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Court : Patna

Decided On : May-01-1997

Judge : P.K. Sarin, J.

Appeal No. : Crl. Rev. No. 351 of 1991

Appellant : Santosh Kumar

Respondent : State of Bihar

Disposition : Application Allowed

Judgement :

P.K. Sarin, J.

1. This criminal revision application is directed against the order dated 19.2.1991 passed by Special Judge (E.C. Act), Patna, in Special Case No. 14 of 1989 whereby he has taken cognizance of an offence under Section 7 of the Essential Commodities Act (hereinafter referred to as the Act) against the petitioner.

2. It appears that a prosecution report was lodged by Inspector (Food) C.I.D., Patna, at the Gardanibagh Police Station Alleging that the petitioner lifted coal from collieries and instead of bringing coal at his place of business he diverted the same to U.P. and thereby be committed an offence punishable under Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as the Order).

The copy of the first information report has been filed as Annexure-1. It was stated in the said report that the petitioner has contravened the provisions of Clauses 10 and 16(1) of the Order and the terms of the licence. The Police, after investigation, submitted charge-sheet finding it to be correct that the coal was sent to U.P. by the petitioner instead of bringing it to his place of business. The learned Special Judge took cognizance of the offence under Section 7 of the Act on the basis of the said charge sheet and the materials contained in the case diary. The learned Special Judge observed that prima facie case is made out for contravention of Clauses 10 and 16 of the Order and conditions 2 and 10 of the licence.

3. The learned Counsel for the petitioner has contended that no storage limit has been fixed for coal under the Order and in absence of fixation of storage limit, the Order is not workable. He has placed reliance on an unreported decision of this Court in C.W.J.C, No. 6231 of 1994 (Sidheshwar Pandey v. State of Bihar, decided on 9.8.1994 wherein it has been observed that the State Government has not fixed any storage limit for a whole-sale dealer and a retail dealer and in its absence of the Order will not be workable in relation to coal. Therefore, the petitioner of the said case could not be said to have violated any provision of the Order it may be mentioned here that storage limits of trade articles was fixed under Notification G.S.R. 49, dated 17th October, 1985. Clause 13 of the said Notification lays down that the coal dealer means a person who at any time holds stock of coal for purchase, sale or storage for the purpose other than personal consumption in a quantity exceeding ten quintals. The learned Counsel for the petitioner has contended that no separate storage limit was fixed for wholesale dealer or retail dealer, as such said Clause 13 cannot be taken to be that storage limit has been fixed for whole-sale dealer or the retail dealer. The term 'dealer' has been defined in sub-clause (e) of Section 2 of the Order, which runs as follows:

Dealer means a person, a firm an association of persons or Co-operative Society other than a National and State level Co-operative Society, engaged in the business of purchase, sale or storage for sale of any trade article whether or not in conjunction with any other business and includes his representative or agent but does not include:

(i) a person who holds or is in possession of agricultural land under any tenure or any capacity and on which he raises or has raised crop of foodgrains, oilseed or whole pulses;

(ii) a manufacturer of sugar;

(iii) Hawkers engaged in the purchase and sale of non-controlled cloth.

4. A wholesale dealer has been defined under sub-clause (u) of Section 2 of the Order which runs of follows:

'Wholesale dealer' means a person engaged in the business of purchase, sale or storage of any article (specified in Schedule I) for purpose other than personal consumption within the storage limit fixed by the Government from time to time.'

Retail dealer has been defined in sub-clause (p) of Section 2 of the Order which runs as follows;

'Retail dealer' means a person engaged in the business of purchase, sale or storage of any article (specified in Schedule I) for purpose other than personal consumption within the storage limit fixed by the Government from time to time.'

5. It may be seen that the dealer is a wider term and whole-sale dealer and retail dealer are only species thereof. Clause (3) of of the Order provides that no dealer after the commencement of the Order shall carry on business of purchase, sale or storage for sale of any of the trade articles mentioned in Schedule-1 except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority under the provisions of the Order. Thus, the charging clause requiring obtaining of licence for dealing in trade article mentioned in Schedule-I is Clause (3) of the Order which uses the terms dealer and not the wholesale dealer and the retail dealer. If any provision has been made for a dealer that would be applicable equally to the wholesale dealer and the retail dealer who are covered under the term dealer. Therefore, for the applicability of Clause (3) a person who is covered under the term dealer would come under the purview of the said clause. Clause 13 of the Notification dated 17.10.1995 regarding storage limit has laid down that coal dealer means a person who holds stock of coal for

proceeding ten quintals. Therefore, any person who holds stock of coal for purchase, sale or storage in a quantity exceeding ten quintals will be a coal dealer and will be covered by the Order and Clause (3) of the Coal Order would be applicable in respect of such dealer. The contention of the learned Counsel for the petitioner that unless separate storage limit was fixed for the wholesale dealer the petitioner would not be dealer, cannot be sustained.

