
(1993) 06 PAT CK 0007

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 119 of 1989

Upender Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 2 BLJR 1258

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Om Prakash, J.—This is an application under Articles 226 and 227 of the Constitution of India for quashing of the Criminal proceeding against the petitioner in Tajpur (Pusa) P.S. Case No, 5889 pending in the court of Special Judge, Essential Commodities Act, Samastipur.

2. It appears that on 10th March, 1989, Marketing Officer, Samastipur, raided the residential house of petitioner Upender Choudhary and recovered 220 bags of cement. The petitioner could not produce any licence or any other paper in this connection. Consequently, the entire quantity of cement was seized and F.I.R. was lodged alleging violation of Bihar Trade Articles (Licenses Unification) Order, 1984. Such F.I.R. has given rise to the above criminal case.

3. Learned Counsel for the petitioner has submitted that the petitioner has committed no violation of any provision of Bihar Trade Articles (Licenses Unification) Order, 1984, because no storage limit was fixed by the State Government with the prior concurrence of the Central Government for cement by the date of occurrence i.e. 10th March, 1989.

4. Learned Counsel for the State has produced no notification by the State Government showing that any storage or stock limit for cement was fixed on or before the 10th March, 1989. In fact she has not disputed before the Court that

no storage limit for cement was fixed by the State Government on or before the date of seizure of the cement from the petitioner's house.

5. In *Thakur Ajay Kumar Singh v. State of Bihar* 1991 (2) PLJR 327 20 bags of cement were found short in the stock by the Marketing Inspector who held inspection of business premises of Thakur Ajay Kumar Singh. In due course, a criminal case was launched against him alleging violation of the terms and conditions of Bihar Trade Articles (Licenses Unification) Order, 1984, then it was held by a Bench of this Court that when no notification fixing storage limit for cement under Bihar Trade Articles (Licenses Unification) Order, 1984, was issued on or before the date of occurrence, prosecution of the cement dealer was not valid.

6. Thus it is clear that no notification was issued by the State Government fixing storage limit for cement by the 10th March, 1989, and the Unification Order was not workable. Hence, in my view, it cannot be held that the petitioner violated any provision of the Unification Order. Apparently, his prosecution for violation of the provisions of the Unification Order is illegal and bad in the eye of law.

7. In the result, this application is allowed and the criminal proceeding in Tajpur (Pusa) P. S. Case No. 58/89 pending in the Court of Special Judge E.C. Act, Samastipur, is hereby quashed.