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Court : Patna

Decided On : Jul-27-2007

Judge : Samarendra Pratap Singh, J.

Acts : Essential Commodities Act - Sections 3 and 7; Bihar Trade Articles (Licenses Unification) Order, 1984 - Sections 2, 31(1) and 31(2); Public Distribution System Control Order, 2001; [Constitution of India](#) - Articles 14 and 16

Appeal No. : Cr. Misc. No. 11239 of 2007

Appellant : Ramanand Prasad

Respondent : State

Advocate for Def. : Abha Singh, Addl.P.P.

Advocate for Pet/Ap. : N.K. Agarwal, A.K. Thakur and Kamalendra Pd. Singh, Advs.

Judgement :

Samarendra Pratap Singh, J.

1. Heard the parties.

2. The petitioner apprehends his arrest in a case under Section 7 of the Essential Commodities Act.

3. The prosecution case in short is that the Block Supply Officer, Akbarpur, the authorised officer under Clause 30 of the Bihar Trade Articles (Licenses Unification) Order, 1984 along with the Sub Divisional Officer, Rajaul raided the shop of one Bhuttu Ansari at Nemdarganj Bazar and 840 liters of Blue kerosene oil was recovered contained in drums on which name of the petitioner along with his license number and one another had been inscribed. It is alleged that the petitioner who is a PDS dealer had stored blue kerosene oil in the shop of Bhuttu Ansari for blackmarketing as latter has no license for dealing in blue kerosene oil.

4. It is submitted on behalf of the petitioner that he is a licensed dealer under Public Distribution System and his shop is at some distance from the shop of said Bhuttu Ansari. It is further submitted that the petitioner had been allotted 1000 liters kerosene oil on 14.7.2006 which he had distributed to the respective card holders and this fact has been certified by the Mukhia and Ward Member of the Gram Panchayat. Learned Counsel further submits that only on account of recovery of kerosene oil from other's shop in drums carrying petitioner's name and licence number does not mean that he has indulged in blackmarketing of kerosene oil supplied under the public distribution system in violation of the Unification Order 1984.

5. Learned Counsel submits that the petitioner is protected and saved from being prosecuted under the rigours of 7 E.C. Act or the provisions of Unification order, 1984, as he being a dealer under the public distribution system is an Agency of the Government. In view of provisions of Clause 31(2) of the Unification order, 1984 with regard to sale or storage for sale of any trade article. In support of the aforesaid submission, learned Counsel refers to a decision of this Court made in the case of Md. waizuddin v. The State of Bihar reported in 2007(1) PLJR 714. In this case, on written report of Block Supply Officer that the dealer's shop was found closed at time of inspection, a P.S. case was instituted under Section 7 of the E.C. Act and Congizance was taken by the court below which order was quashed by this Court observing that the Unification order, 1984 was not applicable to the petitioner. It was observed that a dealer of public distribution shop being an approved agency under Section 31(2) of Unification Order, 1984, and as such saved from prosecution under Section 7 of the E.C. Act for violation of

the provisions of the Unification Order.

6. Learned Counsel for the petitioner further submits that in the year 2001 the Central Government had promulgated an order known as Public Distribution System Control Order, 2001. The State government for the first time issued notification under Clause 10 of the Unification order, 1984 in May, 2006, as such, 2001 order remained Unworkable from 31.8.2001 till May, 2006. Learned Counsel relied on a Bench decision of this Court in the case of Most Girdhari Kuar and Ors. v. The State of Bihar reported in 2007(1) PLJR 768. In this regard, learned Counsel appearing for the State submits that Clause (14) of the PDS (Control) order, 2001 states that provisions of the order will prevail over previous orders which are only contrary to the present order.

7. The first submission of learned Counsel for the petitioner that the PDS dealer is approved agency of the government and saved from prosecution in view of Clause (31)(2) of the Unification Order, 1984 is not borne out from provision of the clause much less there being any material in any form by way of order/notification/letter of approval treating PDS dealership as approved agency for the purpose of exemption with regard to sale, storage of any trade articles. As such, this Court is in respectful disagreement with the observations made in the case of Md. Waizuddin v. The State of Bihar reported in 2007(1) PLJR 714.

8. In this respect, it would be fruitful to quote the definition of dealer and Clause 31 of the Unification order in its extensio. The term dealer is defined as:

'dealer' means a person, a firm, an association of persons or a co-operative society other than a National and State-level Cooperative 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 (sic) or agent but does not include

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

(ii) a manufacturer or sugar;

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

9. The term agency as mentioned in Clause 31(2) of the Unification Order, 1984 is neither defined in the Unification Order nor in the Essential Commodities Act, 1955. The general meaning of term 'Agency' is a business or an organisation that provides a particular service especially on behalf of other business or organisation. As per Law Lexicon the word 'Agency' has been defined as an Entity which acts on behalf of his principal and often uses his name, and his acts in that capacity are attributable to principal. An agent has been defined in the Indian Contract Act as a person employed to do any act for another or to represent another in dealing with the third person.

