

Smt. Premvati Vs. State Committee Under Essential Commodities (Special Provisions) Act and anr.

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Court : Rajasthan

Decided On : Mar-27-1990

Reported in : 1990(2)WLN607

Judge : M.B. Sharma, J.

Appeal No. : S.B. Cri. Revi. Peti. No. 139 of 1989

Appellant : Smt. Premvati

Respondent : State Committee Under Essential Commodities (Special Provisions) Act and anr.

Disposition : Petition allowed

Judgement :

M.B. Sharma, J.

1. This is a revision petition against the order dated April 21, 1989 of a Committee constituted Under Section 6(c) of the Essential Commodities (Special Provisions) Act, 1981 (for short, Special Provisions Act), made in the appeal filed by the petitioner against the order dated January 28, 1986; passed by the Collector, and District Magistrate, Bharatpur Under Section 6A of the Essential Commodities Act,

1955 (for short, EC Act). The revision petition arises in the following circumstances.

2. M/s Prem Industries and Oil Mills Bharatpur is manufacturer of Oil. It is a partnership concern of which Smt. Premvati and four other are partners. On January 6, 1978, Enforcement Inspector Bharatpur inspected the mill premises of the firm and found various irregularities and it was noticed that in the price list and stock list which was exhibited 704 tins of ground-nut oil and 2025 bags of ground-nuts were shown. On physical verification it was found that there were 705 tins of groundnut oil out of which 112 tins were weighting each 16 kg and 691 tins including 4 tins in tank, out of which 2 tins were open. It was also noticed that in the all 498 bags of ground-nut weighing 32 kg each and in the go down which was pledged with the Bank there were 155 bag's ground-nut. In all there were 2048 bags of groundnut. In addition to this, there were 30 Bags weighing 68 kg each of groundnut seeds. In the opinion of the Enforcement Inspector there was a difference in the stock which was exhibited and the stock found on physical verification & the firm was having more than what was exhibited. In the opinion of the Enforcement Inspector there was a contravention of clause 4 of the Rajasthan Pulses Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977 (for short, the Storage Control Order). The oil and groundnuts were seized and were given in the supercargo of Balswarup Gupta partner of M/s Mangilal Balswarup, Nai Mandi Bharatpur. The Enforcement Inspector filed a report to the Collector and the Collector, Bharatpur gave a notice Under Section 6A of the EC Act and reply was filed on behalf of the firm explaining the various irregularities which were allegedly found and the learned Collector under dated January 28, 1986, ordered the confiscation of 29 tins of ground-nut oil, weighing 16 kg each and 30 bags of ground-nut weighting 20 quintal and 40 kg. An appeal was filed by the petitioner firm against the order of confiscation under the Special Provisions Act, passed by the Collector and the appeal was dismissed.

3. It was contended by the learned Counsel for the petitioner that each and every contravention alleged to have been committed by the petitioner firm has been explained and there was no irregularity either in the stock of groundnut oil or ground nut seed. He has contended that there was no contravention of any order

of the EC Act and irregularities said to have been found on physical verification were duly explained and there was no contravention and therefore no order Under Section 6A of the EC Act could have been made. Clause of the Storage Control Order, the contravention of which is said to have taken place that no dealer shall after a period of fifteen days from coming into force of that clause either by himself or by any person on his behalf store or have in possession at any time any pulses, edible oil seeds or edible oils in excess of the quantities specified in that clause. So far as the quantity of oil seeds including groundnut is concerned, different stocks have been prescribed for different categories of cities. Under the second proviso to clause 4 where a dealer is also carrying on business as producer or commission agent, he shall be entitled to retain the stock limits specified in this sub-clause for each business, if such business and accounts thereof are kept separate and distinct from one another. The contention of the counsel for the accused-petitioner is that the accused petitioner is a producer and not a dealer and he was not required to keep the above stock of edible oil-seeds including ground-nut in shell. Produce is defined in Section 2(j) of the Storage Control Order and means a person carrying on the business of milling any of the pulses of expelling extracting, manufacturing or refining any edible oil (i) by buying pulses or edible oil-seeds for being processed by himself and selling the finished products to a whole-saler or through a commission agent; or (ii) by doing any of the process of milling expelling, extracting or manufacturing on behalf of another. 'Whole-sajer' under clause 2(n) means a dealer in edible oil-seeds or in edible oil who sells such commodities to other dealers or to bulk-consumers. A producer can also be a whole-saler but it will depend on the facts of each case. Various categories of Cities 'A', 'B', and 'C', have defined in clause (2) which is a definition clause and category 'A' city means city included as a category 'A' city is the Schedule to the Storage Control Order having population of 10 lakhs and more. Category 'B' city means city included in as a category 'B' city in the Schedule to the Storage Control Order having a population of 3 lakhs and more but less than 10 lakhs or the capital of a State of Union Territory not included in category 'A' city. Category 'C' city means a city which is not category A or category B city. So far as producers are concerned, a producer of edible oil seeds as for the table given under clause 4 of the Storage Control Order, who is carrying on the business on the commencement

