

Thakur Das (Dead) By L. Rs.

Vs

State of Madhya Pradesh and Another

Criminal Appeal No. 109 of 1974

(P. K. Goswami, N. L. Untwalia JJ)

14.10.1977

JUDGMENT

DESAI, J. -

1. This appeal by special leave is directed against the order made by the High Court of Madhya Pradesh, Jabalpur in Criminal Revision 90 of 1973 setting aside the order made by the Sessions Judge, Mandsaur Division in Criminal Appeal 104 of 1972 against the order made by the Collector of Mandsaur confiscating the foodgrains in the quantity of 484 quintals 74 kg. of wheat and 135 quintals 36 kg. of rice under Section 6A of the Essential Commodities Act, 1955.
2. The petitioner Thakur Das, son of Lila Ram Sindhi who died pending the petition, was a licenced dealer in foodgrains having obtained a licence under the Madhya Pradesh Food Dealers Licensing Order, 1965 (for short 'the Order') issued under Section 3 of the Essential Commodities Act, 1955 ('Act' for short). The licence enabled him to store for sale and sell foodgrains set out in schedule I to the Order. By the terms of the licence the licence was obligated to maintain a register of daily accounts for each day on the day to which they relate unless prevented by reasonable cause, the burden of proving which would be upon him. The licence had to deposit at the commencement of licence, the amount of security deposit as provided by clause 6 of the Order. Clauses 8 and 9 conferred power on the licensing authority - Collector of the District in this case - to cancel the licence and to forfeit the security in the event of contravention of any condition of licence.
3. The Food Inspector on a visit to the licenced premises on August 13, 1972 found certain irregularities in the accounts and submitted a report on the basis of which the licensing authority issued notice dated August 21, 1972 to the licence calling upon him to show cause within 24 hours why the licence should not be cancelled, the security deposit may not be forfeited and the seized foodgrains may not be confiscated. Ultimately the licensing authority directed confiscation of the seized foodgrains, cancelled the licence issued in favour of the licensee and forfeited the security deposit. The licensee appealed to the judicial authority constituted under Section 6(C) of the Act, being the Sessions Judge, Mandsaur, against that part of the order by which the seized foodgrains were ordered to be confiscated. The judicial authority was of the opinion that : 'in the facts and circumstances of the case cancellation of the licence and the forfeiture of the security deposit is quite sufficient and it is not just to confiscate the grains worth Rs. 50,000 for the alleged contravention' and directed that the seized foodgrains be sold to some licenced dealer at controlled price and the price so realised be refunded to the licensee. The State of Madhya Pradesh and the Licensing Authority preferred a revision application to the High Court against the order of the judicial authority. The High Court disagreed with the opinion of the Sessions Judge and held that in the facts and circumstances of the case confiscation was just and proper and accordingly set aside

the order of the appellate authority and restored the order of the Collector.

4. Two contentions were raised before the High Court and the same were canvassed before us. It was contended : (1) the judicial authority constituted by the State Government under Section 6C of the Act to hear appeals against the order of confiscation that may be made by the licensing authority under Section 6A is not an inferior criminal court subordinate to the High Court and amenable to the revisional jurisdiction of the High Court under Section 435 read with Section 439 of the Code of Criminal Procedure; (2) in the facts and circumstances of this case, the High Court was not justified in interfering with the order of the appellate authority who had exercised its discretion one way merely because the High Court took a different view of the matter.

5. Section 6A of the Act confers power on the Collector to confiscate any essential commodity which is seized in pursuance of an order made under Section 3 in relation thereto. Clause 11 of the licensing authority to seize stocks to foodgrains, etc. Which are held in contravention of the provisions of the Order or of the conditions of licence issued thereunder. Before confiscating such seized essential commodity, Section 6B confers a duty on the licensing authority to give a notice informing the person to whose detriment the action is proposed to be taken, the grounds on which it is proposed to confiscate the essential commodity and further give him an opportunity to make a representation within a reasonable time as may be specified in the notice and also give a reasonable opportunity of being heard in the matter. Section 6C provides for an appeal against the order of confiscation. The State Government is required to appoint a judicial authority to entertain and hear appeals against the order of confiscation. The State Government is required to appoint a judicial authority to entertain and hear appeals against the order of confiscation. The appellate authority so constituted has power to modify or annul the order of confiscation.

