

In Re: S.K. Mohammad Ali

Court: Calcutta High Court

Date of Decision: Aug. 28, 1987

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 165
Essential Commodities Act, 1955 " Section 7

Hon'ble Judges: Susanta Chatterjee, J

Bench: Single Bench

Advocate: Saktinath Mukherjee and Mr. Ramapati Roy, for the Appellant; S.N. Samajdar, for the Respondent

Judgement

Susanta Chatterjee, J.

The present writ petition has been filed challenging the impugned order under Memo No. 1289/1(5), dated 29.6.87

passed by the District Controller, Food and Supply, Hooghly, being respondent No. 1, and the copy of the impugned order is annexure "J" to the

writ petition. It is stated that the petitioner is the owner of a rice mill known as "M/s. Joypur Rice Mill" at village Pandua within the district of

Hooghly. It is further stated that the petitioner earlier moved writ petitions against the West Bengal Rice Mills (Control and Levy) Orders and

several rules were issued. by this Court and obtained interim orders of injunction. It is further stated that the District Controller, Food and Supply,

Hooghly was very much annoyed and dissatisfied with, the petitioner for obtaining successive orders of injunction from the High Court against the

impugned. West Bengal Rice Mills (Control and Levy) Order and as a result thereof the District Controller, Food and Supply, Hooghly, in

connivance with the. Sub-Divisional Controller and District Enforcement Officers as well as other district authorities illegally and surreptitiously in

the name of checking initiated illegal and unlawful proceeding against the petitioner on various pretexts in the name of discrepancies with regard to

stock. and others and started a criminal proceeding u/s 7 of the Essential Commodities Act being Pandua Police Station Case No. 8, dated 20-

11-86 and the same is pending for decision in the Special Court under the Essential Commodities Act, Chinsurah, Hooghly. On 28-11-86 the

petitioner received a notice to show cause issued by the respondent No. 1 asking the petitioner to explain as to why the appropriate action u/s 7 of

the Rice Milling Industries (Regulation) Act, 1958 should not be taken against him and to submit his reply if any, within 15 days from the date of

receipt of the same. On 11-12-86 the petitioner duly submitted his show cause explanation denying all the allegations contained in the said show

cause notice asserting that he has not violated any of the conditions of licence under the provisions of the Rice Milling Industries (Regulation) Act.

Thereafter under the orders of the Special Court the licences of the petitioner were given on condition that the same would be filed in the Special

Court within the time as specified in the order. Subsequently, the petitioner received on 24-5-87 an order passed by the Collector E.C. Act, Sadar

Hooghly, dated 13-5-87 whereby the petitioner was informed that on the basis of the submissions made by the Learned Assistant Public

Prosecutor the seized stock was directed to be sold to the bona fide purchaser through Government dealer at the approved rate. Against the said

order the petitioner moved this Court and has obtained an interim order on 15-6-87. There are various averments with regard to the bitter

relationship between the petitioner and the respondent No. 1 and all on a sudden on 30-6-87 at about 12-15 p.m. the petitioner was served with

an order passed by the respondent No. 1 under Memo No. 1289/1(5), dated 29-6-87 whereby the petitioner was informed that in exercise of the

power conferred u/s 7(1) (b) of the Rice Milling Industries (Regulation) Act, 1958 read with Order No. Rice Milling (8)/FS/10-20/58/54FS,

dated 4-1-83 read with Government of India, Ministry of Food and Agriculture, Order No. GSR 512, dated 22-4-59 revoked the licence of the

petitioner with immediate effect. A copy of the said order is annexure "J" to the writ petition. The petitioner has specifically alleged that the oA1er

of respondent No. 1 is illegal and mala fide as it would appear from the facts that under the provisions of the Rice Milling Industries (Regulation)

Act, 1958 particularly Section 9, does not empower the Area inspector or the Chief Inspector to enter and inspect the rice mill or to order

production of any documents, books, registers or records in possession or power of any person having control of or employed in connection with

any rice mill.

2. The present writ petition was moved on 17-7-87 upon notice to the State respondents and a supplementary affidavit was also filed. Having

heard the learned lawyers of both sides the matter was adjourned from time to time and it was taken up for disposal of the entire matter. No

interim order was, however, passed by this Court. In spite of giving opportunities, no affidavit-in-opposition has been filed on behalf of the

contesting State respondents.

