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Court : Kerala

Decided On : Aug-31-1981

Reported in : 1981CriLJ1484

Judge : Kumari P. Janaki Amma and; S.K. Kader, JJ.

Appellant : Venugopalan

Respondent : Tehsildar

Judgement :

Kumari P. Janaki Amma, J.

1. On 7-2-1979 the Tahsildar Trichur got information that the third revision petitioner herein had stocked 215 bags of cement in House No. 262 in Ward No. 1 of Ollukkara Pan-chayath, in violation of the Kerala Cement Distribution (Licensing and Regulation) Order 1974. He seized the cement and sealed the room wherein the bags were kept in exercise of the powers under clause 14(1)(e) of the said Order read with Section 6A of the Essential Commodities Act. A report was sent to the District Collector as regards the seizure of the cement. The District Collector issued a notice on 15-2-1979 calling upon the third petitioner to appear before him on 21-2-1979 and show cause with the connected documents and records, if any, why the unauthorised stock of cement seized should not be confiscated to Government.

2. On 14-2-1979 petitioners 1 and 2 presented a petition before the District Collector claiming that the bags of cement seized from the premises of the third petitioner belonged to them. Their case was as follows: The first petitioner's uncle Gopalan Nair as the tavazhi karna- van had applied for cement and obtained 150 bags on 18-12-1978. Before the cement could be taken to his house Gopalan Nair fell ill. He died after two months. He had entrusted the cement with the third petitioner for safe custody. On account of his death the proposed construction could not be taken up for some time. It was felt that the carrying of the cement to the house would be painful to the grief-stricken members of the family. The cement continued to be stored in the premises of the third petitioner. The balance 65 bags was owned by the second petitioner. The second petitioner wanted to construct a house in the name of his wife, Sarojini, and got a permit on 12-10-78 for 150 bags of cement. The cement was purchased on 16-10-78. Immediately after the purchase Sarojini fell ill and her illness took a serious turn. Therefore the second petitioner could not proceed with the construction. It was felt that the cement bags if kept at the work-spot would get damaged and therefore the third petitioner, who was a friend of the second petitioner, was approached and with his permission 65 bags of cement which remained to be used were kept in the premises of the third petitioner. Petitioners 1 and 2 requested the Collector that the cement be returned to them.

3. On 15-2-1979 the third petitioner in response to the notice of the District Collector filed objections stating that the cement did not belong to him and that the 150 bags belonged to the uncle of the first petitioner and the remaining 65 bags to the wife of the second petitioner. The circumstances under which the bags were kept in his premises are also detailed in his objection.

4. The District Collector heard the petitioners through their Advocates and having examined the details in the light of the materials made available rejected the case put forward by the petitioners and directed confiscation of the 215 bags of cement in exercise of the powers conferred on him under Section 6-A of the Essential Commodities Act read with Section 14(1)(e) of the Kerala Cement Distribution (Licensing and Regulation) Order, 1974.

5. The petitioners filed an appeal against the order of confiscation before the District and Sessions Judge, Trichur. Since the Civil Courts stood closed for mid-summer recess the appeal was presented on 10-4-1979 before this Court. After the records were sent over to the District and Sessions Judge it was registered as Criminal Appeal No. 96 of 1979. The Sessions Judge made over the appeal to the Additional Sessions Judge. It would appear that one of the grounds on which the appeal was dismissed was that, the permits issued to Gopalan Nair and Sarojini were for imported cement whereas the cement seized from the premises of the third petitioner took in 22 bags of Indian cement. In the memorandum of appeal a case was put forward by the petitioners that the 22 bags really contained imported cement, that during the course of loading and unloading some of the paper bags which contained the cement got damaged and that they were therefore substituted by gunny bags. In other words, the case put forward was that all the 215 bags of cement were of imported quality. They further contended that the damaged paper bags would be found in the room where the cement was kept. To establish the above case they filed Crl. M. P. No. 269 of 1979 to have a search of the premises in the presence of the appellants or their representatives. That petition was allowed by the Court and a Circle Inspector prepared a mahazar of the building in which the cement bags were kept. 23 damaged paper bags were found in one of the rooms. But the Circle Inspector also reported that the window on the western wall of that room had no shutters suggesting thereby that the paper packets could have been thrown into the room through the window. The Addl. Sessions Judge, who heard the appeal rejected the case put forward by the appellants and dismissed the appeal. According to the Court, the 23 paper bags showed names of four different manufacturers spread over three different countries. The Court observed that the permits would not have been granted so as to include cement from four different consignments. Since neither the personal heirs of Gopalan Nair nor Saropini, in whose favour the permits had been issued, had come forward to claim the cement and since petitioners 1 and 2 admitted that they were friends of the third petitioner the Court held that the purpose of their petitions was only to oblige the third petitioner. The Court further observed that the Central Cement Depot at Trichur is situated at Puthol. Gopalan Nair belonged to Kolazhi and the cement .was purchased by him for an alleged construction at Kolazhi Kolazhi is

