

(1991) 03 CAL CK 0037

Calcutta High Court

Case No: Criminal Revision No. 1179 of 1983

Achinta Kumar Saha

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: March 28, 1991**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227, 323A, 323B
- Criminal Procedure Code, 1973 (CrPC) - Section 4(2), 452, 5
- Essential Commodities Act, 1955 - Section 3, 6A, 6E, 7, 7(1)

Citation: (1992) CriLJ 3 : 96 CWN 85**Hon'ble Judges:** Amulya Kumar Nandi, J; A.M. Bhattacharjee, J**Bench:** Division Bench**Advocate:** Mrinmoy Bagchi and M. Mukherjee, for the Appellant; A.K. Pal and Subir Ganguly, for the Respondent

Judgement

A.M. Bhattacharjee, J.

Our jurisdiction conferred by Article 227 of the Constitution can be taken away or otherwise affected only by or under the authority of the Constitution and not by any legislation whatsoever without such authority. That is why the provisions of Article 323A and Article 323B constituting Part XIVA of the Constitution had to be inserted by way of Constitutional Amendment in 1976 to enable Parliament and other Legislatures to exclude our Constitutional Jurisdiction under Articles 226 and 227 in respect of matters to be adjudicated or tried by Tribunals to be constituted pursuant to the provisions of those Articles. When the paramount law of the land has conferred a jurisdiction, no other law can alter, circumscribe or take its way save under the express authority of that paramount law.

2. In this Court, there does not appear to be any appreciable difference of opinion as to the Collector being otherwise amenable to our superintending jurisdiction under Article 227 while discharging his functions u/s 6 A of the Essential Commodities Act,

1955 in ordering confiscation of the essential commodities seized in pursuance of an Order made u/s 3 of the Act. But the cleavage of opinion appears to centre round the question as to whether Section 6E, in providing that in respect of any essential commodity seized, "the Collector... shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any Court, tribunal or other authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity...", has also excluded the power of superintendence of this Court under Article 227.

3. A learned single Judge of this Court in Prodyot Kumar Das Mondal (1986 Criminal Law Journal 1206) appears to be categorical that the expression "any Court, tribunal or other authority" in Section 6E cannot but include the High Court also even in its jurisdiction under Article 227. Another learned single Judge in Kalachand Saha (1987 Criminal Law Journal 1375) is also equally assertive in holding that those provisions cannot affect the jurisdiction of this Court under Article 227 in any way. With respect, we agree with the view in Kalachand Saha (supra) and dissent, with equal respect, from the view in Prodyot Kumar Das Mondal (supra) and we are inclined to think that the earlier Division Bench decision in Swadeshi Sugar Supplies (1980-1 Calcutta High Court Notes 338) goes a long way to lend assurance to the view we propose to take. We have no manner of doubt that our Constitutional Jurisdiction under Article 227 is far beyond the reach of Section 6E of the Essential Commodities Act, 1955, notwithstanding the purported broad sweep and apparent amplitude of its provisions and would accordingly survive with all its magnitude all such legislative onslaughts.

4. But as we have very often said, borrowing from Shakespeares, it is good to have giant's power, but not to use it as a giant. The wide arch and extent of our Constitutional Jurisdiction may be gigantic, but the exercise thereof must not be giant-like.

5. In the case at hand, at the criminal trial preceding the impugned order of confiscation by the Collector, the Judge, Special Court, though finding the petitioner guilty and sentencing him to imprisonment, directed the Seized goods to be returned to the petitioner, as in his view the offence was a "technical" one. It is difficult to understand as to how the Judge could do so with Section 7(1)(b) staring at the face and mandating that "any property in respect of which the Order has been contravened shall be forfeited to the Government". The learned Judge thought that since there was no discrepancy between the actual stock and the entries in the Register and failure to display the stock and the prices on a board or list as required under the Order would not make the articles or the commodities properties "in respect of which the order has been contravened" within the meaning of Section 7(i)(b) to warrant forfeiture. We do not know why ?

6. If the relevant Order, being the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977, in Paragraph 3, obligates a dealer to display the Stock and Prices of essential commodities, then it is difficult to appreciate as to why his failure to do so shall not be a contravention "in respect of" those commodities. The contravention may consist of failure to display the stock of commodities and their prices, but the offence cannot but relate to or be "in respect of" those stocks. The learned Judge was therefore wrong in holding the seized commodities not to be covered by Section 7(i)(b) and in not ordering their forfeiture thereunder and directing their return.

7. It is no doubt true that Section 452 of the Criminal Procedure Code invests the trial Court with the power to direct disposal at the conclusion of the trial, by destruction, confiscation or delivery of the property regarding which any offence appears to have been committed. But Section 452, like all other provisions of the Code, is subject to the provisions of Section 4(2) and Section 5 of the Code and as a result, in respect of a trial of any offence under a special law, or any law other than the Penal Code, like the Essential Commodities Act, 1955, the provisions of the Code would cease to apply to the extent provisions are made in such other special law.

8. The Essential Commodities Act, 1955 in Section 7(i)(b) provides that on conviction of the accused, the essential commodities "in respect of" which the offence has been committed shall be forfeited and therefore to that extent the general provisions of Section 452 of the Code of Criminal Procedure stand put-weighed. As we have already indicated, once the learned Judge proceeded to convict the accused petitioner, his order directing return of the essential commodities was absolutely illegal and without jurisdiction as the offence obviously related to and was in respect of the essential commodities within the meaning of Section 7(i)(b).

9. And if Section 452 of the Code of Criminal Procedure was thus not available to the Judge in view of Section 7(i)(b) of the Essential Commodities Act, the Judge could no longer order release of the essential commodities as u/s 6E of the Act the jurisdiction of the Court to do so stands clearly ousted and the Collector alone gets the exclusive jurisdiction. Therefore, the point sought to be urged before us that the Collector "sat over the judgment" of the learned Judge, apparently attractive even though it may be, can have no real substance. And once we find the Collector to have acted with and within jurisdiction, we must leave the matter at that.

10. The decision of the Supreme Court in [Thakur Das \(Dead\) by Lrs. Vs. State of Madhya Pradesh and Another](#), even though rendered under the provisions of the Essential Commodities Act, 1955 before the Amendment of 1974, goes a long way to support the view we take. It has been pointed out therein (at 607), that a confiscation proceeding u/s 6A would be affected by the Order of acquittal in criminal prosecution u/s 7 and an order of forfeiture on conviction in a criminal prosecution u/s 7 would be abortive where the commodities have already been confiscated u/s 6A. But otherwise, the two proceedings are in-dependent and there

is a clear dichotomy. We also find that our view finds considerable support from the observations in the decision of the Mysore High Court in [The State Vs. Abdul Rasheed](#), which has followed a Division Bench decision of the Bombay High Court in [Emperor Vs. Purshottam Devji Patel](#),

11. The Rule is accordingly discharged. Records, with a copy of our order to go down at once.

Amulya Kumar Nandi, J.

12 I agree.