

**Fakir Mohammad Vs. King**

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**SooperKanoon Citation :** [sooperkanoon.com/525025](http://sooperkanoon.com/525025)

**Court :** Orissa

**Decided On :** Sep-02-1949

**Reported in :** AIR1952Ori87

**Judge :** Ray, C.J.

**Acts :** Essential Supplies (Temporary Powers) Act, 1946 - Sections 3 and 4

**Appeal No. :** Criminal Revn. No. 4 of 1949

**Appellant :** Fakir Mohammad

**Respondent :** King

**Advocate for Def. :** Government Adv.

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

**Judgement :**

Ray, C.J.

1. This arises out of a rule issued against an order of conviction passed by the Sub-Divisional Magistrate, Ghumusur Division and confirmed by the learned Sessions Judge of Ganjam. The conviction is under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946 (Act No. XXIV (24) of 1946), for purported contravention of an order purporting to have been passed under Section 3 of the Act by the Sub Divisional Magistrate of Ghumsur Division. (I do not like to

discriminate between Sub Divisional Magistrate and Sub-Divisional Officer as both the terms are understood as meaning the same officer.) The order was to the effect that the petitioner should supply a certain quantity of paddy at certain price. The petitioner's defence was that he had not the requisite stock with him. In this respect, the finding is against him. The finding has, no doubt, been arrived at in the most queer manner. It has been said he possesses so many acres of lands and each acre must have or might have produced paddy at such and such rate, and his family expenses, being a family consisting of six members, must not exceed certain quantity or extent, and according to mathematical calculation, the balance must be the stock. If the finding rested on this basis, I should never accept it. What the prosecution, in such cases has to prove is the existence, real as distinguished from notional, of the stock required of him and that exclusive of his own necessities. Otherwise, execution of such a law would amount to confiscation of private property. That is never the intention of the law. But, In this particular case, it appears that the petitioner had agreed to supply 400 maunds of paddy. Out of that he had supplied certain quantity and did not supply the rest. No doubt, this amount is not fully 200 maunds but approximately so. Therefore, so far as the factual portion of the judgment is concerned, I cannot disagree with it; but there is a legal difficulty which to me appears unsur-mountable in the way of upholding the conviction. I am fully alive to the situation that the consequences of this decision might, for the time being, be unfortunate but this is no consideration worth while for a Court of law to come to a decision not sanctioned by law.

2. An order of which contravention can attract penalty must be a legally good order under Section 3 of the Act. Section 3 empowers the Central Government to provide, by notified order, for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. Within the ambits of the general power is included the power of requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such price and to such persons or class of persons or in such circumstances, as may be specified in the order. This power, however, under Section 4 of the Act, may be delegated to certain authorities named and specified therein. Section 4 reads:

'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 Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.'

The requirements of the section are that in case the Central Government decide to delegate their power under Section 3 of the Act they can delegate it to the authorities or persons named therein and that by a direction contained in or conveyed through order. The notified order should specifically mention not only the matters in relation to which the power of making an order should be exercised but also the conditions subject to which they will be exercised and besides the direction by notified order shall specify the person by whom the power is to be exercised. Such persons have been defined in Clauses (a) and (b) of the section. Clause (a) mentions 'such officer or authority subordinate to the Central Government'. I shall pause here for a moment to consider the intent and the signification of specifying the officer and authority mentioned in Clause (a). The Central Government having the power to make an order could not be deemed to have no power to get that order executed. Any authority being vested with a power is, by necessary implication, given the power to execute it. Without delegation, the Central Government could have its power executed by such officer or such authority subordinate to it. It is apparent, therefore, that the Legislature discriminates between execution of an order validly made by an appropriate authority and the making of an order. That the Central Govt. has to delegate its power of making an order under Section 3 by a notified order to officer or authority subordinate to it makes it quite plain to me that such power can never be exercised by any body without a delegation effected in the manner contemplated in the section.

3. Next we come to Clause (b). I shall quote the section over again omitting Clause (a) and omitting such other parts of it as are not material for the purpose in hand. The section will read :

'The Central Government may by 'notified order' direct that the power to make orders under Section 3 shall be exercisable 'also' by such Provincial Government or such officer or authority subordinate to a Provincial Government as may be specified in the direction.'

The words 'as may be specified in the direction' must be common to both the Clauses (a) and (b) and should govern officer or authority subordinate to the Central Government and such Provincial Govt. or such officer or authority subordinate to Provincial Govt. The purport of the section, therefore, is that in order to enable any officer or authority subordinate to a Provincial Government to make an order under Section 3 requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order, he either by name or by designation of his office, probably by the latter means most likely, must have been specified in the direction. 'The direction' means 'direction by notified order by the Central Government'. As a question of fact, it is conceded that the Central Government has not by any notified order directed that the power to make orders under Section 3 shall be exercisable by a Sub-Divisional Officer or any other authority subordinate to a Provincial Government. The order, therefore, does not profess to derive its sanction or validity from a direction of the Central Government.

4. In consideration of the arguments advanced by the learned Government Advocate, it has to be examined whether we can look to any other source for the validity of such an order which otherwise means another source of power to such an officer. Mr. Dube has invited my attention to Section 5 of the Act which reads :

'The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any order made under Section 3.'

