

STATE OF KARNATAKA

v.

KRISHNA BHIMA WALVAKAR & ANR.

May 7, 1981

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[O. CHINNAPPA REDDY, A.P. SEN AND
BAHARUL ISLAM, JJ.]

Essential Commodities Act, 1957—Sections 6A, 6B & 6C—Scope of—Consignment moved on a Sunday—Whether exonerates the consignee from making the requisite declaration before the specified authority.

Interpretation—Power coupled with public duty—Whether use of word 'may' in an order makes the power discretionary.

Clause 3(2)(a) of the Edible Oil, Edible Oil Seeds and Oil Cakes (Declaration of Stocks) Order, 1976 enjoins that before a consignment of oil leaves a place a stock holder who transports edible-oils shall make a declaration in Form II to the specified officer of the place (in this case the Tehsildar of the) Taluk from where such edible oils are transported. Clause (b) enjoins that the declaration shall be shown at every check post on the route immediately after arrival there.

A police officer seized in transit a truck carrying a large quantity of ground-nut oil on the ground that the requisite declaration in Form II had not been furnished to the Tehsildar of the place of despatch of the consignment.

The Deputy Commissioner, after issuing a notice to the respondent under section 6B of the Essential Commodities Act, 1955, released the truck and the consignment on taking from him an indemnity bond and a bank guarantee towards the price of oil. The respondent however produced before the Deputy Commissioner a copy of the invoice issued by the seller and a declaration in Form 39 prescribed under the Mysore Sales Tax Act, 1957.

The Deputy Commissioner ordered confiscation of the truck and the oil on the view that the respondent had contravened the provisions of clause 3(2) (a) and (b) of the Order. On appeal the Sessions Judge affirmed this order.

A single Judge of the High Court in revision held that there was no contravention of the requirement of the Order because the day on which the goods were despatched being a Sunday, it was impossible for the respondent to deliver on that day to Tehsildar the declaration in Form II and that the law would not expect a citizen to do the impossible.

The respondent in the State's appeal to this Court contended that: (1) the confiscation of the entire consignment was arbitrary and excessive in that the use of the word "may" in section 6A made exercise of that power discretionary; (2) since there was nothing to show that the goods had been seized, the power of

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A confiscation under section 6A had not been properly exercised and (3) the order of confiscation was a nullity in that the Deputy Commissioner had not issued a proper show cause notice under section 6B of the Act.

Allowing the State's appeal

B HELD : 1 (a) The word "may" used in section 6A does not mean that the Deputy Commissioner could not order confiscation of the entire consignment of an essential commodity [where he found contravention of any of the orders issued under section 3 of the Act. The power conferred on the Deputy Commissioner under section 6A is a power coupled with public duty. [834 H]

C (b) In directing confiscation of the entire consignment which was being transported without furnishing the declaration in Form II the Deputy Commissioner acted in public interest. The whole purpose of the control order was to maintain control over the stock of essential commodities at a place with a view to securing their equitable distribution and availability at fair prices. The requirements of clause 3 (2) (a) and (b) are mandatory. [835 C-D]

D (c) "Stock holder" as defined in the Order includes the purchaser of oil who is in possession or control thereof. By a legal fiction the explanation treats the owner to have control over the oil in transit. Respondent 4 being the purchaser fell within the definition of "stock holder". Moreover there was nothing to show that the consignor had reserved the *jus disponendi* by the terms of the contract or appropriation and, therefore, the property in the goods passed to respondent 4 (purchaser) on delivery to a common carrier under section 25 of the Sale of Goods Act, 1930. [836 A-B]

E (d) The Deputy Commissioner was right in holding that the declaration in Form II was required to be filed before the specified officer before the goods left a place and that the declaration should be produced at every check post in transit as required by law. The respondent having contravened the provisions of clause 3 (2) (a) and (b) of the order the truck and the consignment of oil were rightly confiscated. [837 A-C]

F (e) It is not correct to say that since the date of despatch of the goods was a Sunday there was no need to comply with the requirements of clause 3 of the Order. If the consignment had to be despatched on Sunday nothing prevented the parties from furnishing the declaration a day earlier. In a transaction of such a magnitude a duty was cast on the party to comply with the requirements of the Order before the consignment left the place. [834 A-B]

