

PETITIONER:
DAKSHINA KANNADA DISTRICT

Vs.

RESPONDENT:
RUDOLPH FERNANDES

DATE OF JUDGMENT: 29/02/2000

BENCH:
M.B.Shah, B.N.Kirpal

JUDGMENT:

Shah, J.

C.A.No.3214 of 1989 In this appeal, a Matador (Mini Lorry) carrying 44 bags of cement was intercepted and seized by the Bajpe Police, Dakshina Kannada on 22.8.1983. Proceedings under Section 6A of the Act were initiated before the Deputy Commissioner. During the pendency of the proceedings, the respondent applied for interim release of vehicle and the same was granted by order dated 1.9.1983 on his furnishing a bank guarantee of Rs. one lakh. That order was challenged by the respondent before the High Court of Karnataka at Bangalore in W.P. No.16668 of 1983 on the ground that imposition of such condition was illegal and onerous. The learned Single Judge after considering second proviso to Section 6A(1) held that the words market price occurring in the section relate only to the essential commodity sought to be carried. According to the learned Judge the proviso gives a concession to the owner to avert confiscation by paying fine not exceeding the market price prevalent on the date of its seizure of the essential commodity. According to the learned Judge if option is to pay a fine equivalent to the market price of the vehicle then there is no necessity to give such option. Owner instead of paying a fine equivalent to the market price can as well think of purchasing a new or fresh vehicle. He, therefore, directed release of the vehicle accepting the Bank Guarantee to the extent of Rs.500/- only. Being aggrieved the State preferred an appeal before the Division Bench of the High Court in WA No.2248 of 1983 which was also dismissed by the impugned order dated 22.3.1988.

C.A. Nos. 5074-75 of 1989

In these appeals, two transport vehicles belonging to the respondents carrying paddy were seized by the Police for the alleged contravention of Food Control Orders. Applications were filed before the Deputy Commissioner for release of said vehicles. By order dated 16.2.1989 the Deputy Commissioner passed an order directing the release of the vehicles in question on their furnishing Bank Guarantee in a sum of Rupees three lakhs each. That order was challenged before the High Court of Karnataka by filing writ petition Nos. 3563 and 3579 of 1989. The High Court following its earlier decision in Rudolph Fernandes vs. Deputy Commissioner, D.K. [1984 (1) Kar. L.J. 200] (C.A.No.3214/89 before us) allowed the writ petitions and

reduced the fine amount to rupees 10,000/- each. Both the orders are challenged before us in these appeals. The short question involved in these appeals is whether fine in lieu of confiscation contemplated under the second proviso to Section 6A(1) of the Essential Commodities Act, 1955 (herein after referred to as The Act) provides for levy of fine on

the basis of market value of the confiscated vehicle or on the basis of the market price of the essential commodity sought under: - to be carried by such vehicle. Section 6A of The Act is as 6A. Confiscation of essential commodity (1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

PROVIDED

PROVIDED FURTHER that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owners of such animal, vehicle, vessel, or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance. (emphasis supplied)

At the outset it is to be stated that the object of The Act is to deter a person from illegally dealing in an essential commodity and consequently, impose a deterrent penalty against a person dealing in them illegally. While doing so, the law takes care to prevent the owner of any vehicle from aiding or assisting such an illegal activity. As per the preamble of the Act, the Act is to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities. For this purpose, Section 3 empowers Central Government to provide for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the same is considered necessary or expedient inter alia for maintaining or increasing supply of any essential commodity or for securing their equitable distribution and availability at fair prices by passing an appropriate order. Section 6A as quoted above provides for seizure and confiscation of essential commodity for contravention of any order issued under Section 3. Further Section 6B provides for issuance of show cause notice and the procedure for confiscation of the seized essential commodity as well as any package, covering or receptacle in which essential commodity is found or any animal, vehicle, vessel or other

conveyance used in carrying such essential commodity. Section 6C provides for appeal against the confiscation order and the procedure for return of confiscated article in case where appeal filed against the confiscation order or the order passed under Section 7 forfeiting the essential commodity is set aside. Thereafter, Section 6D provides that the order of any confiscation under The Act shall not prevent the infliction of any punishment to which the person affected thereby is liable under The Act. Therefore, even if the essential commodity or the vehicle is confiscated, the person can be prosecuted and the penalty provided under Section 7 can be imposed. Section 7(1)(a) provides for punishment to any person who contravenes any order made under Section 3. Section 7(1)(b) and (c) empowers the Court to forfeit to the government any property in respect of which the order has been contravened or to forfeit any package, covering or receptacle in which the property is found and also animal, vehicle, vessel or other conveyance used in carrying the property.

