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Court : Jharkhand

Decided On : Aug-28-2001

Reported in : 2001(49)BLJR1974

Judge : S.J. Mukhopadhaya, J.

Acts : Essential Commodities Act, 1955 - Sections 6-A, 6-C(2) and 7; Bihar Finance Act - Sections 33(5); Indian Penal Code (IPC), 1860 - Sections 120B, 379, 406 and 461

Appeal No. : CWJC No. 1403 of 2000(R)

Appellant : Anil Kumar

Respondent : State of Bihar and ors.

Advocate for Def. : B. Poddar, A.A.G. and; Deepak Kumar, JC to AAG

Advocate for Pet/Ap. : P.K. Sinha, Sr. Adv. and; S.L. Agarwal, Adv.

Disposition : Writ disposed of

Judgement :
ORDER

S.J. Mukhopadhaya, J.

1. This application has been preferred by the petitioner to direct the respondents to return the goods, as were seized by respondents No. 3 to 5 in connection with Barhi P.S. Case No. 117 of 1997, dated 3rd October, 1997, with interest under Section 6-C(2) of the Essential Commodities Act ('E.C. Act', in short).

2. The brief facts of the case are that the petitioner was carrying on business in the name and style of Satyam Enterprises at Barhi in the district of Hazaribagh. He was holding valid wholesale Licence No. 10/96 to deal in edible oil, sugar and foodgrains. The respondents made an inspection on 3rd October, 1997 in the shop premises of the petitioner in presence of sub- Divisional Officer, Executive Magistrate, Commercial Taxes Officer, Block Supply Officer, Supply Inspector and other officials of Supply Department. During Inspection several articles were seized on the ground that the petitioner was indulged tax evasion of Bazar Samiti, black-marketing and hoarding, punishable under Section 7 of the Essential Commodities Act and accordingly, one first Information Report was lodged, registered as Barhi P.S. Case No. 117 of 1997, under Section 7 of the E.C. Act, read with Section 33(5) of the Bihar Finance Act and Section 120B of the Indian Penal Code.

3. The seizure list was prepared on the very date by respondents No. 3 to 5 of which a copy has been enclosed as Annexure I.

4. The petitioner at that stage moved before this Court in Cr WJC No. 166 of 1997(R), wherein a bench of this Court vide order dated 23rd October, 1997 directed to release the articles, except sugar and edible oil, including Vanaspati. The petitioner while filed show cause before the authorities on 24th October, 1997, the Deputy Commissioner vide order dated 20th November, 1997 confiscated the goods under Section 6A of the Essential Commodities Act and directed the Sub-Divisional Officer to sell the same within a week and to deposit the sale proceeds in the treasury. In pursuance of the aforesaid direction of the Deputy Commissioner, the Local Administration tried to sell the goods, stated to be in the lesser price than the prevailing market, for which the petitioner had to move this Court in CWJC No. 3543 of 1997(R) which was disposed of an 18th February, 1998 on the assurance of the Government Advocate that the goods shall be sold

at the market price through fair price shop.

5. Confiscation Appeal No. 38 of 1997 was preferred by the petitioner before the Secretary, Food & Civil Supplies. Government of Bihar, Patna, who dismissed the appeal on 5th January, 1999.

6. In the meantime, some of the seized goods of petitioner were stolen away for which the respondents lodged first information report, registered as Barhi P.S. Case No. 91 of 1998, under Sections 461/379/406 of the Indian Penal Code against Chowkidar. In the meantime, inspite of the court's order, as the petitioner alleged that some of the articles were sold at a lesser price than the market price, he preferred another writ petition before this Court in CWJC No. 1628 of 1998(R), wherein this Court vide order dated 1st July, 1998 directed the Deputy Commissioner, Hazaribagh, to dispose of the representation of the petitioner by a speaking order, after making thorough enquiry regarding market price of the articles sold, giving opportunity to the petitioner. It was further directed that if one or other article has not yet been disposed of, the Deputy Commissioner shall ensure that the same are sold in terms with the undertaking, given before this Court. The order was communicated to the Deputy Commissioner.Later on from the letter, written by the Sub-Divisional Officer, Barhi, bearing No. 565 dated 30th October, 1998 forwarded to the Deputy Commissioner, Hazaribagh, the petitioner could come to know that the Sub-Divisional Officer, Barhi has given ground for non-compliance of the High Court's order that Anil Kumar, petitioner and his family members were evading arrest for selling articles.

7. According to the petitioner, the materials seized by the authorities were taken in their custody and theft took place while it remained in the custody of the respondents. The first information report has been lodged against the Chowkidar and nothing has been alleged against the petitioner or his family members and, thus the question of evading arrest does not arise, but such colour was given by the Sub-Divisional Officer, Barhi to hide the misdeeds of the administration in selling the articles in a lower price and their incompetency in the matter of keeping the seized articles in the safe custody. It is stated that the petitioner was paid a sum of Rs. 24,35,520/- as to the price sold by the respondents and further a sum

of Rs. 33,000/- was refunded to the petitioner, details of which had not been given. But a number of seized articles have neither been returned nor any amount on selling of such articles have been returned to the petitioner. The details of articles seized, the articles sold and the articles which fell short because of theft of some seized articles have been mentioned at paragraph Nos. 20, 21, 22 and 23 of the writ petition, which reads as follows :--

'20. That the petitioner states that petitioner's following articles were seized as it will apparent from Annexure 1, i.e. seizure list.

