(1982) 07 KL CK 0024

High Court Of Kerala

Case No: Criminal R.P. No''s. 313, 314, 386 and 389 of 1980

Sathish and Co., Palghat	APPELLANT
Vs	
State of Kerala and Another	RESPONDENT

Date of Decision: July 9, 1982

Acts Referred:

- Essential Commodities Act, 1955 - Section 6A, 6A(1), 6B

Citation: (1982) KLJ 592

Hon'ble Judges: S. K. Kader, J

Bench: Single Bench

Advocate: M. P. R. Nair, M. K. Chandramohan Das, D. Krishna Prasad, K. Rama Kumar and B. Satheesh Chandran, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

S. K. Kader, J.
These four revision petitions are directed against a common judgment passed by the Court of Session, Palghat, in Criminal Miscellaneous Appeal Nos. 1 and 2 of 1980. The petitioner in Crl. R.P. Nos. 313 and 314 of 1980 is the same person. Crl. R.P. No. 313 of 1980 is directed against the order in Crl. Mis. Appeal No. 1 of 1980, while Crl. R.P. No. 314 of 1980 is against the order passed in Crl. Mis. Appeal No. 2 of 1980. Crl. R.P. No. 386 of 1980 and Crl. R.P. No. 389 of 1980 are filed by the State challenging the common judgment passed in Crl. Mis. Appeal Nos. 1 and 2 of 1980, to the extent it is against them. The petitioner, M|s. Sathish & Company, in Crl. R.P. No. 313 of 1980 and Crl. R.P. No. 314 of 1980 is a wholesale dealer dealing in sugar at Palghat and Coimbatore, having its place of business in Palghat at the Market Road. On December 10, 1979 at about 7.00 p.m. the District Supply Officer, Palghat, raided the premises of M|s. Sathish and Company, hereinafter referred to as the Company, and found that there was a stock of 272 bags of sugar, which was in excess of the quantity that could have been permissibly possessed by the petitioner. According to

the District Supply Officer, as per the stock register the company had stocked or possessed 700 quintals of sugar on December 9 and 10, 1979, and, as per the records 536 bags had been sold. On the basis of the accounts, there could have been only 164 bags of sugar in the premises of the company, but instead of that there was an excess of 108 bags of sugar which was unaccounted. Therefore, the entire quantity of sugar found in the premises were seized, the stock register, and certain invoices were also seized by the District Supply Officer. Thereafter, a show cause notice was issued to the petitioner u/s 6B of the Essential Commodities Act, for short the Act, calling upon the petitioner why the entire quantity of 272 bags of sugar found in the premises should not be confiscated as the company had contravened clause 3''B of the Kerala Sugar Dealers Licensing Order 1967, which will be hereinafter referred to as the Order.

2. A written explanation was given by the company, which contended that it did not stock or possess 700 bags of sugar either on the 9th or 10th of December 1979, as alleged, that as per the trade practice, usually the accounts. are written and completed only by 8.00 p.m., after closing the shop, that the District Supply Officer came to the shop of the company by about 4.00 p.m. and continued the raid till 7.00 p.m. and hence the account for that day could not be written, and that ''there has been no violation of any of the clauses of the Order. This is the subject matter of Crl. Mis. Appeal No. 1 of 1980 and Crl. R.P. No. 313 of 1980.

3. Again on December 13, 1979, at about 10.00 a.m. the Taluk Supply Officer, along with the Rationing Inspector, conducted a raid of the place of business of the company and found as per the stock register maintained in the shop that there was a stock of 700 bags of sugar. This according to the authorities Was a clear violation of clause 3B of the Order and also clause 2(b) of the Order of Government of India, G.S.R. 531 (E)|Ess. Comsugar dated 6-9-1979 read with clause 5 of the Sugar Control Order, 1966. All these 700 bags were seized and the stock register and other documents were also seized. A show cause notice as contemplated under the Act was issued to the company why the entire quantity of sugar should not be confiscated as they contravened clause 3B of the Order and the Order of the Government of India referred to above. The petitioner - company is said to have submitted a written explanation, wherein it mainly contended, that all these 700 bags were actually goods sold to M|s. Captain P. K. Varghese & Sons, Ernakulam and to one Skaria of Muvattupuzha.-Usually they place orders with the company, which in turn negotiates with manufacturers and supply these goods direct to customers without stocking or unloading them, at the place of business at Palghat, and that they have not contravened any order as alleged. This forms the subject matter of Crl. Mis. Appeal No. 2 of, 1980 and Crl. R.P. No. 314 of 1980.