G 2. The very fact that the seized groundnut oil was released only after the respondent furnished the requisite bank guarantee clearly showed that the consignment had been seized. Therefore power under section 6A had been correctly exercised. [837 E-F]

H 3. There was no breach of the requirement of section 6B. In response to the show cause notice issued by the Deputy Commissioner respondent 4 appeared before him and filed a copy of the invoice and declaration in Form 39 of the Mysore Sales Tax Act. The Deputy Commissioner gave a hearing to the parties. That being so, validity of the confiscation under section 6C could not be challenged. [837 G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 669
of 1980.

Appeal by special leave from the judgment and order dated the 2nd February, 1979 of the Karnataka High Court in Criminal Revision Petition No. 320 of 1978.

B.R.L. Iyengar and N. Nettar for the Appellant.

A.L. Wahi and K.C. Dua for Respondent Nos. 1-3.

Ram Jethmalani and Miss Rani Jethmalani for Respondent No. 4.

The Judgment of the Court was delivered by

SEN, J. In this appeal, by special leave, from the judgment of the Karnataka High Court, the only issue between the parties is as to the legality and propriety of the order of confiscation passed by the Deputy Commissioner, Belgaum, of a consignment of 7,200 kg. of groundnut oil seized for contravention of sub-cl. (2) (a) and (b) of cl. 3 of the Edible Oil, Edible Oil Seeds and Oil Cakes (Declaration of Stocks) Order, 1976 (hereinafter called the Order).

Briefly stated the facts are these: On 6.6.1977 at about 11.30 a.m., the Sub Inspector of Police, Hukeri, intercepted a truck bearing registration No. MHL 2675 laden with 40 barrels of groundnut oil weighing 7,200 kg. which were being transported from Kampli to Nippani, without furnishing a declaration in Form II to Tahsildar, Hospet, as required under sub-cl. (2) (a) and (b) of cl.3 of the Order. The Sub Inspector of Police, after seizing the vehicle and the oil registered a case and thereafter reported the matter to the Deputy Commissioner, Belgaum. He forwarded the report together with the seized vehicle and the oil to the Deputy Commissioner, Belgaum for taking action under s. 6-A of the Essential Commodities Act, 1955 (hereinafter called the Act). The truck was released to the owner on his executing an indemnity bond, and the groundnut oil released to the Respondent 4, Gopinath Manikchand Dharia, Proprietor, Messrs Anant Oil Mills, Nippani on his furnishing a bank guarantee for Rs. 70,000/- towards the price thereof. The Deputy Commissioner gave notices as required under s. 6-B of the Act to the parties concerned. During the enquiry, the respondent No. 4 produced before him a copy of the invoice dated 5.6.1977 issued by Sri Satyanarayana Oil Mills, Bellary Road, Kampli, show-

Aing the sale of 7,200 kg. of groundnut oil to Messrs Anant Oil Mills, Nippanni. He also produced a copy of the declaration in Form No. 39 prescribed under the Mysore Sales Tax Act, 1957. The Deputy Commissioner, after affording the parties an opportunity of hearing, held that the respondents had contravened the provisions of sub-cl. (2) (a) and (b) of cl.3 of the Order and accordingly confiscated 40 barrels of groundnut oil and the truck bearing registration No. MHL 2675.

BThe respondents preferred an appeal under s. 6-C of the Act before the II Additional Sessions Judge, Belgaum, who was the Appellate Authority. But he, by his well-considered judgment, confirmed the order of confiscation passed by the Deputy Commissioner under s. 6-A of the Act. Thereupon, the respondents preferred a revision before the High Court and a learned Single Judge has, by his judgment, set aside the order of the Appellate Authority as well as the Deputy Commissioner on the ground that there was substantial compliance of the requirements under sub-cl. (2) (a) and (b) of cl. 3 of the Order inasmuch as the respondents had sent the prescribed declaration in Form II to the Tahsildar, Hospet on 7.6.1977. According to the High Court, no such declaration could be furnished on 5.6.1977 as it was a holiday being Sunday. Upon that view, the High Court set aside the order of confiscation passed by the Deputy Commissioner under s. 6-A of the Act and directed restoration of all the properties to the persons concerned. Hence this appeal by special leave.

