

HIGH COURT OF ORISSA ; CUTTACK

W.P.(C) No.1891 of 2013

In the matter of an application under Articles 226 and 227 of the Constitution of India.

N.Dharma Rao

...

Petitioner

Versus

The Collector, Rayagada & others

...

Opposite Party

For Petitioner

: M/s. C.Ananda Rao, S.K.Behera,
A.K.Rath & G.B.Panda.

For opposite parties

: Addl. Standing Counsel

P R E S E N T :

THE HONOURABLE MR. JUSTICE S.K.MISHRA

Date of judgment: 25.2.2015

S.K.Mishra,J.

In this writ petition the petitioner challenges the judgment dated 9.11.2012 passed by learned Sessions Judge, Rayagada in CrI. Appeal No.8/2012 dismissing his appeal against an order of confiscation made by the learned Collector, Rayagada in C.S. No.3/2013 for confiscation of a vehicle bearing Regn. No.AP-16-TU-4988 on the ground that it was found to be containing blue dyed kerosene oil in the fuel tank.

2. The brief facts of the case is that on 22.12.2011 as per verbal direction of Civil Supply Officer, Rayagada, the Inspector of Supplies, Rayagada Municipality along with the A.C.S.O., Rayagada proceeded to Rayagada Police Station at about 5 P.M. The I.I.C., Rayagada P.S. informed that they have detected a goods carriage, Ashok Leyland Truck bearing Regn. No.AP-16-TU-4988 was loading blue dyed kerosene oil in the fuel tank. The driver of the alleged truck M. Srinu was also present at the Police Station. The Inspector of Supplies along with other Civil Supplies executive staff drained out some fuel from the fuel tank and found the same was blue dyed kerosene oil. Therefore, the Inspector of Supplies drained out the entire blue dyed kerosene oil from the fuel tank and on measurement it came to 98 litres. On being asked, the driver of the vehicle admitted that somebody had given him the blue dyed kerosene oil which he was pouring in the vehicle but could not produce any valid document for using the said blue dyed kerosene oil as fuel in the vehicle. Hence the Inspector of Supplies seized 98 litres of blue dyed kerosene oil along with the aforesaid truck from the possession of the driver M. Srinu in presence of witnesses for contravention of Clause 3(1) of Kerosene Oil (Restriction on Use and Fixation of Ceiling Price) Order, 1993 and the Odisha Public Distribution System Control Order 2008. The seized kerosene oil was kept under the zima of G.V.V. Prasad, Sub-wholesaler of kerosene oil, after execution of a zimanama. Thereafter the Inspector of Supplies lodged a complaint before the Collector for initiation of a proceeding under Section 6-A of the Essential Commodities Act, 1955 for disposal of the seized property. Accordingly, a case being C.S. No.3/2012 was initiated and show cause notice under Section 6-B of the Essential Commodities Act was issued to the opposite party to appear and for filing counter. The opposite party filed counter affidavit. The owner of the seized vehicle, the present petitioner, also filed a petition through his Advocate praying for release of the

vehicle before the Collector, Rayagada. The learned Collector, Rayagada after hearing both parties and perusing the documents came to conclusion that the owner of the vehicle is deemed to have knowledge of using the P.D.S. blue dyed kerosene oil in his vehicle and has contravened the aforesaid provision of law and passed order for confiscation of the seized vehicle under Section 6-A of the Essential Commodities Act on 14.2.2012 and directed the owner to file his option to pay the fine amount equivalent to the market price of the seized vehicle in lieu of confiscation of the same. Since the petitioner was unable to deposit the cost of the vehicle as fixed by the M.V.I, Rayagada as fine amount in lieu of confiscation of the seized vehicle, orders were passed by the Collector, Rayagada for confiscation of the same.

3. The aforesaid orders passed by the learned Collector, Rayagada was assailed before the learned District and Sessions Judge, Rayagada in CrI. Appeal No.8/2012, which was disposed of on 9.11.2012 upholding the orders passed by the learned Collector, Rayagada.

4. The record reveals that the learned Collector, Rayagada in his order dated 14.2.2012 after going through the entire documents available on record, having taken into consideration the arguments advanced by the learned counsel appearing for the petitioner was satisfied that the driver of the seized vehicle was using the seized 98 litres of blue dyed kerosene oil in the fuel tank of the vehicle without any valid licence or document being an agent of the owner and that the owner of the said vehicle cannot escape from his liability for the acts done by his agent/driver M. Srinu and deemed to have knowledge of using the blue dyed kerosene oil in his vehicle and thereby contravened Clause-3(1) of the Kerosene Oil (Restriction on Use and Fixation of Ceiling Price) Order, 1993 and the Odisha Public

Distribution System Control Order, 2008 and ultimately passed order for confiscation of the vehicle.

5. The learned Sessions Judge, Rayagada, while disposing of the appeal, has taken into consideration the statement of the driver, namely M.Srinu, that he was filling the fuel tank of the aforesaid vehicle with kerosene oil, which is blue dyed kerosene oil and brought to the Police Station along with the vehicle and in his presence the Civil Supply Officer drained out 98 litres of blue dyed kerosene oil from the fuel tank and seized the same.

