

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4304 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

KUSHIKKUMAR NARSINHBHAI NI COMPANY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4304 of 1988
MR KM PATEL Advocate with MR MJ BIHOLA Advocate
for the Petitioner
MR LR POOJARI, AGP for the Respondents

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/08/2003

ORAL JUDGEMENT

#. The petitioner challenges the order of confiscation of 200 quintals of rice passed by the Collector, Kheda on

20th March, 1987 (Annexure:E) under Section 6-A of the Essential Commodities Act, 1955, and the order made in appeal by the State Government (Annexure:F) under Section 6-C of the Act, on 22.2.'88.

#. The petitioner was holding a wholesaler's license in food grains and pulses under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. On inspection of the petitioner's shop on 22nd August, 1986, several irregularities were noticed and a show cause notice was issued on the petitioner, enumerating 17 irregularities/breaches therein. After a hearing, pursuant to the show cause notice which was issued on 25.9.'86, the Collector made an order on 20th March, 1987, confiscating 200 quintals of rice. The petitioner appealed against that order, and the appellate authority, after hearing the petitioner through his advocate, dismissed the appeal by a reasoned order made on 20.2.'88.

#. The learned counsel appearing for the petitioner contended that the seizure was illegal, because, satisfaction of the Collector, as required by the provisions of Section 6-A of the Essential Commodities Act, 1955 was not recorded and the seizure was done by the Mamlatdar. There is no substance in this contention, because, show cause notice was issued by the Collector and after hearing the petitioner, the Collector made an order confiscating 200 quintals of rice, and in that speaking order, the Collector has recorded his satisfaction about the contravention of the provisions of the Licensing Order or the conditions of the License.

#. It was then contended that the grounds alleged were only of technical breaches and did not warrant confiscation of the said stock of rice. It was argued that the normal practice was that the bill would be prepared on the day on which the agriculturists came to take payment and not on the day on which the goods were supplied to the petitioner. It was submitted that there was no provision in the Licensing Order for issuance of bill and, therefore, any discrepancy between the date of receipt of the stock and the issuance of the bill in respect of such stock was of no consequence. It was further argued that the concerned authority had not verified whether purchasers from the petitioner were license holders and, therefore, not showing their license numbers in the invoices issued by the petitioner, was not a breach of any condition. As regards the discrepancy in the weight of the stock, it was contended that the actual

weighment of the commodities was not possible, because, these commodities were purchased in bags (Kattas) and sold in Kattas, and that the shortfall was insignificant. The learned counsel placed reliance on the decision of the Supreme Court in N. Nagendra Rao & Co. v. State of Andhra Pradesh [AIR 1994 Supreme Court 2663], in which the Supreme Court held that the goods seized were liable to be confiscated only if the Collector was satisfied about the violation of Control Orders. The Supreme Court held that the language of section 6-A and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock. [see para-5 of the judgment].

#. The learned Assistant Government Pleader, appearing for the respondents supported the impugned decisions on the ground that they have been made on the basis of the material on record, and that the orders have been passed in lawful exercise of the powers of the concerned authority after giving appropriate opportunity of being heard to the petitioner. It was submitted that the breaches which are proved against the petitioner were not of mere technical nature, but included serious violations of the provisions of the Order and the conditions of the License. It was submitted that the discrepancy in the weight of the essential commodities recorded in the stock register was serious, particularly, in respect of allegation no. 6. It was submitted that the place of business was found to be different in gross violation of the conditions of the License. Moreover, in certain purchases, which are referred to in allegation no. 17, the petitioner had issued cheques in the names of different persons while purchasing the goods from Pravinbhai M. Thakkar. It was submitted that in the statement given by the petitioner, he had admitted that he had issued cheques in the names of the persons different from the person from whom he had purchased the stock.