6. Madhya Pradesh State Government has appointed a judicial authority for the purpose of Section 6C but the notification constituting the authority was not placed on record. The licensee preferred an appeal in the Court of Sessions Judge, Mandsaur Division, Mandsaur, and no one questioned that the Sessions Judge presiding over the Session Court at Mandsaur was competent judicial authority for the purpose of Section 6C. While rejecting the contention of lack of revisional jurisdiction, the High Court observed that "all the State Governments obviously following the model notification given by the Centre, have appointed the Sessions Judge as judicial authority within the areas of that (sic) jurisdiction. Accordingly the Sessions Judge of Mandsaur heard the appeal". It, therefore, appears that the Sessions Judge presiding over the Sessions Court set up for the Sessions Division was appointed judicial authority for the purposes of Section 6C.

7. If the Session Judge presiding over the Session Court is the judicial authority, the question is : would it be an inferior criminal court subordinate to the High Court for the purposes of Sections 435 and 439 of the Criminal Procedure Code ? At the one end of the spectrum the submission is that the judicial authority appointed under Section 6C would be *persona designata* and that if by a fortuitous circumstance the appointed judicial authority happens to be the Session Judge, while entertaining and hearing an appeal under Section 6C it would not be an inferior criminal court subordinate to the High Court and, therefore, no revision application can be entertained against his order by the High Court. While conferring power on the State Government of appoint appellate forum, the Parliament clearly manifested its intention as to who should be such appellate authority. The expression "judicial" qualifying the 'authority' clearly indicates that that authority alone can be appointed to entertain and hear appeals under Section 6C on which was conferred the judicial power of the State. The expression "judicial power of the State" has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged courts to be the repository of the judicial

power of the State. The appellate authority under Section 6C must be a judicial authority. By using the expression "judicial authority" it was clearly indicated that the appellate authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as persona designata was to be constituted there was no purpose in qualifying the word "authority" by the specific adjective "judicial". A judicial authority exercising judicial power of the State is an authority having its own hierarchy of superior and inferior court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner. In using the compact expression "judicial authority" the legislative intention is clearly manifested that from amongst several pre-existing authorities judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate functions as envisaged by Section 6C. There is one in-built suggestion indicating who could be appointed. In the concept of appeal inheres hierarchy and the appellate authority broadly speaking would be higher than the authority against whose order the appeal can be entertained. Here the appellate authority would entertain appeal against the order of Collector, the highest revenue officer in a district. Sessions Judge is the highest judicial officer in the District and this situation would provide material for determining appellate authority. If this connection the legislative history may throw some light on what the legislature intended by using the expression "judicial authority". The Defence of India Rules, 1962, conferred power on certain authorities to seize essential commodities under certain circumstances. Against the seizure an appeal was provided to the State Government whose order was made final. By the amending Act 25 of 1966 Section 6A to 6D were introduced in the Act. This introduced a basic change in one respect, namely, that an order of confiscating being penal in character, the person on whom penalty is imposed is given an opportunity of approaching a judicial authority. Earlier appeal from executive officer would lie to another executive forum. The change is appeal to judicial authority. Therefore, the expression clearly envisages a pre-existing judicial authority has to be appointed appellate authority under Section 6C. When the provision contained in Section 6C is examined in the background of another provision made in the order itself it would become further distinctly clear that pre-existing judicial authority was to be designated as appellate authority under Section 6C. A seizure of essential commodity on the allegation that the relevant licensing order is violated, would incur three penalties : (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized essential commodity, apart from any prosecution that may be launched under Section 7. In respect of the first two penalties an appeal lies to the State Government but in respect of the third though prior to the introduction of Section 6C an appeal would lie to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. Therefore, when the Sessions Judge was appointed a judicial authority it could not be said that he was persona designata and was not functioning as a Court.

8. Section 7 and 9 of the Code of Criminal Procedure, 1898, envisage division of the State into various Session Divisions and setting up of Sessions Court for each such division, and further provides for appointment of a Judge to preside over that Court. The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code. Therefore, even if the judicial authority appointed under Section 6C is the Session Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that Court. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and that is the appointed appellate authority, the conclusion is inescapable that he was not persona designata which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class

or as filling a particular character (vide *Central Talkies Ltd. v. Dwarka Prasad* (AIR 1961 SC 606 : (1961) 3 SCR 495 : (1961) 1 Cri LJ 740) and *Ram Chandra v. State of U.P.* (AIR 1966 SC 1888 : 1966 Supp SCR 393 : 1966 Cri LJ 1514)).