3. Mr. Mukherjee, learned Advocate appearing on behalf of the petitioner, submitted that the impugned order passed by the respondent No. 1

cancelling the licence of the petitioner is bad, illegal, mala fide and without any authority of law. It was submitted also that the impugned order was

passed by the respondent No. 1 out of sheer grudge and malice as the petitioner did not comply with his dictates for obtaining various earlier

orders. He has mainly argued that the provisions of Section 9 of the West Bengal Amendment of the Rice Milling Industries (Regulation) Act, 1956

as well as the provisions of submission of returns as well as the licence with regard to the rice mill of the petitioner under the provisions of the West

Bengal Rice and Paddy (Licensing and Control) Order, 1964 and the amendment thereto are bad, illegal and nonest as the same purported to

encroach upon the same field as that of the Rice Milling Industries (Regulation) Act, 1958 and the rules framed thereunder, They have strenuously

argued that the powers exercised by the respondent No. 1 in the instant case are without jurisdiction and the impugned order should be quashed

with the direction to return the seized items. In support of the contention he has drawn the attention of this Court to a decision reported in The

State of Rajasthan Vs. Rehman, . It was pointed out there that the object of the search under the Act is only to ascertain whether there is a

contravention of the provisions of the Act or the rules. Rule 201 enables the authorised officer to make a search only for the investigation of an

offence. The power of search given under Chapter 14 of the Code of Criminal Procedure is incidental to the conduct of investigation which the

police officer is authorised by law to make. Searches made by a police officer during the course of an investigation of a cognizable offence can

properly be approximated with the searches to be made by the authorised officer under Rule 201 of the rules. The ratio of the said decision is that

the provisions of Section 165 of the Code of Criminal Procedure must be valid in the matter of search under Rule 201 of the Rules. The recording

of the reasons u/s 165 does not confer jurisdiction to make a search though it is a necessary condition for making a search. Section 165 of the

Code of Criminal Procedure lays down various steps to be followed in making a search. The recording of reasons is an important step in the

matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the

search is carried out in accordance with the provisions of the Code of Criminal Procedure. It would be a search made in contravention of the

provisions of the Code. Mr. Mukherjee and Mr. Roy appearing on behalf of the petitioner both submitted that without the jurisdiction and/ or in

contravention of the provisions of law, if searches are being made and/or impugned order is passed, they are absolutely bad in law and the same

should be ignored. They have further drawn the attention of this Court to another decision reported in AIR 1868 S.C. 59 (Commissioner of

Commercial Taxes, Board of Revenue, Madras and another vs. Ramkishan Shrikishan Jhaver). It was pointed out that there are several safeguards

and/or protection of individual rights. Those statutory protection should be considered in the proper perspective. If without following the proper

procedure as envisaged in law, steps are taken, the Court should not give indulgence and not only quash the order but to assert the authority to

return the articles in accordance with law. The fact that the Act gives power to Government to empower any officer is, therefore, no reason to

strike it down for, as it was found that the Government that officers of proper status are empowered. The attention of this Court has been drawn to

Section 9 as it was prior to 1974 and the Section 9 substituted by Section 3 of the Rice Milling Industries (Regulation) (West Bengal Amendment)

Act, 1974. In view of the amended Act, the question of authorisation does not arise and the amended Section 9 of the State Act clearly indicates,

inter alia, the power and jurisdiction of the appropriate authorities as to how the same should be exercised. In the absence of exercise of power in

the manner as provided in the amended Act, the acts done and/or caused to have been done should be deemed to be irregular and illegal and the

Court should not hesitate to quash the same in accordance with law.

4. Mr. Samajdar, learned Advocate appearing for the State has submitted that there is no irregularity and/or illegality in the acts complained of.

Although in his fairness he has frankly submitted that he has not got any proper instruction inspite of contacting the authorities concerned, so he

could not file A/O; but looking to the averments made in the writ petition he wanted to assist the Court by submitting inter alia that the acts done

and/or caused to have been done by the officer concerned at the time of search and seizure, the impugned order is neither contrary to nor

inconsistent with the provisions of law as it stands now, although at the beginning he submitted that in view of the Notification No. Rice-Milling-

(1)/5993-F.S., dated 3rd August, 1959 there is authorisation of certain officers to exercise the right referred to in Clauses (a), (b) and (c) of

