

Murarilal Jhunjhunwala

Vs

State of Bihar and Others

Criminal Appeal No.627 of 1990

(B.C. Ray, K. Jagannatha Shetty, J.S. Verma JJ)

16.11.1990

JUDGMENT

1. Special Leave granted.

2. The appellant is prosecuted for contravention of Section 7 of the Essential Commodities Act i.e. for carrying on his business without licence. He has unsuccessfully approached the High Court for quashing the proceedings and he is, therefore, now before us.

3. It is not disputed that the appellant initially had licence for carrying on his business up to 1983. On 19 April, 1984 the Bihar Trade Articles (Licences Unification) Order, 1984 was brought into force. Consequently, the appellant applied for the grant of new licence under the said order, with the payment of licence fees and he was allotted licence No. 100/ 84 and with the allotment of the new licence number the appellant was not left with any doubt in his mind that he had no licence. The licensing authority neither rejected his claim nor pointed out any defects in his application. Bona fide believing that he has not done any illegality the appellant went on every year applying for licence according to law with the payment of licence fees. The Authority also went on accepting the applications and the licence fees but not granted the licence sought for.

4. The authority however, prosecuted the appellant for carrying on his business without licence. It appears the Collector of Giridih, who is the Licensing Authority under the Licences Unification Order directed the District Supply Officer to prosecute the appellant for violation of Section 7 of the Essential Commodities Act. The question is whether there is any justification for prosecuting the appellant.

5. Technically, the authorities may be justified in prosecuting the appellant for carrying on the business without obtaining the licence. But the facts of the case reveal that the appellant is not to be blamed. If there is anybody to be blamed in this case it is only the Licensing Authority who has failed to perform its statutory duties. The appellant has done all that he could do under the law. He has not been told at any time that he is required to do anything more than what he has already done. For successive four years the Licensing Authority went on accepting the application for licence with the necessary licence fees, and at no time it denied the claims of the appellant. Its silence seems to demonstrate the total lack of awareness to the rights of the appellant. To cover up its own inaction and lethargic attitude, it seems to have directed the prosecution of the appellant. The attitude of the Licensing Authority is beyond our compensation. It is arbitrary on the fact of it and unjustified on every aspect of it. We fail to understand why the appellant should be prosecuted when he on his part

has done everything for obtaining the Licence. The appellant was legitimately entitled to the licence which has been unreasonably withheld from him. It would be indeed wrong on the part of the Licensing Authority to prosecute the appellant.

6. In the circumstances of the case, we allow the appeal ; set aside the order of the High Court and quash the proceeding against the appellant pending in the Court of SM and Collector, Giridh, in Misc. Case No. 3/88. We further direct that the appellant be granted license forthwith for which he has already applied according to law.

Appeal Allowed.

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