CThe State was not interested in the confiscation of the truck and, therefore, special leave is confined to the question of the legality and propriety of the order of confiscation passed by the Deputy Commissioner under s. 6-A of the Act in respect of the seized groundnut oil.

DOn the admitted facts, there can be no doubt whatever that there was a contravention of sub-cl. (2) (a) and (b) of cl.3 of the order. Sub-cl. (2) (a) and (b) of cl. 3 are as follows :

E3. (2) A stock holder who transports Edible-Oils, Edible Oil Seeds and Oil Cakes shall make a declaration in Form II to the Officer specified in Sub-Clause (1) in respect of such Edible Oils, Edible Oil Seeds and Oil Cakes,—

F(a) at the place from where such Edible Oils, Edible Oil Seeds and Oil Cakes are transported, before such

Edible Oils, Edible Oil Seeds and Oil Cakes leave the said place; and

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(b) at every check post on the route, immediately after their arrival there;

Provided that the declaration at a check post shall be made in person by the stock holder or by the person in charge of such Edible Oils, Edible Oil Seeds and Oil Cakes to such Officer, as the Government may by special or general order specify.

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The expression 'stock-holder' has been defined in the Order as meaning "Every person who is in possession or control of 150 kilograms or more of groundnut oil.....(b) 15 quintals or more of groundnut oil or cake.....(c) 15 quintals or more of groundnut seeds.....and (d) 20 quintals of groundnut shell. The Explanation thereto provides that edible oil, edible oil seeds and oil cakes in transit shall be presumed to be under the control of the owner thereof.

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The order passed by the High Court setting aside the order of confiscation made by the Deputy Commissioner under s. 6-A of the Act can hardly be supported. In reaching the conclusion that it did, the High Court observes that 5.6.1977 being Sunday, the declaration in Form II could not be delivered to the Tahsildar since the Taluka Office was closed. Nor could it be sent by registered post acknowledgement due as the Post Office could not have been working on that day. It then goes on to observe :

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Then, the question is, whether a stock-holder should not at all transport his stock on a Sunday, though the contractual terms of his business of such transaction required that it should be done, as the stock should reach the consignee on a particular date. It is impossible to conceive that law expects any citizen to perform what is impossible to be performed in law. Now the fact that Form II has been received in the office of the Tahsildar on 7.6.1977, clearly indicates that it must have been sent by registered post on 6.6.1977. Anyhow, when once it is seen that it was impossible for the stock-holder (petitioner-4) to submit Form-II on 5.6.1977 before transporting groundnut-oil in that truck on that day, it cannot at all be said that petitioner-4 has committed any breach of the provisions of the order.

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A It is difficult to subscribe to the view expressed by the High Court. When the parties were entering into a transaction of such magnitude there was a duty cast on them to comply with the requirements of sub-cls. (2) (a) and (b) of cl. 3 of the Order before the consignment left the place. If the consignment was to be loaded on 5.6.1977 which was a Sunday, nothing prevented the parties from furnishing a declaration on 4.6.1977. The High Court appears to be labouring under a belief that there need be no strict observance of the laws on a Sunday. There is no warrant for this view.

Faced with the situation that it was rather difficult, if not impossible, to support the view taken by the High Court, Shri Ram Jethmalani, learned counsel for the respondent No. 4 made a valiant

C effort to avert the order of confiscation passed under s.6-A of the Act, by advancing the following three contentions: (1) The power conferred on the Deputy\Commissioner under s. 6-A of the Act, by the use of the word 'may', makes it a discretionary power which had to be used according to sound judicial principles. It is urged that Messrs Anant Oil Mills to whom the groundnut oil belonged had committed no breach of sub-cls. (2) (a) and (b) of cl.3 of the order and therefore, the order of confiscation of the entire consignment passed by the Deputy Commissioner was wholly arbitrary and excessive. (2) The power of confiscation entrusted to the Deputy Commissioner under s.6-A of the Act is exercisable in relation to an essential commodity seized in pursuance of an order made under s. 3. There was nothing to show that the groundnut oil in question had been seized or that a report of such seizure had been made without unreasonable delay to the Deputy Commissioner under the Order and, therefore, the Deputy Commissioner had no power to direct its confiscation under s. 6-A of the Act. (3) It is not established that the Deputy Commissioner had complied with the statutory requirements of s. 6-B of the Act, by giving a show cause notice to the persons concerned against the action proposed to be taken or afforded them an opportunity of hearing and, therefore, the order of confiscation passed by him under s. 6-A was a nullity. We are afraid, none of these contentions can prevail.

