The State of Assam Vs. Sri Ajit Singh Bothra and ors.

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Court : Guwahati

Decided On : Mar-26-1990

Judge : B.P. Saraf, J.

Acts : Essential Commodities Act, 1955 - Sections 3; Assam Sugar Dealers Licensing Order, 1963; Assam Trade Articles (Licensing and Control) Order, 1982

Appeal No. : Govt. Criminal Appeal No. 34 of 1982

Appellant : The State of Assam

Respondent : Sri Ajit Singh Bothra and ors.

Advocate for Def. : S.S. Sharma, Adv.

Advocate for Pet/Ap. : B.B. Narzary, Public Prosecutor

Disposition : Appeal dismissed

Prior history : B.P. Saraf, J. 1. This is an appeal by the State against the acquittal of the accused persons by the Chief Judicial Magistrate, Kamrup, Gauhati in Case No. 230 C of 1981. 2. The prosecution case, in brief, was that on 27-1-81 the Sub-Inspector of Food and Civil Supplies, Gauhati visited the firm known as Ajitsingh Bothra and Sons and seized 109 bags of sugar on the ground that it was dealing in sugar without a licence as required under the provisions of Assam Sugar Dealers Licensing Order,

Judgement :

B.P. Saraf, J.

1. This is an appeal by the State against the acquittal of the accused persons by the Chief Judicial Magistrate, Kamrup, Gauhati in Case No. 230 C of 1981.

2. The prosecution case, in brief, was that on 27-1-81 the Sub-Inspector of Food and Civil Supplies, Gauhati visited the firm known as Ajitsingh Bothra and Sons and seized 109 bags of sugar on the ground that it was dealing in sugar without a licence as required under the provisions of Assam Sugar Dealers Licensing Order, 1963 (hereinafter referred to as 'licensing order'). The partners of the said firm were charged with the commission of offence under Section 7(1)(ii) of the Essential Commodities Act. The charge was denied by the accused. The defence case was that the licence was issued to the firm under the licensing order as back as in 1967 and the same was renewed from year to year till 1979. Application had been filed for renewal of the licence for the year 1980 and the original licence was also attached with the application as required under the licensing order. However, no order was passed thereon. As the renewal for the next year, namely, 1981 also fell due, on 18-12-80 application was also filed for renewal for the year 1981. On 27-1-81 when the Sub-Inspector of Supply visited the premises of the firm, the licence issued to it was lying with the authorities for renewal. On these facts it was contended by the accused persons that they were entitled to continue their business after applying for renewal of the licence, unless the renewal was refused by the licensing authority and that in such a case, no violation of the provisions of the licensing order can be alleged.

3. The facts stated by the accused were not disputed by the prosecution. The contention of the accused persons found favour with

the learned Chief Judicial Magistrate trying the case, who by impugned judgment and order dated 29-3-82, held the accused not guilty of offence under Section 7(1) of the Essential Commodities Act and acquitted all of them.

4. The aforesaid order of acquittal has been challenged by the State in this appeal. The ground is that no dealer can carry on business in sugar after the expiry of the period of licence until a formal order of renewal is issued by the competent authority. Submission of application for renewal, according to the prosecution, is of no consequence. It is contended that carrying on business during the pendency of the application for renewal tantamounts to carrying on business without licence which is an offence punishable under Section 7(1) of the Essential Commodities Act read with the Clause 3 of the Licensing Order.

5. I have given my careful consideration to the facts of the case and the legal issue involved in this appeal. The contention raised on behalf of the State in this appeal, in my opinion, if accepted, might lead to a serious situation having far-reaching implications which might never have been intended by the licensing order. To properly appreciate the contention, it is necessary to refer to some of the relevant provisions of the licensing order. As stated before, at the relevant time the business of sugar in Assam was regulated by ,the licensing order, namely, the Assam Sugar Dealers Licensing Order, 1982 (which has since been repealed by the Assam Trade Articles (Licensing and Control) Order, 1982). Clause 3 thereof provides for licensing of dealers. It reads:

'3. Licensing of dealers.-- (1) No person shall carry on business as dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

(2) A separate licence shall be necessary for each place of business.

(3) For the purpose of this clause any person who stores sugar in any quantity exceeding 25 quintals at any one time shall, unless the contrary is proved, be deemed to

have stored the sugar for the purpose of sale.'

'Dealer' has been defined in Sub-clause (a) of Clause 2 in the following terms :

'2(a) 'dealer' means a person engaged in the business of purchase, sale or storage for sale of sugar in quantities, exceeding 25 quintals or more at any one time but does not include an industrial undertaking which is engaged in the manufacture or production of sugar and which is registered or licensed under the Industries (Development and Regulation) Act, 1951.'

Clause 4 provides for issue of licence. The relevant portion thereof reads:

'4. Issue of Licence.-- (1) Every application for a licence or renewal thereof shall be made to the licensing authority in Form 'A'.

