

**S. Kariappa Vs. State of Mysore**

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**Court :** Karnataka

**Decided On :** Jun-19-1970

**Reported in :** AIR1971Kant7; AIR1971Mys7; 1971CriLJ72; (1970)2MysLJ141

**Judge :** Ahmed Ali Khan, J.

**Acts :** [Essential Commodities Act, 1955](#) - Sections 3(2), 3(4) and 7; Mysore Food Grains (Wholesale) Dealers Licensing Order, 1964

**Appeal No. :** Criminal Revn. Petn. No. 32 of 1970

**Appellant :** S. Kariappa

**Respondent :** State of Mysore

**Advocate for Def. :** A.K. Laxmeshwar, Adv. for ;State Public Prosecutor

**Advocate for Pet/Ap. :** B.P. Karunakar, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**Ahmed Ali Khan, J.**

1. This revision petition is preferred against the decision of the Munsiff-Magistrate Hunsur in C. C. No. 450 of 1969. In that case, the petitioner was prosecuted on

two counts, (1) for the offence punishable under Section 7 of the Essential Commodities Act which will hereinafter be referred to as the Act, for the contravention of the provision of Clause 3 of the Mysore Food Grains (Declaration of Stocks) Order 1967; (2) that he had committed an offence under Section 7 of the Act for the contravention of the Clause 8 of the Mysore Food Grains (Wholesale) Dealers Licensing Order, 1964, which will hereinafter be referred to as the Order. The trying Magistrate acquitted the petitioner for the offence under the first count holding him not guilty but he held him guilty for the offence under the second count and convicted and sentenced the petitioner under that count to pay a fine of Rs. 1000 or in default, to undergo simple imprisonment for three months. It is against the order of conviction and sentence passed by the learned Magistrate under the second charge the petitioner has preferred this revision petition in this Court.

2. The facts briefly stated are: That the petitioner was charge-sheeted by the police of Periyapatna on the allegations that the accused-petitioner has violated the provisions of Clause 3 of the Mysore Food Grains (Declaration of Stocks) Order, 1967 and also the provisions of Clauses 3 and 8 of the Mysore Food Grains (Wholesale) Dealers Licensing Order, 1964 and thereby committed an offence punishable under Section 7 of the Act. It was stated that on 6-6-1969 at about 9.30 a.m. when the Sub-Inspector of Police, CID Bangalore and the Deputy Superintendent of Police, C. I. D. Bangalore went to the rice mill of the accused-petitioner situated at Kittor village, Periyapatna taluk, along with the Panchas and others and inspected the stock of foodgrains in the said rice mill, they found 2803 quintals of paddy and 119 quintals of rice in possession of the accused petitioner, in his rice mill. The foodgrains were seized under a mahazar along with the stock registers and other documents. It was alleged by the prosecution that the accused petitioner had not given any declaration in respect of the stock held by him under the Law (the subject-matter of the first charge). It was further alleged by the prosecution that the accused had not submitted fortnightly return in form No. 'C' as required by the provision of Clause 8 of the order.

3. As mentioned above, the accused has been acquitted of the offence under the first charge and this revision petition has been preferred only against the order of

conviction and sentence passed by the trying Magistrate which is the subject-matter of the second charge. Therefore, in this revision petition, we are concerned only with the order of the conviction and sentence passed by the trying Magistrate.

4. On the evidence led on behalf of the prosecution in the case, the trial Court found that it is established by the prosecution that the accused failed to submit fortnightly return in form 'C' within the period prescribed in condition No. 4 of the licence and thereby he has committed an offence punishable under Section 7 of the Act for contravening the provisions of Clauses 3 and 8 of the Order. The conclusion arrived at by the Court below, on the evidence was not disputed before me. The learned Counsel for the petitioner has however advanced two contentions. Firstly, he submitted that an opportunity of being heard was not afforded to the petitioner. His second contention was that the conditions of the licence granted to the accused (Ext P-2) are neither an Order nor part of an Order and therefore an (there is no ?) infringement of the Order.

