(2009) 10 JH CK 0028

Jharkhand High Court

Case No: None

Gauri Shankar Saboo — APPELLANT

Vs

State of Jharkhand and Shirendra Lal Manik, Supply Inspector — RESPONDENT

Date of Decision: Oct. 14, 2009

Acts Referred:

- Essential Commodities Act, 1955 - Section 3, 7

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad, J.

Through this writ application, first information report of Kotwali (Pandra) P.S. case No. 584 of 2009 (G.R. No. 3583 of 2009) instituted u/s 7 of the Essential Commodities Act (hereinafter referred to as "the Act") has been sought to be quashed. Further prayer is to release all the commodities seized in connection with the said case.

2. Before adverting to the submissions made on behalf of the petitioner, facts giving rise this application are that on 27.8.2009, a team consisting of Sub-divisional Officer, Sadar, Ranchi, Supply Inspector and others laid raid on the shop No. 21, belonging to the petitioner situated in the premises of Agriculture Produce Market Committee, Pandra, whereby huge quantity of pulses in excess of stock limit and other commodities shown in the seizure list were found and, hence, a case was lodged for the contravention of the provisions of the Unification Order and purportedly also for contravention of the provisions of the Jharkhand Essential Commodities (Price and Stock Display) Order, 1977, though no allegation whatsoever is there in the first information report showing contravention of any of the provisions of the Display Order.

3. Learned Counsel appearing for the petitioner submitted that on the allegation of keeping huge quantity of food grains including pulses than the stock limit fixed under Notification No. 1645 dated 12.8.2009, a case has been registered for the contravention of the provision of the Unification Order and also the contravention of the Price Display Order, though there has been absolutely no allegation whatsoever showing contravention of any of the provisions of the Display Order and that too without having any sanction from the competent authority and as such, prosecution u/s 7 of the Essential Commodities Act for contravening the provision of the Essential Commodities (Price and Stock Display) Order gets vitiated.

4. In this respect, learned Counsel has referred to a decision rendered in a case of Mithila Cycle Centre v. State of Bihar 1990(2) PLJR 184 and a case of Mali Ram Agarwal v. State of Bihar and Ors. 2001(1) SCC 24 (R.B).

5. Learned Counsel further submitted that Central Government in exercise of the power conferred u/s 3 of the Act had promulgated the order known as Removal of (Licensing Requirement Stock Limit and Movement Restriction) on a specified Foodstuffs Order, 2002 wherein any restriction made earlier in sale, purchase, transport, distribution of wheat, paddy, rice etc was lifted.

6. However, in the year 2006, the Central Government, vide its Central Order No. So 1373 (E) dated 29.8.2006 made amendment in the aforesaid order whereby stipulation made under the aforesaid order with respect to free sale, transport, stock etc. was kept in abeyance for certain period which was extended time to time. Pursuant to that, the Secretary, Department of Food, Public Distribution and Consumer Affairs, purportedly in exercise of power u/s 3 of the Act issued notification bearing No. 1645 dated 12.8.2009 whereby Bihar Control Order, 1984 was revived and fixed the stock limit with respect to rice, paddy, pulses, edible oil, sugar etc. but the same was never published in the Gazette which formality was required to be mandatorily done, in view of the provision as contained in Clause 18 of the Unification Order and in that view of the matter, any prosecution for contravention of the provision of the Unification Order for keeping the pulses or other commodities in excess of the stock limit would be quite illegal and, therefore, on these grounds, the first information report is fit to be quashed.

7. It was further submitted that though the stock limit of the pulses has been fixed by the Officials of the State Government and not by the State Government as required under the Unification Order, but still no licence fee for grant of licence for dealing in pulses as retail dealer or wholesale dealer has been prescribed and as such, any order relating to the pulses would not be workable and hence, prosecution would be wholly bad.

8. In this respect, learned Counsel appearing for the petitioner has referred to a decision rendered in a case of Satya Narain Prasad v. State of Bihar 1988 PLJR 583 holding therein that confiscation and prosecution for want of any licence fee fixed

for the licenses for dealing in pulses would be invalid.

9. However, learned Counsel for the State submitted that storage limit of food grains including pulses fixed by the State Government, vide notification No. 1645 dated 12.8.2009 was widely published for information to all concerned in all the local newspapers and as such, prosecution never gets vitiated, even if the said notification has not been published in the Gazette.

10. It was further submitted that as the stock of the pulses and other commodities found in the business premises of the petitioner was more than the storage limit, the petitioner has rightly been prosecuted.

