

R.N.R.

Before Mehinder Singh Sullar, J,
SURESH KUMAR @ BOBBY,—Petitioner
versus

STATE OF PUNJAB,—Respondent

Crl. M. No. 7505/M of 2010

11th November, 2010

Constitution of India, 1950—Art. 226—Liquified Petroleum Gas (Regulation of Supply and Distribution) Order, 1993—Section 3 and Cl.7—Essential Commodities Act, 1955—Section 7—Registration of case under Section 7 of 1955 Act against petitioner for possessing illegal LPG cylinders—Neither an authorized officer of FCI nor any officer of Oil Company joined at time of search and seizure—Registration of FIR on basis of ruqqa of police officer is illegal and without jurisdiction—Non-compliance of essential ingredients of S. 3 and Cl. 7 of 1993 order—Petition allowed, FIR and all subsequent proceedings against petitioner quashed.

Held, that the legislative intent underlying the relevant Order is clear and explicit that in order to invoke a penal provision, the prosecution was required to prove all the essential ingredients of Section 3 and clause 7 of the relevant Order and to observe the strict compliance of the provisions of clause 7 contained therein, with regard to entry, search and seizure of the property. That being the legal position, it can safely be held that neither all the essential ingredients of Section 3 and Clause 7 of the relevant Order are complete, nor ASI of Police Jaswinder Pal Singh was authorized and competent to search and seize the case property, nor he has joined any such authorized person at the time of search and seizure under the relevant Order. Therefore, the entire process of search and seizure was illegal, without jurisdiction, goes to the very root of the case and vitiated the investigation in this context. This grave illegality and material procedural irregularity entail the discharge of the petitioner in this relevant connection.

(Paras 13)

Further held, that the FIR registered against the petitioner—accused on the basis of ruqqa of the police officer is illegal and without jurisdiction. Hence, the contentions that only an officer of the department of Food and Civil Supplies of the Government not below the rank of an Inspector authorized by the State Government or any officer not below the rank of a Sales Officer of an Oil Company authorized by the Central Government, in this respect, was competent and police officer did not have the jurisdiction/power to enter any place, search or seize any article under the Act, have considerable force and the contrary arguments “*stricto sensu*” are liable to be and are hereby repelled under the present set of circumstances.

(Para 14)

R.K. Girdhar, Advocate for the petitioner.

Anter Singh Brar, Senior Deputy Advocate General, Punjab.

MEHINDER SINGH SULLAR, J. (ORAL) :

(1) The conspectus of the facts, culminating in the commencement, relevant for a limited purpose of deciding the sole controversy, involved in the instant petition and emanating from the record, is that on 18th January, 2010, a police party headed by ASI Jaswinder Pal Singh was present at Sadhuwala Turning on Talwandi Bhai road, in connection with patrol duty. A secret information was received by him that petitioner-accused

Suresh Kumar alias Bobby has kept gas cylinders in the shops of Municipal Committee situated on old Tehsil Road and was selling to the people at higher rate of Rs. 600 per cylinder. On the basis of secret information, the ASI prepared and sent writing (ruqqa) to the Police Station for registration of a case. In this manner, the present case was registered against the petitioner-accused, by virtue of FIR No. 8, dated 18th January, 2010 (Annexure P-1) on accusation of having committed the offence punishable under Section 7 etc. of the Essential Commodities Act, 1955 (for brevity "the Act") by the police of Police Station Ghal Khurd, District Ferozepur.

(2) The petitioner did not feel satisfied with the initiation of indicated criminal proceedings against him by the police and filed the present petition for quashing the FIR (Annexure P-1), invoking the provisions of section 482 Cr.PC. That is how I am seized of the matter.

(3) A Coordinate Bench of this Court (Gurdev Singh, J), while issuing notice of motion on 12th March, 2010 passed the following order :—

"It has been submitted by learned counsel for the petitioner that without joining any duly authorised officer of the Food and Supply Department, the ASI conducted the raid, in which the cylinders of LPG are alleged to have been recovered and that there is violation of the Paragraph 7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 1993.

Notice of motion for 25th March, 2010."

(4) The learned State counsel acknowledged the factual matrix in this behalf.

(5) After hearing the learned counsel for the parties, going through the record with their valuable assistance and after considering the matter deeply, to my mind, the present petition deserves to be accepted in this context.

(6) It is not a matter of dispute that the instant case was registered against the petitioner, in pursuance of writing (ruqqa) by the police officer. Moreover, the alleged recovery of gas cylinders was stated to be, also effected by the police officials without associating any person from the Food and Civil Supplies Department.

(7) As is clear from the record that the petitioner was charged for the commission of offences punishable under Section 7 of the Act for violation of Section 3 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 1993 (for short "the relevant Order") punishable under Section 7 of the Act.

(8) Section 3 of the relevant Order reads as under :—

"Restriction on possession, supply and consumption of liquefied petroleum gas—(1) Where a person has been granted a connection for liquefied petroleum gas under the public distribution system then he shall not:

- (a) possess more than one connection of liquefied petroleum gas granted under the public distribution system;*
- (b) possess or use liquefied petroleum gas filled in cylinders or in bulk, unless he has received that supply from a government Oil Company or a distributor authorized by a Government Oil Company;*
- (c) use liquefied petroleum gas for any purpose other than for cooking :*

Provided that the Central Government may by a general or special order permit the use of liquefied petroleum gas for such other purposes it may specify in that Order.

