

Ram Nath Vs. State

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Court : Allahabad

Decided On : Dec-11-1957

Reported in : AIR1958All368; 1958CriLJ595

Judge : S.N. Sahai and ;V.D. Bhargava, JJ.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 7; Uttar Pradesh Coal Control Order, 1953

Appeal No. : Criminal Revn. No. 1198 of 1955 connected with Criminal Revn. Nos. 1264, 1265, 1307 and 1310 of 1955

Appellant : Ram Nath

Respondent : State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : S.K. Verma, Adv.

Judgement :

V.D. Bhargava, J.

1. These are six applications in revision. They have been connected as similar question of law arises in all of them.

2. The applicants in all the revisions were dealers in coal. A raid was made on the shop of Ram Nath (applicant in Criminal Revision No. 1198 of 1955.) on 12-4-54 at about 11 a.m. or 12 noon by the Sub-Inspector of Police and Steam coal weighing three thousand maunds was recovered from his shop. Ram Nath is said to have had no licence to have steam coal and, therefore, he was prosecuted under Sub-clause (1) of clause 3 of the U. P. Coal Control Order, 1953 which prohibited stocking and sale of steam coal without a licence or permit. Similarly in criminal Revision No. 1264 of 1955 a raid was made on the 12th April 1954 at the shop of Bechan and he was found in possession of eighty maunds of coal and he was also prosecuted. In Criminal revision 1265 of 1955 the raid was made on the 12th April 1954 and about 200 maunds of coal was re-covered. In Criminal Revision NO. 1307 of 1955 the raid was made on 12-4-54 and about 3900 maunds of coal was recovered. In 1307 of 1954 the case is not complete and the application is for cancellation of the charge-sheet under section, 7 of the Essential Supplies (Temporary Powers) Act read with sub-clause (1) of clause 3 of the U. P. Coal Control Order. In Criminal Revision No. 1310 of 1955 the raid was made on 28th July 1954 and this case is also similar to the case of 1307 of 1955 where the trial has not yet been held and the application is for quashing of the proceedings. In Criminal Revision 770 of 1956 the raid was made on 17-2-54 and coal was recovered from the shop of the applicant. All these persons had no licence with them. Recovery of the coal in all the cases was admitted: But it was contended that it was cinder and not steam coal, that they had obtained the coal from licensed dealers and that they were not liable to being prosecuted under Clause 3 (1) of the U. P. Coal Control Order.

3. Barring Revision Nos. 1307 and 1310, in all the cases it has been found that the coal which was found in the possession of the applicants was steam coal and the applicants had no licence and the learned Magistrate convicted them and imposed fine on them and confiscated the coal.

4. The case came up before one of us and reliance was placed on Messrs. Dwarka Prasad Laxmi Narain v. State of U. P., 1954 SCR 803: (AIR 1954 SC 224) (A) where their Lordships of the Supreme Court held as follows:

'A law or order which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities must be held to be unreasonable. Under Clause 4 (3) of the Uttar Pradesh Coal Control Order, 1953, the licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he has to do is to record reasons for the action he takes. Not only so the power could be exercised by any person to whom the State Controller may choose to delegate the same, and the choice can be made in favour of any and every person. Such provisions cannot be held to be reasonable'.

And, therefore, they held that:

'The provisions of Clause 4 (3) of the U. P. Coal Control Order, 1953 must be held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by Clause (6) of the article'.

5. It was argued that in view of that decision the conviction was bad. As one of us felt doubt, the matter was referred to a Bench and has again come up before us. After the decision by the Supreme Court in the above case the U. P. Coal Control Order has been amended. The notification was published in the U. P. Gazette Extraordinary dated 12-3-54 and instead of Sub-clause (3) of Clause 4 of the original Order the following was substituted:

'4(3) The licencing authority may, if it is satisfied that it is expedient having regard to the supplies of coal and the interest of the general public or industry, refuse to grant a licence.

(4) The licencing authority may, for reasons to be recorded in writing, suspend, cancel revoke any licence or modify the terms thereof or refuse to renew a licence if he is satisfied that the licensee has contravened any provisions of this Order or the conditions of the licence or any direction or order issued thereunder,

(5) An appeal shall lie to the State Coal Controller within thirty days of the date of the final order passed under Sub-clause (4) suspending, cancelling or revoking any licence or modifying the terms thereof. The orders passed in appeal under this sub-clause shall, except as provided in Sub-clause (6), be final and conclusive.

(6) The State Government may call for records of any case decided under sub-clause (5) and pass such orders as may in the circumstances appear to be just and proper.'

6. The above amendment appears to have been necessitated on account of the decision of their Lordships of the Supreme Court. The language of Sub-clause (3) of clause 4 was too wide and had conferred arbitrary and uncontrolled power upon the executive. But now in the amended clause the Government has fixed limitations that when the licencing authority thought that it was in the interest of the general public or industry then it could refuse to grant a licence. Further, it has been mentioned that if the licence is cancelled or revoked or the authority refused to renew a licence it has to give reasons in writing, as is apparent from Sub-Clause (5) of the amendment. An appeal has also been provided to the State Coal Controller in the case of suspension, cancellation or revocation or modification. A further provision has been made that the State Government may also call for the record and pass any order.

7. With these restrictions as have been provided in the amended sub-clause (4) it cannot be said that now arbitrary or uncontrolled power has been left, which may be exercised by any person to whom the State Coal Controller may delegate his power. They are, in any event, subject to appeal and revision. In the circumstances we think that the authority of the Supreme Court will not be applicable except in the case of Criminal Revision No. 770 of 1956. There the recovery had been made before the coming into operation of the amendment. According to the decision of the Supreme Court, if the power to grant or cancel a licence were arbitrary and were held to be invalid, there would be no revision for granting of the licence and therefore, it was open to applicant Rauf to sell the coal without a licence. We therefore, allow Criminal Revision No. 770 of 1956 and set aside the conviction of Rauf and the sentence passed against him. The forfeited

coal shall be returned to the applicant.

8. So far as Criminal Revisions Nos. 1307 and 1310 of 1956 are concerned, they are dismissed. As in those cases there has been no trial yet, the records of those cases shall be sent back to the trial Court.

9. In the remaining three cases the recovery was made in the month of April and, therefore, after the Notification of the amendment there was again valid power in the State Government to grant licence and since the sale was being made without any permit we think the accused were guilty under Clause 3(1) of the U. P. Coal Control Order. But since the Notification had come only in the month of March and the coal had been seized just a few days thereafter, we think the applicants are entitled to a reduction in sentence, particularly in view of the fact that the coal has also been forfeited. We, therefore, partly allow the revisions as regards the sentence, and reduce the fine in revision No. 1198 of 1955 from Rs. 500/- to Rs. 50/- in default, to 15 days rigorous imprisonment; in 1264 of 1955 from Rs. 100/- to Rs. 10/-, in default, a week's rigorous imprisonment; and in 1265 of 1955 from Rs. 200/- to Rs. 20/-, in default to a week's rigorous imprisonment.

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