

Shambhu Dayal Agarwala

Vs

State of West Bengal and Another

Criminal Appeal No. 310 of 1990

(S. Ranganathan, A. M. Ahmadi JJ)

03.05.1990

JUDGMENT

AHMADI, J. -

1. Special leave granted.

2. The short question which arises for our determination is whether the Collector to whom a report of seizure of any essential commodity is made under Section 6-A of the Essential Commodities Act, 1955 (hereinafter called 'the Act'), is empowered by virtue of Section 6-E of the Act to release the goods seized in pursuance of an order made under Section 3 in relation thereto during the pendency of the proceedings before the Special Court ? The facts, in brief, are as under :

The petitioner, being engaged in the manufacture of mustard oil at his factory at 1, Canal Road, Police Station Behala. Calcutta-53, was required to maintain a stock of mustard seed at his factory premises. A contingent of officers of the District Enforcement Branch led by the Investigating Officer Gopal Mosat, the complainant, raided the factory premises of the petitioner on the morning of Sunday, September 20, 1987, in the absence of the petitioner. The said raid continued till the early hours of September 21, 1987. During the said raid 562 bags of mustard seeds and 267 tins of mustard oil, weighing about 39.92 quintals, were seized for purported infraction of the conditions of the licence as well as the orders issued under Section 3 of the Act. The Investigating Officer filed a written complaint in that behalf at the Behala Police Station which came to be treated as the first information report. The report of the seizure of the essential commodity was made to the concerned Collector as required by Section 6-A of the Act for initiating confiscation proceedings. On September 27, 1987, a charge-sheet was filed before the learned Social Judge. It may be mentioned that before the submission of the charge-sheet a writ petition was filed in the High Court wherein certain interim order were made with which we are not concerned. Suffice it to say that the said writ petition was disposed of by a learned Single Judge of the High Court on February 2, 1988, reserving liberty to the petitioner to apply for release of the seized goods to the Collector before whom the confiscation proceedings were pending. Thereupon, the petitioner preferred to application on February 9, 1988 under Section 6-E of the Act before the Additional Collector for release of the seized commodities. On March 11, 1988 the said officer dropped the confiscation proceedings, albeit without prejudice to the prosecution pending before the Special Judge, and directed the release of the seized commodities. Feeling aggrieved by the said order of release, the State Government invoked the revisional

jurisdiction of the High Court. The said Criminal Revision No. 402 of 1988 was allowed by the High Court on May 11, 1988. The High Court set aside the impugned order of release of the seized goods holding that under the provisions of Section 6-A read with Section 6-E of the Act, the Collector had no power to order release of the seized commodity. The High Court approached the question thus :

"Under Section 6-A of the Act the Collector has under certain circumstances been given power to confiscate the goods. By Section 6-A the Collector has not been given any power to release the goods. Section 6-E is to be read in the perspective of the provision of Section 6-A of the Act because of the phrase "pending confiscation" under Section 6-A used in Section 6-E. If the Collector has not been given any power to release the goods under Section 6-A, it can never be assumed that by Section 6-E which gives some interim power to the Collector with reference to the proceeding under Section 6-A, the Collector has been given any power to release the goods after finding that the goods cannot be confiscated. Under Section 6-A the Collector may order confiscation of the essential commodities so seized. He has not been given any power to release the goods."

3. Mr. P. P. Rao, the learned counsel for the petitioner/appellant contended that on the Collector having dropped the confiscation proceedings it was incumbent on him to pass the consequential order of release under Section 6-E of the Act. According to him since the jurisdiction of the court to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity is specifically and expressly barred by Section 6-E of the Act, the Collector alone has jurisdiction to order release of the seized goods. The words 'pending confiscation' employed in Section 6-E of the Act go with the word 'seize' and are, therefore, descriptive of the essential commodity and are not intended to limit the power of the Collector, argued counsel. He therefore submitted that Section 6-E confers wide powers on the Collector to release the goods at any stage of the proceedings and the High Court was not justified in placing in narrow construction on the language of the said provision. On the other hand Mr. Kapil Sibal, the learned Additional Solicitor General while supporting the impugned order of the High Court, argued that the power to release conferred by Section 6-E on the Collector refers to release in favour of a third party and not the party from whom the essential commodity was seized according to him if the construction placed on Section 6-E on behalf of the petitioner is accepted it would defeat the very purpose of the Act. He, therefore, submitted that this was not a fit case to interfere with the order passed by the Division Bench of the High Court.

