

**Gurucharan Kaur Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/534647](http://sooperkanoon.com/534647)

**Court :** Orissa

**Decided On :** Feb-10-1998

**Reported in :** 86(1998)CLT209; 1998CriLJ1992

**Judge :** S.C. Datta, J.

**Acts :** [Essential Commodities Act, 1955](#) - Sections 7; Orissa Kerosene Control Order, 1962; Orissa Declaration of Stock and Prices of Essential Commodities Order, 1973

**Appeal No. :** Criminal Appeal No. 235 of 1986

**Appellant :** Gurucharan Kaur

**Respondent :** The State

**Advocate for Def. :** Addl. Govt. Adv.

**Advocate for Pet/Ap. :** S.K. Mund and ; T.N. Senapati, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**S.C. Datta, J.**

1. The appellant was tried by the learned Special Judge, Koraput-Jeypore, under Section 7 of the Essential Commodities Act (for short 'the Act') for contravention of

the provisions of Clause 10 of the Orissa Kerosene Control Order, 1962 (for short 'the order') and Clause 3 of the Orissa Declaration of Stock and Prices of Essential Commodities Order, 1973 (for short 'Order 1973'). He was found guilty of the offence, convicted thereunder and sentenced to suffer simple imprisonment for three months only.

2. The facts leading to the present case may be shortly stated as follows :

Appellant Guru Charan Kaur is a sub-wholesale dealer of kerosene which is an essential commodity. She was authorised to carry on the wholesale business at Balimila Nagar (Orkal). On 14-11-1984, the Supervisor, supplies, checked the business premises of the appellant and on verification found 420 litres of kerosene in excess. He also found that no board had been displayed showing the stock and price of kerosene in the said business premises. The appellant failed to explain the excess stock in her possession and non-displaying of the board. Accordingly, he seized the books of accounts, kerosene stock, the licence etc. and reported the matter to the Police Station. On the basis of the complaint a case was started which resulted in filing of charge-sheet and that is how the case proceeded before the learned special Judge, Koraput-Jaypore. The case ended in the conviction of the appellant and so she has moved this Court in appeal.

3. It is contended by the learned counsel for the appellant that kerosene not being one of the items mentioned in the schedule to the Order, 1973, the trial Judge acted illegally in holding that the appellant contravened Clause 3 of the said Order by not displaying a Notice Board. It is further contended that Clause 10 of the 1962 Order provides that in the event of any contravention of any provision of the Order or any direction issued thereunder or any of the conditions of the licence the dealer would be liable to have his licence cancelled by the licensing authority but no penal action is provided. It is also contended that the status of the appellant was that of a sub-wholesale dealer which term came into the statute book only on 13-6-1985 whereas the offence alleged to have been committed by the appellant occurred on 14-11-1984. It is urged that the learned special Judge has, therefore, acted illegally in convicting the appellant under Section 7 of the Act for contravention of Clause 10 of the Order, 1962.

4. Heard learned counsel appearing for the appellant as also learned counsel for the State. In order to appreciate the points raised by the appellant, it is necessary to note Clause 3 of Order 1973 which reads as under:

3. Display of list - (1) Every retailer shall display prominently in the business premises, shops or show rooms, the stock position of each essential commodity in his possession by writing on a board in words 'available' or 'not available' as the case may be, against which such commodity and retail selling prices thereof, each day, and indicate on each unit of item of the said commodities, where possible the sale price by having the sale price either printed on the commodities or on the container or packet thereof, or by means of rubber stamp or by sticking a label on such commodity.

(2) Every dealer except a retailer shall display prominently in the business premises, shops or show rooms a list indicating the opening stock of such commodities in his possession and wholesale prices thereof each day, and indicate on each unit of item of the said commodities, where possible the sale price by having the sale price either printed on the commodities or on the container or packet thereof, or by means of rubber stamp or by sticking a label on such commodity.

5. This Clause 3 enjoins that every retailer should display prominently in the business premises, shops or show-rooms, the stock position of each 'Essential Commodity' in his possession by writing on a Board etc. It is evident therefore, that the stock position of every essential commodity is required to be shown in writing on a Board by a retailer. The word 'essential commodity' has been defined in Clause 2(c) of Order, 1973. This shows that 'essential commodity' means any of the commodities specified in the schedule. Learned counsel appearing for the appellant has taken me to the Schedule appended to this Order. On scrutiny it appears that kerosene oil has not been specified in this schedule. Therefore, it may be concluded that kerosene oil is not one of the essential commodities which is required to be shown on a Board by every retailer, in his business premises. Therefore, it can safely be held that for non-displaying of the stock of kerosene by the appellant in his business premises on 14-11-1984, there has been no

contravention of this Order, 1973.

6. Learned counsel appearing for the appellant submits that the status of the appellant was that of a sub-wholesale dealer at the relevant time and as such, the appellant was not required to maintain proper accounts showing the actual stock position of kerosene in compliance with the conditions of licence as enjoined in Clause 10 of Order, 1962. He submits that the word 'sub-wholesale dealer' was introduced for the first time by virtue of Notification bearing No. SRO No. 327/85 dated 30th May, 1985 published in the Orissa Gazette on 13th June, 1985. According to him, only a wholesale dealer/retail dealer was required to maintain stock position, as per Clause 10 of the said Order on the relevant date. The appellant being a sub-wholesale dealer was not required to maintain the stock position as per Clause 10 of Order, 1962. On scrutiny, I find that there is much force in the submission made by the learned counsel for the appellant. The contravention of clause 10 of Order, 1962 is alleged to have been committed on 14-11-1984. At that point of time, the appellant was neither a wholesale dealer nor a retail dealer. Her status was that of a sub-wholesale dealer on that date and a sub-wholesale dealer was not required to maintain any stock position. The word sub wholesale dealer was for the first time introduced in the order by virtue of Notification dated 30th May, 1985 published in the Orissa Gazette on 13th June, 1985. Therefore, it can be said without any hesitation that there has not been any contravention of the conditions of licence in not maintaining correct stock position of kerosene oil on 14-11-1984. In that view of the matter, it is held that the learned special Judge was not justified in convicting the appellant under Section 7 of the Act for contravention of the provisions of Order 1962 and Order 1973. The learned special Judge ought to have returned a verdict of not guilty.

7. For the reasons aforesaid, the appeal is allowed and the order of conviction and sentence is set aside. She is discharged from bail bond.