

Jagat Bahadur Saxena Vs State

Court: Allahabad High Court

Date of Decision: Dec. 6, 1966

Acts Referred: Essential Commodities Act, 1955 " Section 3(5)
Fertiliser (Control) Order, 1957 " Clause 10, Clause 13, Clause 5

Citation: (1967) 37 AWR 263

Hon'ble Judges: D.P. Uniyal, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D.P. Uniyal, J.

This reference has been made by the learned Civil and Sessions Judge, Bareilly recommending that the order of the

Magistrate dated 16-1-1965 ordering the prosecution of the Applicant u/s 7 of the Essential Commodities Act (Act X of 1955) for contravening

the provisions of Clauses 5, 6, 10 and 13 of the Fertilizers (Control) Order, 1957 (hereinafter referred to as the Order) and Sections 408, 409,

457, 477-A and 411 read with Section 120-B, IPC be quashed.

2. In exercise of powers u/s 2(a)(xi) of the Essential Commodities Act the Government of India declared fertilisers as an essential commodity on

29-3-1957. Pursuant to Section 3 of the Act the Central Government promulgated an Order called the Fertiliser (Control) Order, 1957 to regulate

the production, supply and distribution of the said commodity. This Order came into force with effect from the 15-5-1957. By Clause 5 it was

declared that no person shall carry on business of selling fertilisers except under and in accordance with the terms and the conditions of the licence

granted to him there-under. It is common ground that the UP Government appointed the 1st day of February 1959 as being the date from which

the said Order was to take effect. And accordingly on 20-2-1959 a letter was issued by the Joint Secretary-cum-Director of Movements,

Government of UP, to all station masters, booking clerks, traffic inspectors, etc. informing them that the Fertiliser (Control) Order had been

enforced in UP with effect from 1-2-1959 and the carrying on of business in fertilisers was prohibited without holding a licence.

3. The UP Government authorised Cooperative Societies and their units in different districts to act as licensees for the distribution of fertilisers.

Subsequently there were complaints that persons in charge of Co-operative Societies were disposing of fertilisers for their own personal gain and

misusing the powers conferred on them. It was discovered that the officers of the Society had diverted the prohibited goods from oblique motive

via Richha Road Railway Station for being booked to out-stations. It was alleged that the goods were got booked from that station through the

agency of the accused Station Master who noted fictitious licences on the Railway Receipts issued by him.

4. In the court of the Magistrate an objection was raised on behalf of the accused Applicant challenging the legality of the prosecution, inter alia, on

the ground that there being no publication of any order or direction prohibiting the transport of fertilisers by rail the court had no jurisdiction to take

cognisance of the offence charged. This objection was repelled by the Magistrate, but the learned Civil and Sessions Judge who heard the Revision

was of the view that the prosecution was misconceived inasmuch as there was no publication of any order or direction prohibiting the transport of

fertilisers from one station to another within the State of UP.

5. On behalf of the Applicant reliance was placed on Sub-section (5) of Section 3 of the Essential Commodities Act which reads as follows:

An order made under this section shall,--

(a) in the case of an order of a general nature or affecting a class of persons, to be notified in the official gazette;

(b) in the case of an order directed to a specified individual, to be served on such individual....

It was conceded before the learned Sessions Judge and the learned State Counsel has not been able to show otherwise, that there was no

publication in the official gazette of any Order prohibiting transport of fertilisers by rail from one station to another within the State of UP as

required by Sub-section (5) of Section 3 above. This being so, the Applicant who was the Station Master to Richha Road Railway Station, could

not be held liable for contravening the provisions of Clause 5, 6, 10 and 13 of the Fertilisers (Control) Order, 1957.

6. Mr. B.N. Katju, the learned Deputy Government Advocate, pointed out that the Applicant was also being prosecuted in respect of the offence

u/s 120-B, IPC and that he was liable to be punished for having entered into a conspiracy to help persons carry on business in fertilisers which was

a prohibited commodity. The argument has no substance because there was no allegation against the Applicant that he entered into a conspiracy

with the officers of the Cooperative Society to carry on illicit trade in fertilisers. In this view of the matter the contention must be rejected.

7. For the reasons given above, I accept the reference and quash the order of the Magistrate dated 16-1-1965.