

SATYANARAYANA SULTANIA & ANR.

v.

STATE OF CHHATTISGARH

(Special Leave Petition (Crl) No. 6289 of 2008)

JANUARY 22, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Madhya Pradesh Schedule Commodity Dealer (Licensing and Restriction on Hoardings) Order, 1991—Clause 11—Confiscation of paddy on account of violation of clause 11—Legality of—Held: It was incumbent on the part of the transporter to carry documents mentioned in Clause 11 along with the consignment—Since the said documents were not carried along with the consignment, there was no illegality in the seizure and confiscation thereof—Madhya Pradesh Essential Commodities (Exhibition of Price and Price control) Order, 1997—Clause 6(2).

Words and phrases: Expression 'dealer'—Meaning of — In the context of Clause 2(e) of Madhya Pradesh Schedule Commodity Dealer (Licensing and Restriction on Hoardings) Order, 1991 and Clause 2(a) of Madhya Pradesh Essential Commodities (Exhibition of Price and Price control) Order, 1997—Discussed.

Hundred bags of paddy transported by truck belonging to petitioner no.2 were seized and thereafter in accordance with Clause 6(2) of the Madhya Pradesh Essential Commodities (Exhibition of Price and Price control) Order, 1997, the seized paddy was confiscated. The confiscation order was upheld by the Sessions Judge and by the High Court.

In Special Leave, it was contended by the petitioner that "dealer" in terms of clause 2(a) includes any person

- A dealing with any essential commodity included in the Madhya Pradesh Schedule Commodity Dealer (Licensing and Restriction on Hoardings) Order, 1991 and in case dealing with only one commodity under the said Order at any time in quantity of more than 200 (two hundred) quintals; that since the consignment in question comprised of only 100 quintals of paddy, the same did not attract the provisions of the Licensing Order, 1991, and thus the seizure and confiscation thereof, was wholly illegal and without any legal basis.

- C Dismissing the Special Leave Petition, the Court

- HELD: 1. The definition of the expression "dealer" in the Madhya Pradesh Schedule Commodity Dealer (Licensing and Restriction on Hoardings) Order, 1991 was not intended to include only such persons as were dealing in essential commodity in quantities of more than 200 quintals. The intention of the legislature appears to have been that a dealer is a person who would be dealing in Scheduled food grains in quantities more than 200 quintals at a time and was not confined to individual transactions as in the instant case. It was incumbent on the part of the transporter to carry along with the consignment the documents mentioned in Clause 11 of the Licensing Order, 1991, at least for the purpose of identification, so that there was no possibility of the transported commodity being used for any purpose other than for what it was meant. Although, Clause 11 of the Licensing Order, 1991 does not stipulate that the documents indicated therein are to be carried along with the consignment being transported, the documents concerned are safeguards against clandestine dealing in the food grains covered by the Licensing Order, 1991. The receipt or invoice as also the name of the customer and Licence Number, if any, the date of transaction and the quantity of paddy sold, are documents which prove the

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authenticity of the transaction entered into by the licence holder in respect of the said consignment. It was necessary for the said documents to accompany the consignment of paddy which was being transported. [Paras 11 and 13] [1125-F-G; 1126-A-B; 1126-D-F]

2. The confiscation proceedings under clause 6(2) of the Control Order, 1997, were dependent on the proceedings relating to the alleged violation of Clause 11 of the Licensing Order, 1991. There is no reason to interfere with the order of the High Court. [Paras 14 and 15] [1126-F-G]

CRIMINAL APPELLATE JURISDICTION : SLP (Crl.) No. 6289 of 2008.

From the Judgment & Order dated 18.3.2008 of the High Court of Chhattisgarh at Bilaspur in Criminal Revision No. 459 of 2002.

Saurabh Suman Sinha, Prashant Mishra, Gaurav Agrawal for the Petitioners.

Aniruddha P. Mayee for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The Special Leave Petition is directed against the judgment and order dated 18th March, 2008, passed by the Chhattisgarh High Court at Bilaspur in Crl. Revision No.459 of 2002, dismissing the same.