4. In order to appreciate the rival viewpoints we may at the outset examine the scheme of the Act. The Act, as the long title reveals, was enacted to provide, in the interest of the general public, for the control of production, supply and distribution of, and trade and commerce in, certain commodities. It extends to the whole of India. The dictionary of the Act is contained in Section 2. Section 2(i-a) defines 'Code' to mean the Code of Criminal Procedure, 1973. Section 2(f) says that words and expression used but not defined in the Act and defined in the Code shall have the meanings assigned to them in the Code. Section 3 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the same is considered necessary or expedient inter alia for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. Sub-section (2) of Section 3 outlines what an order made under sub-section (1) thereof may provide. Besides regulating by licences, permits or otherwise the manufacture or production of any essential commodity or the storage, transport, distribution,

disposal, acquisition, use, consumption, etc. thereof, the order may, inter alia, provide for controlling the prices at which the essential commodity may be bought or sold and may also require any person holding in stock any essential commodity to sell the whole or a specified part of the quantity held in stock or produced or received by him or likely to be produced or received by him to the Central Government or a State Government or to an officer or agent of such government, etc. Sub-section (3) of Section 3 provides for determination of the price to be paid to the person from whom the essential commodity is so purchased. Section 6 lays down that an order passed under Section 3 will have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument. Then comes Section 6-A which provides for the confiscation of essential commodity. Sub-section (1) of this section may be reproduced for ready reference :

"6-A. Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto it shall be reported without any unreasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied that there has been a contravention of the order, may order confiscation of -

(a) the essential commodities so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel, or other conveyance used in carrying such essential commodity;"

Sub-section (2) of the said section empowers the Collector to sell any essential commodity, if the same is subject to speedy and natural decay or it is otherwise expedient so to do in public interest, at the controlled price, if any, fixed therefor or by public auction if no such price is fixed. If the Central or the State Government has fixed the retail sale price of such commodity under the Act or under any other law, the Collector is empowered to order its sale through fair price shops at the price so fixed. Section 6-B posits that no order of confiscation of any essential commodity or conveyance, etc., shall be made unless the owner or the person from whom it is seized has been served with a notice informing him of the grounds on which it is proposed to confiscate the same and he has been given reasonable time to make a representation in writing against the grounds set out in the notice and has been given a reasonable opportunity of being heard. This section incorporates the principles of natural justice to ensure that the owner or person from whom the essential commodity is seized has the fullest opportunity to satisfy the Collector against passing a confiscation order of under Section 6-A. An appeal is provided by Section 6-C against the order of confiscation passed under Section 6-A. Section 6-D clarifies that an award of confiscation under the Act by the Collector shall not prevent the infliction of any punishment to which the concerned person is liable under the Act. We then come to Section 6-E which was inserted in the Act in place of the existing provision by Act 42 of 1986 with effect from September 9, 1986. Since the incident in question relates to a date subsequent to September 9, 1986, it is unnecessary to notice the earlier provision. Section 6-E which confers exclusive jurisdiction on the Collector and in the State Government concerned under Section 6-C to pass certain orders pending confiscation reads as under :

"6-E. Whenever any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under Section 6-A, the Collector, or, as the case may be, the State Government concerned under Section 6-C 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, package, covering, receptacle, animal, vehicle vessel or other conveyance."

It is obvious on a plain reading of this provision that the same was brought on the statute book with a view to debarring the courts from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized under an order made under Section 3 of the Act. Section 7 prescribes the penalties for the contravention of any order made under Section 3 and provides for the forfeiture of the essential commodity to the government and for the forfeiture of any animal, vehicle or other conveyance used in carrying the said essential commodity, if the court so orders. Section 10-A makes every offences under the Act cognizable and non-bailable, notwithstanding anything contained in the Code. Section 11 provides that no court shall take cognizance of any offence punishable under the Act except on a report made by a public servant as defined by Section 21, IPC, or any person aggrieved or any recognised consumer association. Section 12-A empowers the State Government to constitute by notification as many Special Courts as may be necessary and Section 12-AA which begins with a non-obstante clause - notwithstanding anything contained in the Code - provides that all offences under the Act shall be triable only by the Special Court constituted for the area in which the offence was committed. Section 12-AC makes the provisions of the Code (including the provisions as to bail and bounds) applicable to the proceedings before the Special Courts as if it is a Court of Sessions unless the Act provides otherwise.