11. Before adverting to the submission, I feel it appropriate to trace the background under which present notification, bearing No. 1645 dated 12.8.2009 has been issued. After the enactment of the Essential Commodities Act, 1955, State of Bihar in exercise of power delegated to it u/s 3 of the Act was pleased to issue and promulgate Bihar Trade Articles (licenses Unification) Order, 1984. Clause (o) of the said Unification Order defines pulses which mean any one or more of the pulses as specified in Part ''B'' of Schedule-1. The Unification Order has also defined retail dealer as well as wholesale dealer in Clause 2 (p) and Clause 2 (u) respectively. According to Clause 3 of the Unification Order, no dealer can carry on business of purchase, sale or storage for sale of any of the trade articles mentioned in Schedule 1 except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority under the provisions of this Order. Clause 4 of the Unification Order deals with the grant of licence on payment of fee prescribed in Schedule IV. Clause 18 of the Unification Order provides for restriction on the possession of trade articles in quantity exceeding the limit to be fixed by the Stage Government.

12. Subsequently, the Central Government in exercise of power conferred by Section 3 of the Essential Commodities Act, 1955 issued an order name as Removal of (Licensing requirements stock limits and Movement Restrictions) on specified Foodstuffs Order, 2002 whereby restriction earlier put on the matter of purchase, stock, sell, transport etc. on wheat, paddy/rice etc. was removed and thereby dealers were free to deal in the said food grains. However, the Central Government, vide its Central Order No. S.O. 1373 (E) dated 29.8.2006 made certain amendments in the aforesaid order whereby stipulation made in the aforesaid order with respect to sale, supply, storage, distribution etc. was kept in abeyance initially for six months which under different orders were extended time to time. Under that situation, the Secretary, Department of Food, Public Distribution and Consumer Affairs in purported exercise of power conferred u/s 3 of the Act, issued notification bearing No. 1645 dated 12.8.2009 whereby Control Order, 1984, meaning thereby Unification Order was revived and consequently, stock limit for food grains such as, rice, paddy, pulses, edible oil, sugar etc. were fixed but that notification was never published in the Official Gazette, though u/s 18 of the Unification Order it should

have been issued with prior concurrence of the Central Government and the notification should have been published in the Official Gazette. The provision as contained in Clause 18 of the Unification Order, 1984 reads as follows:

18. Restriction on possession of trade articles - No person shall, either by himself or by any person on his behalf, store or have in his possession at any time any trade article mentioned in Schedule 1 and Schedule II in quantity exceeding the limits fixed -

(i) under an order issued by the Central Government, or

(ii) by the State Government with prior concurrence of the Central Government by issuing a notification in official Gazette from time to time.

13. Admittedly, the aforesaid notification has neither been published in the official Gazette nor anything is on record to show that said notification has been issued with prior concurrence of the Central Government. Moreover, the said notification as required under the aforesaid clause has never been issued by the State Government, rather it has been issued by the Secretary of the department.

14. The intendment of the notification being published in the Official Gazette is that in case of fixation of stock limit the public must come to know the same. Therefore, it would not be operative unless published in the Official Gazette and mere printing of such notice in the newspaper, as has been done by the authority cannot be equated with the publication in the Official Gazette.

15. Thus, issuance of the notification prescribing stock limit of the food grains including pulses never seems to have been done in accordance with the provisions of the Unification Order and on that account, any prosecution on the ground of having excess food grains/ pulses than the stock limit fixed would certainly be quite illegal.

16. That apart, the prosecution for contravention of the provisions of the display order also seems to be bad on account of the fact that before launching prosecution against the petitioners, no sanction has been obtained though under proviso to Clause (6) of the display order, it was required to be obtained from the competent authority. The proviso to Clause (6) of the display order reads as follows:

Provided that no prosecution shall lie against a person for contravention of any of the provisions of this Order unless the same has been sanctioned by the District Magistrate or Special Officer, In-charge Rationing or Additional District Magistrate (supply) or Sub-divisional Magistrate with a limit of their respective local jurisdiction.

17. Thus, proviso makes it clear that no prosecution shall lie against any person for contravention of any of the provisions of the order unless the sanction has been obtained from the competent authority. This proposition of law has been laid down in a case of Mithila Cycle Centre v. State of Bihar (supra). The said principle has been

reiterated in a case of Mali Ram Agarwal v. State of Bihar and Ors. (supra).

18. Thus, the prosecution on account of contravention of the provisions of the display order can certainly be said to be bad.

19. Further plea taken on behalf of the petitioner seems to be that the prosecution is invalid on account of the fact that no licence fee has been prescribed for dealing in pulses. This fact never seems to have been controverted on behalf of the State and as such, on this count also the prosecution gets vitiated as it has been held in a case of Sitya Narain Prasad v. State of Bihar (supra) that any confiscation or prosecution becomes invalid on account of the fact that no licence fee has been prescribed for licenses for dealing in pulses.

20. Under the aforesaid situation, continuance of the criminal proceeding against the petitioner would certainly amount to abuse of the process of law and hence, the first information report of Kotwali (Pandra) P.S. case No. 584 of 2009 is quashed so far the petitioner is concerned. Consequently, any articles seized in connection of the said case are directed to be released in favour of the petitioner forthwith.

21. In the result, this application is allowed.