5. With regard to the first contention, the learned Counsel for the petitioner relies upon the proviso to Clause 8 of the Order which reads -- 'provided that no order shall be made under this clause unless the licensee has been given a reasonable opportunity of being heard' and argues that inasmuch as the Court below had not given an opportunity of being heard to the petitioner, the Order under revision is liable to be quashed. I am not inclined to accept the contention of the learned counsel. So far as I could see, the petitioner had made no grievance before the lower Court. He was represented by a Counsel and contested the case. In these circumstances, it cannot be said that no proper opportunity had been afforded to the petitioner and there had been failure of natural justice in the proceeding conducted against him in the trial Court. Therefore it is to be held that the first contention is unsustainable.

The second contention advanced on behalf of the petitioner is that the conditions of the licence are not part of the order. Therefore, the contravention of the said conditions would not amount to contravention of the provision of the order. In other words, the contention of the learned Counsel for the petitioner is that the violation of the condition of the licence does not amount to any violation of the order made

under Section 3 of the Act.

Ex. P-2 is the licence granted to the accused-petitioner under the Order. It was valid upto 31-12-1969. The conditions governing Exhibit P-2 are contained in Form B of Schedule II of the Order. Condition No. 4 of the licence which is also incorporated in Form B of Schedule II of the Order lays down that the licensees must submit returns in form (C) of Schedule II of the order once in a fortnight so as to reach the licensing authority within 3 days after the close of the fortnight. It also specifies that the fortnight shall be reckoned from the first to the fifteenth of calendar month, and from the 16th to the end of the month. The prosecution alleged that the accused petitioner has contravened this condition. The trial Court on the evidence held that it is proved that the petitioner has contravened condition No. 4 of the licence and consequently infringed the order made under Section 3(2)(h) of the Essential Commodities Act which is punishable under Section 7 of the said Act. It was further of the view that the condition of the licence was part of the Order.

Section 3 of the Act relates to power to control production, supply, distribution etc., of essential commodities. It provides:

'(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein.

'(2) Without prejudice to the generality of the powers conferred by Sub-section (1), an order made thereunder may provide -

\*\*\* (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters.' (The other portion of the sub-section is not relevant for our purpose.)

Section 5 of the Act, reads:

'5. Delegation of powers. -- The Central Government may by notified order, direct that the power to make orders under Section 3 shall, in relation to such matters and subject to such conditions if any, as may be specified in the direction, be exercisable also by (a) such officer or authority subordinate to the Central Government or (b) such State Government or such officer or authority subordinate to a State Government as may be specified in the direction.'

Section 7 of the Act, which is the penal Section, provides:

'7. Penalties.-- (1) If any person contravenes, whether knowingly, intentionally or otherwise, any order made under Section 3,

(a) he shall be punishable -

(i) in the case of any order made with reference to clause (h) or clause (i) of subsection (2) of that section with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which may extend to five years and shall also be liable to fine; (The remaining portion of the Section is not relevant for our purpose).

The Preamble to the Mysore Foodgrains (Wholesale) Dealers Licensing Order, 1964 reads:

'S. O. 1152.-- In exercise of the powers conferred by Section 3 of the [Essential Commodities Act, 1955](#) (10 of 1955) read with notification of the Government of India in the Ministry of Food and Agriculture (Department of Food) Published under G. S. R. 888 - dated the 28th June, 1961, in the Gazette of India (Part II, Section 3, Sub-section (i) dated 8th July, 1961), and with the prior concurrence of the Central Government, the Government of Mysore hereby makes the following order, namely:--'

Clause 3 of the said order which deals with the Licensing of Wholesale Dealers provides:

'No person shall carry on business as a wholesale dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.'

Clause 4 of the said order relates to the issue of licences. Sub-clause (2) of that clause provides:

'Every licence issued or renewed under this order shall be in Form 'B'.'

Clause 8 of the order deals with the contravention of conditions of license. It provides:

'No holder of a licence issued under this order or his agent or servant or any other person acting on his behalf shall contravene any of the terms or conditions of the licence and if any such holder or his agent or servant or any other person -- acting on his behalf contravenes any of the said terms or conditions, then, without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by order in writing of the licensing authority.'

(The remaining portion is not relevant for our purpose).

The terms and conditions of the licence are contained in Form B to Schedule II of the Mysore Foodgrains (Wholesale) Dealers Licensing Order, 1964.

