05.01.2023
S/L. No. 7
Court No.12
Suvayan/
Sourav

FMA 1359 of 2014

Sri Bharatlal Agarwala
Vs.
The State of West Bengal & Ors.

Mr. Bhudev Chatterjee
Mr. Prasanta Bishal
…for the appellant.

Mr. Susovan Sengupta
Mr. Subir Pal
…for the State.

Heard Mr. Bhudev Chatterjee, learned Counsel for the appellant and Mr. Susovan Sengupta, learned Counsel for the State/respondents.

This appeal arises out of an order dated 12.09.2013 passed by Hon'ble Single Judge in WP 1561 (W) of 2008. It is fairly submitted by learned Counsel for the appellant that though the order has been passed in favour of the appellant, the appellant is aggrieved by the refund of price of sugar as directed in last paragraph of the impugned order.

The last paragraph of the impugned order reads thus:

> ***"Mr. Saha Roy has opposed this prayer and I agree with the submissions made. By a Section 6C of the Act says that so far as the sugar is concerned, the price shall be determined in accordance with the provisions of Section 3(3C) of the Act.***

> ***Section 3(3C) of the Act does not speak of market value. Mr. Saha Roy submits that the amount determined for the seized quantities of sugar have been done following the directions contained in Section 3C. In such view of it, the petitioner is not entitled to any sum more than what had been deposited in the Treasury after the sale. The petitioner is however, entitled to interest from the date of the confiscation at the rate of 8% per annum till the order passed by the concerned S.D.O."***

It is submitted by the learned Counsel for the appellant that the sugar seized from the appellant was levy free sugar and he being a wholesaler had purchased the sugar at a rate higher than the control price. The seizure was made from his premises illegally and criminal case was initiated against him and, ultimately, he got acquitted. In view of the impugned order passed by Hon'ble Single Judge, he is now entitled to refund of lessor price than what he had incurred in purchasing that stock of sugar which was seized. Learned Counsel for the appellant relies on Section 6A of the Essential Commodities Act, 1955 (the Act, for short) to buttress his submission that the sugar seized from his possession being levy free sugar should have been put to public auction or he should have been asked to purchase the sugar at the price he had incurred in purchasing the same and such price should have been put in fixed deposit, which could have been refunded to him in due process of law.

Before entering upon the merit of contention raised by learned Counsel for the appellant, it is beneficial to say here that under the Scheme of the said Act confiscation proceeding is totally different form the criminal case that is initiated consequent upon seizure. Confiscation proceeding has its own course in accordance with the Scheme of the said Act and criminal proceeding has its own course in accordance with the Cr.P.C. It is a good thing that the appellant has been acquitted and has now come forward to claim the benefit.

From a close reading of Section 6A, we find that Clause 1 of Sub-section (2) of Section 6A of the said Act authorised the collector to sale perishable goods at the control price and sugar being a perishable goods has been sold in control price only, irrespective of the fact that what price the appellant had bought the stock of sugar. There is a specific legislative intent to enact Sub-section (2) of Section 6A of the said Act and that is very evident from the proviso to Section 2 relating to food grains. The very intent of selling perishable goods by the collector at control price is to provide adequate stock at the Fair Price Shop for the benefit of the common people. So far as goods in respect of which no control price has been fixed such goods is to be sold by public auction according to Clause II of Sub-section (2) of Section 6A of the Act. The relevant time when the stock of sugar was seized from the appellant, sugar was not a free commodity in the market. At that time, control price for sugar had been fixed and sugar was available through Fair Price Shop only. In view of such fact, the collector had no option to opt for public auction by-passing the dictum of Section 6A (2) (I).

In view of such discussion, we are unable to accept the contention raised by the learned Counsel for the appellant to the effect that the collector should have put the seized sugar to public auction so that more price would have been fetched and the appellant could have been compensated adequately. Accordingly, we do not find any merit in the contention made by the learned Counsel for the appellant and the appeal fails.

It is submitted by the learned Counsel for the appellant that even after passing of the order and filing of application by the appellant before the competent authority for refund of the money, the money ordered to be refunded in the writ petition has not yet been refunded.

Regard being had to the facts and submissions, we disposed of the appeal with the direction that if the refund as ordered vide order dated 12.09.2013 in WP 1561 (W) of 2008 is not made in favour of the appellant within one month of his filing of application to that effect, the State is liable to pay the interest at the rate of 12% from the succeeding month.

With the aforesaid observation, the appeal being FMA 1359 of 2014 is, accordingly, disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)