

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL) NO.6289 OF 2008

Satyanarayana Sultania & Anr. .. Petitioners

Vs.

State of Chhattisgarh .. Respondent

J U D G M E N T

ALTAMAS KABIR, J.

1. The Special Leave Petition is directed against the judgment and order dated 18th March, 2008, passed by the Chhattisgarh High Court at Bilaspur in Crl. Revision No.459 of 2002, dismissing the same.

2. Briefly stated, the facts involved are that on 3rd February, 2000, a hundred bags of paddy were being transported by one Ramesh Sahu, the driver of truck No.MP-23DA 2115 belonging to the one Hemant Kumar, the Petitioner No.2 herein. The said driver was transporting the said paddy on the strength of a letter written on the letter pad of Bajrang Rice Mill. En route the truck was searched by the Food Inspector and the paddy was seized. In accordance with Clause 6(2) of the Madhya Pradesh Essential Commodities (Exhibition of Price and Price Control) Order, 1997, confiscation proceedings were initiated and the seized paddy was ordered to be confiscated by the Collector. An appeal was preferred which was also dismissed by the learned Sessions Judge, Bilaspur, in Crl. Appeal No.65 of 2001, confirming the order dated 13th March, 2001, passed by the Collector and Licensing Authority, Janjgir Champa, in Case No.60 of 2000. The Appellate Order was questioned in revision before the Chhattisgarh High Court at Bilaspur and the same was also dismissed on 18th March, 2009. The said decision is the

subject matter of the present Special Leave Petition.

3. Appearing in support of the Special Leave Petition, Mr.

Saurabh Suman Sinha, learned Advocate, questioned the order of

the High Court on several grounds.

It was contended by him

that having regard to the definition of "dealer" in the

M.P.

Essential Commodities (Exhibition of Price and Price Control)

Order, 1997, hereinafter referred to as "the Control Order,

1997", the Petitioners had not committed any illegality in

transporting the paddy in question.

It was pointed out that

clause 2(a) defines "dealer" as a person

who carries on the

business of selling by retail or wholesale or storing for sale

by retail or wholesale any commodity whether or not such

business is carried in addition to any other business, but does not include a hawker or a peddler. It was submitted that the

said definition of "dealer" was amended by the State Government

in prior consultation with the Central Government by

notification dated 10th September, 1998, in exercise of the

powers conferred by Section 3 of the Essential Commodities Act,

1955. The amended definition of "dealer" included any person

dealing with any essential commodity included in the Schedule

to the "Licensing and Restriction on Hoardings) Order, 1991,

hereinafter referred to as "the Licensing Order, 1991", and if

dealing with only one commodity under the said Order at any

time in quantity of more than 200 (two hundred) quintals.

4. Mr. Sinha also referred to the definition of "dealer" in

the Licensing Order, 1991, wherein a "dealer" was described in

clause 2(e) to mean a person who is engaged or intends to

engage in the business of purchase, sale or storage for sale of

any one food grain specified in Schedule I in quantity of 10

quintals or more at any one time and in respect of all food

grains taken together in quantity of 50 quintals or more at any

one time. Certain other commodities were also referred to

which are not relevant for our purpose.

The said Licensing

Order, 1991, was amended by a notification dated 27th April, 1998, by the State Government with the prior concurrence of the Central Government, wherein the definition of "dealer" was once again amended to mean a person, partnership firm, association or any registered body engaged in or intends to engage in the business of purchase, sale or storage for sale (not including store of commodities produced by him by personal cultivation) and includes the business of commercial agent, and processor dealing in any or all of the scheduled commodities, other than sugar, of only one of scheduled commodities at any one time in quantity of more than 200 quintals. Mr. Sinha sought to urge that the definition of "dealer", therefore, did not include persons dealing in any one Scheduled commodity at any time in quantities of less than 200 quintals. It was urged that the Licensing Order, 1991, would be attracted only if the transactions involved more than 200 quintals of a Scheduled commodity at any one time.

5. Learned counsel submitted that since the consignment in question comprised 100 quintals of paddy, the same did not attract the provisions of the aforesaid Licensing Order, 1991, and the seizure and confiscation thereof was, therefore, wholly illegal and without any legal basis.

6. Mr. Sinha then urged that there was no compulsion under any of the Licensing Orders for the transporter or the driver of the vehicle carrying the goods to retain with him a copy of the receipt, invoice or bill relating to the goods in question and that Clause 11 of the Licensing Order, 1991, merely provides that the licence holder will give only one copy of receipt or invoice to each customer containing his name, address, licence number, name of customer and licence number (if any), date of transaction, sold quantity in quintals, total amount received and he will keep second copy with him to show on demand by the licensing authority or by any other officer

authorized by him for inspection.

Mr. Sinha urged that Clause

11 did not require the transporter of the goods to carry with

him any of the aforesaid documents mentioned in the said

Clause. In fact, the driver of the vehicle was carrying a

letter dated 3rd February, 2000, written by the Petitioner No.1

to Bajrang Rice Mill, Sargaon, informing the said Mill that a

hundred bags of paddy, weighing 75 quintals, had been sent by

truck No.MP-23DA 2115 and to receive the same and send payment

and empty bags of paddy through the driver of the truck Ramesh

Sahu. It was also indicated that due to absence of the Mandi

Authorities, the Bill and License would be sent to the Mill

later. In fact, a Credit Memo also dated 3rd February, 2000,

for a sum of Rs.39,375/- in relation to truck was also sent to

the buyer Bajrang Rice Mill, Sargaon, for the purpose of

payment for the transported goods.

