

**Surendranath Wig Vs. State**

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**Court :** Orissa

**Decided On :** Mar-28-1991

**Reported in :** 1992CriLJ3045; 1991(I)OLR481

**Judge :** L. Rath and ;K.C. Jagadeb Roy, JJ.

**Acts :** Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973; Orissa Declaration of Stocks and Prices of Essential Commodities (Amendment) Order, 1982

**Appeal No. :** Criminal Revision No. 85 of 1984

**Appellant :** Surendranath Wig

**Respondent :** State

**Advocate for Def. :** S.K. Das, Addl. Govt. Adv.

**Advocate for Pet/Ap. :** P.K. Dhal, Adv.

**Disposition :** Appeal succeeded

**Judgement :**

**L. Rath, J.**

1. A difference having arisen as regards the proper interpretation of Clause 3 of the Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973

(hereinafter referred to as the Orissa Order') with the Hon'ble Mr. Justice S. C. Mohapatra taking different view than that taken earlier in some other decisions of the Court, this appeal has come before us by reference

2. The brief facts' necessary to explain the case are that the appellant is a retailer at Barbil whose shop was checked on 29-5-1983 at about 5. P. M. by the PW 1 the Civil Supplies Supervisor. PW 1 booked the appellant for violation of Clause 3 of the Orissa Order since the declaration board maintained by him did not show the mention regarding 22 quires of writing paper though such stock was available. The stock of paper was seized by PW 1 who prepared a prosecution report and produced the appellant before the Mobile Court, The plea of the appellant was of his having purchased the paper from a wholesaler at 4 P. M. that very day and hence the stock to have not been displayed in the declaration board. During the trial while the prosecution proved its case through PWs 1 and 2, the latter being the Inspector of Weights and Measures who was present at the check, the appellant established the fact of his having purchased the papers on that very day by examining D. W. i who proved the credit memo of 29-5-1983 under which he had sold 2 reams of white paper to the appellant on that day. The Special judge while did not. disbelieve the fact of purchase of the paper on 29-5-1983, yet held that the appellant was under a duty to forth-with show such stock of paper when the stock arrived at the retail shop and having not done that, he had contravened the Clause 3 of the Orissa Order and for the reasons, sentenced him to three months' RI. in the appeal before this Court the learned Single judge agreed with the Special Judge but since there are earlier decisions of this Court to the contrary, referred the matter to be placed before the larger Bench.

3. For an appreciation of the question involved it is necessary to exact Clause 3 of the Orissa Order as it now stands after amendment on 24-3-1982 and as it stood prior to the amendment:

Before 24-3-1982 From 24-3-1982

'3 Display list \_Every dealer of essential commodities shall display prominently in the shops or showrooms a list indicating the opening stock of such, commodities in his possession and retail selling prices thereof each day and indicate on each unit

of item of the said commodities, where possible, 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.

'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 the words 'available' or 'not available', as the case may be, against each such commodity and retail selling prices there 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 price 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. A reading of the Clause as it stood prior to the amendment shows that an obligation had been cast on the retailer of essential commodities to prominently display the list indicating the opening stock of the commodities and retail selling price thereof. The words 'Opening stock' have been interpreted by several decisions of this court as has been referred to by the learned Single Judge himself taking the view that such words mean the stock position at the opening of the day and do not extend to cast obligation on the dealer to go on either adding to or subtracting from the stock position displayed. all throughout the day reflecting the transactions made during the day. Reference in this connection has been made to 1978 CLR 87 (Dhani Kuntia v. State), 47 (1979) CLT 107 (State of Orissa v. G. Seetaram Swamy) 53 (1982) CLT 18 (State of Orissa v. Balaram Sahu) and 55 (1983) CLT 216 (State of Orissa v. P. Bainstaba Senapati). Analysing, the provisions we find ourselves in agreement with the view taken in the reported decisions that the words 'opening stock' would indicate, an intention of 'making' the dealer responsible for disclosing the position of the stock at the