9. Our attention was drawn to a cleavage of opinion amongst High Court on the construction of the expression "judicial authority" used in Section 6C. In *State of Mysore v. Pandurang P. Naik* ((1971) 1 Mvs LJ 401), the Mysore High Court was of the opinion that though a District and Sessions Judge was appointed as a judicial authority by the State Government in exercise of the powers conferred by Section 6C of the Act in that capacity it would not be an inferior criminal court within the meaning of Section 435. Same view was taken by the Gujarat High Court in *State of Gujarat v. C.M. Shah* (1974 Cri LJ 716 (Guj HC)). The exact specification of the appellate authority constituted by the notification could not be gathered from the judgement but it appears that the appeal was heard by the Additional Sessions Judge which would indicate that even if a District and Sessions Judge could transfer such appeal pending before him to Additional Sessions Judge which was a pointer that he was not a *persona designata*. After referring to certain sections of the Code of Criminal Procedure it has been held that the Additional Sessions Judge hearing an appeal under Section 6C is not an inferior criminal court within the meaning of Section 435(1). Our attention was also drawn to *State of Madhya Pradesh v. Vasant Kumar*. (1972 Jab LJ 80) Only a short note on this judgment appears in 1972 Jabalpur Law Journal 80 but it clearly transpires that the point under discussion has not been dealt with by the Court.

10. As against this, this very question was examined by a Full Bench of the Andhra Pradesh High Court in *Public Prosecutor (A.P.) v. L. Ramayya* (1975 Cri LJ 144 : 1975 MLJ (Cri) 155 : 1974 Andh LJ 372). Two questions were referred to the Full Bench. The first was : whether the District and Sessions Judge who is appointed judicial authority for hearing appeals under 6C is a *persona designata* or an inferior criminal court, and the second was : whether even if it is an inferior criminal court, a revision application against the order of the appellate authority would lie to the High Court ? The Full Bench answered the first question in the affirmative. While summing up its conclusions, the Court held that when a judicial authority like an officer who presides over a court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a Court held that when a judicial authority like an officer who presides over a court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a Court in which case it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a Court would necessarily follow. We are in broad agreement with this conclusion.

11. We are accordingly of the opinion that even though the State Government is authorized to appoint an appellate authority under Section 6C, the Legislature clearly indicated that such appellate authority must of necessity be a judicial authority. Since under the Constitution the courts being the repository of the judicial power and the officer presiding over the court derives his designation from the nomenclature of the Court, even if the appointment is made by the designation of the judicial officer the appellate authority indicated is the Court over which he presided discharging functions under the relevant Code and placed in the hierarchy of courts for the purposes of appeal and revision. Viewed from this angle, the Sessions Judge, though appointed an appellate authority by the notification, what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Code of Criminal Procedure and indisputable it is an inferior criminal court in relation to High Court.

Therefore, against the order made in exercise of powers conferred by Section 6C a revision application would lie to the High Court and the High Court would be entitled to entertain a revision application under Sections 435 and 439 of the Code of Criminal Procedure, 1898 which was in force at the relevant time and such revision application would be competent.

12. It was next contended that in the facts and circumstances of this case the High court should not have interfered with the order made by the Sessions Judge setting aside the confiscation of the seized food-grains. Section 6A confers a discretionary power on the Collector to confiscate seized essential commodity if the seizure is on account of contravention or violation of an order made under Section 3 in relation to the commodity. The Act envisages two independent proceedings against a person charged with contravention or violation of an order made under Section 3 in relation to an essential commodity. Under Section 6A the Collector can confiscate the seized commodity. Under Section 7 such contravention is made punishable. As Section 7 stood at the relevant time, even where a prosecution is launched it was not absolutely obligatory upon the Court to forfeit the property in respect of which the relevant order had been contravened. It was left to the discretion of the Court to direct forfeiture of the whole or part of the commodity brought before the Court in respect of which an offence appeared to have been committed. Since the subsequent amendment in 1974 the discretion of the Court in this behalf is taken away and it is made obligatory upon the Court to forfeit the property in respect of which an offence appears to have been committed under Section 7. Therefore, either the Collector can order the confiscation and yet Section 6D permits infliction of any punishment to which the person convicted thereby is liable under the Act irrespective of the fact that the Collector has ordered confiscation under Section 6A. The dichotomy is that the Collector can proceed to seize the essential commodity and cancel the licence and forfeit the security deposit. A prosecution can be launched and the Court will have to deal both with the question of punishment and forfeiture of the property in respect of which an offence appears to have been committed. Further, even if the Collector confiscated the property it would be still open to the competent authority to launch prosecution and the Court would have to deal with the person who is charged with the offence but in such a situation the question of forfeiture of the property would not arise because the Collector has already confiscated the same.

