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Court : Madhya Pradesh

Decided On : Jan-19-1974

Reported in : 1974CriLJ1110; 1974MPLJ336

Judge : Shiv Dayal and ;Surajbhan, JJ.

Appellant : The State of Madhya Pradesh

Respondent : Chainkaran

Judgement :

Shiv Dayal, J.

1. This is an appeal against an order of acquittal.

2. The respondent was tried for contravention of the M. P. Commodities Price Display Order, 1971, issued under Rule 114 (2) of the Defence of India Rules, 1971.

3. The prosecution case against the accused was that on December 13, 1971, he had for sale in his shop baby food, milk powder, Amul Spray, Parag, Lactodex, etc., but he had not displayed the price list.

4. The accused accepted that he had not displayed the price list and pleaded guilty.

5. The learned trial Magistrate, however, acquitted the accused on the ground that the said Order had not received prior concurrence of the Central Government as required under Rule 114 (4) of the Defence of India Rules, 1971. The material portion of Rule 114 may be reproduced here:

General control of industry, etc.,

(1) xx xx xx

(2) If the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the Defence of India and Civil Defence, the efficient conduct of military operation or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of article or things and trade and commerce therein or for preventing any corrupt practice or abuse of authority in respect of any such matter.

(3) Without prejudice to the generality of the powers conferred by Sub-rule (2), an order made thereunder may provide for--

(a) Regulating by licences, permits or otherwise, the production, manufacture, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever;

X X X X X X

(4) Notwithstanding anything contained in Sub-rules (2) and (3), an order under these Sub-rules for regulating by licences, permits or otherwise by movement or transport of any foodstuffs, including edible oil seeds and edible oils or for controlling the prices or rates, at which any such foodstuffs may be bought or sold, shall not be made by the State Government except with the prior concurrence of the Central Government.

(Underlined by us).

6. The contention is that although power is given to the State Government under Sub-rules (2) and (3) to issue an order, such as the impugned order, yet, as required in Sub-rule (4), no order could be issued for controlling the prices except with the prior concurrence of the Central Government. The learned trial Magistrate has held that requirement to display conspicuously a price list was part of price control and was within the mischief of Sub-rule (4). Tt is true that the M. P. Commodities Price Display Order, 1971, (hereinafter referred to as the Order) was published without prior concurrence of the Central Government. The question is whether that Order falls within the purview of Rule 114 (4) of the Defence of India Rules, 1971.

7. Learned Counsel for the appellant State contends that the latter part of Sub-rule (4) relates to only those food-stuffs, the movement or transport of which is regulated under the first part of the Sub-rule. She lays emphasis on the word 'such' and urges that it necessarily refers to those food-stuffs for regulating the movement or transport of which an order is made. In our opinion, this argument cannot be accepted. The non obstante clause in Sub-rule (4) refers to two kinds of orders which may be made under Sub-rules (2) and (3) of Rule 114 of the Defence of India Rules: (1) An order for regulating (by licences, permits or otherwise) movement or transport of any food-stuffs, including edible oil seeds and edible oils; and (2) an order for controlling the prices or rates at which any such food-stuffs may be bought or sold. Both these orders are independent of each other. It is not as if the second part is subject to or controlled by the first part. The State Government may make a rule under the first part, without controlling the prices or rates under the second, vice versa, the State Government, may make a rule for controlling prices or rates, but may not regulate the movement or transport of the foodstuffs. Both being independent of each other, it cannot be said that the expression 'such food-stuffs' relates to those in respect of which an order has been made for regulating the movement or transport. The word 'such in the second part refers merely to the foodstuffs' described in the first part. It is merely demonstrative of the description of foodstuffs to avoid the necessity of repetition. Under the first part, the order which can be made is for regulating the movement or transport of any food-stuffs, including edible oil seeds and edible oils. Under the second part, an order may be made for controlling the prices or rates of any food-

stuffs, including edible oil seeds and edible oils. For the sake of economy of words, instead of repeating the whole expression 'any food-stuff including edible oil seeds and edible oils', the framers of the law aptly chose to substitute the expression 'such food-stuffs'. Therefore, we reject the argument and hold that on a true construction of the non obstante clause contained in Sub-rule (4) of Rule 114 of the Defence of India Rules, no order for controlling the prices or rates of any food-stuffs, including edible oil seeds and edible oils, can be made by the State Government, except with the prior concurrence of the Central Government.

8. However, we have to examine whether the M. P. Commodities Price Display Order, 1971, falls within the purview of the said Sub-rule (4). There is no question of regulating the movement or transport of any food-stuffs under that order. We have to see whether that Order is for 'controlling the prices or rates'. After defining 'commodity', 'dealer' and 'price' in Clause 2, it is provided in Clauses 3, 4 and 5 as follows:

3. Every dealer shall, in respect of any commodity display conspicuously a list of prices in Dev Nagri script in the form prescribed in the Second Schedule during the hours of business at a place as near to the entrance of his business as possible.

4. Every dealer shall, in respect of any commodity also display the price of each unit of the items of a commodity, either by getting it printed on the container or by affixing a rubber stamp or by sticking a label on it.

