SUPREME COURT OF INDIA

State of Bihar

Vs.

Arvind Kumar

Crl.A.No.1075-76 of 2012

(B.S.Chauhan and Swatanter Kumar, JJ.)

23.07.2012

JUDGMENT

B.S.Chauhan, J.

1. Leave granted.

2. These appeals have been preferred against the impugned judgments and orders dated 15.3.2011 in Cr.WJC No. 215 of 2011 and dated 29.4.2011 in Crl. Misc. No. 14629 of 2011 of the Patna High Court, by which a huge quantity of wheat seized by the appellant from the premises of the respondents under the provisions of Essential Commodities Act, 1955 (hereinafter referred to as „EC Act') has been released.

3. Facts and circumstances giving rise to these appeals are that:

> "A. On 15.2.2011, a secret information was received by the department of the appellants in respect of illegal storage of subsidized food grains of Public Distribution Scheme by the respondents which led to the raid upon the premises of M/s Harsh Tejas Nutrition Pvt. Ltd., (Flour Mill of the respondents) situate at Patna, New Bypass Road near Petrol Pump. The Sub- Divisional Officer, Patna City and other officers from the local police raided the premises of the said flour mill and found off loading of wheat from Truck bearing registration No. BHI 1899. The driver and other workers fled away. It was found that the grains bags had the seal of Food Corporation of India, (hereinafter called 'FCI'), U.P. Government Food Department, Food and Supply Department, Haryana; and Government of Punjab. The seized material made it apparent that there had been diversion of FCI grains for the purpose of black marketing. Appellants seized 5923 bags filled with more than 2991 quintals wheat.
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> B. None from the company where the raid was conducted came forward to claim the seized material or to justify the storage of same. Thus, the FIR bearing case No.

15/2011 dated 18.2.2011 was lodged under Sections 7 and 10 of the EC Act in addition to the appropriate Sections 421/424 of the Indian Penal Code, 1860 (hereinafter called 'IPC') in respect of the said seizure.

C. The respondents herein preferred Criminal Writ Petition No. 215/2011 for quashing confiscation proceedings and/or release of the confiscated goods.

D. The High Court allowed the said writ petition within a very short span vide order dated 15.3.2011 and subject to certain procedural compliances observed that continuing seizure of the seized articles for a long time may not be justified and therefore the High Court issued direction for release of the said wheat.

E. The respondent approached the Chief Judicial Magistrate, Patna, for releasing the wheat in pursuance of the order passed by the High Court on 15.3.2011 by moving an application. The learned CJM dismissed the application of the respondent on 7.4.2011 on the ground that he could not produce any document which may show their ownership to the said seized material.

F. The respondent again approached the High Court by filing Criminal Miscellaneous No. 14692/2011 which had been allowed vide order dated 29.4.2011.Hence, these appeals.Mr. Gopal Singh, learned counsel appearing for the State of Bihar has submitted that the orders had been passed by the High Court in a mechanical manner in utter disregard of the statutory provisions of the EC Act, particularly, the provisions of Sections 6-A and 6-E. Therefore, the impugned judgments and orders dated 15.3.2011 and 29.4.2011 are liable to be set aside."

4. On the contrary, Mr. Nagendra Rai, learned senior counsel appearing for the respondents has vehemently opposed the appeals contending that Sections 6-A and 6-E apply only where the goods are seized in pursuance of an order issued under Section 3 of the EC Act. In the instant case, no order had ever been issued under Section 3, therefore, the said provisions are not attracted. Respondents were able to show their ownership in respect of the seized materials. The High Court in the impugned judgments made it clear that release of the wheat was only an interim measure subject to the final decision in the case. Therefore, no interference is warranted by the court, the appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The EC Act was enacted to safeguard the public interest considering it necessary in the interests of the general public to control the production, supply and distribution of, trade and commerce in, certain commodities through the legislation. It was in the light of the aforesaid

public policy that Section 3 of the EC Act empowered the Government to issue notifications and once a notification is issued, it enables the competent authority to confiscate the goods under Section 6- A and prosecution leading to punishment provided under Section 7 of the EC Act. The Collector has been empowered under Section 6-A, if it is found to be expedient to sell the seized commodity which is subject to natural decay, at a controlled price or by public auction or dispose of through Public Distribution System to avoid artificial shortages, maintain the price line and secure equitable distribution thereof through fair price shops as it is in the interest of the general public.

