

Mukesh Chand and Dinesh Chand Vs Addl. Commissioner and Joint Secretary, U.P. Government, Food and Civil Supplies and Another

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: March 20, 1996

Acts Referred: Essential Commodities Act, 1955 â€” Section 6A, 6B, 6B(1), 6D(1)

Hon'ble Judges: Brijesh Kumar, J

Bench: Single Bench

Advocate: J.N. Kesharwani, for the Appellant; C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Brijesh Kumar, J.

Heard Sri Yogesh Kesharwani for the Petitioner and Sri B. N. Sirswal for the State.

2. The brief question involved in this petition relates to the opportunity which is sought to be provided to an owner of the goods which have been

seized and confiscated u/s 6A of the Essential Commodities Act, 1955, by the Collector by an order passed u/s 6B of the Act.

3. Briefly, the facts of the case are that on a search and raid made in the premises of an Ata Chakki and godown of Nirmal Kumar adjacent to it in

the Fatehganj locality P. S. Naka, Lucknow. on 24.3.1982, some tins of palm oil, bags of wheat and flour and bags of cement etc., were

recovered. Nirmal Kumar, it appears, had denied the fact that Ata Chakki belonged to him. Some other persons came forward, saying that it was

taken by them on rent from Nirmal Kumar. However, without going into that aspect of the matter, suffice is it to say that the authorities had

recorded a finding that the Ata Chakki belonged to Nirmal Kumar. So far as the Petitioners are concerned, they moved an application alongwith

an affidavit on 23.4.1982, forwarding their claim to the bags of wheat and flour recovered in the raid, saying that they carry on business in wheat

and flour and had sent 92 bags of wheat to the Ata Chakki for being grinded. They had thus claimed the ownership of the bags of wheat and flour.

In support of their case, they also seem to have filed an affidavit in June, 1982. Thereafter, on 7.7.1982, the authority concerned issued a notice to

Nirmal Kumar u/s 6B of the Essential Commodities Act, 1955 (for short, the Act). The order of confiscation shows that after providing an

opportunity of hearing to both the parties and after hearing the counsel, the Collector, Lucknow did not accept the case that Ata Chakki was given

on rent to Kedarnath Gupta and Ganesh Prasad, but found that the same belonged to Nirmal Kumar. So far as the case of the Petitioners was

concerned, it was rejected on the ground that according to the Petitioners, they had given 92 bags of wheat for being grinded, but at the spot 58

bags of wheat as well as 38 bags of flour were recovered, the total of which comes to 96 bags. The other reason for not accepting the case of the

Petitioners was that only it was once that the Petitioners had sent their wheat for grinding to the Ata Chakki of Nirmal Kumar and had not sent it

either before or after the recovery. The appeal preferred by the Petitioners was also rejected by the Additional Commissioner by order dated June

16, 1984. He also adopted the same reasoning as indicated by the Collector.

4. The main thrust of the learned counsel for the Petitioners is that no notice as required u/s 6B of the Act was ever served upon the Petitioners.

From the order passed by the Collector, it appears that undisputedly a notice was served upon Nirmal Kumar alone from whom the goods were

seized. The question to be considered is as to whether it was necessary to give notice to the Petitioners who had claimed to be the owners of

wheat bags or not. In this connection, the relevant provision, as contained in Section 6B of the Act, is quoted below:

6B. Issue of show-cause notice before confiscation of essential commodity.--

(1) No order confiscating any essential commodity shall be made u/s 6A 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.

(2) ...

(3) ...

5. Learned counsel for the State had vehemently urged that according to Sub-section (1) of Section 6D of the Act, notice is to be given either to

the owner or to the person from whom the goods are seized. It is also submitted that in any case, the Petitioners had since put forward their case

before the authority concerned, there was substantial compliance with the provisions contained u/s 6B of the Act. It is, however, difficult to

appreciate the arguments as advanced on behalf of the State. Learned counsel for the Petitioners submits that once the Petitioners had put forward

their claim as owners of the wheat bags, it was necessary for the authority concerned to give notice, indicating the grounds of confiscation, to the