5. No dealer shall--

(a) sell to any person any commodity at a price higher than the price specified in respect of such commodity in the list of prices, or

(b) refuse to sell such commodity to any person at the price so displayed.

9. From these provisions, it is abundantly clear that the requirement of the law is that the dealer must display conspicuously a list of prices. The further requirement, which is contained precisely in Clause 5, is (1) that the dealer must not sell any commodity at a price higher than the price specified by him in the list of prices;

and. (2) the dealer cannot refuse to sell a commodity at the price so displayed. In other words, if any person offers the price, which is displayed in the price list, the dealer is bound to supply the commodity to him at such price. Thus, the obligations imposed by the said Order are only these two and no other. This can be illustrated thus: Dealer 'X' displays price of Til oil at Rs. 10/- per kg. Another dealer 'Y' at his shop, displays the price at Rs. 90/- per kg. of the same Til oil. Both of them are free to do so. Neither of them has infringed the aforesaid Order. But having so displayed in the price list, dealer 'X' is prohibited to refuse to sell the Til oil to a person, who offers Rs. 10/- per kg. nor can he sell one kg of Til oil at more than Rs. 10/-. On the other hand, dealer 'Y' can sell a kilogram of Til oil at any price upto Rs. 90/-, but not higher than that; nor can he refuse to supply a kilogram of Til oil to any person, who offers Rs. 90/- for it.

10. From the above illustration, it is abundantly clear that what is regulated is the 'supply'/ of the commodity, but prices or rates are not controlled. Sub-rule (2) of Rule 114 of the Defence of India Rules empowers the Central Government and also the State Government to make an order for securing an equitable distribution and availability of any article or thing at fair price and for that object, it may provide, inter alia, for regulating supply and distribution. Supply may be regulated in various ways. Controlling the prices or rates is one of such ways.

11. In our view (1) the expressions 'distribution', 'availability' and 'supply' within the meaning of Rule 114 (2) of the Defence of India Rules, 1971, are of wide connotation, to regulate which prices or rates may or may not be controlled. A law may be enacted to control availability of commodities without controlling their prices or rates. (2) A law which does not fix prices or rates, but merely requires a dealer to display or exhibit a price list so that the dealer is left free to sell his goods at any price he likes, is not one which regulates or controls prices or rates, but merely regulates availability of the commodity and is, therefore, not within the mischief of Rule 114 (4) of the Defence of India Rules. 1971.

12. We have demonstrated above that the M. P. Commodities Price Display Order, 1971, although it regulates 'supply', does not control 'prices' of any food-stuffs or commodity. It does not control prices or rates but aims at safeguarding availability

of commodities and prevention of hoarding.

13. We may mention that the M. P. Commodities (Exhibition of Prices and Price

Control) Order, 1973, not only provides for the price list to be exhibited (see Clause 3, which corresponds to Clause 3 of the Commodities Price Display Order, 1971), but also controls the prices (see Clause 4). Clauses 3, 4 and 5 may be reproduced here:--

3. Exhibition of Price List. -- (1) Every dealer shall exhibit at the entrance or some other prominent place of his business premises the price list of commodities held in stock by him for sale.

(2) The price list shall, --

(a) indicate separately the prices of different categories or varieties of commodities;

(b) bear the signature of the dealer; and

(c) be legibly written in Hindi language and Devnagri script.

(3) Every dealer shall prominently exhibit a separate list showing the stock of different categories or varieties of commodities held by him at the end of the day preceding.

4. Charging of prices. -- A dealer shall not charge in respect of a sale of any commodity a price in excess of that calculated, --

(a) at the price, if any, fixed by the Central Government or State Government, or

(b) when there is no controlled price as mentioned in Sub-clause (a) and when the rate in respect of sale by such dealers is fixed by the manufacturers or producers or their distributors at the rate so fixed;

(c) when there is no controlled price as mentioned in Sub-clause (a) and when the rate in respect of sale by such dealers is not fixed by the manufacturers or producers or their distributors as mentioned in Sub-clause. (b), at a price not exceeding a margin of 2% for the wholesale dealer and 4% for the retail dealer, which will cover all expenses incurred by the wholesale dealer or the retail dealer, but shall exclude taxes payable on the article or transaction.

5. Dealers not to withhold from sale. -- A dealer shall not withhold from sale any commodity ordinarily kept by him for sale.

14. A non obstante clause has to be strictly construed. The expression 'controlling the prices or rates' in Sub-rule (4), in the absence of any specific definition, must be given its natural dictionary meaning.

15. We, therefore, hold that the M. P. Commodities Price Display Order, 1971, does not fall within the purview of Sub-rule (4) of Rule 114 of the Defence of India Rules, 19.71, and did not require prior concurrence of the Central Government. It is valid.

16. The accused pleaded guilty. He should be convicted on his plea of guilty.

17. The appeal is allowed. The order of acquittal is set aside. The respondent is held guilty of the offence punishable under Rule 114 (ii) of the Defence of India Rules, 1971, Tead with Clause 3 of the M. P. Commodities Price Display Order, 1971, and is sentenced to pay a fine of Rs. 200/-; in default, to suffer simple imprisonment for one month.