

SUPREME COURT OF INDIA

Collector of Ganjam

Vs.

Ramesh Chander Padhi

C.A.No.755 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

06.02.2009

JUDGMENT

Dr.Arijit Pasayat, J

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Orissa High Court setting aside part of the order imposing fine in lieu of confiscation and directing the Collector, Ganjam to pass orders under second proviso to Section 6-A(1) of the *Essential Commodities Act, 1955* (in short the `Act'). The writ petition was filed against the order dated 29.5.2006 of Collector, Ganjam in a proceeding under Section 6-A of the Act.

3. Facts leading to initiation of the aforesaid case is that on 21.12.2004 while the Marketing Inspector, Jaganathprasad Block, while following the Sub-Collector, Bhanjanagar during tour to Jaganathprasad Block, found one bus bearing registration No.OIG-185 parked at the Bus Stand and kerosene oil was being poured in the oil tank of the bus. Looking at them, both the driver and the conductor of the vehicle fled away. He drained out the kerosene oil from the oil tank of the bus which contained 42 liters of kerosene, and prepared the sample list by taking 2 liters out of the seized kerosene oil for its chemical examination. The bus as well as kerosene were seized and a proceeding bearing EME No.37 of 2004 was initiated against the respondent and another under Section 6-A of the Act. The proceeding was initiated for contravention of Clause 8 of Orissa Kerosene Control Order, 1962 read with Clause 3 of Kerosene Control (Restriction on use and Fixation of Ceiling Price), 1993. In the said proceeding, the respondent who is the owner of the bus filed an application for release of the vehicle. While deciding the aforesaid application, the Collector concluded the proceeding under Section 6-A of the Act and directed confiscation of the vehicle. However, the Collector in view of the provisions contained in Section 6-A of the Act directed the respondent to pay a fine of Rs.20,000/-.

4. Stand of the writ petitioner was that while considering the application for release of the vehicle, the Collector could not have concluded the proceedings under Section 6-A(1) of the

Act. It was also pointed out that if the Collector concluded the proceedings under Section 6-A(1) of the Act, there was no reason for him to impose conditions such as payment of fine of Rs.20,000/-. With reference to second proviso to section 6-A(1) of the Act it was submitted that if fine is imposed in lieu of confiscation, the same shall not exceed the market price of the essential commodities seized. This plea found favour with learned Single Judge.

5. In support of the appeal, learned counsel for the appellants submitted that the true scope and ambit of second proviso to Section 6-A(1) of the Act has not been kept in view.

6. There is no appearance on behalf of the respondent in spite of service of notice.

7. The true scope and ambit of second proviso to Section 6-A(1) of the Act was examined by this Court in *Deputy Commissioner, Dakshina Kannada District v. Rudolph Fernandes*¹. It was inter- alia observed as follows:

“4. The short question involved in these appeals is -- whether fine in lieu of confiscation contemplated under the second proviso to Section 6-A(1) of the *Essential Commodities Act, 1955* (hereinafter referred to as "the Act") provides for levy of fine on the basis of market value of the confiscated vehicle or on the basis of the market price of the essential commodity sought to be carried by such vehicle. Section 6-A of the Act is as under:

"6-A Confiscation of essential commodity.--(1) Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of--

(a) the essential commodity 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: Provided....

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance 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 animal, vehicle, vessel or other conveyance.” (emphasis supplied)

5. At the outset it is to be stated that the object of the Act is to deter a person from illegally dealing in an essential commodity and consequently, impose a deterrent penalty against a person dealing in them illegally. While doing so, the law takes care to prevent the owner of

any vehicle from aiding or assisting such an illegal activity. As per the Preamble of the Act, the Act is to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities. For this purpose, Section 3 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of the essential commodity and trade and commerce therein if the same is considered necessary or expedient inter-alia for maintaining or increasing supply of any essential commodity or for securing their equitable distribution and availability at fair prices by passing an appropriate order. Section 6-A as quoted above provides for seizure and confiscation of the essential commodity for contravention of any order issued under Section 3. Further Section 6-B provides for issuance of show-cause notice and the procedure for confiscation of the seized essential commodity as well as any package, covering or receptacle in which the essential commodity is found or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. Section 6-C provides for appeal against the confiscation order and the procedure for return of the confiscated article in case where appeal filed against the confiscation order or the order passed under Section 7 forfeiting the essential commodity is set aside. Thereafter, Section 6-D provides that the order of any confiscation under the Act shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act. Therefore, even if the essential commodity or the vehicle is confiscated, the person can be prosecuted and the penalty provided under Section 7 can be imposed. Section 7(1)(a) provides for punishment to any person who contravenes any order made under Section 3. Section 7(1)(b) and (c) empowers the court to forfeit to the Government any property in respect of which the order has been contravened or to forfeit any package, covering or receptacle in which the property is found and also any animal, vehicle, vessel or other conveyance used in carrying the property.

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. This would also be consistent with the scheme of Section 7 which provides for levy of penalty. It empowers the court trying the criminal case to pass an order forfeiting to the Government any property in respect of which the order under Section 3 has been contravened. It also empowers forfeiture to the Government of any package, covering or receptacle in which the property is found and in addition any animal, vehicle, vessel or other conveyance used in carrying the commodity. Therefore, not only the essential commodity which is seized is to be forfeited, but the vehicle also could be forfeited to the Government. Hence, the measure of fine which is required to be levied in lieu of confiscation under the second proviso to Section 6-A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of the essential commodity. That is to say, the limit of such fine would be up to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case.

7. In *Shambhu Dayal Agarwala v. State of W.B.*² after considering the scheme of Sections 6-A and 7 and dealing with the proviso (ii) to sub-section (2) of Section 6-A, this Court observed: (SCC p. 555, para 6)

“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.”
(emphasis added)

8. As a matter of fact in *Shambhu Dayal Agarwala's* case (*supra*) (at para 6) this Court dealt with the position and observed as quoted above.

9. Learned Single Judge does not appear to have considered the scope and ambit of second proviso to section 6-A(1) of the Act in its proper perspective.

10. Accordingly, we set aside the impugned order and remit the matter to the High Court to consider the matter afresh in view of what has been stated in *Deputy Commissioner, Dakshina's* case (*supra*).

11. The appeal is allowed.

¹(2000 (3) SCC 306)

²(1990 (3) SCC 569)