A MUNSHI RAM RAM NIWAS

v.

COLLECTOR, FOOD AND SUPPLIES DEPARTMENT AND ORS.

SEPTEMBER 17, 1991

B [M.H.KANIA, N.M. KASLIWAL AND M.FATHIMA BEEVI, JJ.]

Delhi Sugar Dealers Licensing Order, 1963—Clause 2 (f) (i)—Khandsari (Sugar) kept in contravention of Sugar Licensing Order i.e. without licence—Seizure of 80 bags of sugar of three varieties—Samples taken from C *three varieties of sugar from three bags out of the entire seized lot of 80 bags—Whether representative samples—Analyst Report—Samples containing more than 90% sucrose confiscation of entire stock of sugar—Validity of confiscation order.*

Under the provisions of Delhi Sugar Dealers Licensing Order 1963, D **a person was entitled to keep only upto a maximum of 10 quintals of sugar without licence and sugar means any form of sugar including Khandsari sugar containing more than 90% of Sucrose.**

The appellant's business premises were raided and 80 bags of sugar viz. 53 bags of Khandsari, 18 bags of Khandsari (dust) and 9 bags of Khandsari (sulphur) were seized in his presence. Two samples each from E **all the three varieties of Khandsari were taken and three samples of sugar were sent for analysis to the public analyst, who reported that the samples contained sucrose 93.5%, 94.2% and 97.16% respectively. The Collector passed an order confiscating the entire seized stock of sugar as the same was kept without any licence. Against the order of the Collector, the appellant filed an appeal before the Lt. Governor, Delhi which was** F **dismissed. The writ petition filed against the order of Lt. Governor was dismissed in limine by the High Court. In appeal to this Court, it was contended on behalf of the appellant that (a) only two samples each out of the three bags were taken from the entire lot of Khandsari and this could at the most show that only three quintals of Khandsari was 'sugar' and the same being less than 10 qtls., there was no violation of the Licensing** G **Order; (b) it was necessary for the prosecution to prove that the appellant was in possession of more than 10 quintals of sugar and this could only be done by taking samples from all the bags of Khandsari if it wanted to show that other bags of Khandsari also contained more than 90% of sucrose; (c) the possibility cannot be excluded that those bags from which samples were not taken, did not contain sucrose more than 90%.**

H **Dismissing the appeal, this Court,**

HELD: A large quantity of 80 quintals of Khandsari was found in the appellant's premises, whereas only 10 quintals of sugar was allowed to be kept without licence. At the time of seizure of the goods two samples each were taken separately from three different varieties of Khandsari at the instance of the appellant. It was proved by the public analyst that all the three samples contained sucrose more than 90%. It was not disputed by the appellant at the time of taking samples or thereafter that the samples taken would not represent the correct quantity of sucrose in those bags of Khandsari from which samples were not taken. In his written reply to the show-cause notice issued by the Collector no such objection was raised by the appellant. In the circumstances of the case if the Collector was satisfied that 80 quintals of sugar was found in the appellant's premises without licence, it cannot be held that the order of confiscation passed by the Collector was arbitrary or based on no material. It was quite reasonable for the Collector to hold that there was more than 10 quintals of Khandsari having more than 90% sucrose and this violated the Sugar Licensing Order. Therefore, there was sufficient justification for him to pass the order of confiscation. Accordingly, the order of confiscation passed by the Collector is maintained. [142 C, 141 F-H, 142A-C, D]

Suraj Bhan Sharad Kumar **v.** *Delhi Administration* **Criminal Revision No. 104 of 1980 decided on 25th September, 1980 by Delhi High Court, distinguished.**

2. In the instant case more than 10 years have already elapsed to the alleged commission of the offence. Therefore, it would be against the interests of justice to further continue any criminal proceedings in the case. Accordingly, it is directed that the criminal proceedings launched and pending against the appellant should be dropped. [142 E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2929 of 1986.

From the Judgment and Order dated 20.12.1985 of the Delhi High Court in C.W.P. No. 3120 of 1985.

K.R. Nagaraja, R.S. Hegde and Mrs. Sushila for the Appellant.

G.Venkatesh Rao and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

KASLIWAL, J. This appeal by special leave is directed against the order of the High Court of Delhi dated 20th December, 1985 dismissing *in*

A *limine* the writ petition filed by the appellant against the order of the Lt. Governor, Delhi dated 8th November, 1985. This Court by order dated 25th August, 1986 granted special leave limited to the following question.

> "One of the questions raised by the learned counsel before us is whether the samples taken from 3 out of 80 bags of Khandsari could be treated as representative samples. He has
B cited before us a judgment of the High Court where it has been held that they cannot be so treated. We grant special leave limited to the question stated above. We find no force in other submissions".

In order to decide the above question we would mention facts in brief necessary in this regard.

C

In a raid in the business premises of the appellant on 28th February, 1980, the following bags of Khandsari (sugar) were seized in the presence of Shri Ram Niwas, sole proprietor of the firm.

