(2011) 04 GUJ CK 0143

In the Gujarat High Court

Case No : Special Criminal Application No. 2444 of 2010

Vallabh Lubricant APPELLANT

Vs

Mamlatdar Porbandar and Others RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 6A

Citation : (2013) 1 Crimes 583

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : V.C. Vaghela, for the Appellant; C.M. Shah, Assistant Public Prosecutor for Respondents 4, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—By this petition, the applicant has preferred this petition to quash and set aside the order dated 28.09.2010 passed by the learned District Judge, Porbander in Criminal Appeal No. 28 of 2009 by which the learned Judge has confirmed the order dated 20.12.2005 passed by District Supply Officer, Porbander in Food Enforcement Case No. 82 of 2005 and order dated 21.04.2007 passed by the District Collector, Porbander in Food Enforcement Case No. 2 of 2007 by which applicants was directed to deposit sum of Rs. 2,43,000/- with the office of Mamlatdar, Porbander.

2. The applicant is businessmen and the applicant was holding license for Light Diesel Oil and was selling light diesel oil from his shop situated in village Bokhira of Porbander. The said license was to expire on 04.03.2005. The applicant made application for renewal of the said license. Respondent No. 2 issued show cause notice to the applicant citing certain irregularities with regard to maintenance of stock register etc. One of the ground for taking action u/s 6-A of Essential Commodities Act, 1955 against the applicant was that though stock worth 9000 liters was shown in the register as on 22.09.2005, on actual verification, there was in fact no stock found. The applicant appeared in the proceedings of Food

Enforcement case and pointed out that there were no irregularities committed by him. Respondent No. 2 vide order dated 20.12.2005 directed the applicant to deposit a sum of Rs. 2,43,000/- with the office of Respondent No. 1. Being aggrieved by the said order, applicants preferred appeal before the Sessions Court, Porbander. Appeal was also dismissed by the Sessions Court, Porbander vide order dated 28.09.2010 passed by the learned District Judge, Porbander in Criminal Appeal No. 28 of 2009. Therefore, this petition.

3. It is submitted by Mr. Vaghela, learned Advocate for the applicant that order passed by the Sessions Judge is against evidence on record and has not decided anything on merits and no reasons are given. It is also submitted that no offence has been committed under the Essential Commodities Act. It is also submitted that register was duly maintained upto 22.09.2005, however, as the proprietor of the applicant was busy attending social function for the period between 22.09.2005 to 24.09.2005, his brother did not issue bill for stocks sold on account of ignorance of the prescribed procedure. It is also submitted that there was no ill intention on the part of the applicant in not raising the bill for stocks sold. It is also further submitted that the Mamaladar u/s 6-A of the Essential Commodities Act cannot direct the applicant to deposit the amount but at the most he can confiscate the goods. Therefore, it is requested to allow present petition.

4. Ms. C.M. Shah, learned APP has supported the order passed by the Sessions Judge, Porbander and submitted that the order is legal and not required to be interfered with. She requested to pass appropriate orders.

5. This Court has perused the order passed by Collector as well as Sessions Judge. It is not in dispute that notice was issued by Respondent No. 2 to the applicant citing certain irregularities with regard to maintenance of stock register etc. The said notice was issued u/s 6-A of the Essential Commodities Act. One of the ground for taking action u/s 6-A was that though stock worth 9000 liters Light Diesel Oil was shown in the register as on 22.09.2005, but on verification, there was no stock found. Therefore, impugned order dated 21.04.2007 was passed by the District Collector, Porbander in Food Enforcement Case No. 2 of 2007 by which applicant was directed to deposit sum of Rs. 2,43,000/- with the office of Mamlatdar, Porbander.

6. It prima facie appears that breaches which are committed by the applicants are technical in nature. That there is no intention of the applicants of malpractice and black marketing. Therefore, when there is no ill intention by the applicants, it cannot be said that the applicants have committed any serious offence or serious irregularity. In opinion of this Court, if the impugned order is modified to the extent that applicants shall deposit 30% of Rs. 2,43,000/- with the office of Mamlatdar, Porbander it will meet ends of justice.

7. In view of above, order dated 28.09.2010 passed by the learned District Judge, Porbander in Criminal Appeal No. 28 of 2009 by which the learned Judge

has confirmed the order dated 20.12.2005 passed by District Supply Officer, Porbander in Food Enforcement Case No. 82 of 2005 and order dated 21.04.2007 passed by the District Collector, Porbander in Food Enforcement Case No. 2 of 2007 by which applicants was directed to deposit sum of Rs. 2,43,000/- with the office of Mamlatdar, Porbander is modified to the extent that the applicants shall now deposit Rs. 72,900/- with the Office of Mamlatdar, Porbander.

8. In view of above, present Special Criminal Application is allowed to the aforesaid extent.