G As to point No. (1), it is axiomatic that the power of confiscation of an essential commodity seized for contravention of an order issued under cl.3, is a discretionary power. The use of the word 'may', however, does not necessarily mean that the Deputy Commissioner cannot, in the given circumstances of a particular case, direct the confiscation of the entire consignment of an essential commodity in relation to which there is a contravention of any of the orders issued under s.3 of the Act. It all depends on the facts

and circumstances of each case whether the confiscation should be of an entire consignment or part of it, depending upon the nature of the contravention. The power conferred on the Deputy Commissioner under s.6-A of the Act, by the use of the word 'may', makes the power coupled with a public duty. Sometimes it may be in the public interest to direct confiscation of the entire consignment of an essential commodity when there is deliberate contravention of the provisions of an order issued under s.3 of the Act.

In the facts and circumstances of the present case, it cannot be doubted for a moment that the Deputy Commissioner acted in the public interest to direct confiscation of the entire consignment of the groundnut oil, as it was being transported from one place to another without furnishing the requisite declaration in Form II. All systems of control, supply and distribution of essential commodities would fail unless the various control orders issued by the Central Government under s. 3 of the Act in relation thereto are strictly observed. These control orders are issued under s. 3 when the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of essential commodities or for securing equitable distribution and availability at fair prices etc. Sub-cls. (2) (a) and (b) of cl. 3 of the Order enjoin that the stock-holder shall make a declaration in Form II in relation to movement of edible oil, edible oil seeds and oil cakes, to the Tahsildar in-charge of the taluka of the place from where such edible oil, edible oil seeds and oil cakes are transported before such edible oil, edible oil seeds or oil cakes, leave the place. The whole purpose is to maintain a control over the stock of such essential commodities at a place with a view to secure their equitable distribution and availability at fair prices. The requirements of sub-cls. (2) (a) and (b) of cl. 3 of the the Order are clearly mandatory.

We fail to comprehended the contention that there was only a technical breach. Under sub-cls. (2)(a) and (b) of cl. 3 of the order, a stock-holder is required to furnish a declaration in Form II in relation to movement of edible oil, edible oil seeds and cakes, to the Tahsildar in-charge of the taluka at the place from where such commodity is sought to be transported before such commodity leaves the place. The definition of 'stock-holder' certainly means the consignor who holds such stock of edible oil, oil seeds and cakes and also may include a purchaser of such oil, seeds and cakes who is in possession or control thereof. Explanation to the definition of

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A 'stock-holder', by a legal fiction, treats the owner to have control over the edible oil, edible oil seeds and cakes, in transit. The respondent No. 4, being the purchaser, also comes within the definition of 'stock-holder' by reason of the said Explanation. There is nothing to show that the consignor had reserved the *jus disponendi* by the terms of the contract or appropriation and, therefore, the property in the goods passed to the respondent No. 4 on their delivery to a common carrier under s. 25 of the Sale of Goods Act, 1930.

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The allegation in the complaint is that 40 barrels of groundnut oil weighing 7,200 kg. were being transported by the truck bearing No. MHL 2675 without furnishing the requisite declaration in Form II and it was intercepted at the Hukeri check-post by the Sub-Inspector of Police.

C In response to a notice issued by the Deputy Commissioner under s. 6-B of the Act, the respondent No. 4 produced before him the documents of title in relation to the goods. From these documents, it is clear that the consignor was Sri Satyanarayana Oil Mills, Kampli and the consignee was Messrs Anant Oil Mills, Nippani and that the truck was laden with the consignment. These facts were also borne out by the particulars furnished in the declaration in Form 39 under the Mysore Sales Tax Act, 1957.