2. Briefly stated, the facts involved are that on 3rd February, 2000, a hundred bags of paddy were being transported by one Ramesh Sahu, the driver of truck No.MP-23DA 2115 belonging to the one Hemant Kumar, the Petitioner No.2 herein. The said driver was transporting the said paddy on the strength of a letter written on the letter pad of Bajrang Rice Mill. En route the truck was searched by the Food Inspector and the paddy was seized. In accordance with Clause 6(2) of the Madhya Pradesh Essential Commodities (Exhibition of Price and Price Control)

- A Order, 1997, confiscation proceedings were initiated and the seized paddy was ordered to be confiscated by the Collector. An appeal was preferred which was also dismissed by the learned Sessions Judge, Bilaspur, in Crl. Appeal No.65 of 2001, confirming the order dated 13th March, 2001, passed by the Collector and Licensing Authority, Janjgir Champa, in Case No.60 of 2000. The Appellate Order was questioned in revision before the Chhattisgarh High Court at Bilaspur and the same was also dismissed on 18th March, 2009. The said decision is the subject matter of the present Special Leave Petition.

3. Appearing in support of the Special Leave Petition, Mr. Saurabh Suman Sinha, learned Advocate, questioned the order of the High Court on several grounds. It was contended by him that having regard to the definition of "dealer" in the M.P. Essential Commodities (Exhibition of Price and Price Control) Order, 1997, hereinafter referred to as "the Control Order, 1997", the Petitioners had not committed any illegality in transporting the paddy in question. It was pointed out that clause 2(a) defines "dealer" as a person who carries on the business of selling by retail or wholesale or storing for sale by retail or wholesale any commodity whether or not such business is carried in addition to any other business, but does not include a hawker or a peddler. It was submitted that the said definition of "dealer" was amended by the State Government in prior consultation with the Central Government by notification dated 10th September, 1998, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955. The amended definition of "dealer" included any person dealing with any essential commodity included in the Schedule to the "Licensing and Restriction on Hoardings) Order, 1991, hereinafter referred to as "the Licensing Order, 1991", and if dealing with only one commodity under the said Order at any time in quantity of more than 200 (two hundred) quintals.

4. Mr. Sinha also referred to the definition of "dealer" in the Licensing Order, 1991, wherein a "dealer" was described

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in clause 2(e) to mean a person who is engaged or intends to
engage in the business of purchase, sale or storage for sale
of any one food grain specified in Schedule I in quantity of 10
quintals or more at any one time and in respect of all food
grains taken together in quantity of 50 quintals or more at any
one time. Certain other commodities were also referred to
which are not relevant for our purpose. The said Licensing
Order, 1991, was amended by a notification dated 27th April,
1998, by the State Government with the prior concurrence of
the Central Government, wherein the definition of "dealer" was
once again amended to mean a person, partnership firm,
association or any registered body engaged in or intends to
engage in the business of purchase, sale or storage for sale
(not including store of commodities produced by him by
personal cultivation) and includes the business of commercial
agent, and processor dealing in any or all of the scheduled
commodities, other than sugar, of only one of scheduled
commodities at any one time in quantity of more than 200
quintals. Mr. Sinha sought to urge that the definition of "dealer",
therefore, did not include persons dealing in any one Scheduled
commodity at any time in quantities of less than 200 quintals.
It was urged that the Licensing Order, 1991, would be attracted
only if the transactions involved more than 200 quintals of a
Scheduled commodity at any one time.

5. Learned counsel submitted that since the consignment
in question comprised 100 quintals of paddy, the same
did not attract the provisions of the aforesaid Licensing Order,
1991, and the seizure and confiscation thereof was, therefore,
wholly illegal and without any legal basis.

6. Mr. Sinha then urged that there was no compulsion
under any of the Licensing Orders for the transporter or the
driver of the vehicle carrying the goods to retain with him a copy
of the receipt, invoice or bill relating to the goods in question
and that Clause 11 of the Licensing Order, 1991, merely
provides that the licence holder will give only one copy of
receipt or invoice to each customer containing his name,

- A address, licence number, name of customer and licence number (if any), date of transaction, sold quantity in quintals, total amount received and he will keep second copy with him to show on demand by the licensing authority or by any other officer authorized by him for inspection. Mr. Sinha urged that
- B Clause 11 did not require the transporter of the goods to carry with him any of the aforesaid documents mentioned in the said Clause. In fact, the driver of the vehicle was carrying a letter dated 3rd February, 2000, written by the Petitioner No.1 to Bajrang Rice Mill, Sargaon, informing the said Mill that a
- C hundred bags of paddy, weighing 75 quintals, had been sent by truck No.MP-23DA 2115 and to receive the same and send payment and empty bags of paddy through the driver of the truck Ramesh Sahu. It was also indicated that due to absence of the Mandi Authorities, the Bill and License would be sent to the Mill later. In fact, a Credit Memo also dated 3rd February,
- D 2000, for a sum of Rs.39,375/- in relation to truck was also sent to the buyer Bajrang Rice Mill, Sargaon, for the purpose of payment for the transported goods.