Petitioners in relation to wheat bags. To appreciate the above argument, one may have to closely scrutinize the provision, namely, Section 6B of

the Act as quoted above. The provision is in terms that no order of confiscation is to be passed unless the owner of such goods is given a notice in

writing informing him of the grounds on which it is proposed to confiscate the commodity. It also provides, "or" the notice is given to a person from

whom the commodity is seized. The whole intention of the provision is clear that it is the owner who is first entitled to the notice. It cannot be the

sweet will of the authority concerned to give notice indicating the grounds of confiscation to either of the two. In case, where the owner is known

or somebody comes forward claiming to be the owner of the goods seized, notice at the first instance has to be given to him. The alternative which

has been provided in the provision seems to be where the owner of the goods is not known or nobody is coming forward claiming to be the owner

of the goods and in that event, the notice if given to the person from whom the commodity is seized, would only suffice. There may be

circumstances in which it may not be possible to trace out the owner. In that event also, there would be no option left but to give notice to the

person from whose custody the goods are seized. It is difficult to envisage a situation in which the authority concerned may have the owner as well

as the person from whose custody the goods are seized, before it, but on its own sweet will, may prefer to give notice to the person from whom

the goods are seized ignoring the owner of the goods. That would frustrate the whole purpose of the provision itself. The owner and the person

from whose custody the goods are seized, are not interchangeable. The only possible interpretation of the provision as contained u/s 6B of the Act

is that in the event, where the owner is not known or is not traceable or in some special circumstances where it may not be possible to serve such

owner with the notice, it will meet the requirement by giving notice to the person from whom the goods are seized. As observed earlier, the order

itself indicates that the notice was sent only to Nirmal Kumar from whose Ata Chakki and godown the goods are said to have been seized even

though the Petitioners had come forward claiming ownership of the wheat and flour bags.

6. Learned counsel for the State then submits that even though the notice was not sent to the Petitioners, substantially the provision of Section 6B

of the Act was complied with, since the Petitioners had themselves put forward their claim and the case, before the authority concerned, and had

also supported the same by filing an affidavit later on sometime in June, 1982. Again a scrutiny of the provision contained in Section 6B of the Act

would indicate that the argument advanced does not hold water. First of all, it is to be noticed that the Petitioners had placed their claim in April,

1982 and had filed an affidavit in June, 1982. It was only thereafter that the Collector had issued notice u/s 6B of the Act to Nirmal Kumar, as it

was rightly thought necessary that grounds of confiscation had to be informed as provided under Clause (a) of Sub-section (1) of Section 6B of the

Act. No such grounds have been informed to the Petitioners as owners and the claimants of wheat bags. Thereafter Clause (b) of Sub-section (1)

of Section 6B of the Act provides that reasonable time would have to be given for making a representation in writing and further, there is yet

another provision in Clause (c) of Sub-section (1) of Section 6B of the Act which specifically provides for a reasonable opportunity of being heard

in the matter. Thus the mode and manner in which the opportunity of hearing is to be provided has been very clearly and specifically laid in Clauses

(a), (b) and (c) of Sub-section (1) of Section 6B of the Act. In the present case, the grounds of confiscation have not been intimated to the

Petitioners. A representation could be given only meeting those grounds, informed to the Petitioners; that too was not done, much less an

opportunity of hearing after representation, as provided under Clause (c) referred to above. Had the Petitioners been provided that opportunity,

they might have preferred to produce evidence to convince the authorities about their ownership of the confiscated wheat and flour by producing

record, etc., but their claim has been brushed aside behind their back only on the ground that the total of the wheat bags and the flour bags

recovered was 96, whereas according to the Petitioners they had handed over only 92 bags of wheat for being grinded and the other ground that

according to the documents, the Petitioners had not sent the wheat for being grinded to that Ata Chakki before or after the raid and seizure. Had

an opportunity of hearing been given to the Petitioners, they might have been able to explain the circumstances which have been considered in their

absence.

7. In view of the discussion held above, it is held that the Petitioners were not given an opportunity of hearing as required u/s 6B of the Act, hence

the part of the order of confiscation of the appellate authority in so far as it relates to the bags of wheat and flour seized, is quashed and the matter

is remanded to the Collector for affording an appropriate and proper opportunity of hearing, as envisaged u/s 6B of the Act, to the Petitioners and

pass appropriate orders after hearing. Since it appears that the goods have been disposed of and it has been stated that they have been converted

into money, the appropriate orders shall be passed by the authority concerned regarding money for the seized items of wheat and flour bags alone

while passing fresh orders.

8. The petition stands allowed in the manner indicated above with costs.