5. The above resume of the relevant provisions of the Act makes it clear that once an order is made by the Central Government under Section 3 for regulating or prohibiting the production, supply and distribution of any essential commodity it shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument. Any person who contravenes any order made unless Section 3 becomes liable to penal action under Section 7 and the property in respect of which the order has been contravened becomes liable to forfeiture. Notwithstanding anything contained in the Code, the offence punishable under the Act for the contravention of an order under Section 3 is cognizable and non-bailable and may be tried by the Special Court constituted for the area in which the offence was committed. Thus the breach of an order made under Section 3 attracts penal consequences, i.e., imprisonment and fine, and also renders the property seized liable to forfeiture. This is one consequence of the breach of an order made under Section 3 of the Act. The Act also provides, in Section 6-A, that where any essential commodity has been seized in pursuance of an order made under Section 3 in relation thereto, a report of the seizure must be sent to the Collector without unreasonable delay, on receipt whereof the Collector may inspect the seized property and on being satisfied about the contravention of the order made under Section 3 may order the confiscation of such essential commodity and any package, covering or receptacle wherein such essential commodity is found as well as any animal, vehicle or conveyance used for carrying such essential commodity. If the essential commodity is liable to speedy decay, the Collector is empowered to sell it at the controlled price, if any, or by public auction or through fair price shops if the retail sale price for such commodity is fixed. The price so realised minus the expenses incurred

for effecting the sale has to be paid to the owner of the essential commodity or the person from whom it was seized (a) where no order of confiscation is ultimately passed by the Collector, or (b) where the appellate order passed under Section 6-C so requires or (c) where in a prosecution under the Act the person concerned is finally acquitted. An order of confiscation made after following the requirements of Section 6-B does not prevent the infliction of punishment under the other provisions (Sections 7 to 10) of the Act. Thus confiscation of the essential commodity, etc., is not in lieu of punishment but can be in addition to the penal consequences. It is in this background that we must examine the controversy before us.

6. Section 6-A empowers confiscation of the seized essential commodity, the package, covering and receptacle in which the essential commodity was found and the animal, vehicle or other conveyance in which such essential commodity was carried. The words 'may order confiscation' convey that the power is discretionary and not obligatory. Sub-section (2) thereof confers a special power to deal with any essential commodity which, in the opinion of the Collector, is subject to speedy and natural decay or it is otherwise expedient in public interest to be disposed of in the manner indicated therein. Section 6-A, therefore, merely confers power of confiscation and not the power of release, disposal, distribution etc., except to the limited extent permitted by sub-section (2) thereof. Of course the second proviso to sub-section (1) of Section 6-A permits the grant of an option to pay, in lieu of confiscation of any animal, vehicle, vessel or other conveyance, a fine equal to its market price at the date of seizure. Section 6-E was first enacted to debar courts from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized in pursuance of an order made under Section 3 in relation thereto. By the substituted Section 6-E as it presently stands the scope of the provision has been enlarged by extending the bar of jurisdiction of the court, tribunal or other authority to the release, etc., of packages, coverings or receptacles as well as animals, vehicles, vessels or other conveyances also. It provides that whenever any essential commodity is seized under an order made in exercise of power conferred by Section 3 in relation thereto no court, tribunal or other authority shall have jurisdiction to make any order with regard to the possession, delivery, disposal, release or distribution of such essential commodity save and except the Collector pending confiscation under Section 6-A, or the State Government concerned under Section 6-C. The question then is whether this power of release which is conferred on the Collector pending confiscation is wide enough to permit the release of the essential commodity to the owner or to the person from whom it was seized, notwithstanding the pendency of prosecution for breach of an order made under Section 3 in relation thereto ?

