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(1992) 05 CAL CK 0024

Calcutta High Court

Case No: Criminal Revision Case No. 1507 of 1988

Bhajahari Ghosh — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision: May 5, 1992

Acts Referred:

- Constitution of India, 1950 - Article 227
- Essential Commodities Act, 1955 - Section 3, 6A, 6B

Citation: (1993) 1 ILR (Cal) 17

Hon'ble Judges: Amal Kanti Bhattacharji, J

Bench: Single Bench

Advocate: Dipak Sengupta, Dhrubajyoti Ghosh and Amitava Ganguly, for the Appellant;

Final Decision: Allowed

Judgement

Amal Kanti Bhattacharji, J.
This is an application under Article 227 of the Constitution of India challenging confiscation order dated September 27, 1988 passed by the S.D.O. Sadar, Baharampore, acting as Collector under the Essential Commodities Act, 1955. The Petitioner"s case is that on April 12, 1988, the Police officers attached to the district enforcement branch Belganga raided the godown-cum-shop of the Petitioner at Khidirpore, P.S. Hariharpara, on allegation that he was carrying on business of wheat and that he failed to produce books of account and stocks in Rate Board. The said Police officers seized 70 quintals of wheat, 50 kgs. of moosuri pulses, and 2 quintals of kheshari pulses for the alleged violation of the provisions of para. 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977. Thereafter, a notice was served on the Petitioner u/s 6B of the Essential Commodities Act, 1955, asking him to show cause why the seized articles should not be confiscated. The Petitioner had shown cause against the proposed confiscation order and after hearing the Petitioner the impugned order was passed confiscating the seized articles and ordering that the same should be sold in public distribution system and by public auction. After the filing of the present application,

an ad interim stay of operation of the impugned order was granted by this Court. The Petitioner now challenges that the order in question is bad, illegal and of no legal force and that the same should be set aside.

2. The stay was duly notified and the affidavit of service in this Court was filed by the Petitioner. None, however, appears to oppose the application.

3. Mr. Dhrubajyoti Ghosh appearing for the Petitioner attacks the order of the Collector on several grounds. His first contention is that the notice served u/s 6B of the Essential Commodities Act is bad as it does not mention any particular provision of the Act which is alleged to have been contravened. The second contention is that wheat is not a controlled commodity and is not covered by the West Bengal Pulses and Edible Oil Seeds and Edible Oils (Dealers Licensing) Order, 1978. His third contention is that the confiscation order has been passed mechanically by the Collctor without being satisfied about the contravention of any provision of any order issued under the Essential Commodities Act.

4. The Petitioner has furnished a copy of the notice received by him from the Collector u/s 6B of the Essential Commodities Act. The notice is as follows:

In the Court of Sub-Divisional Officer, Baharampore, Murshidabad.

Misc Case No. 22/88. Pro. No. 328/88.

To Bhajahari Ghosh, S/o. Ramkrishna Ghosh of Khidirpore Ghoshpara P.O.: Baruipara, P.S. Hariharpara. Where the following article had been seized by the Police D.E.B. Msd. in C/W Hariharpara P.S. Case No. 2 Dt. 12/4/88 for contravention the provision of the said Act.

I proposed to take action under the provision or u/s 6A of the E.C. Act for confiscation of the article described in the seizure list and as I am satisfied that you contravened the provision of the said Act.

You are hereby directed to make a representation or show-cause before me on 29.6.88 against each confiscation.

Seized articles as per seizure list.

Given under my hand and seal

of the Court this the 24th day

of May 1988.

Nazir, Murshidabad Collectorate for causing service and return to this Court please.

Sd/- Illegible.

Subdivisional Officer,

Sadar, Beharampore and Collector

(West Bengal)

5. It would be seen from the notice that the Collector has not mentioned any particular provision of any order which is alleged to have been contravened. The only thing wich he has stated in the notice that he is satisfied that the Petitioner has contravened the provisions of the said Act." The name of the Act has also not been mentioned. In any case in the absence of the particulars of the provisions which have been contravened the person concerned cannot be expected to meet effectively the allegations made against him, and in such circumstances he cannot be deemed to have been given reasonable opportunity of being heard in the matter. Section 6A of the Act provides that whenever any essential commodity is seized in pursuance of an order made u/s 3 of the Act in relation thereto, the Collector may if he thinks it expedient so to do direct the essential commodity so seized to be produced for inspection before him and if he is satisfied that there has been a contravention of the order he may order confiscation of the commodity after complying with the provisions of Section 6B. Thus, it is essential on the part of the Collector to inform the person concerned that there has been a contravention of a particular provision of an order made u/s 3 of the Act. The notice issued by the Collector in this case, which has been quoted above, does not at all indicate which provision of which order has been contravened. So this noice is illegal, inoperative and insufficient.

6. Now in this case 70 quintals of wheat, 50 kgs. of mussuri pulses, and 2 quintals of Khesari pulses have been seized from the Petitioner. So far as wheat is concerned, it is obviously not covered by the West Bengal Pulses, Edible Oil Seeds and Edible Oils (Dealers Licensing) Order, 1978. So confiscation of the wheat under the said order is obviously bad. It is further stated by Mr. Dhrubajyoti Ghosh that the West Bengal Wheat and Wheat Products (Licensing Control and Prohibition of Certain Classes of Commercial Transactions) Order, 1973, has been repealed under notification No. 10527-F.S./E.S./14R-10/73 pt. II dated November 14, 1986. That being so there was evidently no control order in respect of storage of wheat on the date of seizure of the same. The State does not appear to show if and how the said seizure of the relevant quantity of wheat is justifiable. In the circumstances I uphold the contention raised by Mr. Dhrubajyoti Ghosh that the seizure of the wheat in this case has not been legal.

7. As regards the seizure of the pulses in this case it is found that 50 kgs. of mussuri pulses and 2 quintals of khesari pulses have been seized. Under para. 3 of the West Bengal Pulses, Edible Oil Seeds and Edible Oils (Dealers Licensing) Order, 1978 no person having a stock exceeding 10 quintals of all pulses shall engage in himself in any business as a dealer after the expiration of a period of 15 days from the coming into force

of the said paragraph except under and in accordance with the terms and conditions of a licence granted in this behalf by the Licensing Authority. As shown above, the pulses seized were less than 10 quintals. So the Petitioner was not required to be licensed as a dealer under the aforesaid order. The Collector in his order has mentioned para. 3 of the West Bengal Pulses, Edible Oil Seeds and Edible Oils (DL) Order. It is not understood how he has construed the aforesaid paragraph. Obviously he has passed the order mechanically without taking into consideration the legality or otherwise of the storage of the pulses in this case. So his order is patently bad and must be set aside.

8. In the circumstances, this application under Article. 227 of the Constitution succeeds. The impugned order dated September 27, 1988, allowing the confiscation and sale of the essential commodities concerned is set aside. The ad interim stay already granted is hereby made absolute. The seized articles be returned to the owner. Let a copy of this order to be sent to the lower Court as early as possible.