Section 9 of the Act. It was canvassed that such power of authorisation of certain officers has conferred the rights to the officers concerned in the

present case and they are entitled to act of search and the impugned order passed thereby is not vitiated in law, He has further submitted that in

Clause 25 of Appendix XV of the Bengal General Clauses Act, 1899 it is provided, inter alia, that where any enactment is, after the

commencement of this Act, repealed and reenacted by a Bengal Act (or West Bengal Act) with or without modification, then, unless it is otherwise

expressly provided any (appointment) order, scheme, rule, by-law, notification or form (made or) issued under the repealed enactment shall, so far

as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been (made or) issued under the provisions so re-

enacted, unless and until it is superseded by any (appointment) order, scheme, rule, by-law, notification or form (made or) issued under the

provisions so reenacted. In view thereof, there must be saving and nothing is irregular and the Court should be slow to interfere with the matter.

Regard being had to the materials on record and the conduct of the petitioner and the background of the case, the petitioner cannot ask for any

indulgence from this Court.

5. Having heard the submissions made on behalf of the respective parties at length and upon consideration of the materials on record, this Court

finds that with regard to the merit of the case this Court is not inclined to interfere with it. If the petitioner is aggrieved so far as the merit of the case

is concerned, the petitioner can very well file an appeal u/s 12 of the said Act and there is provision of appeal by any person aggrieved by the

decision of the licensing authority u/s 7 or u/s 7 within the stipulated time as mentioned therein, to an appellate officer who shall be a person

nominated in this behalf by the Central Government. But in the instant case there is a point of jurisdiction whether besides the consideration of the

merit of the case an order has been passed by a person having no jurisdiction at all. The question of jurisdiction can certainly be urged in this forum

within the scope of Article 226 of the Constitution of India. This Court had specifically asked the learned lawyers of both sides to make their

submission only with regard to the legality and jurisdiction as to the power exercised by the officer concerned in the instant case after passing the

impugned order and making search thereof. Being aware of the limited scope of such investigation in the present case, this Court finds that Section

9 of the present Act clearly lays down that where the licensing officer or any police officer not below the rank of a Sub-Inspector of Police has

reasonable grounds for believing that there has been a contravention of any of the provisions of this Act or the rules made thereunder, the licensing

officer or the police officer, as the case may be, after recording in writing the grounds of his belief, at all reasonable hours -

(a) enter and search any place where any rice-mill is located:

Provided that the said officer prior to the entry for searching the place should be accompanied by at least three distinguished persons for observing

the operation,

(b).....

(c).....

(d).....

6. From the said section the persons who are entitled to search have been specifically defined. The scope of search has also been specifically

mentioned. Now the definition of licensing officer as would appear from Section 3(c) is that the licensing officer means an officer appointed as such

u/s 4, Section 4 lays down that the Central Government may, by notified order -

(a) appoint such person, being Gazetted Officer, as it thinks fit to be licensing officer for the purpose of this Act; and

(b) define the limits within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

7. It is, therefore, beyond any question that the definition of the licensing officer cannot be enlarged unless there is further authorisation in the

manner provided in the Act itself. The position of authorisation has undergone a positive change after the substitution of a new section being

Section 9 in 1974. It is clear that there cannot be any scope of further authorisation and/or to delegate the function to any other persons other than

the person named in the statute. There is no scope of also re-delegation of the said delegated authorities, In view of such clear stipulation of law

persons authorised to do certain acts must be strictly adhered to otherwise safeguards and/or restrictions and protection available to ordinary

citizen will extinguish and evaporate.

8. Having all anxious consideration of the matter, I find that in the instant case there is exercise of the rights by the persons who are not authorised

by law and the impugned order is thus inherently defective and have got no jurisdiction to exercise the powers they have exercised. Considering all

aspects of this matter this Court finds that the impugned order cannot be sustained and the petition be allowed on the score and the impugned

order, dated 29-6-87 passed by the respondent No. 1 copy of which is Annexure "J" to the writ petition is quashed and/or set aside and in

consequence thereof the respondents are directed to return the articles within a month from the date of communication of this order. It is made

clear that this order will not prevent the authorities concerned to proceed in accordance with law subsequently by complying with the rigors of law

and by giving all opportunities available to the petitioner also in accordance with law. This order will also not prevent the authorities concerned to

consider renewal of the licence in accordance with law by giving an opportunity of hearing to the petitioner.

9. There will be no order as to costs.