(2) Every licence issued or renewed under this order shall be in Form 'B' and shall be subject to the conditions specified therein.

The period of licence and fees chargeable are provided in Clause 5 :

'5. Period of Licence and Fees chargeable.-- (1) Every licence issued under this Order, shall be valid from the date of issue to the 3Ist December, 1963, and may thereafter be renewed for a further period of one year at a time.

(2) The fees specified below shall be chargeable in respect of each licence, namely:--

For issue of licence -- Rs. 5/-

For renewal of licence -- Rs. 2/-

For issue of duplicate licence -- Rs. 10/-

Clause 6 which deals with the power of the licensing authority to refuse to grant or renew a licence in the following terms:

'6. Power to refuse licence.-- The licensing authority may, after giving the dealer concerned an opportunity of stating his case in writing and for reasons to be recorded in writing, refuse to grant or renew a licence.'

Clause 7 empowers the licensing authority, in case of contravention of the provisions of the licence to cancel or suspend a licence.

Clause 8, which provides for appeal against an order of the licensing authority refusing to to issue or renew a licence or cancelling or suspending a licence, reads :

'8. Appeal.-- (1) Any person aggrieved by any order of the licensing authority refusing to issue or renew a licence or cancelling or suspending a licence under the provisions of this order may appeal to the State Government within 30 (thirty days) of the receipt by him of such order.

(2) No order shall be made under this clause unless the aggrieved person has been given reasonable opportunity of stating his

case in writing.

(3) Pending the disposal of an appeal, the State Government may direct that the order refusing to renew a licence or the order of cancelling or suspending a licence shall not take effect until the appeal is disposed of.'

6. From a reading of the various clauses of the licensing order referred to above, it is clear that the object of the licensing order is to regulate the business of sugar. Obtaining a licence had been made a condition precedent for carrying on of business only to achieve that object. The scheme of licensing is very simple and clear. A person carrying on business as dealer has to obtain a licence and work in accordance with the terms and conditions of the licence. Under Clause 5 all licences issued under the licensing order are valid from the date of issue till 31st December. Thereafter provision has been made for renewal for a period of one year at a time. The requirement to be fulfilled for renewal are to submit an application in Form 'A' and to deposit a licence fee of Rs. 2/-. These are the only two things which the licensing order obligates a licensee to do for obtaining renewal of his license. Under Clause 6 the licensing authority has been given the power to refuse to renew a licence. That, however, can be done for the reasons to be recorded in writing and only after giving the dealer concerned an opportunity of showing cause in

writing. As the action of the authority refusing to renew a licence is likely to cause prejudice to the dealer, under Clause 8, he has been given the right of appeal against such order. The appeal lies before the State Government.

7. A conjoint reading of all these causes makes it abundantly clear that in case of refusal to renew a licence, there must be an order in writing to that effect. Till such an order is passed, it cannot be said that the renewal is refused. Because, only at that stage, the dealer has been given a right of appeal. Till such a decision is taken, he can continue to carry on his business by virtue of the licence originally issued despite expiry of the term thereof. This is the only reasonable interpretation that can be given to the provisions of the licensing order. Any other interpretation will go counter to the scheme, object and purport of the licensing order and lead to very disturbing implications.

8. To illustrate, all licences under the licensing order expire on 31st December. Application for renewal can be filed with a fee of Rs. 2/- even that day. If no orders are passed on the spot on such applications, which in practice is never the case, on 1st of January there will be no dealer having a licence to carry on the business of sugar. As a consequence, from 1st January till such date when renewal is granted, all dealers in sugar shall have to keep the business of sugar totally closed as otherwise every one of them would take the risk of prosecution for violation of the licensing order. In this connection, I may refer to the facts of the case before me. In this case, from 1967 till 1979 the licence was renewed from year to year by making endorsement on the body of the original licence itself. The original licence was granted on 19-12-67 which was valid till 31-12-67. For the year 1968 the application for renewal was filed on 28-12-67 but the revewal was made on 9-2-68. Similarly, for the year 1969 the renewal was made on 29-1-69, for the year 1970 on 11-2-70, for the year 1971 on 10-2-71, for the year 1972 on 18-2-72, for the year 1973 on 27-3-73, for the year 1974 on 29-1-74, for the year 1976 on 18-2-76, for the year 1977 on

19-1-77, for the year 1978 on 4-2-78 and for the year 1979 on 28-2-79. Right from the inception, evidently there was a gap between the expiry of the licence and the date of renewal. Such situation is not uncommon or unknown. Provisions for licences, registration certificates etc. are there in very many statutes. Carrying on of business without a valid licence is an offence in all such statutes. I may refer in this connection to the provisions of the Assam Cinema (Regulation) Act, 1953 (Assam Act XIV of 1953). Under the enactment no person can give an exhibition by means of a cinematograph elsewhere than in a place licensed under the Act. A licence for a permanent cinema hall granted under the said Act and the Rules framed thereunder is valid for one year only though it may be renewed from year to year by the licensing authority on application for renewal submitted by the licensee in the manner prescribed. No time limit has been prescribed for the licensing authority to dispose of the application for renewal. A question may arise whether a licensee of a permanent cinema hall, who has submitted an application for renewal of the licence in the manner prescribed after complying with all requirements of the law, has to close down his cinema hall on the date of expiry of the existing licence and keep it closed till an order of renewal is passed in the application for renewal.