#. It is evident from the record that the petitioner was given adequate opportunity of being heard, both by the Collector and the appellate authority, and both the authorities have considered each and every allegation in detail on the basis of the material on record as well as the contentions which were raised by the petitioner. The finding of fact reached by these two authorities clearly

show that there was a discrepancy in the stock register. Allegation no. 6, was to the effect that 426 bags (Kattas) of Parimal rice were purchased from Jivatram & Sons of Delhi vide bill no. 11973 dated 29.7.'86 and its weight was shown as 136 quintals in the bill. However, in the stock register, it was credited as 212.50 quintals on 1.8.'86. This discrepancy was established from the material on record. The only explanation which is sought to be given in para-6 of the petition as regards this allegation is that general practice followed by all the stockists is that when rice is received in 'Kattas', the receipt of article is shown in the stock register on the basis of each 'Katta' containing 50 Kg weight, and similarly when it is sold, disposal is shown on the basis of each 'Katta' weighing 50 kg. of rice. It is stated that the petitioner had accordingly shown the receipt of rice and disposal thereof at the time of its sale on the basis of each 'Katta'. This explanation as regards the difference between 212.50 quintals shown in the stock register as against 136 quintals covered by allegation no. 6 can, hardly be accepted. While trying to give such explanation, the petitioner seems to have overlooked that the difference between the two figures was 76 quintals and not a few kilograms, and such a huge discrepancy can never occur even if the weight is written with reference to the number of bags i.e. 'Kattas' while purchasing and selling the goods.

#. The allegations at sr. nos. 8, 9, 10 and 11 which are held to be proved by both the authorities and which are found to be of serious nature, are to the effect that while selling several bags of rice to various persons, it was noted in the stock register that they were sold to the license holders, but, in the bills which were issued, license numbers of such purchasers were not noted, as was required to be done under the conditions of the License. It will be noticed from the condition no. 9 of the license which is to be issued in the statutorily prescribed form-B, under the said Licensing Order, that the license holder is required to issue to every customer, a correct receipt or invoice and if any purchaser is a license holder, then, his license number is also required to be indicated. Therefore, there was clear violation of condition no. 9 of the License committed by the petitioner, as held by the authorities while making orders under Sections 6-A and 6-C of the Act.

#. The allegation no. 16 pertained to the place of business and the explanation given by the petitioner has

been found to be unsatisfactory. The place of business is required to be mentioned in the License under clause-2(b) thereof. It provides that essential articles in which the business as dealer/producer is to be carried on shall not be stored at any place other than any of the godowns/storage places mentioned therein. Even clause-2(a) provides that the dealer shall carry on business at the place mentioned therein. In order to have effective control on the supply and distribution of essential commodities, the places where the stock is to be kept are of vital importance and, therefore, any change of place in carrying on business or stocking essential commodities cannot be dismissed as a mere technical deviation.

#. The allegations nos. 12, 13, 14 and 15 were also established and they showed the discrepancies in the stock register.

##. The allegation no. 17 appears to be the most serious of all the allegations, alleging against the petitioner that he had purchased under the bills nos. 826, dated 19.7.'86, 828, dated 22.7.'86, 841, dated 16.8.'86 and 842, dated 20.8.'86, 22 quintals of rice from Pravinbhai Thakkar through his Commission Agent Prabhudas and issued cheques in the names of some other persons in whose names these bogus bills were prepared. This allegation has been admitted by the petitioner in his statement, copy whereof is at Annexure:A collectively. Even the Commission Agent Prabhudas, in his statement, copy of which is also at Annexure:A collectively, stated that the said quantity of goods was supplied by Pravinbhai Thakkar and Kiritbhai Thakkar in the name of different agriculturists and they had obtained cheques in the names of such different parties from the petitioner. Condition no. 9 of the License required correct receipts and invoices to be issued by the license holder, and issuance of cheques as against the bills taken out in bogus names at the instance of the supplier to whom the cheques were given, was a clear violation of the conditions of the license as well as the provisions of the Licensing Order, which enjoins a duty on the license holder to maintain correct record so that proper control could be maintained for the supply and distribution of essential commodities.

##. In the above view of the matter, there is no warrant for interference with the impugned orders which have been based on the material on record and have been passed in lawful exercise of the jurisdiction of the concerned authorities under Sections 6-A and 6-C of the Act. Some

of the breaches proved against the petitioner are of serious nature and the order of confiscation has not been mechanically passed on technical breaches as alleged. Both the authorities were fully aware of the serious nature of some of the breaches, including in respect of the transaction in respect of 200 quintals of rice purchased from Pravinbhai Thakkar, who had a Fair Price Shop, under the bills prepared in the name of some other persons, which indicated that the goods meant for the ration card holders under the Public Distribution System (Control) Order, 2001, were purchased by the petitioner from Pravinbhai while showing transactions in the names of other persons.

##. In the above view of the matter, there is, absolutely no substance in the contentions raised on behalf of the petitioners. The petition is, therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

[R.K. ABICHANDANI, J.]

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