about 9 kms. north of Puthol. As regards the second appellant it is mentioned that he was residing within Trichur Town. The place Ollukara wherefrom the cement was seized is 8 kms. east of puthol. The Court therefore held that it was very unlikely that petitioners 1 and 2 would have kept the cement obtained as per the permit issued to Gopalan Nair and Sarojini in the premises of the third petitioner as it would involve heavy transport charges to carry the cement to that place and also to take it back to the places of construction. It was for the above reasons that the appeals were dismissed.

6. In the revision petition filed by the petitioners they challenge the above order of the Additional Sessions Judge. mainly on two grounds. Firstly it is contended that the notice issued by the District Collector did not conform to the essential requirements of the Act inasmuch as there was no mention of the grounds on which the confiscation was effected. The second contention is that the Additional Sessions Judge had no jurisdiction to dispose of the appeal. The Judicial authority contemplated under Section 6C of the Essential Commodities Act is notified as the District and Sessions Judge. There is no office by name District and Sessions Judge, and as such there is nobody notified to receive and dispose of appeals under Section 6C of the Essential Commodities Act. The appellate order is therefore a nullity and is not to be acted upon.

7. It is easy to dispose of the first ground. It is true that Section 6B(1)(a) contemplates a notice to be issued to the owner of the essential commodity informing him of the grounds on which it is proposed to confiscate the articles. The contention of the petitioners is that the notice to the third petitioner did not contain the essential details and no opportunity was available to them for meeting the grounds of confiscation. The relevant portion of the notice issued by the District Collector reads:

The Tahsildar, Trichur has reported that at about 1.00 p. m. on 7-2-1979 at Ollukkara 215 bags of cement were found being stocked in House No. 262 of Ward No. 1 of Ollukkara Panchayat owned by Sri Kunnathumkara Chittilappilly Vareed Joce, Ollukkara. Neither Sri Jose nor others in the house could produce any purchase bills or other records in proof of the possession of cement. As the

provisions in the Kerala Cement Distribution (Licensing and Regulation) Order 1974 were violated the Tahsildar seized the cement and sealed the room under clause 14(1)(c) of the said order read with Section 6(A) of the E. C. Act 1955.

The action of Sri Jose in having procured and stocked cement in contravention of the provisions of the Kerala Cement Distribution (Licensing & Regulation) Order. 174 is illegal...

There is no dispute that the confiscation proposed was for violation of the Kerala Cement Distribution (Licensing and Regulation) Order (for short the Order). Under clause 3 of the Order as amended in 1978 no person shall store or have in his possession more than twenty bags of cement except under permit issued by the concerned authority. The notice issued contains specific mention that the third petitioner had in his possession 215 bags of cement without the purchase bills or other records authorising him to keep possession of the cement. This is sufficient to meet the requirement of Section 6B(1)(a). Even assuming that there was some defect in the notice since there has been substantial compliance of that Section 6B(3) applies and it cannot be said that the order of confiscation is invalid.