6. The learned Counsel for the the petitioner has next contended that the Coal Control Order, 1956 stood repealed by virtue of Clause 32 read with Schedule-III of the Order. The Order, as originally issued in 1984 contained Clause 32 which provided that from the date of commencement of the Order the Licensing Order mentioned in Schedule-III would stand repealed except Bihar Cement Control Order, 1972, and the provisions of the Order would have effect notwithstanding anything to the contrary contained in the licence repealed. While the English version of the Order contained the word 'Licensing Order' in Clause 32, the Hindi version of the Order did not convey that the Licensing Orders were to be repealed. Hindi version provided that the licence under the Orders mentioned in Schedule-III were repealed. Therefore, the Hindi version does not refer to the Licensing Order but mentioned in Schedule-III. Coal Control Order was also mentioned in Schedule -III. It is now settled by this Court that where there is inconsistency or discrepancy between the Hindi version and the English version of any statute the Hindi version shall prevail. Therefore, according to the Hindi version of Clause 32 as it was enacted in 1984, it did not effect repeal of the licensing orders. It repealed the licences under the Orders mentioned in Schedule-III. Therefore, the Coal Control Order shall not be deemed to have been repealed by Clause 32 of the Order. In 1985, by notification No. G.S.R. 47 dated 17th October, 1985, some amendments were made in the Order and by the amendment made in 1985 only that part of Clause 32 was omitted which related to except Bihar Cement Control Order, 1972. Thus, after amendment in 1985 also the provision in Clause (3) practically remained the same. At present also in the Hindi version of the Order is amended, only licences under the Orders mentioned in Schedule-III have been repealed. By amendment in 1985 Schedule-III was also amended. In the amended entry regarding Bihar Coal Control Order, as mentioned in Schedule-III it has been specifically provided that the Clauses 2 (b), 6 (c), 9, 10, 11, 12 and 13 have not

been repealed. It indicated that position had been made clear that only the clauses regarding licences, as given in the Coal Control Order, have been repealed and it has been specifically provided that certain clauses of Bihar Coal Control Order, 1956 have not been repealed. Therefore, it cannot be said that Bihar Coal Control Order, in its entirety stood repealed by virtue of Clause 32 of the Order.

7. The learned Counsel for the petitioner has contended that Bihar Coal Control Order has been repealed by Order 1984 by virtue of Clause 32 and it could not have been revived by any amendment in 1985. Had the Coal Control Order been repealed in 1984 the contention of the learned Counsel for the petitioner would have held good that the repealed control order cannot be revived by making any amendment but as we have already observed that the Bihar Coal Control Order, 1956 does not stand repealed by Clause 32 of the Order. In these circumstances, there is no question of revival of any repealed Order by amendment made in 1986.

8. The learned Counsel for the petitioner has next contended that the Officer who has lodged the report on the basis of quarries made by him and also enquiry done by him was not authorised under Clause 30 of the Order, as such the inspection made by him was without jurisdiction and the prosecution on the basis of inspection made by such unauthorised person would be bad in law.

9. Clause 30 of the Order provides the authorities who have been conferred the powers of entry, search, seizure and inspection etc. if they have reason to believe that any contravention of provisions of the Order has been or is being or is pointed out to be made. The Inspector (Foods) C.I.D. is not one of the authorities mentioned in Clause 30 of the Order. He appears to have been authorised under Clause 30 subsequently by Notification No. G.S.R. 31, dated 28th July, 1992. By the said Notification Deputy Superintendent of Police (Food) C.I.D. Bihar and Inspector of Police (Food) C.I.D., Bihar have been inserted in sub-clause (1) of Clause 30 of the Order after the words 'Police (Food)'. In the present case, the offence is said to have been committed in the year 1989. At that time Inspector of Police (Food) C.I.D. was not authorised under Clause 30 of the Order to make inspection, search, or seizure etc., for the purposes of finding of contravention of the Order. If a person is not authorised to make inspection, search of seizure and

he makes any inspection, search or seizure and prosecution is launched on the basis of the such inspection, search or seizure, that prosecution would be bad in law. This Court has held in the case of Roshan Lal Arjun Lal v. State of Bihar 1992 (2) PLJR 669: 1993 East Cr. C. 88, that a seizure by an Officer, Dy. S.P. (Food) not competent under the law is invalid and no prosecution can be launched on the basis of such illegal seizure and the criminal proceedings in such a case have to be set aside. The same principles are applicable in respect of Inspector of Police (Food) and inspection made by person not competent to do so under Clause 30 of the Order. In these circumstances, the contention of the learned Counsel for the petitioner that a prosecution launched on the basis of inspection done by unauthorised person is bad in law, has to be accepted and the cognizance order is as well as prosecution based on such inspection has to be set aside.

10. Accordingly, the criminal revision application is allowed. The impugned order and the proceedings on the basis of the impugned order are hereby quashed.

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