6. The learned Sessions Judge further taken into consideration the fact that the present petitioner has stated that the prosecution report is complete false and fabricated. It is stated that neither the I.O. nor the Civil Supply Officer drained the fuel from the tank of the vehicle nor found any kerosene oil in presence of the opposite party. The said owner namely, M. Dharma Rao, the present petitioner, on 17.1.2012 contended that he has not committed the offence and that mischief has been done by the driver and the Court may punish the driver and confiscate the kerosene oil and to release the vehicle as the said vehicle was financed by the Finance Company. Learned Sessions Judge keeping in view the contention of the opposite party, the driver and the owner of the vehicle and having regard to the seizure list and other documents held that the fact of seizure of 98 litres of blue dyed kerosene oil from the vehicle cannot be disbelieved. Learned Sessions Judge also held that no material has been placed on behalf of the owner to show that the blue dyed kerosene oil was filled by his driver without his knowledge. Therefore, the conclusions arrived at by the learned Collector, Rayagada were upheld.

7. In course of hearing of the writ petition, learned counsel for the petitioner raised the following grounds:-

(i) The Collector, Rayagada has proceeded in confiscation proceeding against the driver of vehicle by issuing notice under Section 6-B of E.C. Act without examining any witnesses nor ensuring production of seized fuel nor the same was tested chemically to ascertain the seized fuel is blue dyed kerosene oil.

(ii) Though as per admitted case of prosecution/police the vehicle was detained, allegedly when the driver of the vehicle, while pouring/loading blue dyed kerosene oil in the fuel tank, no independent witness or police officials who have seized the vehicle with instruments of pouring/loading were examined.

(iii) The alleged blue dyed kerosene oil was not chemically tested to arrive at the finding of contravention of Clause 3(1) of Kerosene Oil Central Order, 1993 and PDS Rule, 2008.

8. Section 6-A of the Essential Commodities Act provides for confiscation of essential commodities whenever there is violation of Section 3 of the Act. This provision has been inserted by the Amendment Act 25 of 1966 with the objective of dealing firmly with violation of the Essential Commodities Regulations and to provide a deterrent for any such violation. Section 6-B of the Act provides the procedure to be followed before confiscation. It is appropriate to take note of the Section itself, which is quoted below:-

“6-B. Issue of show cause notice before confiscation of food grains. Etc. (1) No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under Section 6-A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of Sub-section (1), no order confiscating any animal, vehicle or other conveyance shall be made under Section 6-A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had all reasonable and necessary precautions against such use.

(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under Clause (a) of Sub-section (1), if in giving such notice, the provisions of that clause have been substantially complied with."

9. Thus, a plain reading of Section 6-B leaves no doubt in the mind of the Court that it is a summary proceeding and there is no provision of taking evidence in such proceeding. The learned Collector has to be satisfied about the violation of the provisions of Essential Commodities Act before passing order of confiscation on the basis of the materials available on record. Of course, the aggrieved party has the right of reasonable opportunity of being heard in the matter. So, the learned Collector, Rayagada did not commit any error on record by not examining any witness from the side of the State.

10. Secondly, it is contended that the independent witnesses should be examined regarding seizure of that. As stated earlier it

is a summary proceeding and it is not a full scale criminal trial. In fact, the order passed by learned Collector, Rayagada is subject to the final outcome of the criminal case if any case has been initiated against the accused for the self-same allegation. So it is not necessary to examine any independent witness in this regard.

11. The last contention was that there was no chemical examination of the blue dyed kerosene oil. In this regard, the statement of M.Srinu, the driver, is clear which has been recorded by Civil Supplies Authorities and, therefore, it is not hit by Section 162 of the Cr.P.C. Such document is admissible in a summary proceeding. He has admitted that he has collected blue dyed kerosene oil and pouring the same in the fuel tank of the aforesaid truck. Moreover, it is common knowledge that the Civil Supply Officer having sufficient practical experience can very well determine a liquid to be blue dyed kerosene by smell and observation. So this Court is of the opinion that no prejudice can be said to have been caused for not sending the seized liquid for chemical examination.

12. As far as the contention of the learned counsel for the petitioner to the effect that the petitioner was not aware of the driver indulging in such activity is concerned, it is common knowledge that the trucks do ply by using high speed diesel. In order to convert the vehicles running on diesel to use kerosene as fuel, necessary changes or modification has to be made to the engine and unless that is done such a truck cannot run on kerosene. Hence the contention of the learned counsel for the petitioner that the petitioner has no knowledge about any such use of kerosene oil is of no avail and is not acceptable.

Keeping in view the aforesaid discussion, this Court comes to the conclusion that the order passed by the learned

Sessions Judge, Rayagada requires no interference. Hence, the writ petition is dismissed.

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S.K.Mishra, J

Orissa High Court, Cuttack
Dated 25th February, 2015/A.K.Behera.

Orissa High Court, Cuttack
Dated June, 2010/A.K.Behera.

Sd/-

A.S.Naidu,J.

S.C.Parija,J. I agree.

Sd/-
S.C.Parija,J

True Copy

Orissa High Court, Cuttack
Dated June,2010/A.K.Behera.

P.A.

