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Ratnaraj Thangraj Vs. Deputy Controller of Rationing and ors.

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Court : Mumbai

Decided On : Feb-12-1982

Reported in : 1982(1)BomCR475

Judge : D.P. Madon and ; Sharad Manohar, JJ.

Acts : [Essential Commodities Act, 1955](#) - Sections 6C and 7; Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order, 1973; Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977; [Limitation Act, 1963](#) - Sections 5 and 29(2)

Appeal No. : Writ Petition No. 352 of 1982

Appellant : Ratnaraj Thangraj

Respondent : Deputy Controller of Rationing and ors.

Advocate for Def. : A.C. Agarwal, A.G.P.

Advocate for Pet/Ap. : T.H. Sardar, Adv.

Judgement :

D.P. Madon, J.

1. This writ petition under Article 227 of the Constitution of India is directed against an order dated February 6, 1982 passed by the learned Principal Judge of the

Bombay City Civil Court, Bombay, as the judicial authority appointed under section 6-C of the [Essential Commodities Act, 1955](#) (Act No. 10 of 1955), whereby he dismissed the appeal filed is the petitioner, namely, Miscellaneous Appeal No. 6 of 1982, as being barred by limitation.

2. The petitioner is a dealer in edible oil and owns two shops, one at Ghatkopar and the other at Chembur in Greater Bombay, both being shops under the trade name and style of Ratna Stores. Under Clause 3 of the Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order, 1973, read with Clause 3 of the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977, any trader storing more than 500 kilograms of edible oil is required to take out a licence under the said orders in addition to a gumaste licence and a licence under the Bombay Municipal Corporation Act, (Bombay Act No. III of 1888).

3. On October 23, 1981 the third respondent, namely, the Inspector of Police, Crime Branch (Control), C.I.D., Bombay, along with the members of the staff of the Rationing Department raided the said shop at Ghatkopar and seized the entire stock of 644 kilograms of edible oil of different kinds from the said shop on the ground that they exceeded the statutory limit specified above. It is the contention of the petitioner that out of the said quantity of 644 kilograms of edible oil nearly 200 kilograms were from his shop at Chembur which was temporarily stored at Ghatkopar on route to the said shop at Chembur. The petitioner also had in his possession the purchase bills in respect of the aforesaid quantity of oil which is shown to the raiding party. In spite of the aforesaid explanation, the said entire stock of 644 kilograms of oil seized by the police under a Panchanama. The petitioner was also arrested and subsequently charged with having committed offences under the aforesaid orders read with section 7 of the Essential Commodities Act.

4. By an order dated November 24, 1981 the first respondent, the Deputy Controller of Rationing, ordered the said entire quantity of 644 kilograms to be confiscated to the Government. Under section 6-C(1) of the Essential Commodities Act an appeal against an order of confiscation passed under section 6-A of the said Act lies to a judicial authority appointed by the State Government

concerned, in this case the State of Maharashtra. The judicial authority whom the State of Maharashtra has appointed for the purposes of the said section 6-C is the Principal Judge of the Bombay City Civil Court. The period of limitation prescribed by the said section 6-C for filing an appeal is one month from the date of the communication to the petitioner of the said order.

5. There is no dispute that the said appeal was filed two days after the expiry of the said period of limitation. There is equally no dispute that the provisions of section 5 of the [Limitation Act, 1963](#), not having been expressly excluded, apply by reason of section 29(2) of the Act. The learned Principal Judge, however, came to the conclusion that the petitioner had not satisfactorily explained the said delay of two days and there was, therefore, no sufficient cause made out by him for condoning the delay, and he accordingly dismissed the petitioner's appeal as being time-barred. In passing this order the learned Principal Judge appears to have overlooked a very salient fact which we will presently mention, which, in our opinion, has resulted in gross injustice to the petitioner.

6. On January 8, 1982 the said Inspector of Police who had launched the said prosecution applied to the Metropolitan Magistrate, 25th Court, Mazgaon, Bombay before whom the said criminal case was pending, for discharging the petitioner and cancelling his bail bond on the ground that further inquiries had revealed that the contentions of the petitioner were true and, therefore, there was no sufficient evidence against the petitioner to prosecute him on the charges which had been levelled against him. This application was granted by the learned Magistrate and the petitioner was discharged. It is, therefore, apparent that the petitioner had not committed any offence in respect of the goods which had been seized, but nonetheless the said goods remained confiscated to the Government. The learned Principal Judge should have borne this fact in mind and, instead of taking a highly technical view of the matter, ought to have condoned the delay and done justice to the party who had come to him asking for it. The very fact that the criminal prosecution had to be withdrawn showed that the petitioner had been wrongly charged and his goods wrongly confiscated. These facts alone ought to have constituted a sufficient cause for condoning the delay.

7. In the result, we make the rule absolute and set aside the impugned order of the learned Principal Judge of the Bombay City Civil Court, condone the delay in filing the said Miscellaneous Appeal No. 6 of 1982 and direct the Principal Judge to dispose of the said appeal within a period of two weeks from the date of the communication of our order to him in the light of the observations made by us in this judgment. We must add that Mr. Agarwal learned Assistant Government Pleader, who appeared on behalf of the respondents, has taken an extremely fair attitude in this case, and in appreciation thereof we make no order as to costs of this petition.

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