It is seen from the above provisions of the Mysore Foodgrains (Wholesale) Dealers Licensing Order that it is promulgated by the State of Mysore in exercise of the powers conferred under Section 3 of the Essential Commodities Act. Section 3(2)(h) of the Act provides for the collection of any information or statistics with a view to regulating or prohibiting any of the aforesaid matters. It is also clear that the form in which licence has to be granted is contained in Form B of Schedule II of the Order. All the conditions of the licence are incorporated in Form B of Schedule II itself. The Licensing Authority is not empowered to impose any additional conditions. Clause 4 (2) of the Licensing Order directs that every licence issued or renewed under that order shall be in Form 'B'. The effect of this sub-clause is that the conditions of licence prescribed in Form 'B' to Schedule II become part of the order. Thus the terms and conditions contained in the licence

which are enumerated in Form 'B' to Schedule II, cannot be construed to be conditions separate from the order itself. The resultant position is that any infringement of the term or condition of the licence would amount to an infringement of the Order itself, the conditions incorporated in Form 'B' of Schedule II of the Order being part of the Licensing Order of 1964. Hence condition No. 4 of the Licence (Ex. P-2) is a part of the Order itself and infringement of that condition amounts to an infringement of the Order of 1964. The relevant portion of Clause 8 is excerpted above. It is laid down in that clause that in case of any contravention of the terms or conditions by the licensee his licence may be cancelled or suspended by the licensing authority without prejudice to any other action that may be taken against him. The language of the clause clearly indicates that if a person contravenes any condition or term of the licence granted to him, the authorities concerned are not precluded from taking any other action under the law against him besides the cancellation of the licence.

It was, however, contended by the learned counsel for the petitioner that Section 7 of the Essential Commodities Act does not expressly penalise the contravention of the conditions or terms of the licence. He submitted that the contravention alleged in this case being contravention of a condition of the licence which is not made punishable under Section 7, no conviction could be passed against the petitioner. It is not possible to concede to his contention. Section 7 of the Act makes punishable the contravention of any order made under Section 3 of the Act. Condition 4 of the licence Ex. P-2 granted to the petitioner, as observed above, is part of the order made under Section 3 of the Act. That being so, any contravention of the above terms of the licence would be punishable under Section 7 of the Act. In these circumstances, the omission of reference to licence in the penal section viz., Section 7 of the Act, is of no consequence.

The learned Counsel for the petitioner relied upon two decisions of the Supreme Court in support of his contention that the terms and conditions of the licence cannot be construed to be part of the order and therefore infringement of the conditions and terms of the licence does not amount to infringement of the provision of the order. The first decision on which reliance was placed by the learned counsel was *East India Commercial Co. v. Collector of Customs*, :

1983(13)ELT1342(SC) . That was a civil appeal filed by the appellant company before the Supreme Court. The facts of that case were that the appellant company applied for the grant of a licence to import fluorescent tubes and fixtures from the United States of America. It was mentioned in the application that the goods were required for the company's own use as industrial raw material or accessories. The Licence was issued to the company subject to the condition that the goods were to be utilised only for consumption as raw material or accessories in the license holder's factory and that no portion thereof was to be sold to any party. On arrival of goods the company took delivery and cleared them on payment of customs duty.

On information alleged to have been received by the Chief Controller of Imports that the Company was selling the goods to various parties, the matter was investigated and the goods were seized under a search warrant. Later on the goods seized were, with the consent of the parties concerned, sold under an order of the High Court, and the sale proceeds were kept in the custody of the Court of the Presidency Magistrate. A Criminal prosecution launched against the director of the Company under Section 5 of the Imports and Exports (Control) Act, 1947, ended in the discharge of the accused and on revision against the order of discharge the High Court construed Section 5 of the Act of 1947 and held that said Section penalised only a contravention of an order made or deemed to have been made under the said Act, but did not penalise the contravention of the conditions of licence issued under the Act or issued under a statutory order made under the Act and dismissed the revision.

Thereafter pending the proceeding started by the Company for the return of the sale proceeds, the Collector of Customs, the respondent, started a proceeding purported to be under Sec, 167 (8) of the Sea Customs Act read with Section 3 (2) of the Imports and Exports (Control) Act, 1947, and called upon the appellant by notice to show cause within seven days from the date thereof why the said proceeds should not be confiscated and also why penal action should not be taken against the Company. It was stated in the said notice that the special licence was issued on the express condition that the goods covered by the said licence should be utilised for consumption as raw material or accessories in the factory of the

license holder and that no part thereof should be sold or permitted to be utilised by any other party, that as the appellant sold a portion of the goods imported under the said licence to others in breach of the said condition, the goods or the money substituted in its place were liable to be confiscated.