4. The District Collector, thereafter, passed separate orders confiscating 272 quintals of sugar seized on 10-12-1979 and 700 quintals on 13-12-1979. These orders were attacked in Crl. Mis. Appeal Nos. 1 and 2 of 1980 before the Court of Session. The

learned Sessions Judge disposed of these appeals by a common judgment by making slight modification in respect of the quantity of sugar which was confiscated. In Crl. Mis. Appeal No. 1 of 1980, the learned Session Judge confirmed the order of the District Collector in respect of 108 quintals; while in the other appeal, the order was confirmed in respect of 200 quintals.

5. These orders are vigorously attacked by Shri M.P.R. Nair, learned advocate appearing for the company in Crl. R.P. No. 313 and Crl. 314 of 1980 on various grounds. But the main grounds urged by the counsel before this Court are the following: (1) In Crl. Mis. Appeal No. 1 of 1980, there is absolutely no evidence or material to support the finding of the District Collector, that the petitioner violated clause 3B of the Order and the Order of the Government of India in this regard; (2) the learned Sessions Judge, instead of considering whether the order of the District Collector in Confiscating the quantity of sugar on the ground of contravention of clause 3B of the Order was right or wrong, found that it was condition 3 of the licence that was violated; (3) it cannot be said that the company held or possessed 700 bags of sugar on the dates alleged; (4) the order of the District Collector is vitiated by serious illegalities as (i) he did not consider the defence plea and the evidence adduced on behalf of the company, and (ii) he did not apply his mind to the relevant provisions in S. 6A of the Act and give any reason why the quantity of sugar involved in the two cases should be confiscated.

6. Clause 3B of the Order, it is not disputed, came into force only on 11-12-1979. But the order of the Government of India referred to above is dated 6-9-1979. At the material time as per clause 3B, read with the Order of Government of India, admittedly the petitioner could stock or possess at the place of its business 500 quintals of sugar (500/bags). The operative portion of me order of the District Collector in respect of the 272 bags of sugar reads:

Therefore the dealer received 700 quintals of sugar on 10-12-1979. It is reasonable to assume that at a time he had more than 500 quintals in stock on 10-12-1979. This is a violation of CL, 3-B of K.S.D.L. Order and direction issued under G.S.R. 531 (E)|Ess. Com Sugar under cl, 5 of the Sugar (Control) Order 1966 issued by Government of India.

Therefore in exercise of the powers conferred on me u/s 6A of the Essential Commodities Act, I hereby order the confiscation of 272 quaintals of sugar seized from M|s. Satish and Company, Market Road, Palghat and to credit to Government account the cost of the above quantity of sugar already kept under Revenue Deposit.

7. Factually this order cannot be supported. The only document relied on by the counsel appearing for the State in support of the conclusion of the District Collector in the stock register. It is not disputed before this Court that there is nothing in the stock register which will show or indicate that on 10-12-1979 there was a slock of

more than 500 quintals of sugar. The entries in the stock register only show that the total receipt of sugar on 9th and 10th December, 1979 together (both days inclusive) was 500 quintals. The learned counsel appearing for the State also was fair enough to submit that on the facts of the case, the findings of the District Collector cannot be supported. Curiously enough, the learned Sessions Judge, instead of considering and deciding whether the order of the District Collector that the company had contravened clause 3B of the order read with the Government of India Order was correct or not, came to a different conclusion that what was violated was the conditions of the licence. u/s 6A(1) , the statutory authority competent to con-fiscate is the Collector of the District, if he is satisfied that there has been con-travention of the Order. It is clear from the section that the satisfaction referred to therein is that of the Collector of the District and not that of the revisional authority or any other authority. No steps also are seen taken against the company for suspension or cancellation of the licence. If there was violation of the conditions of licence; the authority concerned should have proceeded against the company under clause 8 of the Order.''

8. Counsel for the company submitted that apart from all these, the orders passed in both these matters are liable to be quashed on a short ground that the District Collector did not apply his mind to the materials before him and did not consider and give any reason for confiscating the quantity of sugar involved in this case. There is considerable force in these contentions. An order of confiscation in penal in nature and is a very drastic action. An enquiry in this regard must be a fair and proper one and not as a mere formality. The order of confiscation depends only on the satisfaction of the Collector of the District. The discretion vested in the officer in this regard must be execised in a fair and judicial manner. The provisions in S. 6A of the Act are not mandatory and the section is only an enabling one. Satisfaction under S. 6A is not to be arrived at merely as a matter of the officer''s opinion. A full enquiry as contemplated under S. 6B of the Act has to be conducted before an order of confiscation is made under S. 6A of the Act. A notice in writing stating the grounds on which it is proposed to confiscate the article in question has to be given to the owner of that article or the person from whom it was- seized. Thereafter, the owner or the person, as the case may be, has to be given two opportunities, an opporunity of making representation in writing and secondly an opportunity of being heard in the matter. It is clear from the express provisions in S. 6A and 6B of the Act, that before passing an order of confiscation, the concerned authority must be satisfied that there was contravention of a provision of law touching the matter and there was proper and justifiable grounds for confiscation. It is not enough. if the Collector is satisfied that there is contravention of the Order, he must further be satisfied that there are proper and adequate grounds for passing an order of confiscation. In other words, a mere violation of any of the Order by itself will not be sufficient to pass an order of confiscation. The District Collector must call his attention to the matters he is bound to consider and exclude from his consideration

