

Public Prosecutor Vs. A. Venhayya

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Court : Chennai

Decided On : Apr-05-1944

Reported in : AIR1944Mad452

Appellant : Public Prosecutor

Respondent : A. Venhayya

Judgement :

Leach, C.J.

1. The respondent was charged in the Court of the Sub-Divisional Magistrate of Gudur with having been engaged in an undertaking which involved the purchase, sale and storage for sale in wholesale quantities of foodgrains without a licence issued under the Foodgrains Control Order, 1942, and that thereby he had committed an offence punishable under Rule 81 (i) of the rules framed under the Defence of India Act, 1939, read with Rule 81 (2) (a). The Sub-Divisional Magistrate held that the offence had been proved and sentenced the respondent to pay a fine of Rs. 500. In default of payment of the fine he was sentenced to undergo simple imprisonment for two months. The respondent appealed to the Sessions Judge of Nellore, who set aside the conviction and sentence. This appeal has been preferred by the Provincial Government from the order of the Sessions Judge acquitting the respondent.

2. The judgment of the Sessions Judge is of unnecessary length and certainly cannot be commended for clarity of expression. In fact, in places it is very difficult to follow what is meant. So far as we understand the judgment, the Sessions Judge was of the opinion that Clause (3) of the Foodgrains Control Order which requires a dealer in wholesale quantities of foodgrains to take out a licence is ultra vires the Central Government because if given effect to, it may operate to prohibit a dealer carrying on his business. The Sessions Judge also indicated that if he had not formed the conclusion that Clause (3) of the Foodgrains Control Order was ultra vires he would have felt constrained to direct a re-trial. For reasons which we shall state we consider that the Sessions Judge erred in holding Clause (3) of the Foodgrains Control Order to be ultra vires and that a re-trial would be necessary if it were intra vires. Sub-section (1) of Section 2, Defence of India Act, 1939, states that the Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the War, or for maintaining supplies and services essential to the life of the community. Subsection (2) states that without prejudice to the generality of the powers conferred by Sub-section (1), the rules may provide for, or may empower an authority to make orders providing for, all or any of the matters set out in the sub-section. Clause (20) of the sub-section reads as follows:

The control of agriculture, trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to, articles or things of any description whatsoever which can be used in connexion with the conduct of the war or for maintaining supplies and services essential to the life of the community.

3. Sub-section (4) of Section 2 provides that the Central Government may by order direct that a power or duty which by rule under Sub-section (1) is conferred or imposed upon the Central Government shall in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged, (a) by an officer or authority subordinate to the Central Government, or (b) whether or not the power or duty relates to a matter with respect to which a Provincial Legislature has power to make laws, by a Provincial Government or by

an officer or authority subordinate to such Government, or (c) by any other authority. Sub-section (5) gives to the Provincial Government a power of delegation of a power or duty which by rule made under Sub-section (1) is conferred upon it. In *Kewalram v. Collector of Madras* : AIR1944 Mad285 , this Court held that when a power had been delegated under Section 2 (4), a person or authority to whom the delegation has been made has all the power of the Central Government unless the order of delegation contains some restriction on the exercise of the power. Sub-rule (2) (a) of Rule 81 of the rules made under Section 2 of the Act states that the Central Government or the Provincial Government so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the War or for maintaining supplies and services essential to the life of the community, may by order provide:

For regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever and in particular for prohibiting the withholding from sale, either generally or to specified persons or classes of persons, of articles or things kept for sale, and 'for requiring articles or things kept for sale to be sold either generally or to specified persons or classes of persons or in specified circumstances.

4. Clause (f) as it stood when the offence was committed in this case stated that the Central Government or the Provincial Government might by order provide:

For any incidental and supplementary matters for which the Central Government or the Provincial Government thinks it expedient for the purpose of the order to provide, including, in particular, the entering and inspection of premises to which the order relates with a view to securing compliance with the order; and an order under this rule may prohibit the doing of anything regulated by the order except under, and in accordance with the conditions of, a licence granted by such authority as may be specified in the order, and may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and either to the whole or any part of any undertaking, and so as to have effect either generally or in any particular area.

5. The Foodgrains Control Order was notified on 21st May 1942. It was made by the Central Government in exercise of the powers conferred by Sub-rule (2) of Rule 81, Defence of India Rules. Clause 3 states that no person shall engage in an undertaking which involves the purchase, sale or storage for sale, in wholesale quantities of any foodgrain except under and in accordance with a licence issued in that behalf by the Provincial Government or by an officer authorised by the Provincial Government in this behalf. Rule 2 (c) defines 'purchase in wholesale quantities' as meaning the purchase in quantities exceeding twenty maunds in any one transaction, and includes purchase by any person on behalf of another as a commission agent or as an arhatiya. Clause (d) contains a corresponding definition of 'sale in wholesale quantities.' A definition of 'storage for sale in wholesale quantities' has been inserted in Clause 2, but this was done at a later date and Clause 3 must be construed without the aid of this definition. This is not difficult. Clause (a) of Rule 81 (2) is a lawful provision. As we have seen, Sub-section (1) of Section 2 of the Act empowers the Central Government to make such rules as appears to it necessary or expedient for, inter alia, maintaining supplies and services essential to the life of the community, and Sub-section (2) expressly empowers it to make rules for the control of trade or industry for the purpose of regulating or increasing supplies or for maintaining supplies and services essential to the life of the community. A power to control includes a power to prohibit as the Court of Appeal in England pointed out in *Rex v. Croydon and Norwood Tramways Co* (1887) 18 Q.B.D. 39. In that case, Lindley L. J. observed: 'If I prohibit a man from doing a thing, I control him to that extent.'

