

**Rajasthan Traders Vs. State**

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**Court :** Madhya Pradesh

**Decided On :** Jan-21-2002

**Reported in :** 2002(3)MPHT123; 2002(2)MPLJ314

**Judge :** S.L. Kochar, J.

**Acts :** Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991; [Essential Commodities Act, 1955](#) - Sections 6A and 6B

**Appeal No. :** Criminal Revision No. 392/2001

**Appellant :** Rajasthan Traders

**Respondent :** State

**Advocate for Def. :** Girish Desai, Dy. Adv. General

**Advocate for Pet/Ap. :** Jaisingh, Sr. Adv. and ;Vivek Singh, Adv.

**Disposition :** Criminal revision dismissed

**Judgement :**

**S.L. Kochar, J.**

1. The applicant has filed this revision petition against the order passed by Sessions Judge, West Nimar, Mandleshwar in Criminal Appeal No. 330/2000

wherein the learned Judge affirmed the order passed by the Collector/Licensing Authority, District Khargone in case No. 13/2000 where the Collector found that contravention of Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (for short, 'the Order') under which license was granted and there was breach of Condition Nos. 2 and 3 and Clause 8 (i) of the said Order was committed by the applicant and ordered for confiscation of Rs. 50,000/- (Rupees Fifty thousand) out of price of wheat weighing 494.50 quintals worth Rs. 2,96,000/-.

2. The facts of the case in brief are that the Food Inspector inspected the premises of the applicant on 6th of June, 2000 and found that in the stock register dated 20-4-2001, 2 quintals wheat was mentioned in excess and the same was not rectified even upto the date of inspection. It was also found that 494,50 quintals of wheat was illegally stored in a godown other than the godown mentioned in his license. The Food Inspector, after completing the search, submitted memorandum before the Collector for taking action against the applicant for commission of breach of Provision of the Order and the Collector took cognizance and issued show-cause notice under Section 6B of the [Essential Commodities Act, 1955](#) (for short, 'the Act') on 16-6-2000.

3. The applicant has submitted his written reply alongwith the document. According to him, 494.50 quintals of wheat was purchased on 5th June, 2000 in the premises of Krishi Upaj Mandi Samiti and the same was lying in the open ground but because of apprehension of rains, the same was stored with due permission obtained by the Secretary of the Krishi Upaj Mandi Samiti, Bhikangaon. Alongwith the reply, the applicant has also filed the application dated 5-2-2000 addressed to the Secretary, Krishi Upaj Mandi Samiti seeking permission for storing the wheat in the godown No. 1 of Mandi Samiti temporarily so as to save the wheat from the apprehension of rains. Accordingly the permission was granted by the Secretary of the Mandi Samiti. He has also submitted that on 20-4-2000 actual stock of the wheat was 1476.83 quintals but because of calculation mistake, there was difference of 2 quintals and the same was continued till 6-5-2000 when the premises was inspected by the Food Inspector. The applicant, further submitted in its reply that as per the licence conditions, licensee was required to

inform the Licensing Authority within 48 hours regarding change of place of storage of commodity at different place than the place specified in the license but before expiry of 48 hours his premises was inspected by the Food Inspector and he could not furnish the information about the same. The applicant had submitted that he applied for the storage of 494.50 quintals wheat in godown No. 1 of the Krishi Upaj Mandi Samiti, he had not committed any breach.

4. The Collector after giving full opportunity of hearing to the applicant passed the order on 23-10-2000 holding that the applicant's reply was not satisfactory about breach of conditions of licence regarding difference of 2 quintals in the stock register and actual stock found in the godown and regarding storage of 494.50 quintals of wheat in different godown than the godown specified in the licence. The Collector has also held that if the said wheat had been purchased on 5-6-2000 then how in the stock register dated 5-6-2000 the purchase of 11.46 quintals of wheat was shown. This difference clearly indicates that the applicant purchased wheat prior to 5-6-2000 and stored in the separate unauthorized godown, which has not been specified in Licence No. 271/91 and also did not furnish information within stipulated period of 48 hours as mentioned in the licence. The Collector observed breach of Clauses 4 (2) and 8 (i) of the Order and Conditions 2-B and 3 of the licence and ordered for confiscation of Rs. 50,000/- (Rupees Fifty thousand) out of the price of 494.50 quintals of wheat worth Rs. 2,96,000/- as indicated above. Against this order the applicant went up in appeal and the same has been dismissed. The Appellate Court has discussed the issue in detail.

5. I have heard Counsel for the parties and perused the record.

6. Contention of the Counsel for the applicant is that he purchased 494.50 quintals of wheat on 5-6-2000 is tallying with the original stock register which has been seized and filed before the Collector.

7. This Court has gone through the original stock register and in column of purchase dated 5-6-2000, purchase is shown to be 11.46 quintals that belies the explanation of the applicant that he had purchased 494.50 quintals of wheat on 5-6-2000 in the Mandi Samiti premises and stored the same in godown No. 1 just to save from rains.

8. Apart from this stock register, the applicant has not filed any document showing the purchase of wheat on 5-6-2000.

9. Because of the aforesaid apparent illegality committed by the applicant, explanation for keeping the said wheat in godown No. 1 on 5-6-2000 with the permission of the Secretary of the Krishi Upaj Mandi Samiti is of no avail. The two Courts have examined the matter on facts as well as on law thoroughly and found the applicant guilty for commission of breach of licence condition for which the Collector is authorized to take action under Section 6A of the Act for confiscation. Counsel for the applicant relying on a decision reported in 1983 MPWN 176 (Ganpat Ram Gulab Chand v. State of M.P.) contended that there was no mens rea on the part of the applicant, hence, order of confiscation of Rs. 50,000/- (Rupees Fifty thousand) is bad in law.

10. Against the aforesaid decision learned Dy. A.G. appearing for the State placed reliance on the judgment reported in (1990) 3 SCC 549 (Shambhu Dayal Agarwala v. State of West Bengal and Anr.), wherein the Supreme Court has held that--

'The words 'may order confiscation' in Section 6A convey that the power of confiscation is discretionary and not obligatory. Confiscation of the essential commodity etc. is not in lieu of punishment but can be in addition to the penal consequences.'

Therefore, the Dy. A.G. relying on the aforesaid judgment has submitted that mens rea is not essential element for confiscation of commodities.

11. I have gone through the judgments and found that the facts are altogether different than the facts of the present case. In the case of Ganpat Ram (supra) there was a finding given by the Appellate Court that--

'On consideration of the documents produced in the case that the alleged contravention of Condition No. 2 of the licence by the appellant in pledging 120 bags of wheat with the Govt. ware-house without taking steps to have said place entered into his license as place for storage of food-grains was not intentional in as much as the stock register and other books maintained by the appellant said

fact was duly disclosed.'

11. In the present case, the applicant has not disclosed correct fact of purchase of wheat in the stock register and also not mentioned that the said quantity of wheat was kept at godown No. 1 of the Krishi Upaj Mandi Samiti after obtaining permission from the Secretary, therefore, the aforesaid decision is not helpful on facts as well in the circumstances of the case. Both the Courts below have rightly held the applicant guilty for committing breach of Clause 8 (1) of the order and Condition Nos. 2 and 3 of the licence. Therefore, this revision requires no interference in revisional jurisdiction of this Court. I find no illegality, irregularity or perversity in the order of the Court below, therefore, this revision has no merits. It is, accordingly dismissed.

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