of that Order is entitled to have in its stock 1/2nd of the maximum quantity of pulses used by him in any of the three years ending on the 31st of October, 1977. A look at the record will show that there was no material that so far as the petitioner who is admittedly a producer of edible oils, what was the maximum quantity of edible oils and what was the maximum quantity of oil-seed. Therefore, there was no material on the basis of which it can be said that contravention of clause 4 of the Storage Control Order was prima facie made out.

4. So far as the difference in the stocks which were found on physical verification is concerned, it may be stated from the reply filed by the petitioner that the same stood explained. Along with the reply the petitioner firm filed some documentary evidence. A look at Anr. 11 which is a document from the Bank of Baroda shows that 457 bags of 160 quintals and 1000 bags of 350 quintals in all 1457 bags were found in the godown if that be so, the total shown in the 'fard checking' of the Enforcement Inspector perhaps is not correct. A look at the aforesaid 'fard checking' will show that in the hall 498 bags, were found and in the Bank Godown 1550 bags weighing 52 kg each were found. In fact, in the Bank godown, as stated earlier 1457 bags were kept. If that be so, the total will come to 1955 and not 2048. In the stock register the closing balance of January 5, 1978 was 2066 bags of ground-nut and 676 tins of ground-nut oil and if 1955 bags as aforesaid which were found on physical verification are deducted, the petitioner was required to explain about 111 bags. Under clause 3 of the Rajasthan Display of Prices & Stock of Essential Commodities Order 1977, (for short, Display of Prices Order) a dealer was required during the hours of his business to display conspicuously in Form 'A' a list of prices and stocks of articles he deals in at a place as near to the entrance of his business-premises as possible. Under the proviso to clause 3, for articles 'edible Oils and Hydrogenated Vegetable Oil the actual stock position at the beginning of each day shall be displayed in column No. 4 of the list in the Form A and for the rest articles of the Schedule, the words 'available' or 'not available' shall be written as per note given below of Form 'A'. There is also Rajasthan Edible Oils and Oilseeds Dealers Licensing Order, 1977 (for short, the Licensing Order) under which a licensee is required to maintain a register of daily accounts for each variety of Edible Oils and Oilseeds showing there in the opening stock on each day, the quantities received on each day showing the place from where and

the source from which received, the quantities delivered or otherwise removed on each day showing the place of destination and the closing stock on each day. The closing balance of preceding day shall be opening balance of the next day. As stated earlier, the closing balance of January 5, 1978, of groundnut bags was 2066 and groundnut oil was 676 tins. On the date of checking i.e. January 6, 1978, 30 bags of ground-nut weighing 2040 kgs were found and recovered and oil-extraction percentages is about 30% to 32%. In my opinion, there does not appear to be any contravention of any of the clauses of the aforesaid Order either in respect of groundnut or groundnut oil and therefore 29 tins of groundnut and 30 bags of groundnut seeds could not be confiscated because there was no contravention of any Order.

5. Consequently, I allow the revision petition and set aside the order dated January 28, 1986 of the Collector Bharatpur as well as the order dated April 21, 1989, passed by the Committee. It is hereby directed that the aforesaid tins of oils as well as bags of groundnut seeds shall be handed over to the petitioner.

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