7. Admittedly, the High Court has not even taken a prima facie view that the State Government had not issued twice any order/notification under Section 3 of EC Act though the FIR made reference to clause 6(a) of the Public Distribution System (Control) Order, 2001 issued under Section 3 of the EC Act. Respondent also referred to the said Control Order 2001 in Para 3 of the Crl.W.J.C. No. 215 of 2011 filed by them. More so, the question of ownership of the goods seized is a question of fact which ought not to have been gone into by the High Court in its revisional or extra-ordinary jurisdiction. Further, there is nothing on record on the basis of which the issue of ownership has been decided by the High Court. There was no cogent material on record before the High Court on the basis of which direction to release the goods so seized could be issued.

8. We are at pains to observe that the High Court has dealt with the issue in most casual and caviler manner without any application of mind showing complete disregard of the legislature enacting the provisions for general welfare.

9. This Court while dealing with a similar issue in *Shambhu Dayal Agarwala v. State of West Bengal Anr*[1]held that whenever any essential commodity is seized, pending confiscation under Section 6-A, the Collector has no power to order release of the commodity in favour of the owner. Having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard, it was further held that the word "release" in Section 6 -E is used in the limited sense of release for sale etc. so that the same becomes available to the consumer public. The court held as under:

> "No unqualified and unrestricted power has been conferred on the Collector 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 and would completely defeat the purpose and object of the Act. The view that the Act itself contemplates a situation which would render Section 7(1)(b) otiose where the essential commodity is disposed

> of by the Collector under Section 6-A(2) is misconceived. 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 Section 6-A(2) is granted. The power conferred by Section 6-A(2) 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. The said judgment was followed and approved by this Court after explaining the scope of the statutory provisions in *Oma Ram v. State of Rajasthan Ors*[2]"

10. What we found shocking in the instant case is that the petition was filed before the High Court for quashing of the FIR and alternatively for releasing the seized items and the High Court without giving any reason whatsoever disposed of the petition observing as under:

> "Considering the submissions of the parties, in the opinion of the court, continuing the seizure of the seized items for a long time may not be justified at least the seizure of the wheat. This is the only reason given by the High Court without even considering what were the averments on behalf of the parties and without considering the requirement of the statutory provisions."

11. In the subsequent order dealing with the ownership of the wheat the High Court has only taken note of the fact that as the respondents herein were prepared to furnish adequate/sufficient security to the satisfaction of the court below for release of the wheat in question, the wheat could have been released by the CJM. In case the learned CJM came to the conclusion after appreciating the evidence on record that the respondents/applicants were not in a position to show any document which may show their ownership to the wheat, there was no justification for the High Court to issue directions for release of such material merely because applicant could furnish the security. If it is so, any stranger or third party may give sufficient security and get the seized goods release in his favour. Such a course is not permissible even while deciding the application under Section 451/457 of the Code of Criminal Procedure, 1973. People having no title/ownership over the seized material may get the same released on furnishing security and sell it in black market and earn profit several times more than the amount of security furnished by him. We fail to understand as how such an order of release which defeat the very purpose for which the EC Act was enacted, could be passed.

12. The High Court has totally ignored the fact that any order passed under Section 6-A is appealable under Section 6-C of the EC Act. Therefore, to consider such an application for release of the goods was totally unwarranted at least at that stage.

13. In Manish Goel v. Rohini Goel, AIR 2010 SC 1099, this Court has held that generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (See also: *Vice Chancellor, University of Allahabad Ors. v. Dr. Anand Prakash Mishra Ors*[3]*and Karnataka State Road Transport Corporation v. Ashrafulla Khan Ors*[4].

14. Learned counsel for the parties are not in a position to reveal the status of the criminal proceedings initiated against the respondents. In such a fact-situation, as has been suggested by learned counsel for the parties we set aside the aforesaid judgments and orders dated 15.3.2011 and 29.4.2011 and remand the case back to the High Court to consider afresh after examining all factual and legal issues involved in the case. Till the disposal of the case afresh, interim order passed by this Court on 31.10.2011 shall remain operative. The appeals stand disposed of accordingly.

Judgment Referred

[1]*(1990) 3 SCC 0549*
[2]*(2008) 5 SCC 0502*
[3]*(1997) 10 SCC 0264*
[4]*AIR 2002 SC 0629*