

Pravash Chandra Bachar Vs. the State

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Court : Orissa

Decided On : Nov-06-1991

Reported in : 1992CriLJ1721

Judge : L. Rath, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3, 3(2), 7 and 7(1); Orissa Kerosene Control Order, 1962; Orissa Rice and Paddy Control Order, 1965

Appeal No. : Criminal Appeal No. 323 of 1988

Appellant : Pravash Chandra Bachar

Respondent : The State

Advocate for Def. : J.M. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : Manoj Mishra, Adv.

Disposition : Appeal dismissed

Judgement :

L. Rath, J.

1. The conviction of the appellant under Section 7(1)(a) of the Essential Commodities Act for contravention of Clause 8(b) of the Orissa Kerosene Control Order, 1962 (hereinafter referred to as 'the Order') and sentence to RI for three

months and to pay a fine of Rs. 1,000/-, in default to undergo RI for a further period of one month has made him prefer this appeal.

2. In nutshell the prosecution case is that on 8-12-86 while the appellant was having his grocery shop in the Weekly Shandy at Turudi, his shop was raided by the Supply Supervisor of Umerkote (P.W. 1) and he was found to have been in possession of 56 litres of kerosene kept in a half drum along with an empty tin container, two plastic funnels and measuring instruments of the capacity of one litre, 500 mls. 100 mls. and 50 mls. The appellant admitted of not possessing any licence to trade in kerosene. Kerosene found in his possession was seized under the seizure list Ext. 1 and was kept in the zima of P.W. 3. On P.R. being submitted by the Supply Supervisor the appellant was put to trial and was convicted. In the trial the prosecution examined three witnesses including P.W. 1 the Supply Supervisor, P.W. 2 the Marketing Inspector and P.W. 3 the Nimadar No witness was examined in defence.

Two contentions were advanced by Mr. Misra, learned counsel for the appellant. The first is that mere possession of kerosene in excess of the limit fixed by the 1982 Order of the Government made under Clause 8 of the 1962 Order is not unauthorised and hence not an offence and, secondly, kerosene cannot be said to have been recovered from the possession of the appellant. Developing the first submission it is contended by him that Section 3 of the Essential Commodities Act provides in Sub-section (1) thereof that the purpose of the Act is to make provision to provide for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. So far as Sub-section (2) is concerned, Clause (f) thereof only contemplates the order to be in respect of a person holding in stock or engaged in the production, or in the business of buying or selling, of any essential commodity. It is hence his submission that the entire motivation of the provision is to regulate the trading activity in essential commodities and that storage which is prohibited is only such storage when it is for the purpose of business of sale only and would not include mere possession of certain quantity of kerosene. The submission does not find force with me as the preamble of the Act shows that it is for the purpose of control of the production, supply and distribution of, and trade and commerce in essential commodities.

Such objectives are doubtless to be understood in their widest sweep. The regulation of the activities in essential commodities for the said purpose would inherently include in it also a power to impose a restriction on the limit of individual possession since without such limit being fixed, the very purpose of the Act would be frustrated. As such, what is implicit and inherent and also logically follows that the power of regulation in the matter of production, supply and distribution of the essential commodities and trade and commerce therein would necessarily include in it the power to fix the maximum limit of retention both by a dealer or also by an individual not carrying on business in the commodity. Clause (d) of Section 3(2) provides that an order may be made providing for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. The law thus specifically contemplates for an order to be made to regulate also the acquisition, use or consumption besides storage of the essential commodities. Clause 8 of the Control Order, 1962 is in the following words:--

8. The licensing authorities shall have the power by the order notified in the Gazette in respect of their respective jurisdictions --

(a) to fix the price of rate at which kerosene may be sold by dealers; and

(b) to regulate the storage, distribution and sale of kerosene;

Provided that where the licensing authority is the Collector no such order shall be made without the previous consent of the State Government.'