- (2) No distributor of a Government Oil Company shall supply liquefied petroleum gas filled in cylinders to any person unless he holds a valid authorisation form the Government Oil Company.*
- (3) No person shall fill any cylinder with liquefied petroleum gas or transfer liquefied petroleum gas from one cylinder to another cylinder or from one container to another container unless authorised by the Chief Controller of Explosives.*
- (4) No transporter or delivery person shall deliver or cause to be delivered liquefied petroleum gas either in cylinders or in bulk to any person other than the consumer for whom the liquefied petroleum gas is meant for."*

(9) Clause 7 of the relevant Order is as under :—

“Power of entry, search and seizure.

- (1) *An officer of the Department of Food and Civil Supplies of the Government not below the rank of an Inspector, authorised by such Government and notified by the Central Government, or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government or a person authorised by the Central Government, may with a view to ensuring compliance with the provisions of this order, for the purpose of satisfying himself that this order or any order made thereunder has been complied with :*
- (a) *Stop and Search any vessel or vehicle which the officer has reason to believe has been or is being, or is about to be, used in the contravention of this order;*
 - (b) *enter or search any place with such aid or assistance as may be necessary;*
 - (c) *Seize and remove, with such aid or assistance as may be necessary, the entire quantity of any stock of liquified petroleum gas in cylinders, cylinder valves and pressure regulators, alongwith the vehicles, vessels or any other conveyance used in carrying such stock if he has reason to suspect that any provision of this order has been or in being or is about to be contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquified petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyance to seize before the Collector having jurisdiction under the provisions of Section 7 of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production;*
- (2) *The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this order.”*

(10) A co-joint reading of these provisions would leave no manner of doubt that only an officer of the Department of Food and Civil Supplies of the Government not below the rank of an Inspector authorized by the State Government or any officer not below the rank of a Sales Officer of an Oil Company authorized by the Central Government, in this behalf, was competent and Police Officer did not have the jurisdiction/power to enter, search any place or seize any article under the Act. Moreover, it was for the prosecution to allege that the petitioner was actually a dealer and the gas cylinders were supplied to him under the public distribution system, which are totally lacking in the instant case.

(11) However, the celebrated argument of the learned State counsel that the Police has the power to search and seize the articles, is not only devoid of merit but misplaced as well. It is a matter of fact that a specific procedure has been provided and no other person except the person authorized under clause 7 of the relevant Order is authorized to enter, search any place and seize the articles for the purpose of commission of the offence punishable under the Act. That means, the provisions of special statute (clause 7) with regard to entry, search and seizure will prevail over and above the general provisions of law.

(12) Again it is not a matter of dispute that it is well settled principle of interpretation of statute, that the words of an enactment are to be given their ordinary, popular and natural meaning. If such meaning is clear and unambiguous. The effect should be given to a provision of a statute in the same manner whatever may be the consequences. The basis of this principle is that the object of all interpretations being to know what the legislature intended, whatever was the intention of the legislature has been expressed by it through words which are to be interpreted accordingly, because the intention of the legislature can be deduced only from the language through which it has expressed itself. If the language of a statute is clear, the only duty of the Court is to give effect to it and the Court has no business to look into the consequences of such interpretation. The Court is under an obligation to expound the law as it exists and leave the remedy to the legislature, even if harsh conclusions result from such exposition. Equally, it is now well recognized proposition of law that mandatory provisions and command of law have to be complied with in the same manner as envisaged and mandated by any statute and it cannot be interpreted otherwise. Reliance in this respect can be placed on the judgment of Hon'ble Apex

Court in case Jeewan Kumar Raut and Anr. versus Central Bureau of Investigation (1).

(13) Thus, the legislative intent underlying the relevant Order is clear and explicit that in order to invoke a penal provision, the prosecution was required to prove all the essential ingredients of Section 3 and Clause 7 of the relevant Order and to observe the strict compliance of the provisions of clause 7 contained therein, with regard to entry, search and seizure of the property. That being the legal position, it can safely be held that neither all the essential ingredients of Section 3 and Clause 7 of the relevant Order are complete, nor ASI of Police Jaswinder Pal Singh was authorized and competent to search and seize the case property, nor he has joined any such authorized person at the time of search and seizure under the relevant Order. Therefore, the entire process of search and seizure was illegal, without jurisdiction, goes to the very root of the case and vitiated the investigation in this context. This grave illegality and material procedural irregularity entail the discharge of the petitioner in this relevant connection.

(14) Such thus being the legal position on record, the FIR (Annexure P-1) registered against the petitioner-accused on the basis of ruqqa of the Police Officer is illegal and without jurisdiction. Hence, the contentions of the learned counsel for the petitioner that only an officer of the Department of Food and Civil Supplies of the Government not below the rank of an Inspector authorized by the State Government or any officer not below the rank of a Sales Officer of an Oil Company authorized by the Central Government, in this respect, was competent and Police Officer did not have the jurisdiction/power to enter any place, search or seize any article under the Act, have considerable force and the contrary arguments of learned State counsel "stricto sensu" are liable to be and are hereby repelled under the present set of circumstances. The law laid down in the aforesaid judgment "mutatis mutandis" is applicable in the present controversy and is the complete answer to the problem in hand.

(15) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(16) In the light of aforesaid reasons, the instant petition is hereby accepted. Consequently, FIR No. 8, dated 18th January, 2010 (Annexure P-1) and all subsequent proceedings thereto are quashed and the petitioner is discharged in the obtaining circumstances of the case.

R.N.R.