7. The Act was enacted to safeguard public interest. It was thought necessary in the interests of the general public to control the production, supply and distribution of, and trade and commerce in, certain commodities through legislation. With that in view, powers to control production, supply, distribution, etc. came to be conferred on the Central Government by Section 3 of the Act. As pointed out earlier, in order to deter persons dealing in such essential commodities from contravening any order made under Section 3, the law envisages two independent proceedings, namely, (i) confiscation under Section 6-A and (ii) prosecution leading to punishment provided by Section 7 of the Act. In order to ensure that the steady supplies of essential commodities to the members of the general public is not disrupted, provision is made in sub-section (2) of Section 6-A that the Collector may, if it is expedient and in public interest so to do, sell the seized commodity at the controlled price or by public auction if no such price is fixed or through the public distribution system if the retail sale price is fixed for the said commodity. Similar powers can be exercised if the commodity is subject to speedy and natural decay. The obvious purpose of conferring this power on the Collector without waiting for the completion of the confiscation proceedings is to maintain the smooth supplies of essential commodities to the consumer public, avoid artificial shortages,

maintain the price line and secure equitable distribution thereof through fair price shops. If such a power was not conferred and if the seized commodity could not be dealt with till the completion of the confiscation proceedings, it would defeat the very object and purpose for which the Act was enacted. By the conferment of this power a duty is cast on the Collector to see that essential commodities are not locked up in proceedings under the Act; artificial scarcity is not created to hike up prices; a close watch is kept on the supplies to the general public; when necessary in public interest the stock of seized commodities is released to combat short supply and in general to ensure the availability of essential commodities at fair prices to the general public. To ensure that this objective of maintaining supplies and securing equitable distribution of essential commodities is not defeated, the legislature has entrusted the task to the Collector in its entirety and has ruled out interference by courts, tribunals and other authorities by placing an embargo on their jurisdiction in this behalf by Section 6-E of the Act. While conferring wide powers as above on the Collector, the legislature has also protected the dealer's interest by providing that in the event it is ultimately found that he was not guilty of contravention of any order made under Section 3, he shall be paid the price realised with reasonable interest. But if the prosecution ends in a conviction, Section 7(1)(b) enjoins that the property in respect of which the order was contravened 'shall be forfeited' to the government. The language of this clause is clearly mandatory and leaves no option to the court but to order forfeiture. This becomes clear if we read this clause in juxtaposition with clause (c) which confers a discretion on the court to order forfeiture of any packing, covering or receptacle in which the essential commodity was found or any animal, vehicle, vessel or any other conveyance which was used to carry to same. If the property is returned to the owner or the person from whom it was seized in exercise of power under Section 6-E, it is difficult to understand how the court would implement the mandate of clause (b) of sub-section (1) of Section 7 of the Act. But the learned counsel for the appellant argued that even in cases where the Collector sells the essential commodity under sub-section (2) of Section 6-A and retains the price thereof, the essential commodity ceases to be available for forfeiture under clause (b) of Section 7(1) of the Act. He, therefore, submitted that the Act itself contemplates a situation which renders clause (b) of Section 7(1) otiose where the essential commodity is disposed of by the Collector under sub-section (2) of Section 6-A of the Act. He, therefore, saw no harm in releasing the commodity to the owner or the person from whose possession it was seized on condition that such person deposits the market price of the commodity on the date of seizure or gives a bank guarantee for the said sum. In this connection reference was also made to the provision in sub-section (5) of Section 452 of the Code which inter alia provides that the term 'property' shall include, 'in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise'. This definition can be invoked in view of Section 2(f) of the Act which is not inconsistent with any provision of the Act. But this submission overlooks the fact that the power conferred by sub-section (2) of Section 6-A to sell the essential commodity has to be exercised in public interest for maintaining the supplies and for securing the equitable distribution of the essential commodity. If the essential commodity is returned to the person from whom it was seized or to the owner thereof, the very objective of the Act would be defeated and the purpose of seizure would be frustrated. The seizure has to be effected not for the sake of earning revenue, i.e. the market price of the commodity at the date of seizure, which may be ultimately forfeited, but to prevent hoarding of essential commodities, avoid artificial shortages, maintain a steady supply to the community and ensure equitable distribution at fair and reasonable prices. If the seized commodity is returned by merely securing its value, this objective of the Act will be wholly defeated. That is why Section 6-A does not empower the Collector to give an option to pay, in lieu

of confiscation of essential commodity, a fine not exceeding the market value of the commodity on the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by sub-section (2) of Section 6-A is granted. This shows that the legislature did not intend to confer a power on the Collector to return the essential commodity to the owner or the person from whose possession it was seized. That is for the obvious reason that it would run counter to the very object and purpose of the enactment.