The appellant company filed an application in the High Court under Article 226 of the Constitution for the issue of an appropriate writ, including a writ in the nature of prohibition against the Collector of Customs from continuing with the proceedings initiated by him. This application was dismissed by the High Court solely on the ground that it was within the jurisdiction of the Collector of Customs to ascertain whether there had been a contravention of the relevant provisions of the Imports and Exports (Control) Act, 1947, as would entail an order of confiscation.

On appeal to the Supreme Court, it was held that the Collector (respondent) had no jurisdiction to initiate proceedings or make an enquiry under the said Section in respect of certain act alleged to have been done by the appellant and therefore the Collector (respondent) can certainly be prohibited from proceeding with the same and therefore the writ petition filed by the Appellant Company was maintainable. It was further observed by the Supreme Court that inasmuch as the notification dated 1st of July, 1943, did not impose a condition in the matter of issuing a licence under the specified rule, there was no infringement of the order under Section 8 of the Imports and Exports (Control) Act, 1947, but there was only violation of the condition of a licence granted under the order made in exercise of the powers conferred under Section 3 of the Act. With regard to the notification dated 6th of March, 1948, the Supreme Court observed that the said notification did not provide for a condition in the licence that subsequent to the import the goods should not be sold. It was also observed that condition (v) of Clause (a) only empowers the licensing authority to impose a condition from an administrative point of view. It was further observed that it cannot be suggested that the condition with which we are now concerned is a condition imposed from an administrative point of view, but it is a condition which affects the rights of parties.

It is clear that in the case before the Supreme Court, the order itself did not contain nor specify any conditions to be imposed in the licence. The conditions to be

imposed in the licence were left to the licensing authority under that order. In these circumstances, it was held that the condition imposed by the licensing authority prohibiting the sale of the imported article did not amount to contravention of the order made under Section 3 of the Imports and Exports (Control) Act, 1947 and consequently the provisions of Section 167 (8) of the Sea Customs Act could not be attracted as it cannot be said that there was a contravention of the order made under Section 3 of the Imports and Exports (Control) Act, 1947. In the instant case, as observed above, the terms and conditions of the licence are prescribed in Form No. 'B' of Schedule II of the order which has been referred to in Clause 4 (2) of the order and hence became a part of the Order itself. Therefore, the decision of the Supreme Court relied on by the Advocate for the petitioner is not of much assistance to him.

The next decision relied on by the Advocates for the petitioner was in *Bootha Linga Agencies v. V. T. C. Poriaswami Nadar*, : [1969]1SCR65 . In that case, the appellant who carried on business in the manufacture and sale of coffee powder was importing chicory for the purpose of his business under actual user's licence issued by the Government. The consignment of chicory which was a consignment of 495 cases arrived at Madras Port in December, 1955 and the cases were cleared by the appellant on December 20, 1955. The respondent in that case contended that the appellant had agreed to sell the consignment to him under Exhibit A-1 dated November 26, 1955 and certain amounts had been advanced by him to the appellant on November 26, 1955 and December 23, 1953. The legality of that agreement was challenged before the Supreme Court and it was contended by the appellant that the contravention of the terms of the licence issued under the notification dated March 6, 1948 was a contravention of the notification itself within the meaning of Section 5 of the Act XVIII of 1947. But their Lordships were unable to accept the arguments advanced, as correct. Their Lordships observed as follows:

