

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 728 of 2010

MANORANJAN MONDAL
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Debasish Roy, Sr. Adv.

For the Opposite Party : Mr. B.K. Roy, Advocate

Hearing concluded on : 19th January, 2023

Judgement on : 19th January, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure is manifestation of displeasure of the petitioner over the proceeding of E.B.G.R. case no. 8 of 2009 pending before the learned Additional Chief Judicial Magistrate, Sealdah, that arose out of Section 02/EB (Ultadanga) Police station case no. 221 of 2009 dated 23rd September, 2009 under Section 7 (1)(a)(ii) of the Essential Commodities Act, wherein he has been arrayed as accused.
2. Briefly stated, on 23rd September, 2009, Additional O.C., Food and Edible Oil Section E.B. informed the Officer-in-charge of Ultadanga Police Station that on 14th July, 2009 a team of officers of E.B. held a raid at M/s Satima Aloo Company, wholesale go-down at 10B, Mohanlal Street, Kolkata-700004 in order to inspect the stock of

potato. Mr. Manoranjan Mondal the wholesaler and potato dealer, was not present. One Kartick Roy, Manager of the shop, was present, but he could not produce any bill/voucher regarding the stock of potato between the period from 18th September, 2009 to 23rd September, 2009. He only produced a small Exercise Book which did not contain details of purchase and sale of stock of potato. According to the petitioner, there was violation of clause (4) of the West Bengal Prevention of Hoarding of Essential Food Stuffs Order, 2009. Accordingly, Ultadanga P.S. case no. 221 was registered on 23rd September, 2009. The petitioner, however, surrendered to the jurisdiction of learned A.C.J.M., Sealdah and was admitted on bail.

3. Mr. Debasish Roy, learned Senior Counsel representing the petitioner, makes me go through the notification no. 4375-F.S. dated 14th July, 2009 which is The West Bengal Prevention of Hoarding of Essential Food Stuffs Order, 2009 (hereinafter referred to as 'said order') and submits that the informant of the case had no authority to hold any inspection as a competent officer, as defined in clause (6) of the said order, without obtaining the written permission of the controller, as defined under Clause 2 (4) of the said order. Therefore, learned A.C.J.M., Sealdah could not have taken cognizance of the offence. It is further contended by Mr. Roy that the said order was published in the Kolkata Gazette on 14th April, 2009 but the preamble of the order is significantly silent about the concurrence of Central Government.

4. To buttress his point, Mr. Roy relies upon the judgement of Hon'ble Supreme Court in the case of **DISTRICT COLLECTOR,**

CHITTOOR & ORS. VS. THE CHITTOOR DISTRICT GROUNDNUT TRADERS ASSOCIATION, CHITTOOR & ORS. reported in AIR 1989

SC 989. I have perused the judgement wherein the Hon'ble Apex Court held:-

“The 1982 Order was framed by the State Government in exercise of delegated powers under [Section 3\(1\)](#) of the Act with the prior concurrence of the Central Government. [The Act](#) is a central enactment providing for the control of the production, supply and distribution, trade and commerce in certain specified essential commodities. [Section 3](#) confers power on the Central Government to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein if it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. The Central Government has the legal sanction to issue orders under the aforesaid provisions for securing the aforesaid objectives which may include control of price, regulation of production and manufacture of any essential commodity, regulation, movement, transport, sale and distribution of the essential commodities and other allied matters. [Section 5](#) empowers the Central Government to delegate its powers under [Section 3](#) for issuing orders or notifications to such officers or authorities subordinate to the Central Government or to State Government or such officers or authorities subordinate to State Government as may be specified in the order in relation to such matters and subject to such condition as it may specify in the order. The Central Government is competent to delegate powers to the State Government or its officers and it may further specify restrictions and conditions for the exercise of the delegated power. Any order issued

under [Section 3](#) of the Act is legislative in nature and is required to be notified in the official gazette under [Section 3\(5\)](#) of the Act. The Central Government in the Ministry of Agriculture and Irrigation (Department of Food) issued the Notification No. GSR 800 dated 9th June 1973 delegating its powers under [Section 3\(1\)](#) of the Act to the State Government to make orders in respect of the matters specified in various sub-clauses of sub-section (2) of [Section 3](#) in relation to foodstuffs subject to certain conditions specified therein. The Notification is as under:

"PUBLISHED IN THE GAZETTE OF INDIA (PART) II SECTION 3
SUB-SECTION (i) DATED 17TH JUNE, 1978/27 JYAISTHA,
1900 (SAKA).

MINISTRY OF AGRICULTURE & IRRIGATION (DEPARTMENT
OF FOOD)

ORDER

New Delhi, the 9th June, 1978.

G.S.R. 800--In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the Order of the Government of India in the late Ministry of Agriculture, (Department of Food) No. GSR, 315(E) dated the 20th June 1972, the Central Government hereby directs that the powers conferred on it by sub-section (1) of [Section 3](#) of the said Act to make orders to provide for the matters specified in clauses (a), (b),

(c), (d), (e), (f), (h), (i) and (j) of sub- [section 2](#) thereof shall, in relation to food- stuffs be exercisable also by a State Government subject to the conditions: (1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf; (2) that before making an order relating to any matter

specified in the said clauses (a), (c) or (f) or in regard to distribution of disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government; and (3) that in making an order relating to any of the matters specified in the said clause (j), the State Government shall authorise only an officer of the Government.

*sd/-
(K. Balakrishnan)
Deputy Secretary to the
Government of India.
No. 3 (Genl)(1)-D & R(1)-
59"*

By Clause (2) of the Notification the Central Government while delegating its powers under [Section 3](#) of the Act to the State Government for issuing orders in respect of the matters specified therein, expressly placed restriction on the State Government relating to any matters specified in clauses (a), (c), (d) and (f) of sub-section (2) of [Section 3](#) of the Act to the extent that while making an order pertaining to any matters specified in the aforesaid clauses the State Government shall obtain prior concurrence of the Central Government. The Notification is manifestly clear that the Central Government did not delegate to the State Government its general power to pass any order under [Section 3\(1\)](#) of the Act for regulating or prohibiting the production, supply and distribution of the specified essential commodities and trade and commerce therein. On the other hand the State Government was delegated limited power to make orders in relation to foodstuffs subject to certain conditions specified in the Notification after obtaining prior sanction of the Central Government. Any order made by the State Government regulating matters specified in clause (2) of the Notification without obtaining the prior sanction of the Central

Government would be in contravention of the delegated power. A delegate is not entitled to exercise powers in excess or in contravention of the delegated powers. If any order is issued or framed in excess of the powers delegated to the authorities, such order would be illegal and void.”

5. Since, the inspection was held without obtaining the permission of the controller as defined under clause (4) of the said order and in absence of any document to substantiate the fact that the said order was passed after obtaining concurrence of the Central Government, I am of the view that this is a fit case to invoke the provision of Section 482 of Cr.P.C. and to quash the proceeding pending before the learned A.C.J.M., Sealdah to advert abuse of process of law, which I accordingly do. The proceeding being no. E.B.G.R. case no. 8 of 2009 stands quashed.
6. Let a copy of this judgement be sent down to learned Trial Court for information and necessary compliance.
7. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)