

SUPREME COURT OF INDIA

Kailash Prasad Yadav and Another

Vs

State of Jharkhand and Another

(S. B. Sinha and Markandeya Katju, JJ)

Appeal (Crl.) 659 of 2007

02.05.2007

JUDGMENT

S. B. SINHA, J.

1. Leave granted.

2. Appellants were owners of a truck. The said truck was hired for transportation of foodgrains by one Kailash Chand Sahu. It was allegedly carrying wheat belonging to the Food Corporation of India. A confiscation proceeding was initiated. An order of confiscation was passed by the Deputy Commissioner, Sahibganj. An appeal preferred thereagainst has been dismissed by the Additional Sessions Judge I, Sahibganj by an order dated 7.03.2005 passed in Criminal (Confiscation) Appeal No. 32 of 2003. Appellants filed a writ petition before the Jharkhand High Court which by reason of the impugned judgment has been dismissed by a learned Single Judge of the said Court.

3. Mr. H.L. Agrawal, learned senior counsel appearing on behalf of the appellants, in support of this appeal, would submit that wheat being a de-controlled item and there being no control whatsoever, either on trading of wheat or possession or transportation thereof, the impugned judgment cannot be sustained.

4. Mr. B.B. Singh, learned counsel appearing on behalf of the State, on the other, would submit that the appellants having abetted a fair price shop dealer who was appointed under the Public Distribution System (Control) Order, 2001 (for short "the 2001 Order", the impugned order cannot be faulted with.

5. Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made under Section 3 of the Essential Commodities Act, 1955 (for short "the Act") are violated. When a vehicle is used for carrying an essential commodity, it may be seized and ultimately directed to be confiscated in terms of Clause (c) of Sub-Section (1) of Section 6-A of the Act. Violation of an order made under Section 3 of the Act, therefore, is a pre-condition for passing an order of confiscation.

6. The 2001 Order does not deal with a matter dealing in wheat or transportation thereof. "Fair Price Shop" has been defined in Clause 2(k) of the 2001 Order to mean "*a shop, which has been licensed to distribute essential commodities by an order issued under Section 3 of the Act, to the ration card holders under the Public Distribution System* ." Clause 3 provides for identification of families living below the poverty line. Clause 4 provides for issuance of ration cards. Clause 5 deals with scale of issue and issue price. Clause 6 provides for the procedure for distribution of foodgrains by the Food Corporation of India to the State Government or their nominated agencies. Sub-clause (2) of Clause 6 obligates the fair price shop owners to take delivery of stocks from authorised nominees of the State Governments to ensure that essential commodities are available at the fair price shop within first week of the month for which the allotment is made. Sub-clause (4) thereof obligates the authority or person who is engaged in the distribution and handling of essential commodities under the Public Distribution System not to wilfully indulge in substitution or adulteration or diversion or theft of stocks from central godowns to fair price shop premises or at the premises of the fair price shop. Explanation appended thereto defines "diversion" to mean "*unauthorized movement or delivery of essential commodities released from central godowns but not reaching the intended beneficiaries under the Public Distribution System* ". Clause 9 provides for penalty. There is no provision for search of a vehicle. The power of search is confined to fair price shop or any premises relevant to transaction of business of the fair price shop. The power of such authorities causing a search is confined to Sub-clause (3) of Clause 10 of the 2001 Order to search, seize or remove such books of accounts or stocks of essential commodities where such authority has reason to believe that these have been used or will be used in contravention of the provisions of the Order.

7. A valid seizure, as is well known, is a sine qua non for passing an order of confiscation of property.

8. Unfortunately, this aspect of the matter has not been considered by any of the authorities and the courts. The High Court observed:

"From the impugned orders it appears that the wheat, which were seized, were found kept in FCI bags duly stitched by the FCI and they were meant for being distributed to the poor through Public

Distribution System but the same was found being diverted by the petitioners for the purpose of black marketing and at the time of raid and seizure no valid paper was produced by the petitioners regarding possession of the wheat in question."

9. Whether there was any valid paper regarding possession of wheat was not the subject matter of the confiscation proceeding. We are concerned with a vehicle carrying the wheat. Appellants herein are not concerned with wheat in question.

10. We have to consider the matter from another angle. The order of confiscation is not passed only because it would be lawful to do so. The authorities must arrive at a clear finding in regard to the violation made under Section 3 of the Act. The issues which have been raised before us have not been considered either by the Deputy Commissioner or by the learned Sessions Judge as also by the High Court. The matter is pending before the criminal court. We, therefore, do not intend to delve further into the matter. Keeping in view the facts and circumstances of this case, we are of the opinion that it was not a fit case where an order of confiscation could have been passed.

11. Reliance placed by Mr. Singh on *Shambhu Dayal Agarwala v. State of West Bengal and Another* , itself stated the law, thus:

"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"

12. Yet again, in *Deputy Commissioner, Dakshina Kannada District v. Rudolph Fernandes* , whereupon again Mr. Singh has relied upon, it was held:

"6. In the light of the aforesaid provisions, the second proviso to Section 6-A [sic 6-A(1)] is required to be considered. First it is to be stated that the proviso limits the power of the competent authority to recover fine up to the market price for releasing the animal, vehicle, vessel or other conveyance sought to be confiscated. So maximum fine that can be levied in lieu of confiscation should not exceed the market price. For our purpose, the relevant part of the proviso would be "in the case of ... vehicle ... the owner of such ... vehicle ... shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such ... vehicle". Question is whether fine should not exceed the market price of the seized essential commodity or whether it should not exceed the market price of the vehicle. For this purpose, it appears that there is some ambiguity in the section. It is not specifically provided that in lieu of confiscation of the vehicle a fine not exceeding the market price of the vehicle or of the seized essential commodity is to be taken as a measure. Still however, it is difficult to say that the measure of fine is related to the market price of the essential commodity at the date of its seizure. It nowhere provides that fine should not exceed the market price of the essential commodity at the date of seizure of the vehicle. The proviso requires the competent authority to give an option to the owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market

price. What is to be confiscated is the vehicle and, therefore, the measure of fine would be relatable to the market price of the vehicle at the date of seizure of the essential commodity sought to be carried by such vehicle"

13. We do not intend to deal with the question as to whether upon conclusion of the trial, a case for forfeiture of the vehicle may be passed or not, being wholly irrelevant at this stage.

14. For the reasons aforementioned, the impugned judgments cannot be sustained, which are set aside accordingly. The appeal is allowed.