8. The petitioners have a case that if the notice had mentioned that 22 bags of cement kept in the building of the third petitioner was Indian Cement, they would have been in a position to prove that those bags really contained foreign cement. The argument is that on account of the omission to mention that fact they have been prejudiced in their defence. This contention also has no weight, because, even assuming that the 22 bags contained Indian cement that will not absolve the third petitioner of the responsibility of making out that he had the necessary authorisation for keeping the cement in his possession. It does not make any difference whether the cement stored is foreign cement or Indian manufactured cement.

9. It is argued on behalf of the petitioners that under the proviso to Section 3 the third petitioner need declare the stock only within seven days of the receipt thereof. In the instant case there is no - material to show that 7 days had elapsed before the notice was issued, under Section 6(1)(a) and therefore no offence has been committed. But such a contention is not seen raised before the District

Collector or before the District and Sessions Judge. When the stock of cement was received by the third petitioner was a matter within his knowledge and it was up to him to put forward that contention at the proper time. The omission necessarily leads to the conclusion that the proviso to clause 3 has no application. Even otherwise, the case of the petitioners as to how the cement happened to be stored in the third petitioner's building negatives the application of the proviso.

10. The main contention of the petitioner is based on Section 6C of the Essential Commodities Act. Under Section 6C any person aggrieved by the order of confiscation under Section 6A may file an appeal to any judicial authority appointed by the State Government within a month from the date of communication of the order. The Kerala Government by its notification dated 9th August, 1968, appointed the District and Sessions Judges as the judicial authority within their respective jurisdiction for the purpose of Section 6C. The argument put forward is that there is no judicial authority by name District and Sessions Judge appointed under any statute. Sections 2 and 4 of the Civil Courts Act, 1957 provide respectively for District Judges and Additional District Judges. Section 9 of the Code of Criminal Procedure provides for the Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. In other words, neither of the statutes provides for a judicial authority by name District and Sessions Judge. It is therefore argued that there is no proper notification appointing a judicial authority under Section 6C. Reliance is placed on the decision of the Supreme Court in *Thakur Das v. State of M. P.* : 1978 CriLJ1 . That case deals with the interpretation of Section 6C of the Essential Commodities Act. The question involved was whether the appellate authority under Section 6C is a *persona designata* or whether it is a Court. On the basis of a notification issued by the Madhya Pradesh State Government under Section 6C of the Essential Commodities Act a licensee preferred an appeal to the Sessions Judge. Nobody objected that the Sessions Judge was not a competent judicial authority for the purpose of Section 6C. But when a revision petition was filed against the decision of the Sessions Judge the question arose whether the Sessions Judge disposing of an appeal under Section 6C is an inferior criminal Court liable to the revisional jurisdiction of the High Court under Section 435 and Section 439 of the Code of Criminal Procedure. The Supreme Court observed (at p. 4 of Cri LJ):

In using the compact expression 'judicial authority' the legislative intention is clearly manifested that from amongst several pre-existing authorities exercising judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate functions as envisaged by Section 6C. There is one inbuilt suggestion indicating who could be appointed.

11. The above decision is relied upon to show that the judicial authority should be a pre-existing authority. The argument is that there is no pre-existing judicial authority termed a District and Sessions Judge and therefore the notification issued by the Kerala State Government is bad in law. But the argument overlooks the fact that under the notification issued by the Madhya Pradesh State Government also, the judicial authority is the District and Sessions Judge. Although details of the notification are not available in the decision of the Supreme Court, the above fact is made clear in the decision of the Madhya Pradesh High Court in Harbhajansingh v. State : AIR 1978 MP150 . Therefore, the decision in Thakur Das v. State of Madhya Pradesh : 1978 CriLJ1 , is not of much assistance to the petitioner.