matters which are irrelevant to that which he has to consider. All the relevant and material facts and circumstances must be subject to an objective test.

9. The petitioner''s counsel cited in support of his contentions the decision of this Court reported in Sasidharan v. State of Kerala, 1980 KLT 671. According to the counsel appearing for both sides, this is the only reported case having a direct bearing on the point. It was the scope and ambit of section 67B(2) and 67C(2) of the Abkari Act, 1077 that were considered by this Court in the said decision. The provisions in sectioa 67B(2) and section 67C(1) of the Abkari Act 1077 and the provisions in section 6A and 6B of the Act are almost identical. The decisions of the Supreme Court and this Court and also some English cases have been referred to and duly considered by the learned Judge, George Abraham Vadakkel J., in Sasidharan v. State of Kerala, 1980,KLT 671. The principle enunciated with regard to confiscation of a property u/s 67B(1) by this Court in the above case is that in order that an officer may order confiscation of a property specified in the section, the authorised officer has to be satisfied of two matters, viz., (1) that an offence under the Act has been committed in respect of or by means of that property, and (2) that such property i.e., the property in respect of or by means of which an offence under the Act has been committed is liable to confiscation under the Act. Therefore, it is not enough if the officer is satisfied of the first requirement; he must also be satisfied on the facts and circumstances of the case that the property in question is one liable to be confiscated under the Act. I am in respectful agreement with the principles enunciated in Sasidharan v. State of Kerala, 1980 KLT 671. On analogy, these principles squarely apply to cases of confiscation u/s 6A of the Act. There is no doubt that confiscation of a property is penal in nature: See 1975 KLT (SN) 33, Abdul Kader v. State of Kerala, 1975 KLT 151. As stated earlier, it is not mandatory in every case that the property involved should be confiscated on being satisfied that there was contravention of the order. The discretion in this regard should be exercised judiciously and properly and not arbitrarily. As the confiscation of the property in question may depend upon several factors all the factors have to be taken into account before passing any final order. Learned Judge in Sasidharan v. State of Kerala, 1980 KLT 671, pointed out that one of the factors to be taken into account by the officer is as to whether the same would operate harshly, in the sense, that such an action is grossly disproportionate to the abkari offence which was committed in respect of or by means of that property.

10. In the case on hand, the District Collector has not applied his mind and considered whether the property involved in this case was liable to be con-fiscated. The orders passed by him clearly show that it was only because he was satisfied that there was violation of clause 3B read with the Order of Govern-ment of India dated 6-9-1979 that he ordered confiscation of the quantity of sugar in this case. Applying the principles laid down in Sasidharan v. State of Kerala, 1980 KLT 671, the orders passed by the District Collector confiscating the quantity of sugar in these cases cannot be sustained. The two revision petitions filed by the State as stated earlier is

challenging the case against the common judgment of the Sessions Judge, modifying the orders of the District Collector refusing to confirm the orders in its entirety. As already stated, even on facts the order passed in Crl. Mis. Appeal No. 1 of 1980 cannot be sustained. As regards Crl. Mis. Appeal No. 2 of 1980 it cannot be said that it is factually unfounded in so far as the Civil Supplies Authorities found the stock of 700 bags on the particular day. But that order also cannot be sustained in view of the legal defect in the order of the District Collector.

In the result, Crl.R.P. Nos. 313 and 314 of 1980 are allowed and the Judgment of the Court of Session and the Orders passed by the District Collector are hereby set aside. The Criminal Revision, Petitions filed by the State, Crl R.P. Nos. 386 and 389 of 1980 are dismissed. The quantity of sugar seized from'' the company has been sold and therefore the company is not entitled to get the goods confiscated. They can only claim the value of the goods. The sale proceeds collected by the sale of the quantity of sugar seized on 10-12-1979 and 13-12-1979 will be returned to the company.

Disposed of as above.