10. As per its definition, a dealer could be either a person or a firm or an association of persons or even a 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 with the exception mentioned in Section 2(e)(i)(ii) and (iii) of Part II of the Unification Order, 1984 as cited above. Clause 31 of Unification order, 1984 is as follows:

31. Exemptions.-(1) The State Government may, by general or special order by notifications in the Official Gazette, and subject to such conditions or restriction, as may be specified in such order, exempt any person or class of persons or firm or association of persons or any cooperative society from the operation of all or any provisions of this Order and may at any time suspend or rescind such exemption:

Provided that no notification under this clause shall be issued except with the previous approval of the Central Government.

(2) Nothing in this Order shall apply to the purchase, sale or storage for sale of any trade article by or on behalf of-

(a) The Central Government.

(b) The State Government.

(c) The officers, departments, institutions or other organisations of the State Government or such agencies as may be approved by the State Government.

(d) Any Central or State level Co-operative Society.

11. Clause 31 of the Unification Order 1984 under the heading Exemption is in two parts.

The first part vests State Government with the power that it can by general or special order by notification, as may be specified in such order, exempt any person or class of persons or firm or association of persons or any co-operative society from the operation of all or any of provisions of this Order and may at any time suspend or rescind such exemption. (The underlining is by me for emphasis).

Part two states that provisions of Unification order, 1984 will not apply so far it relates to purchase, sale or storage for sale of any trade articles by or on behalf of (a) the Central Government (b) the State Government (c) the officers, departments, institutions or other organisations of the State Government or such agencies as may be approved by the State Government. Thus Clause 31(2)(c) states that such agencies could also be saved from rigours of operation of the order which may be approved by the State Government. It means that such agency all by itself do not stand exempted from the rigours of provisions of Unification Order, 1984 save and except if it is approved by the State Government for that purpose.

12. The core question is whether the PDS dealer could be said or deemed to be an agent of the State Government or acting on its behalf, and whether it is an agency approved by the State Government for the purposes of exemption from the rigours of the Unification Order, 1984.

13. A PDS dealer does not act on behalf of the State Government but rather it is a licences under Part II of the Unification Order, 1984 given licence to trade in specified articles subject to the terms and conditions mentioned therein. There is a provision of grant of licence for a PDS dealer as well as refusal and renewal of the

same. It is a mere contract, entered between PDS dealer who is licensee and licensing authority which is generally a District Collector or a Sub Divisional Officer of the Sub division. The Unification Order 1984 nowhere says such PDS dealer/shopkeeper is an agency of the Government.

14. It is a cardinal principle of interpretation of statute not to read or include anything in a provision which is sufficiently illustrative in itself.

15. Section 3 of the E.C. Act empowers the Central Government that it may by order provide for regulating or prohibiting the production, supply or distribution of an essential commodities by issuing licence, permits or otherwise. Section 7 of the E.C. Act is a penal clause in respect of contravention of any order made under Section 3 of the E.C. Act. The Legislature has made exception in Clause 31(2)(c) of the Unification Order, 1984 in favour of the officers, department, institution or other organisations of the State Government all of which are its very organ of creation. Unlike government servant, a PDS dealer is not a salaried class and does not have a retirement age or pensionary benefit. Similarly an organisation or institution of government is its creation and all its financial implication is fully taken care of by the government. It's officials and staffs all appointed by such bodies after observing due requirement of Articles 14 and 16 of the [Constitution of India](#).

16. The Legislature vide Clause 31(2)(c) has also extended this exemption to the agencies approved by the State Government for purposes of exemption. The very language would show that it has not bestowed exceptions from rigours of provision to all agencies. The Legislature was conscious of the fact that agency at large should not be exempted from the rigours of the provisions and only such of them would be granted exemption who are approved by the Government. Had there been any intention to save the PDS dealer from exemption from the rigours of 1984 order it would have been so mentioned in Clause 31(2)(c).

17. There is no notification of the State Government either under Section 31(1) or 31(2)(c) of the Unification Order, 1984 approving PDS dealer as an agency saved from the rigours of the Act. Learned Counsel for the petitioner has also not produced any such approval/notification of the Government in this regard.

18. In view of the above discussions, this Court finds that the PDS dealers are not agencies which are approved by the State Government for being granted exemption under the Unification Order, 1984, as such they do not come either in the category indicated in Section 31(1) or 31(2)(a)(b), (c) and (d) of the Unification order, 1984.

19. So far as merits of the case is concerned, in view of the nature of allegation levelled against the petitioner that two drums blue kerosene oil having his name and licence (sic) on it had been recovered from the shop of a person who is not authorised to deal in blue kerosene oil, I am not inclined to allow him the privilege of anticipatory bail which is refused with direction to surrender and seek regular bail which would be disposed of on its own merit without being prejudiced by this order.

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