1. Mustard oil--3902 Tins

2. Vanaspati--2303 Tins

3. Vanaspati cartoons--220 cartoons

4. Refined oil Postman--290 tins

5. Sugar--140 bags

6. Coconut oil--13 cartoons

21. That the petitioner states that it will transpire from Annexure 6 that following articles were sold :

1. Vanaspati (Dalda)--1039 Tins

2. Mustard oil--2700 Tins

3. Refined Postman--206 tins

4. Vanaspati Dalda Pouch--105 cartoons

5. Sugar--148 bags

22. That the petitioner states that following articles were short :

1. Vanaspati --1264 Tins. The Value of which is Rs. 6,95,200/-.

2. Mustard oil--1191 Tins. The Value of which is Rs. 6,43,140/-.

3. Refined Postman--84 tins. The Value of which is Rs. 54,600/-.

4. Vanaspati cartoon--115 cartoons. The Value of which is Rs. 51,350.

The price of coconut oil has not been mentioned for 13 cartoons. The total value of the short goods was Rs. 14,56,190/-.

23. That the petitioner states that if any enquiry is made in respect of the prevailing market rate at that time Vanaspati per tin was Rs. 750/-. The price of Mustard oil at that time was Rs. 800/-per tin. The price of refined postman was Rs. 1,010/- per tin. The price of Dalda pouch was Rs. 750/- per cartoon.'

8. The respondents while taken plea that the claim for difference of amount on the basis of lesser sale price, has become infructuous in view of earlier order passed in CWJC No. 414 of 1999(R), have accepted that some of the seized materials were stolen away. It is stated that the difference in the amount is due to theft, committed by Mr. Vishwanath Prasad and his family, brother-in-law of the petitioner, who is stated to be the real owner of the business, However, such statement made at paragraph No. 5, page 4 of the counter affidavit, is not based on record and the said paragraph No. 5 has been stated to be true to the information of the officer, who has sworn the affidavit without referring the relevant records.

9. It is not in dispute that the respondents seized the goods of the petitioner Anil Kumar and it was in their custody, when the theft took place. In the aforesaid background and in view of earlier direction of the Court, the respondents cannot deny return of the seized materials or refund of the amount equivalent to the theft seized materials. Similar matter fell for consideration before the Supreme Court in the case of N. Nagendra Rao & Company v. State of Andhra Pradesh, AIR 1994 SC 2663, wherein, taking into consideration the provisions of Section 6-C(2) of the Essential Commodities Act, the Court held as follows :--

This provision cuts across the argument of the State that where even part is confiscated the person whose goods are seized is not liable to the compensated for the remaining. The section is clear that if only part of the goods are confiscated then the remaining has to be returned. The very first part of the Sub-section indicates that where the order of confiscation is modified in appeal meaning thereby if confiscation is confined to part only the Government is bound to release or return the remaining or pay the value thereof. But what is more significant of this subsection which sides its reach is the expression, 'and in either case it is not possible for any reason to return the essential commodity seized' then the State shall be liable to pay the market price of the value with interest. The expression, 'for any reason' should be understood in broader and larger sense as it appears from the context in which it has been used. The inability to return, giving rise to the statutory obligation of deeming it as sale to the Government may arise for variety of reasons and extends to any failure on the part of the Government. For instance, the goods might have been sold in pursuance of interim arrangement under Section 6-A(2), or it might have been lost or stolen from the place of storage. The goods might have been deteriorated or rusted in quality or quantity. The liability to return the goods seized does not stand discharged by offering them in whatever condition it was confiscation of part of the goods thus could not affect the right of owner to claim return of the remaining goods. Nor the owner is bound to accept the goods in whatever condition they are. The claim of the respondent, therefore, that the appellant was bound to accept the goods in whatever condition they were is liable to be rejected.'

10. In the case of Northern Plastics Ltd. v. Collector of Customs & Central Excise, reported in (2000) 1 SCC 545, the Supreme Court held that the value of the goods as on the date or time when the goods ought to have been cleared or to be returned, an interest was also allowed in favour of the appellant of the said case.

11. In the present case, the respondents have not denied the statement, made in paragraph No. 22 of the writ petition, wherein, shortage of seized articles have been shown by the petitioner of which the total amount has not been returned. The respondents in their counter affidavit have also given the chart of the confiscated and stolen goods and the goods, which were damaged at paragraph No. 19 of the said affidavit.

12. In the aforesaid background, the respondents, being liable to return the goods seized, if any of it stood stolen away from the place of storage, are bound to refund the amount to be calculated at the market rate. Accordingly, they are directed to make it good in favour of the petitioner by return of goods or paying the market price thereof with interest at the rate of 8%, within two months from the date of receipt/production of a copy of this order.

13. With the aforesaid observations anddirections, the writ petition stands disposedof.

14. Writ disposed of.