9. Sitting in Division Bench I had come across a number of cases involving licences. In all these cases, it was noticed that though the applications for renewal were filed in time year to year, orders thereon did go even beyond the expiry of the year to which renewal related. The cinema exhibitions continued. The halls were not closed down on 1st January. In fact, it is well-accepted position that in such cases, unless the licence is suspended or the licensee directed for specific reasons to stop the exhibitions would continue as usual on the basis of contemplated renewal.

10. In this connection, I may refer to the various labour laws, industrial laws, and very many other enactments where a person is required to obtain licence to carry on business

which is subject to renewal from year to year or at certain fixed intervals. In all such cases once the licensee does his part, namely, submission of application for renewal of licence after fulfilling all the requirements of law, he would be entitled to carry on his business until his application for renewal is rejected or any direction is issued to him to the contrary. In fact, most of the businesses, industries and other activities are going on in that manner. This is the real state of affairs and we are to take note of it, no matter whether we approve of such delays on the part of the authorities in disposing of the applications for licences or renewals thereof, or not.

11. From the discussion made above, I am absolutely clear in my mind that a licensee, who has applied for renewal of the licence in the manner laid down in the law, is entitled, in the absence of any provision to the contrary in the law itself, to continue to carry on his activities until any order is passed by the licensing authority refusing to renew the licence in accordance with law. The above view of mine gets full support from a decision of the Punjab and Haryana High Court in Chandra Industries v. The Punjab State (1972) 29 STC 558, 565. It was a case under the Punjab General Sales Tax Act, 1948. Under that Act, a dealer became liable to pay tax on the expiry of 30 days after the date on which the gross turn over in the year 1st exceeded the taxable quantum. Section 7(1) of the said Act prohibited a dealer, who was liable to pay tax under the said Act, from carrying on of business as a dealer unless he had been registered and possessed a certificate of registration. Such a dealer was required to make an application for registration in the prescribed manner to the prescribed authority. A question arose whether such a dealer, in view of the requirement of Section 7(1), could continue to carry on business until a certificate of registration was granted to him. The High Court held:

'It could never be the intention of the Legislature that a dealer liable to pay tax, who has done all which lay in his power to obtain the registration certificate, should pull down his shutters and keep his business closed under

pain of being punished Under Section 23(1) and await indefinitely the pleasure and leisure of the prescribed authority in issuing the registration certificate. Adoption of such a construction would be to make the applicant liable to punishment for the laches and delays of the authority and its office.'

The aforesaid passage was quoted with approval by the Supreme Court in Assessing Authority v. Patiala Biscuits ., (1977) 39 STC 381, 385 : (AIR 1977 SC 1339). The Supreme Court also observed that the words 'has been registered and possesses a registration certificate' used in Sub-section (1) of Section 7 have to be construed in accordance with the general tenor of the section as a whole, and in a manner which would avoid oppressive, unreasonable and anomalous results.

12. In my opinion, the ratio of this decision of the Supreme Court squarely applies to the controversy at issue in the present appeal also. The dealer in the instant case applied for renewal of the licence well within the time in the prescribed form along with the prescribed fee to the competent authority. The application for renewal for the year 1980 was filed as back as on 31-12-79 and for 1981 on 18-12-80. The application was in order. There was nothing that the dealer could have done. Passing a formal order on the application was not in the hands of the dealer. It was for the licensing authority to pass the order. From the dates of renewal for different years given above, it is evident that ever since the licence was issued, every year there was a gap between the expiry of the period of the licence and the date of renewal. During this interregnum period the dealer cannot be said to be dispossessed of the licence that was issued to him. In other words, the silence of the licensing authority on the renewal application cannot be deemed to be refusal to renew more particularly in view of the provision contained in Clause 6 of the licensing order set out above. I am, therefore, of the opinion that a dealer who possesses a licence to carry on the business of sugar under the licensing order is entitled to continue to do so even after the expiry of the period of licence once he has made an application for renewal in the manner prescribed until an order is passed by the

licensing authority under Clause 6 refusing to renew the licence. In that view of the matter, in my opinion, the learned Chief Judicial Magistrate was right in holding that there was no violation of the licensing order by the accused persons and he was justified in acquitting them of the charge of commission of offence Under Section 7(1) of the Essential Commodities Act. This appeal by the State, therefore, has no merit and is accordingly dismissed.