13. In the case before us the prosecution is not launched. The collector directed confiscation of the seized foodgrains. The Sessions Judge set aside the order of confiscation holding that in view of the penalty of cancellation of licence which would deny the licensee an opportunity to carry on a business of foodgrains and the forfeiture of security deposit, it would be unjust to inflict further penalty in the form of confiscation of foodgrains worth Rs. 50,000. It appears from the judgment of the High Court that the price so worked out was the price on which confiscated foodgrains were sold at the controlled rate.

14. The contention is that if the appellate authority which had power to annul or modify the order has annulled the order of confiscation, would the High Court be justified in interfering with such order in exercise of its revisional jurisdiction merely because it was of the opinion that confiscation was justified.

15. Section 435 which confers revisional jurisdiction on the High Court enables the Court to call for an examine the record of any proceedings before any inferior criminal court for the purposes of satisfying itself as to the correctness, legality or propriety of the finding, sentence, or order recorded or passed, etc. Under Section 439 the High Court, while exercising revisional jurisdiction, has the same power as is conferred on the High Court as a court of appeal under Section 423, Except that in exercise of revisional jurisdiction it cannot convict the person and impose sentence if he is acquitted

by the subordinate criminal court. As Section 439 stands subject to the exception mentioned herein, the revisional jurisdiction of the High Court appears to be co-extensive with its appellate jurisdiction but the extent and ambit of that jurisdiction has been more often examined by this Court and it is clearly demarcated. The revisional jurisdiction conferred upon the High Court under Section 439 is not lightly to be exercised. It can be exercised only in exceptional cases where the interest of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on the record. (Vide D. Stephens v. Nosibolla (1951 SCR 284 : AIR 1951 SC 196 : 52 Cri LJ 510), Logendra Nath Jha v. Polailal Biswas and K. Chinnaswamy Reddy v. State of Andhra Pradesh ((1963) 3 SCR 412 : AIR 1962 SC 1788, (1963) 1 Cri LJ 8)). It must, however, be confessed that these observations were in the context of a revision petition filed by a private party against the order of acquittal recorded by the trial Court. The question again figured in a different context in Amar Chand Agarwalla v. Shanti Bose ((1973) 3 SCR 179 : (1973) 4 SCC 10 : 1973 SCC (Cri) 651), wherein the High Court exercising the revisional jurisdiction under Section 439 quashed the charges and proceeding on the ground that the complainant had suppressed material facts. This power was exercised after the trial has proceeded, witnesses were examined and charges were framed and the further trial was in progress. Setting aside the judgment of the High Court, this Court observed that the jurisdiction under Section 439 is to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

16. In the case before us the Sessions Judge after examining the relevant factors bearing on the question of confiscation exercising the appellate jurisdiction held that confiscation in the facts and circumstances of this case was not justified. The High Court was of a different opinion as in the view of the High Court these defaults should not be lightly viewed because the orders regulating the production, supply and distribution of essential commodities are issued in public interest and the regulations are made for proper enforcement of such orders. The High Court was also of the opinion that when there is a breach committed with a view to obtaining monetary profit, the punishment in terms of money should be equivalent of a stiff and deterrent multiple of the improper profit the offender is likely or intends to make by the breach. Confiscation of property is penal in character. The Sessions Judge examined the penal character of confiscation order and held that in the circumstances of the case it was not just and proper. The appellate authority had power and jurisdiction to decide the same. The High Court could not have lightly interfered with the order of the Sessions Judge setting aside the confiscation especially in exercise of the revisional jurisdiction under Section 439 without making out any of the well-recognised grounds for interfering in exercise of its revisional jurisdiction and straightaway proceed to interfere with the order which would not be correct exercise of its revisional jurisdiction.

17. The facts are that the licensee is dead and he has left behind minor children and a widow. The licence having been cancelled, the business cannot be carried on. The security deposit is forfeited, though that by itself would not have been a material consideration for our decision. But keeping in view all the factors, in our opinion the high Court was not justified in interfering with the order of confiscation.

18. Accordingly, this appeal is allowed and the order made by the High Court is set aside and the one made by the Sessions Judge is restored.

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