

M/s. Munshi Ram Ram Niwas

Vs

Collector, Food and Supplies Department and Others

Civil Appeal No. 2929 of 1986

(M. H. Kania, N. M. Kasliwal, Smt. M. S. Fathima Beevi JJ)

17.09.1991

JUDGMENT

N. M. KASLIWAL, J. -

1. This appeal by special leave is directed against the order of the High Court of Delhi dated December 20, 1985 dismissing in limine the writ petition filed by the appellant against the order of the Lt. Governor, Delhi dated November 8, 1985. This Court by order dated August 25, 1986 granted special leave limited to the following question.

"One of the questions raised by the learned counsel before us is whether the samples taken from 3 out of 80 bags of khandsari could be treated as representative samples. He has cited before us a judgment of the High Court where it has been held that they cannot be so treated. We grant special leave limited to the question stated above. We find no force in other submissions."

2. In order to decide the above question we would mention facts in brief necessary in this regard.

3. In a raid in the business premises of the appellant of February 28, 1980, the following bags of khandsari (sugar) were sized in the presence of Shri Ram Niwas, sole proprietor of the firm.

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Khandsari --- 53 bags  
Khandsari (dust) --- 18 bags  
Khandsari (sulphur) --- 9 bags  
----- Total --- 80 bags -----

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Two samples each from all the three varieties of khandsari were taken and three samples of sugar were sent for analysis to the public analyst. The public analyst reported that the samples of sugar contained sucrose - 93.5 per cent, 94.2 per cent and 97.16 per cent respectively. The Collector passed an order confiscating the entire goods as the same were kept in contravention of the provisions of Delhi Sugar Dealers Licensing Order, 1963 (in short the 'Licensing Order'). It is not necessary to mention the details of this order of confiscation because the matter had gone up to the High Court and the case was ultimately remanded by the High Court of Delhi by order dated March 27, 1984. The High Court directed the Collector for de novo determination of the proceedings under Section 6-A of the Essential Commodities Act, 1955, in accordance with law. The Collector (north) after remand gave a fresh show cause notice to the appellant on May 21, 1984 setting forth the brief

sequence of the proceedings and asking him to show cause as to why the entire stock of 80 bags of sugar seized in the case, be not confiscated to the State ? The appellant appeared and filed a written reply to the show cause notice. The case was then heard at length and the Collector again passed an order confiscating the entire seized stock of 80 quintals of sugar. An appeal filed against the aforesaid order was dismissed by the Lt. Governor, Delhi by order dated November 8, 1985. A writ petition filed against the order of the Lt. Governor was dismissed in limine by the High Court by order dated December 20, 1985. Hence this appeal.

4. Clause 2(f)(i) of the Licensing Order defines sugar as under :

"2.(f)(i) Sugar means any form of sugar including khandsari sugar containing more than 90 per cent of sucrose."

Under the Licensing Order a person was entitled to keep only up to a maximum of 10 quintals of sugar, without a licence. Admittedly the appellant was not having any licence.

5. It was contended on behalf of the appellant that in order to prove that khandsari was 'sugar' under the Licensing Order, it was necessary to prove that it contained more than 90 per cent of sucrose. It was submitted that the prosecution only took two samples each out of the three bags from the entire lot of 80 bags of khandsari and this could at the most show that only 3 quintals of khandsari was 'sugar' and the same being less than 10 quintals, there was no violation of the Licensing Order. It was submitted that it was necessary for the prosecution to prove that the appellant was in possession of more than 10 quintals of sugar and this could only be done by taking samples from all the bags of khandsari if it wanted to show that other bags of khandsari also contained more than 90 per cent of sucrose. It was also submitted that the possibility cannot be excluded that those bags from which samples were not taken, did not contain sucrose more than 90 per cent. It was argued that the burden lay on the prosecution to prove that more than 10 quintals of sugar was found in the premises and then alone any order of confiscation could have been passed. In support of the above contention reliance was placed on a judgment of learned Single Judge of Delhi High Court in Suraj Bhan Sharad Kumar v. Delhi Administration [Criminal Revision No. 104 of 1980, decided on Sept. 25, 1980].

6. In the fact and circumstances of the present case the contention raised on behalf of the appellant has no force. The admitted facts of the case are that at the time of seizure of the goods Shri Ram Niwas was present and the samples were taken in his presence. Two samples each were taken separately from three different varieties of khandsari at the instance of Shri Ram Niwas himself. It was proved by the public analyst that all the three samples contained sucrose more than 90 per cent. It was nowhere disputed nor suggested by Shri Ram Niwas at the time of taking samples or thereafter that the samples taken would not represent the correct quantity of sucrose in those bags of khandsari from which samples were not taken. Shri Ram Niwas had filed a reply in writing, to show cause notice, but in such reply also no objection was taken as sought to be raised now. In the facts and circumstances mentioned above if the Collector was satisfied that 80 quintals of sugar were found in the premises without licence, it cannot be said that the order of confiscation passed by the Collector was arbitrary or based on no material. The decision of the learned Single Judge of Delhi High Court in Suraj Bhan Sharad Kumar v. Delhi Administration [Criminal Revision No. 104 of 1980, decided on Sept. 25, 1980] is totally distinguishable as in that case the dealer was having licence and the prosecution failed to prove that he was in possession of more than 1000 quintals of sugar. In the case in hand before us the facts are entirely different.

7. As already mentioned above only two samples each were taken from the three verities, and all the three samples were found to contain more than 90 per cent sucrose. A large quantity of 80 quintals of khandsari was found in the premises, whereas only 10 quintals of sugar was allowed to be kept without licence. Thus it was quite reasonable for the Collector to hold that there were more than 10 quintals of khandsari having more than 90 per cent sucrose and this violated the Licensing Order.

8. Thus in the facts and circumstances of the present case we are fully satisfied that the Collector had enough material for his satisfaction that there was violation of the Licensing Order and there was sufficient justification for him to pass the order of confiscation. The order of confiscation passed by the Collector is maintained and the appeal is dismissed.

9. During the course of arguments learned counsel for the appellant submitted that though a criminal prosecution is pending against the appellant Ram Niwas but no effective progress has been made in the case except filing of challan. It appears to us that the State is not serious in pursuing the criminal proceedings and even otherwise more than 10 years have already elapsed since the alleged commission of the offence. It would be against the interest of justice to further continue any criminal proceedings in the case. We, therefore, direct to drop the criminal proceeding launched and pending against the appellant Shri Ram Niwas in the present matter.

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