Khandsari	–	53 bags
Khandsari (dust)	–	18 bags
D Khandsari (sulphur)	–	9 bags
Total	–	80 bags

Two samples each from all the three varieties of Khandsari were taken and three samples of sugar were sent for analysis to the public analyst. The public analyst reported that the samples of sugar contained
E Sucrose— 93.5%, 94.2% and 97.16% respectively. The Collector passed an order confiscating the entire goods as the same were kept in contravention of the provisions of Delhi Sugar Dealers Licensing Order, 1963 (in short the 'Licensing Order'). It is not necessary to mention the details of this order of confiscation because the matter had gone upto the High Court and the case was ultimately remanded by the High Court of Delhi
F by order dated 27th March, 1984. The High Court directed the Collector for denovo determination of the proceedings under Section 6A of the Essential Commodities Act, 1955, in accordance with law. The Collector (North) after remand gave a fresh show cause notice to the appellant on 21st May, 1984 setting forth the brief sequence of the proceedings and asking him to show cause as to why the entire stock of 80 bags of sugar seized in the case,
G be not confiscated to the State? The appellant appeared and filed a written reply to the show cause notice. The case was then heard at length and the Collector again passed an order confiscating the entire seized stock of 80 quintals of sugar. An appeal filed against the aforesaid order was dismissed by the Lt. Governor, Delhi by order dated 8th November, 1985. A writ petition filed against the order of the Lt. Governor was dismissed in limine by the High Court
H by order dated 20th December, 1985. Hence this appeal.

Clause 2 (f) (i) of the Licensing Order defines sugar as under. A

"Sugar means any form of sugar including Khandsari sugar containing more than 90% of Sucrose."

Under the Licensing Order a person was entitled to keep only upto a maximum of 10 quintals of sugar, without a licence. Admittedly the appellant was not having any licence. B

It was contended on behalf of the appellant that in order to prove that Khandsari was sugar under the Licensing Order, it was necessary to prove that it contained more than 90% of Sucrose. It was submitted that the prosecution only took two samples each out of the three bags from the entire lot of 80 bags of Khandsari and this could at the most show C that only 3 quintals of Khandsari was sugar and the same being less than 10 quintals, there was no violation of the Licensing Order. It was submitted that it was necessary for the prosecution to prove that the appellant was in possession of more than 10 quintals of sugar and this could only be done by taking samples from all the bags of Khandsari if it wanted to show that other bags of Khandsari also contained more than 90% bags of D Sucrose. It was also submitted that the possibility cannot be excluded that those bags from which samples were not taken, did not contain Sucrose more than 90%. It was argued that the burden lay on the prosecution to prove that more than 10 quintals of sugar was found in the premises and then alone any order of confiscation could have been passed. In support of the above contention reliance was placed on a judgment of learned E Single Judge of Delhi High Court in *Suraj Bhan Sharad Kumar* v. *Delhi Administration* (Crl. Revision No. 104 of 1980 decided on 25th September, 1980).

In the facts and circumstances of the present case the contention raised on behalf of the appellant has no force. The admitted facts of the case are that at the time of seizure of the goods Shri Ram Niwas was F present and the samples were taken in his presence. Two samples each were taken separately from three different varieties of Khandsari at the instance of Shri Ram Niwas himself. It was proved by the public analyst that all the three samples contained Sucrose more than 90%. It was nowhere disputed nor suggested by Shri Ram Niwas at the time of taking samples or thereafter that the samples taken would not represent the cor- G rect quantity of Sucrose in those bags of Khandsari from which samples were not taken. Shri Ram Niwas had filed a reply in writing, to show cause notice, but in such reply also no objection was taken as sought to be raised now. In the facts and circumstances mentioned above if the Collector was satisfied that 80 quintals of sugar were found in the premises without licence, it cannot be said that the order of confiscation passed by H

A the Collector was arbitrary or based on no material. The decision of the learned Single Judge of Delhi High Court in *Suraj Bhan Sharad Kumar* v. *Delhi Administration* (supra) is totally distinguishable as in that case the dealer was having licence and the prosecution failed to prove that he was in possession of more than 1000 quintals of sugar. In the case in hand before us the facts are entirely different.

B

As already mentioned above only two samples each were taken from the three varieties, and all the three samples were found to contain more than 90% Sucrose. A large quantity of 80 quintals of Khandsari was found in the premises, whereas only 10 quintals of sugar was allowed to be kept without licence. Thus it was quite reasonable for the collector to hold C that there were more than 10 quintals of Khandsari having more than 90% Sucrose and this violated the Licensing Order.

Thus in the facts and circumstances of the present case we are fully satisfied that the Collector had enough material for his satisfaction that there was violation of the Licensing Order and there was sufficient jus- D tification for him to pass the order of confiscation. The order of confiscation passed by the Collector is maintained and the appeal is dismissed.

During the course of arguments learned counsel for the appellant submitted that though a criminal prosecution is pending against the appellant Ram Niwas but no effective progress has been made in the case except filing of challan. It appears to us that the State is not serious in E pursuing the criminal proceedings and even otherwise more than 10 years have already elapsed to the alleged commission of the offence. It would be against the interest of justice to further continue any criminal proceedings in the case. We, therefore, direct to drop the criminal proceedings launched and pending against the appellant Shri Ram Niwas in the present matter.

T.N.A. Appeal dismissed.