7. Mr. Sinha submitted that in view of the above, the

seizure and confiscation of the paddy was wholly arbitrary and

was liable to be set aside with a direction for return of the
seized goods.

8. On behalf of the State of Chhattisgarh, Mr. Aniruddha P.

Mayee, learned Advocate, however, urged that the definition of

"dealer" as sought to be interpreted on behalf of the
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Petitioners was erroneous since under the Licensing Order,

1991, the definition of "dealer" had been amended on 27th

April, 1998, to include persons engaged in business of any one

Scheduled commodity at any one time in quantities of more than

200 quintals. According to learned counsel for the
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Respondent, the said definition did not refer to any on
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transaction as a whole but in respect of the amounts of the

scheduled commodity which was being dealt with by the person

concerned. Accordingly, a person dealing in any one Scheduled

commodity at any time in quantities of more than 200 quintals

would be a "dealer" and would also be considered as a "dealer" for transportation of any goods, even if the same was below 200 quintals. It was submitted it was precisely for such a reason persons dealing in food grains were required to hold a licence for dealing in the said commodity in respect of quantities as indicated in the Licensing Order, 1991.

9. As far as Clause 11 of the Licensing Order 1991, is concerned, it was urged that the said clause merely indicated the procedure that was to be followed in respect of a transaction of buying and selling by a dealer to a customer and it was naturally expected that the documents in question were to accompany the consignment and that the fact that the petitioners were aware of the said requirement would also be evident from the letter written by the Respondent No.1 to Bajrang Rice Mill on 3rd February, 2000, indicating that he would later come with the Bill and Licence in respect of the said consignment.

10. Learned counsel submitted that the transportation of the paddy was in violation of clause 11 of the Licensing Order, 1991, and the consignment had been rightly seized and confiscated in the absence of the documents. Learned counsel submitted that no case had not been made out for interference in the impugned judgment of the High Court.

11. We have carefully considered the submissions made on behalf of the respective parties and we are inclined to agree with the submissions made on behalf of Respondent State, since in our view the definition of the expression "dealer" in the Licensing Order, 1991, was not intended to include only such persons as were dealing in essential commodity in quantities of more than 200 quintals. The intention of the legislature appears to have been that a dealer is a person who would be

dealing in Scheduled food grains in quantities of more than 200 quintals at a time and was not confined to individual transactions as in the instant case. We are also of the view that it was incumbent on the part of the transporter to carry along with the consignment the documents mentioned in Clause 11 of the Licensing Order, 1991, at least for the purpose of identification, so that there was no possibility of the transported commodity being used for any purpose other than for what it was meant.

12. For the sake of reference, Clause 11 of the Licensing Order, 1991, is reproduced hereinbelow:-

"Clause 11 - Licence Holder will give only one copy of Receipt or Invoice to each customer containing his name, address, Licence Number, name of customer and Licence Number (if any), date of transaction, sold quantity in quintals, total paddy and amount received and he will keep its second copy with him to show on demand by Licensing Authority or by any other Officer authorized by him for inspection."

13. Although, the aforesaid clause does not stipulate that the documents indicated therein are to be carried along with the consignment being transported, the documents concerned are safeguards against clandestine dealing in the food grains covered by the Licensing Order, 1991. The receipt or invoice as also the name of the customer and Licence Number, if any, the date of transaction and the quantity of paddy sold, are documents which prove the authenticity of the transaction entered into by the licence holder in respect of the said consignment. We are of the view that it was necessary for the said documents to accompany the consignment of paddy which was being transported.

14. As far as the confiscation proceedings under clause 6(2) of the Control Order, 1997, are concerned, the same are

dependent on the proceedings relating to the alleged violation

of Clause 11 of the Licensing Order, 1991.

15. In that view of the matter, we see no reason to

interfere with the order of the High Court impugned in the

Special Leave Petition, which is, accordingly, dismissed.

J.
(ALTAMAS KABIR)

J.
(CYRIAC JOSEPH)

New Delhi

Dated: January 22, 2010

ITEM NO.62

COURT NO.3

SECTION IIA

(FOR JUDGMENT)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).6289/2008
(From the judgement and order dated 18/03/2008 in CRLR No.
459/2002 of The HIGH COURT OF CHATTISGARH AT BILASPUR)

SATYANARAYAN SULTANIA & ANR.

Petitioner(s)

VERSUS

STATE OF CHHATISGARH

Respondent(s)

(With appln(s) for exemption from filing O.T.,stay)

Date: 22/01/2010 This Petition was called on for judgment today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s)

Mr.Gaurav Agrawal,Adv.

For Respondent(s)

Mr. Aniruddha P. Mayee,Adv.

UPON hearing counsel the Court made the following
O R D E R

Hon'ble Mr. Justice Altamas Kabir pronounced the Judgment of
the Bench comprising His Lordship and Hon'ble Mr. Justice Cyriac
Joseph.

The Special Leave Petition is dismissed in terms of the
signed Judgment.

(VISHAL ANAND)
Sr. P.A.

(JUGINDER KAUR)
Court Master

(Signed reportable Judgment is placed on the file)