8. And now to the structural setting and context in which the word 'release' is used in Section 6-E. While debarring courts, tribunals and other authorities from exercising power in relation to the seized commodity, power is conferred on the Collector or the State Government concerned under Section 6-C, to make orders with regard to the possession, delivery, disposal, release or distribution of such commodity, etc. This power can be exercised pending confiscation. The power conferred by this section is unqualified. The word 'release' is preceded by the words 'possession, delivery and disposal' and followed by the word 'distribution'. The setting and context in which the word 'release' is used makes it clear that it is not used in the sense of 'return'. In the first place as pointed out earlier it would completely defeat the purpose and object of the Act if the essential commodity seized for suspected contravention of the order made under Section 3 is returned to the owner or person from whom it was seized even before the confiscation proceedings were completed. Such an intention cannot be ascribed to the legislature. Secondly, it is not possible to believe that the legislature would confer unqualified and unrestricted power to return the essential commodity to the owner or the person from whose possession it was seized before a decision whether or not to confiscate the same is taken. As the section stands, if the interpretation put by the learned counsel for the appellant is accepted, it would be permissible to the Collector to return or restore the commodity without imposing any condition, pending confiscation proceedings. We are unable to persuade ourselves to accept the interpretation placed by Mr. Rao on the word 'release'. The scheme of Sections 6-A, 6-B and 6-C makes clear that after the essential commodity is seized and the same is inspected by the concerned Collector, the latter has to decide, after complying with the procedure set out in Section 6-B, whether or not to confiscate the essential commodity. Since the procedure delineated in Section 6-B is time consuming, the Collector has been given special power to sell the essential commodity as stated in sub-section (2) of Section 6-A if it is subject to speedy and natural decay or it is expedient in public interest so to do. If the Collector decides not to confiscate the commodity and if no prosecution is launched or contemplated the commodity has to be returned to the owner or person from whom it was seized. If in the meantime it is sold in exercise of power under sub-section (2) of Section 6-A, the price of the commodity has to be paid as provided by sub-section (3) of Section 6-A. If the Collector has ordered confiscation but the order is reversed in appeal under Section 6-C and no prosecution is pending, sub-section (2) of Section 6-C enjoins that the essential commodity should be 'returned' and if that is not possible its price together with reasonable interest. It is pertinent to note that sub-section (2) of Section 6-C uses the words 'return the essential commodity seized' and not the words 'release the essential commodity seized'. It seems to us that having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard against the word 'release' is used in the limited sense of release for sale, etc., so that the same becomes available to the consumer public. There could be no question of releasing the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. Such a view would render clause (b) of Section 7(1) totally nugatory. It seems to us that Section 6-E is intended to serve a dual purpose, namely (i) to prevent interference by courts, etc., and (ii) to effectuate the sale of the essential commodity under

sub-section (2) and the return of the animal, vehicle, etc., under the second proviso to sub-section (1) of Section 6-A. In that sense Section 6-E is complementary in nature. We are, therefore, of the opinion that the High Court was right in the ultimate conclusion it reached.

9. Counsel for the appellant next pointed out that this Court had passed an interim order on December 8, 1988 for sale of the seized commodity and for handing over the sale proceeds to the appellant on the latter furnishing a bank guarantee to the satisfaction of the Special Judge, 24 Paraganas (South), Alipore. Despite this order the seized commodity had not been disposed of. Mr. Rao, therefore, contended that this Court should not assist the respondent State which had defied and thwarted the order of this Court. It is true that the seized commodity has not been disposed of to-date. But it appears from the subsequent order of February 13, 1989 as amended by the order of February 15, 1989, that the only direction given to the Special Judge was to dispose of the pending prosecution within two months. It was further directed that the Special Judge will pass appropriate consequential orders regarding the release of the seized goods. It, therefore, becomes clear that when the subsequent orders were passed on February 13 and 15, 1989, the appellant did not insist on the sale of the seized commodity as per the order of December 8, 1988. The matter came up for hearing on subsequent occasions also but at no time did the appellant press for the implementation of the said order of December 8, 1988. Even after the Special Judge recorded an acquittal and directed return of the goods, the appellant did not seek implementation of the said order. Nor did the appellant move the High Court for the implementation of the said order in the appeal pending against the order of acquittal. It is, therefore, too late in the day now to contend that as the order of December 8, 1988 has remained unimplemented we should refuse to grant any relief to the respondent State.

10. For the reasons stated above we see no merit in this appeal and dismiss the same with costs.

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