commencement of the' business of the day. Had it been the intention in the Orissa Order that the display board would be a running account of the stock' position, there was no necessity of the word 'opening" to have been used since' intention, could have been easily achieved by deleting the word 'opening' in which event; the provision would have meant that the dealer had an obligation to, display prominently in the shops or, showrooms a list indicating the stock of such commodities in his possession. It is more reasonable to hold that the subordinate lagislating authority, was conscious of the position that requiring the dealer to declare, the stock at, each moment of the business would be impracticable and that hence,, only .required the opening stock to be declared. Violation of the provisions of the, Order being penal in,, nature exposing the dealer to criminal, prosecution and conviction, the words used in the sections creating the liability are ,to receive rigorous . interpretation, and it is not available to interpret, them in a relaxed or liberalised manner so as to enlarge the area of prosecution. While , this has been the interpretation of this Court regarding the, words 'opening stock', It is true, as has been observed by, the Hon'ble Justice Mr. S. C. Mahapatra, .that the subordinate legislating authority though, it fit to split the provision of Clause 3 into two provisions The purpose .of . the amendment is however to make the matter more dear so far as the retailers are, concerned. Clause 3 of the Orissa Order, as it stands after amendment, , expressly makes distinction between a retailer and, a dealer .even though the defination in Clause 2, Sub-clause (a) defines 'dealer" as any person carrying-on business of sailing any essential commodity, and ,as including a producer, wholesaler or retailer Thus even though ... for, the purpose of definition a retailer is included in a dealer, yet it is found that in Clause 3,.as it now stands, a distinction his been Drought between . a dealer (and a retailer. While Sub-clause

(1) deals with retailer, Sub-clause

(2) deals with every dealer except a retailer So far as the retailer is concerned, the provision is that he is under the duty to display prominently the stock position of each essential commodity in his possession by writing on a board the words available' or 'not available', as the case may be, against each commodity and retail selling prices thereof, each day. The words 'by' 'each day' are of great

consequence in interpreting the provision. The word 'by', and used as a preposition, in the context has the dictionary meaning of 'as being through the agency' or 'through the means of'. It would thus mean that the display of the stock position as under Clause 3(1), is through the means of writing on the board either as 'available' or 'not available'. There is no requirement shown for declaring the opening stock. All that is required to show is the stock position each day either as 'available' or 'not available'. No obligation is cast upon the dealer to further declare the exact position of the stock available. As a matter of fact, if; the requirement of law is declaration of exact stock position at each moment, there would be hardly any necessity of indicating further in the board of such stock either being available or not. The legislature cannot be taken to have used the words superfluously. This becomes further apparent by juxtaposing Sub-clause

(1) with requirement of Sub-clause

(2) of Clause 3 which applies to a dealer and requires him to indicate the opening stock of the commodities which, as has been explained above, would mean the position of the stock at the commencement of the business of the day. To hold the contrary and adopt the view that a retailer has the duty also to declare the stock position in the board after every sale or purchase transaction is not only not warranted in law but also would wipe out the distinction between the Sub-clauses

(1) and

(2) of Clause

3. Besides, Sub clause

(2) of Clause 3 also itself does not visualise the declaration board to be maintained as a running account of the stock position. Two Single judge decisions of this Court, one reported in (1990) 3 OCR 386 (Jogendra Sahu v. State of Orissa) and other unreported of Hon'ble M Justice A. Pasayat in Criminal Appeal No. 84/81 (decided on 7-4-19-0) (1990) 3 OCR 634 (Sudarsan Sahu v. State) have taken the same view. In that view of the matter, we would not accept the reference and hold the earlier decisions of this Court to have taken the correct

view. Admittedly the appellant had effected the purchase on 29-5-1983 itself and in view of the conclusion reached by us, was under no obligation to indicate the stock position on the declaration board and hence neither could have been prosecuted nor could have been found guilty of the offence.

4. In the result, the appeal succeeds and the conviction and sentence passed against the appellant are, set aside.

**K.C. Jagadeb Roy, J.**

5. I agree.

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