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It appears from these documents that Sri Satyanarayana Oil Mills, after despatching the consignment, purported to furnish the declaration in Form II to the Tahsildar, Hospet, which was received

E by him on 7.6.1977, requesting for the release of the groundnut oil in question. The respondent No. 4 contended before the Deputy Commissioner that there was substantial compliance of the requirements of sub-cl. (2)(a) and (b) of cl. 3 of the Order and, therefore, the seized groundnut oil be released, but he rejected the contention on the ground that the declaration in Form II was required to be filed before the specified officer before the goods left the place. The Deputy Commissioner requisitioned the form produced before the Tahsildar, but it did not bear any date. He was of the view that the declaration was not sent by registered post on 6.6.1977 as asserted, but had apparently been handed over in the Taluka office and acknowledgment obtained for the same. The Deputy Commissioner observed that the requirement of law was that the declaration in Form II had to be produced at every check-post during transit, and this was not done. The driver of the truck did not have a copy of the declaration in Form II, but only the declaration in Form 39 which could not be taken to be in compliance of law. Obviously, the stock-holder, Sri Satyanarayana Oil Mills, after despatching the

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consignment of groundnut oil, purported to furnish the declaration in Form II. This was in complete breach of the requirements of sub-cls. (2) (a) and (b) of cl. 3 of the Order. The Deputy Commissioner, therefore, held that the respondents having contravened the provisions of sub-cls. (2) (a) and (b) of cl. 3 of the Order, the seized truck alongwith the entire consignment of the groundnut oil was liable to be confiscated under s. 6-A of the Act. The learned Sessions Judge, in our opinion, rightly confirmed the order of confiscation passed by the Deputy Commissioner under s. 6-A of the Act as it was unassailable. At no point of time was there a contention raised that the Deputy Commissioner had failed to exercise his discretion as to the quantity of the groundnut oil liable to be seized. It is now too late in the day to urge the point before this Court.

As to point No. (2), there is no warrant for the submission that there was nothing to show that the groundnut oil had been seized and, therefore, the power of confiscation was not exercisable by the Deputy Commissioner under s. 6-A of the Act. It is manifest from the order of the Deputy Commissioner that there was a contravention of sub-cls. (2) (a) and (b) of cl. 3 of the Order and that the Sub Inspector of Police seized both the truck and the consignment of groundnut oil, and forwarded the same to him along with his report for taking action under s. 6-A of the Act. The contention of the Public Prosecutor before the Deputy Commissioner was that the seized truck and the groundnut oil were liable to be confiscated. The very fact that the seized groundnut oil was released to the respondent No. 4 on his furnishing a bank guarantee for Rs. 70,000 for the price of the consignment of the groundnut oil clearly shows that it had been seized. It is, therefore, idle to contend that the power of confiscation under s. 6-A of the Act was not exercisable for want of seizure.

As to point No. (3), from the narration of facts above, it is amply clear that there was no breach of the requirements of s. 6-B of the Act on the part of the Deputy Commissioner. The record shows that the Deputy Commissioner, on receipt of the report of the Sub Inspector of Police mentioning the fact of contravention of sub-cls. (2) (a) and (b) of cl. 3 of the Order and forwarding the seized truck and the consignment of groundnut oil, issued notice to the parties concerned under s. 6-B of the Act to show cause against their confiscation. In response to the notice, the respondent No. 4 appeared before the Deputy Commissioner and filed a copy of the invoice together with a copy of the declaration in Form 39 under the Mysore

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A Sales Tax Act, 1957. The Deputy Commissioner sent for the declaration in Form II as furnished to the Tahsildar which did not bear a date. He also gave a hearing to the parties. That being so, the validity of the order of confiscation under s. 6-C cannot be challenged on the ground that the requirements of s. 6-B had not been fulfilled.

B The result, therefore, is that the appeal succeeds and is allowed. The judgment of the High Court is set aside and that of the II Additional Sessions Judge, Belgaum, upholding the order of confiscation passed by the Deputy Commissioner, Belgaum, is restored, insofar as it relates to the confiscation of the consignment of groundnut oil weighing 7,200 kg. under s. 6-A of the Essential Commodities Act, 1955.

P.B.R.

Appeal allowed.