In the light of aforesaid provisions, second proviso to Section 6A is required to be considered. First it is to be stated that the proviso limits the power of the competent authority to recover fine up-to the market price for releasing the animal, vehicle, vessel or other conveyance sought to be confiscated. So maximum fine that can be levied in lieu of confiscation should not exceed the market price. For our purpose, relevant part of proviso would be in the case of vehicle the owner of such vehicle shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such vehicle. Question is whether fine should not exceed the market price of the seized essential commodity or whether it should not exceed the market price of the vehicle. For this purpose, it appears that there is some ambiguity in the Section. It is not specifically provided that in lieu of confiscation of vehicle a fine not exceeding the market price of the vehicle or of the seized essential commodity is to be taken as measure. Still however, it is difficult to say that measure of fine is related to the market price of the essential commodity at the date of its seizure. It nowhere provides that fine should not exceed market price of the essential commodity at the date of seizure of the vehicle. The proviso requires the competent authority to give an option to the owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market price. What is to be confiscated is the vehicle and, therefore, measure of fine would be relatable to the market price of the vehicle at the date of seizure of the essential commodity sought to be carried by such vehicle. This would also be consistent with the scheme of section 7 which provides for levy of penalty. It empowers the Court trying the criminal case to pass an order forfeiting to the Government any property in respect of which the order under Section 3 has been contravened. It also empowers forfeiture to the Government any package, covering or receptacle in which the property is found and in addition any animal, vehicle, vessel or other conveyance used in carrying the commodity. Therefore, not only the essential commodity which is seized is to be forfeited, but the vehicle also could be forfeited to the Government. Hence, measure of fine which is required to be levied in lieu of confiscation under second proviso to Section 6A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the

fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of essential commodity. That is to say, limit of such fine would be up-to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case.

In Shambhu Dayal Agarwala v. State of West Bengal and another¹ after considering the scheme of Sections 6A and 7 and dealing with the proviso (ii) to sub-section (2) of Section 6A, this Court observed: -

Section 6-A, therefore, merely confers power of confiscation and not the power of release, disposal, distribution, etc., except to the limited extent permitted by sub-section (2) thereof. Of course, the second proviso to sub-section (1) of Section 6A permits the grant of an option to pay, in lieu of confiscation of any animal, vehicle, vessel or other conveyance, seizure. a fine equal to its market price at the date of (emphasis added)

Lastly we would mention that in the impugned order dated 22nd March 1998, the High Court in support of its reasoning referred to a similar provision under Section 115(2) of the Customs Act, 1962, which provides for confiscation inter alia of vehicle used as means of transport in smuggling of any goods or carriage of any smuggled goods which is as under:- 115. Confiscation of conveyance. (1)

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal 1[***]:

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation. In this section, market price means market price at the date when the goods are seized.

The Court observed that though the language of the aforesaid proviso is clear, the idea sought to be conveyed under the proviso to Section 6A(1) of the Act appear to be the same. In our view, the analogy drawn by the High Court is erroneous because the proviso specifically mentions that where any such conveyance is used as a means of transport in the smuggling of goods, the owner of any conveyance is to be given an option to pay in lieu of the confiscation of the conveyance, a fine not exceeding the market price of the goods which are sought to be smuggled. Explanation provides that market price means market price at the date when the goods are seized. As against this, Section 6A second proviso does not refer to payment of fine not exceeding market price of the essential commodity but apparent

reference is a fine not exceeding the market price of the vehicle sought to be confiscated. This appears to be obvious because in case where market price of the seized essential commodity is more than the price of the conveyance then owner of the conveyance would not come forward to take it back if he is asked to pay something more than its market price. Similarly, when the market price of the seized vehicle is much more than of the essential commodity, it cannot be said that instead of confiscation it should be released at a price which is less than its market price. Further it is required to be noted that under Section 6B(2) no order confiscating vehicle or other conveyance can be passed if the owner proves to the satisfaction of the competent authority that it was used in carrying the essential commodity without his knowledge or connivance.

In the result, the appeals are allowed and the impugned orders holding that measure of imposing fine in lieu of confiscation under second proviso to Section 6A of the Essential Commodities Act would be the market price of the essential commodity seized are set aside. However, considering the fact that since vehicles are already released, no further directions are required to confiscation. be given with regard to the fine amount in lieu of Ordered accordingly. No costs.