court and confirming the order of confiscation of a lorry passed by the Collector of

Ramanathapuram at Madurai.

2. The District Supply Officer, Ramanathapuram at Madurai, organised a night patrol, went with the Tahsildar, Arappukottai to Kannirajapuram

during the night between 6th July, 1976 and 7th July, 1976, and was watching the movement of vehicle along the border of the District, when the

lorry bearing registration No. TMZ 7709 belonging to the revision petitioner was seen at about 3:30 a.m. proceeding towards Tirunelveli District.

The lorry was intercepted near the border of Ramanathapuram District and the driver, Vellaichamy was interrogated and the lorry, was searched

65 bags of rice and 30 bags of paddy were found in the lorry. S.T.U. Balu

Chettiar, the owner of the lorry was also in the lorry. The driver of the lorry as well as the petitioner are alleged to have confessed to the District Supply Officer that the bags of paddy and rice were intended to be transported to Tuticorin. However, the entry in the trip sheet was to the effect that the consignment was intended for Sayalkudi, a village within Ramanathapuram District. The District Supply Officer, however, came to the conclusion that there was an attempt at transporting the paddy and rice referred to above to Tuticorin in Tirunelveli District in contravention of the provisions of clause 4(1) of the Tamil Nadu Paddy and Rice (Movement Control) Order, 1970 (to be referred to hereinafter as the Order). Therefore, he seized the lorry with the rice and paddy bags. The lorry was released to the owner on his executing a bond on 28th July, 1976 for Rs. 25,000/- with two sureties for a like sum each.

3. A notice under S.6-B of the Essential Commodities Act (to be referred to hereinafter as the Act) was issued to the owner by the District Supply Officer to show cause within 7 days from the date of the receipt of the notice as to why the lorry should not be confiscated to the Government. The lorry driver, Vellaichamy and the lorry owner, S.T.U. Balu Chettiar submitted their written explanation on 17th August, 1976. A counsel engaged by them appeared before the Collector on 24th August, 1976 and reiterated the contentions put forward in the written explanation. Their contention was that the rice and paddy were sought to be transported to Sayalkudi and were not intended to be taken to Tuticorin. This contention was rejected by the Collector, because the lorry was intercepted when it was crossing the village of Kannirajapuram at the District border leaving behind Sayalkudi and would have crossed the border of the District but for the interception by the District Supply Officer. Therefore, the Collector was satisfied that the delinquents, viz., the petitioner and the driver of the lorry had violated the provisions of clause 4(1) of the Order and ordered that the lorry TMZ 7709, with 65 bags of rice and 30 bags of paddy seized by the District Supply Officer of Ramanathapuram at Madurai on 6th July, 1976 at Kannirajapuram, be confiscated to the Government under S. 6-B of the Act. This order of the Collector was confirmed by the learned Sessions Judge who dismissed C.A. No. 377 of 1976 by judgment dated 27th October, 1976.

4. This order of the Collector confirmed by the learned Sessions Judge cannot be sustained, because the Collector has not himself issued the notice

under S. 6-B of the Act. By reason of S. 6-B of the Act.

(1). No order confiscating any essential commodity package, covering receptacle, animal, vehicle, vessel, or other conveyance, shall be made

under S. 6-A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel, or other conveyance or the

person from whom it is seized-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering,

receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of

confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

The authority who should issue the notice is the authority who could pass the order of confiscation under S. 6-A of the Act.

5. S. 6-A lays down that:

Where any essential commodity is seized in pursuance of an order made under S. 3 in relation thereto, a report of such seizure shall, without

unreasonable delay, be made to 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 may, if he thinks it expedient so to do, direct the essential

commodity so seized to be produced for inspection before him, and if he is 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, etc.

6. This power vested in the Collector could not be delegated by him to any Officer or Authority subordinate to him prior to the amendment of S. 2

by Act 92 of 1976 by, which clause (ia) has been inserted defining the "Collector" for the purpose of the Act as including an Additional Collector

and such other Officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise

the powers of the Collector under this Act. The fact that only by the amending Act (92 of 1976) the Legislature had empowered the Collector to

authorise the aforesaid Officers to perform the functions and exercise the powers of the Collector, would show that the Legislature did not intend

that the Collector should delegate his powers or authorise any other officer to perform the functions and exercise the powers of the Collector under

the Act prior to the amendment. I may also add that in the instant case, there is no evidence to the effect that any such authority was given by the

Collector to the District Supply Officer. The amendment by virtue of Act 92 of 1976 (Amendment to Essential Commodities Act) came into force

with effect from 2nd September, 1976. The impugned notice under S. 6-B of the Act was issued by the District Supply Officer on 16th July,

1976. On the date of the impugned notice, the District Supply Officer had no power or authority to issue any notice under S. 6-B. Therefore, there

was no valid notice under S. 6-B. On this ground alone, the order of the Collector has to be set aside.

7. Before issuing a notice under S. 6-B of the Act, the authority issuing such notice should apply to the facts of the case and should come to a

conclusion that there is a case for initiating proceedings under the Act. After the authority comes to the conclusion that there has been a

contravention of any order made under S. 3 of the Act, the owner of the vehicle can only endeavour to prove to the satisfaction, of the said

authority that the vehicle was used in carrying the essential commodity without his knowledge or connivance and without the knowledge or

connivance of the person in charge of the vehicle. In calling upon the owner to prove that the commodity was carried without the knowledge or

connivance of the person in charge of the vehicle, viz., the driver, the Legislature has, cast a very heavy burden on the owner of the vehicle. If the

owner of the vehicle does not succeed in discharging this onus, the authority is entitled to order the confiscation of the vehicle. Hence, the authority

who issues the notice under S. 6-B of the Act should fee the same as the authority who passed the order of confiscation under S. 6-A of the Act.

In the instant case, there was not only no valid notice by a duly empowered authority under S. 6-B of the Act, but, the authority who passed the order of confiscation is different from the authority who issued the notice. The opinion of the District Supply Officer that an offence has been committed or any order under S. 3 of the Act has been contravened cannot be adopted by the Collector and the Collector cannot pass the order of confiscation on the basis of the opinion of the District Supply Officer. Therefore, this revision petition is allowed and the order of confiscation passed by the Collector and confirmed by the learned Sessions Judge is set aside. The petitioner will retain the lorry.