5. He argues that the Central Government may give directions to a Provincial Government to carry into execution in the Province of any order made under Section 3. I could not exactly follow him. The present order can be justified by reading 'to be an order by way of execution of either the Central Government's or Provincial Government's Order'. That Section 5 has absolutely no reference to an

execution of an order by the Provincial Government, I have no doubt in my mind to hold. The object of the section is that execution of the Central Government's order may in numerous cases be with much greater facility carried out through the Provincial Government on account of the person required being resident of the Province or the essential commodity lying there or for another similar reason. When the Provincial Government executes an order under direction of the Central Government within the meaning of Section 5, it need not have the power to make an order under Section 3. The order derives its force from the Central Government and the Provincial Government as an agent of the Central Government puts the order into execution. In my judgment, therefore, Section 5 has absolutely no relevance to the question at issue. This contention could have been advanced with force and cogency if the Provincial Government had issued an order under Section 3 requiring the petitioner to supply some stocks and the Sub-Divisional Officer by way of carrying that out had asked him to do so. But this is not the fact here. The learned Government Advocate has placed before me the direction of the Central Government by a notified order which reads (Govt. of India-Dept. of Food No, PY 603 (2) 1 dated 21-10-1946) :

'In exercise of the powers conferred by Section 4 of the Essential Supplies (Temporary Powers) Ordinance, 1946 (No. XVIII of 1946) the Central Government is pleased to direct that the powers conferred on it by Sub-section (1) of Section 3 of the said Ordinance to provide for the matters specified in Sub-section (2) thereof shall, in relation to foodstuffs, be exercisable also by any Provincial Government, subject to the conditions that

(a) before making any order relating to any matter specified in Clauses (a), (b), (c), (d), (f) and shall obtain the concurrence of the Central Government;

(b) no order made in the exercise of the aforesaid powers shall have effect so as to prohibit or restrict the export, from any place in the Province to any place outside India, of any articles or things.'

The only material portion that is of any assistance to us in this case may be carved out and quoted below. It is; the Central Government is pleased to direct that the power conferred on it by Sub-section (1) of Section 3 of the said Ordinance (at

present the Act) to provide for the matters specified in Sub-section (2) thereof shall in relation to foodstuffs be exercisable also by any Provincial Government subject to the conditions that before making any order relating to any matter specified in Clauses.....(f) of the said Sub-Section (2) shall obtain the concurrence of the Central Government.

6. This notification does not specify any officer or authority subordinate to the Provincial Government as being empowered to make an order under Section 3. We should, therefore, expect that such orders should be made by the Provincial Government in order to acquire validity. The learned Government Advocate has placed before me two documents, one is a telegram by the Secretary to the Government of Orissa, Supply and Transport Department, to the Food Department, New Delhi and its post confirmation copy, dated 9-1-1947 and the other, the concurrence of the Central Government communicated in its reply by telegram issued by the Food Department, New Delhi, and argues that, read together, these documents would make out the requirement for delegation, to the subordinate authorities or officers of the Orissa Government, of the power to make an order under Section 3. I cannot go so far as that, This is just the fulfilment of the conditions required in Clause (a) of the Government of India Notification, already referred to. That means concurrence of the Central Government was given to the Provincial Government of Orissa to exercise its power of making an order under Section 3. The Orissa Government's telegram no doubt proposes that they are going to authorise their District Officers and Sub-Divisional Officer to direct persons to sell stock of paddy. The proposal is made in the following words :

'Request concurrence in proposal to frame a notification whereby district officers and Sub-Divisional Officers could direct persons or class of persons to sell stock of paddy etc. At permissible price.'

The reply to that was in the following terms :

'.....Government of India concur in proposed Orissa Notification and also its extension to pulses etc.'

The very simple question that stares us in the face is whether this exchange of correspondence amounts to specification (in the Central Government's direction by notified order) of the officers referred to in Orissa Government's telegram as persons by whom the power to make order under Section 3 is exercisable. To the question that I propose to put to myself 'should that amount to delegation by specification in the direction within the meaning of Section 4'? My answer is emphatically in the negative. If the Central Government had chosen to notify their concurrence to Orissa Government's proposal so as to make it 'a direction by notified order', it could bear that interpretation. Plainly enough, a Provincial Government has no power to delegate its power with concurrence of the Central Government to its subordinate officer.

7. My conclusion, therefore, is that issuing an order to the petitioner by the Sub-Divisional Officer, Ghumsur Division is neither by way of executing Central Government's order under Section 3 nor, by way of executing Provincial Government's order under Section 3. If it was by way of execution of the Provincial Government's order, such an order has not been produced before me nor in the Court below. Such an order cannot certainly be made out of the Provincial Government's notification issued after concurrence of the Central Government. If that notification is construed to be an order under Section 3, then it would mean a standing order directed to all persons whosoever is chosen by the District Officer or Sub-Divisional Officer to be the victim of the order. One will be driven to distraction before he can put such a meaning on such a notification.

8. Under these circumstances, I quash the conviction of the petitioner and the sentence passed against him. If there is any order of confiscation accompanying the conviction, that also must be and is hereby vacated. The rule issued is made absolute.