7. Mr. Sinha submitted that in view of the above, the
- E seizure and confiscation of the paddy was wholly arbitrary and was liable to be set aside with a direction for return of the seized goods.

8. On behalf of the State of Chhattisgarh, Mr. Aniruddha P. Mayee, learned Advocate, however, urged that the definition
- F of "dealer" as sought to be interpreted on behalf of the Petitioners was erroneous since under the Licensing Order, 1991, the definition of "dealer" had been amended on 27th April, 1998, to include persons engaged in business of any one Scheduled commodity at any one time in quantities of more
- G than 200 quintals. According to learned counsel for the Respondent, the said definition did not refer to any one transaction as a whole but in respect of the amounts of the scheduled commodity which was being dealt with by the person concerned. Accordingly, a person dealing in any one Scheduled
- H commodity at any time in quantities of more than 200 quintals

would be a "dealer" and would also be considered as a "dealer" A
for transportation of any goods, even if the same was below
200 quintals. It was submitted it was precisely for such a reason
persons dealing in food grains were required to hold a licence
for dealing in the said commodity in respect of quantities as
indicated in the Licensing Order, 1991. B

9. As far as Clause 11 of the Licensing Order 1991, is
concerned, it was urged that the said clause merely indicated
the procedure that was to be followed in respect of a transaction
of buying and selling by a dealer to a customer and it was C
naturally expected that the documents in question were to
accompany the consignment and that the fact that the petitioners
were aware of the said requirement would also be evident from
the letter written by the Respondent No.1 to Bajrang Rice Mill
on 3rd February, 2000, indicating that he would later come with
the Bill and Licence in respect of the said consignment. D

10. Learned counsel submitted that the transportation of
the paddy was in violation of clause 11 of the Licensing Order,
1991, and the consignment had been rightly seized and
confiscated in the absence of the documents Learned counsel
submitted that no case had not been made out for interference E
in the impugned judgment of the High Court.

11. We have carefully considered the submissions made
on behalf of the respective parties and we are inclined to agree
with the submissions made on behalf of Respondent State, F
since in our view the definition of the expression "dealer" in the
Licensing Order, 1991, was not intended to include only such
persons as were dealing in essential commodity in quantities
of more than 200 quintals. The intention of the legislature
appears to have been that a dealer is a person who would be G
dealing in Scheduled food grains in quantities of more than 200
quintals at a time and was not confined to individual transactions
as in the instant case. We are also of the view that it was
incumbent on the part of the transporter to carry along with the
consignment the documents mentioned in Clause 11 of the H

- A Licensing Order, 1991, at least for the purpose of identification, so that there was no possibility of the transported commodity being used for any purpose other than for what it was meant.

12. For the sake of reference, Clause 11 of the Licensing Order, 1991, is reproduced hereinbelow:-

- B "Clause 11 - Licence Holder will give only one copy of Receipt or Invoice to each customer containing his name, address, Licence Number, name of customer and Licence Number (if any), date of transaction, sold quantity in quintals, total paddy and amount received and he will keep its second copy with him to show on demand by Licensing Authority or by any other Officer authorized by him for inspection."

- D 13. Although, the aforesaid clause does not stipulate that the documents indicated therein are to be carried along with the consignment being transported, the documents concerned are safeguards against clandestine dealing in the food grains covered by the Licensing Order, 1991. The receipt or invoice as also the name of the customer and Licence Number, if any, the date of transaction and the quantity of paddy sold, are documents which prove the authenticity of the transaction entered into by the licence holder in respect of the said consignment. We are of the view that it was necessary for the said documents to accompany the consignment of paddy which was being transported.

14. As far as the confiscation proceedings under clause 6(2) of the Control Order, 1997, are concerned, the same are dependent on the proceedings relating to the alleged violation of Clause 11 of the Licensing Order, 1991.

- G 15. In that view of the matter, we see no reason to interfere with the order of the High Court impugned in the Special Leave Petition, which is, accordingly, dismissed.

D.G. Special Leave Petition dismissed.

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