It is the submission of Mr. Misra that the Control Order, 1962 pre-eminently deals only with issue of licence to dealers in kerosene and governs the relationship between dealers and the licensing authorities and hence in that context Clause 8 would only mean the licensing authority to have the power to issue order regulating storage, distribution and sale of kerosene for the purpose of carrying on business activity in kerosene. Inasmuch as the learned Special Judge negatived the prosecution case of the appellant being a dealer in kerosene or to have been carrying on business in kerosene and merely convicted him for having contravened that provision of the maximum retention limit, it should be held that

such maximum limit prescribed had no application to individual possession unless the possession becomes a storage as under Clause 8 so as to invite the limit fixed and the conviction set aside. The limit is fixed by the order issued by the State Government on 19th of April, 1982 vide SRO No. 264/82 to the following effect :--

In supersession of Food and Civil Supplies Department Order No. 20213-P1.IC-26/79, dated the 3rd May 1979 as amended by order No. 7635-P1. IC. 26/79, dated the 23rd February, 1980, the State Government in exercise of the powers conferred by Clause 8 of the Orissa Kerosene Control Order, 1962 do hereby direct that no person other than a dealer or an oil company shall store or have in his possession kerosene in quantity exceeding ten litres at a time.

Developing the submission, Mr. Misra contends that possession and storage are two different concepts as was decided by this Court in (1977) 44 Cut LT 629 : (1978 Cri LJ 683) (Prem Bahadur v. State of Orissa). It is his further submission that the order so issued is also beyond the powers of the State Government as Clause 8 of the Control Order, 1962 contemplates the order to be issued only by the licensing authority and not by the State Government.

3. The authority on which reliance is placed is not one in support of the submission. In that case which related to Orissa Rice and Paddy Control Order, 1965 decision was taken on the footing that the Order did not make possession without a licence an offence though 'storage' had been made an offence. Deciding that storage and possession conveyed different concepts, inasmuch as the storage would indicate continued possession whereas possession may be fleeting possession also, the case decided that transshipment in a moving vehicle would not amount to storage within the meaning of the Order. So far as the present Control Order is concerned, the Order in 1982 issued by the State Government specifically fixes the maximum retention limit either for storage or for possession of kerosene in quantity exceeding ten litres at a time. Thus possession beyond the fixed quantity has been specifically made an offence read along with Section 7 of the Essential Commodities Act. It is also not correct to say that the power under Clause 8(b) of the Order to provide to regulate the storage, distribution and sale of kerosene would not include within itself the power also to fix the limits for

possession since, as has been seen earlier, a regulation fixing the maximum retention limit even by an individual is a necessary concomitant of the power of regulation for storage in the context of the provisions of the Act and the Control Order.

4. The submission as regards the lack of power in the State Government to issue the order in exercise of the powers under Clause 8 of the Control Order, 1962 is also misconceived. 'Licensing authority' has been defined in Clause 1(d) of the Control Order, 1962 to mean, so far as the entire State is concerned, the State Government. Hence the licensing authority for the entire State would have the power under Clause 8 to issue the Order, The first submission of Mr. Misra hence must be rejected.

5. The second submission has also no substance. Undoubtedly the evidence of P.W. 2 shows that the appellant's shop in the shandy was in a row sandwiched by two shops on either side and that the witness did not remember who were the owners of the shops or what articles they were selling. It was also his evidence that the half drum containing kerosene was found just outside the shop adjoining the shop area inside which the appellant was sitting. On the basis of such evidence, the submission advanced on behalf of the appellant is of the prosecution having failed to clinch the issue against the appellant to show that it was he who had been in possession of kerosene seized and that unless possession is so proved, the prosecution must fail. It appears from Ext. 1, the seizure list itself that the quantity of kerosene seized was from the shop of the appellant and from his possession. The appellant himself also signed the seizure list in English. Thus he was all through aware of the fact that kerosene had been seized from his possession alone. P.W. 1 has also deposed regarding the kerosene in question to have been seized from the possession of the appellant. It hence must conclusively be held that the kerosene in question was seized from the possession of the appellant. Thus both the submissions on behalf of the appellant fail.

6. At the time of admission notice of enhancement of sentence had been issued. Considering the fact however that the trading activity of the appellant has been negatived, the offence committed by him though is against the provisions of the

Act and the Control Order, yet would not warrant in the facts and circumstances of the case a higher punishment than what has been imposed and as such I would discharge the notice of enhancement.

7. The appeal is dismissed.

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