'It is clear that Section 5 before its amendment only penalised the contravention of any order made or deemed to have been made under the Act. It is true that a licence was granted by virtue of a statutory notification dated March 6, 1948 issued under the Defence of India Rules and later deemed to have been issued

under Act XVIII of 1947. Notification No. 23N.ITC/43 dated July 1, 1943 merely provides that no goods shall be imported except the goods covered by special licences issued by an authorised officer. Notification No. 2-ITC/48 dated March 6, 1948 authorises the licensing officer to impose one or more conditions prescribed by that order and the licensing officer has therefore power to impose conditions in the licence issued by him, but if the licensee contravenes the conditions imposed by the licence it is difficult to hold that it is not merely a contravention of the conditions of a licence but there is contravention of the terms of the notification and so the provisions of Section 5 of the Act XVIII of 1947 are attracted. ....It follows therefore that on the material date of breach of the condition of a licence was not tantamount to a breach of the statutory order within the meaning of Section 5 of Act XVIII of 1947. The view that we have expressed is borne out by the decision of this Court in : 1983(13)ELT1342(SC) in which it was held by the majority judgment that an infringement of the condition of a licence was not equivalent to an infringement of the two orders dated July 1, 1943 and March 6, 1948 i.e., Nos. 23 NITC/43 and 2/ITC/48 made under the Imports and Exports (Control) Act, 1947 and therefore the provisions of Section 167 (8) of the Sea Customs Act were not attracted.'

Both the orders referred to in the decision viz., the orders dated 1-7-1943 and 6-3-1948 did not specify the terms and conditions to be imposed in the licence. Therefore, the decision relied upon is distinguishable from the instant case inasmuch as the terms and conditions of the licence were incorporated in Form No. 'B' itself which has a statutory effect.

Under Sections 3 and 4 (a) of the Imports and Exports (Control) Act, 1947, the Central Government made an order on 7th of December, 1955, which is called Imports (Control) Order, 1955. In the order dated 7th of December, 1955, which was made under Sections 3 and 4 (a) of the Imports and Exports (Control) Act, 1947, the conditions to be imposed in the licence granted were incorporated. The Supreme Court in its decision in : [1969]1SCR65 has observed, with regard to the said order in paragraph 9 of the judgment,--

'We pass on to consider the next contention put forward on behalf of the appellant, namely, that in any event the Imports (Control) Order, 1955 had come into force on December 7, 1955 and the performance of the contract became illegal after that date. It was pointed out that the goods arrived at the Madras Port on December 13, 1955 and were cleared on December 10, 1955. Reference was made to the conditions imposed in the licence, Ex. B-9 that 'the goods will be utilised only for consumption as raw material or accessories in the license holder's factory and that no portion thereof will be sold to any party.' It was contended that the appellant would be committing an offence under Section 5 of Act XVIII of 1947 if he sold the goods to the respondent in pursuance of the contract as the condition of the licence would be violated. In our opinion, the argument of the appellant is well founded and must be accepted as correct. It is manifest that the disposal of the imported chicory which arrived at Madras Port on December 13, 1955 was governed by the provisions of the Imports (Control) Order, 1955 which came into force on December 7, 1955. Clause 5 (4) of the 1955 Order expressly provides that the licensee shall comply with all the conditions imposed or deemed to be imposed under the clause. Therefore, the sale of the imported goods would be a direct contravention of Clause 5 (4) and under Section 5 of the Imports and Exports (Control) Act, 1947 any contravention of the Act or any order made or deemed to have been made under the Act is punishable with imprisonment upto one year or fine or both. In consequence, even though the contract was enforceable on November 26, 1955 when it was entered into, the performance of the contract became impossible or unlawful after December 7, 1955 and so the contract became void under Section 56 of the Indian Contract Act after the coming into force of the Imports (Control) Order, 1955.'

It is thus clear that as the order dated 7th of December, 1955, provided that the licensee shall comply with all the conditions imposed or deemed to be imposed under the clause mentioned therein, it was held that a contravention of the conditions of the licence was the contravention of Clause 5 (4) and punishable under Section 5 of the Imports and Exports (Control) Act, 1947. The principle enunciated was that contravention of the conditions of the licence if they are part of the order would amount to contravention of the order itself. In the present case, the conditions of the licence granted to the accused-petitioner are incorporated in

Form No. 'B' of Schedule II of the Order, which, as mentioned above, are part of the order by virtue of the provisions of Sub-clause (2) of Clause 4 of the Order. Therefore, contravention of the terms and conditions of the licence issued would amount to the contravention of the order itself as laid down by the Supreme Court in its decision referred to above. I think, the learned State Public Prosecutor is right in his contention that the said decision in effect goes in support of the State. Therefore, on the reasons stated above, the second contention advanced on behalf of the petitioner is not sustainable.

In the result, this revision petition fails and the same is dismissed.

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