12. Reference is made to the case Kerala State Electricity Board v. Kunha-humma : [1977]1SCR996 . The question involved in that case was whether Article 137 of the Limitation Act (1963) has application in respect of a petition filed before the District Judge under Sections 10 and 16(5) of the Indian Telegraphs Act 1885 read with Section 51 of the Indian Electricity Act. Following the decision in National Telegraph Co. Ltd. v. The Post Master General 1913 AC 546, the Supreme Court held that where by statutes matters are referred for determination by a Court of Record with no further provision the necessary implication is that the Court will determine the matters as Court. Reference has also been made in that case to Section 3(15) of the General Clauses Act which states that District Judge in any Act of the Central Legislature means the Judge of the Civil Court of Original Jurisdiction other than the High Court in exercise of its original civil jurisdiction. It was held that the District Judge dealing with application under Section 16 of the Telegraph Act acts as a civil Court. This decision does not touch the aspect that is highlighted by the learned Counsel for the petitioner that there is no judicial

authority by name District and Sessions Judge,

13. It is only appropriate in this context that to refer to Articles 233 and 236 of the Constitution, Article 233 deals with appointment of District Judges. Article 236 states among other things that the expression District Judge includes among other things an additional District Judge, Sessions Judge and Additional Sessions Judge. In the ordinary course there is (nothing irregular if the same person is appointed to act as District Judge on the civil side and the Sessions Judge on the criminal side; in fact, in almost all the States that is what is being done. In such cases the officer in whom both the functions are vested is known as the District and Sessions Judge. Thus the Kerala Higher Judicial Service Rules make provision only for appointment of District and Sessions Judges and not of a District Judge or a Sessions Judge. The expression 'District and Sessions Judge wherever used, connotes that the concerned officer acts as District Judge when he functions on the civil side and as the Sessions Judge when he functions on the criminal [side.

14. We may refer here to the decision *State of Kerala v. Hussain* 1978 Mad LJ (Cri) 542 : 1978 Cri LJ (NOC) 279 (Ker) disposed of by one of us (myself). The main questions involved in that case were the scope and ambit of the enquiry mentioned in Section 6B, whether the expression 'opportunity to be heard' includes opportunity to adduce evidence and also whether the District and Sessions Judge is a *persona designata*. Incidentally it was contended that since the notified judicial authority in Kerala is the District and Sessions Judge, a revision petition will not lie under Section 397 of the Criminal P. C. The matter was dealt with as follows:

It is true that an order under Section 6A does not involve a conviction for an offence and to that extent, it may be stated that the proceedings are of a civil nature and a revision petition should have been filed on the 'civil side before the District- Judge. But so long as the same person functions as the District Judge and the Sessions Judge, it does not make much of a difference whether the petition is entertained on the civil side or the criminal side and so long as the scope of the appeal as also the revision petition is to see if the provision of a specified

enactment has been contravened justifying confiscation of articles the aggrieved party may not be prejudiced simply because the decision is on the criminal side. It is also pertinent to note that an order under Section 6A in so far as it involves confiscation of articles is deterrent in nature. Since the violation of orders under the Essential Commodities Act involves penal consequences like confiscation it is only fit and proper that the appeal is entertained by the District and Sessions Judge on the criminal side and the revision petition is disposed of by this Court under the Code of Criminal Procedure.

15. The above decision is referred to only to show that the dichotomy involved in the office of the 'District and Sessions Judge' has already been the subject matter of an earlier decision of this Court.

16. It was then faintly suggested that the judicial authority mentioned being the District and Sessions Judge, an Additional Sessions Judge was not competent to dispose of the revision petition (or appeal?). But once it is held that the judicial authority is a Court the provisions of either the Civil Courts Act or the Criminal P. C. should apply. Under Section 400 of the Criminal P. C. the Additional Sessions Judge may exercise all powers of a Sessions Judge in respect of a case transferred to him by any general or special order of the Sessions Judge.

17. It follows that the objections raised by the petitioner regarding the maintainability of the appeal filed before the District and Sessions Judge and the disposal of by the Additional Sessions Judge have no force.

18. Although a contention has been raised in the Memorandum of Revision that the Kerala Cement Distribution (Licensing and Regulation) Order 1974 as amended in 1978 is invalid and inoperative on the ground that under Section 3 of the Essential Commodities Act the State Government is incompetent to pass such an- order, the point was not argued before us. Therefore we do not propose to deal with it

For the reasons already mentioned we dismiss the revision petition.

An oral application was made immediately after the passing of the judgment for leave to appeal to the Supreme Court. Both sides were heard today. We do not think that this is a fit case for grant of a certificate. Leave not granted.

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