6. Therefore Section 2 confers power to prohibit a person carrying on a particular trade should this course be deemed necessary in the interests of the community in these days of national peril. Although the Sessions Judge appeared to think there was, there is no analogy between the Defence of India Act and the Rules framed thereunder and provisions in an Act conferring upon a municipal authority licensing powers. One way of controlling or regulating a trade is by insisting upon those engaged in it taking out licences. The power to grant a licence must contain a power to refuse one if this is deemed to be expedient. In our judgment the Central Government had the power under Rule 81 (2), to issue the Foodgrains Control Order and the provisions of Clause (3) are in all respects intra vires

notwithstanding that there is a discretion in the matter of issuing licences. Before turning to the merits of the case for the prosecution, it is necessary to deal with an argument which has been stressed in this Court by the learned advocate for the respondent. The licences contemplated by Clause (3) of the Foodgrains Control Order, are issued by the Grain Control Officers. It is said that the Provincial Government has no power of delegation. This contention is obviously fallacious in view of the provisions of Section 2 (5), Defence of India Act. All that is necessary to be assured of is that there has been a delegation. This question was not dealt with by the learned Sessions Judge. The learned Advocate-General has had no difficulty in satisfying the Court on this point. On 17th June 1942, the Governor of Madras in exercise of the powers conferred by Sub-section (5) of Section 2, Defence of India Act, directed that the powers conferred upon the Provincial Government by Clause (3) of the Foodgrains Control Order, shall be exercised also by the Grain Control Officers within their respective jurisdictions, subject to the control of the Special Officer for Prices, Madras. This notification was published in the Fort St. George Gazette of 23rd June 1942.

7. The charge against the respondent related to the period from 1st July 1942 to 5th September 1942, during which time the respondent held no licence. On 5th September 1942, the Deputy Tahsildar inspected the premises of the respondent and found stored therein 150 bags of paddy. He examined the books of the respondent which showed that he had been carrying on a wholesale trade in paddy and rice from 1st July 1942. He questioned the accused who told him that he had applied for a licence and that he was carrying on the trade in anticipation of it being granted to him. The Deputy Tahsildar again visited the respondent's godown on 20th November 1942 and discovered that between 5th September and 4th October 1942 the respondent had disposed of the 150 bags of paddy. In the course of his examination by the Magistrate before the framing of the charge under Section 342, Criminal P.C., the respondent repeated his statement that he had been carrying on business in anticipation of a licence being granted to him.

8. In Criminal Appeal No. 934 of 1943, Horwill J., held that storage for sale within the meaning of the Foodgrains Control Order is not an undertaking within Clause (3) and consequently if storage for sale in wholesale quantities is to be an offence,

it must be proved that it was stored for the purpose of fulfilling a contract. This opinion was dissented from by Kuppuswami Ayyar J. in *In re Uduman Taraganar* reported in : AIR1944 Mad451 . Kuppuswami Ayyar J. considered that if a person undertakes to trade and if he stores foodgrains in wholesale quantities for sale in future under contracts to be entered into in the future, he is guilty of an offence punishable under Clause (3). We have no hesitation in agreeing with Kuppuswami Ayyar J. Storage in wholesale quantities for the purpose of sale is just as much an offence as sale if a licence has not been granted. There is no doubt that the respondent did store food grain during the period between 1st July and 5th September 1942 in contravention of Clause (3) of the Foodgrains Control Order. He was a dealer in foodgrains and on 5th September he had on his premises 150 bags of paddy, which was far in excess of 20 maunds. It was obviously there for the purpose of sale because the paddy was sold. It had been sold when the Deputy Tahsildar visited the godown on 20th November 1942. In these circumstances the learned advocate for the respondent very properly said that he did not wish the case to be sent back for retrial as suggested by the Sessions Judge. He contended, however, that there was a flaw in the procedure adopted by the trial Magistrate and that this justifies the rejection of the appeal against the acquittal. The complaint is that the questions which were put to him when he was examined under Section 342, Criminal P.C., were not sufficiently specific. We consider that there is no substance in this contention. By no stretch of imagination can it be said that there has been any miscarriage of justice. Nothing which was said or might have been said in the course of the trial could alter the fact that on 5th September 1942 the respondent had stored on his premises 150 bags of paddy and that they were stored for the purpose of sale.

9. As an offence has been established, the appeal must be allowed, which means that we convict the respondent and impose the same sentence as the Magistrate imposed. The learned advocate for the respondent has asked us to issue a certificate under Section 20S, Government of India Act, 1935. We are unable to do so because the case involves no question of the interpretation of that Act or any Order in Council made thereunder.

