

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 17912 of 2023

Petitioner :- Ajay Dubey

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vikram Yadav,P.K. Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

1. Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

2. The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 06.10.2023 passed by Special Judge (Essential Commodities, Act), Jaunpur in criminal appeal No. 95 of 2023 and order dated 31.07.2023 passed by Collector/ District Magistrate, Jaunpur.

II- To issue a writ, order or direction in the nature of mandamus commanding the respondents to release the vehicle Goods Carrier Tata Ace Gold Diesel BS6 bearing registration No. U.P. 62 BT 7930 of the petitioner.

III- To issue a writ, order or direction as this Hon'ble Court may deem fit and proper under this circumstances of the case.

3. Facts in brief are that on 28.04.2023 at about 8 a.m. at the house of petitioner raid was made by a team led by District Supply Inspector where the petitioner was present and during the course of raid proceedings. 277 empty/ filled gas cylinders domestic and commercial were recovered from three rooms of his house regarding which recovery memo was prepared on the spot with details of cylinders. 28 domestic empty cylinders were found to be laden on vehicle bearing No. U.P. 62 BT 7930 on which Mahadev Indane Gramin Vitran, Rehati, Jalalpur, Jaunpur was mentioned. During the course of query it was told by the petitioner that the vehicle was owned to him but no satisfactory reply could be given by him regarding collection of those cylinders. As a result, those cylinders were taken into custody and recovery memo after being prepared was got signed by the team, the petitioner and dealer of Prasad Gas Agency, Jalalpur. The vehicle was also taken into custody and handed over to the police and case Crime No. 103 of 2023 under Section 3/7 of E.C. Act was registered and report for confiscation of cylinders and vehicle was filed by District Supply Officer before the Collector/ District Magistrate, Jaunpur on 16.05.2023 on the basis of

which show cause notice was issued to the petitioner regarding confiscation of cylinders and vehicle under Section 6-A of the Act. A written statement was filed by the petitioner before the Collector which was considered and an order dated 31.07.2023 was passed by which the aforesaid cylinders and the vehicle was confiscated under Section 6-A of the Act while giving an option to the petitioner to make deposit of market value of the vehicle and then to get it released in his favour, in case of failure, it was to be auctioned and amount was to be deposited in the government treasury. Against this order an appeal was filed before the learned court of Sessions (Special Judge) E.C. Act as appeal No. 95 of 2023 which was heard and decided by the learned court by order dated 06.10.2023 while dismissing the appeal. Being aggrieved with the orders passed by the learned courts below as aforesaid present petition has been preferred before this Court.

4. It is submitted by learned counsel for the petitioner that he is an innocent person and he works as transporter of gas cylinders those were not owned by him. He had no knowledge about the black marketing of the aforesaid cylinders but his vehicle became unfit for a period of two days that was the reason cylinders were stored in the rooms of his house. He never indulged in black marketing of either the cylinders said to be recovered from his place or to transport them by his vehicle bearing No. U.P. 62 BT 7930.

5. It is further submitted that the learned Collector issued show cause notice in response to which an explanation was filed by the petitioner but it was not considered and order for confiscation was passed while giving an option to make deposit of the market value of the vehicle which cannot be said to be lawful unless Mens Rea is proved on his part before the learned Collector. Likewise, the learned appellate court did also not consider all these facts and the settled position of law but passed the order as aforesaid while dismissing the appeal.

6. Learned counsel for the petitioner relied his argument on the case decided by Co-ordinate Bench of this Court in ***Maharani Deen Bind Vs. State of U.P. [2012(1) ADJ 538]*** in which it was observed by this Court that during investigation no involvement of the petitioner as well as his driver was found in carrying the rice belonging to PDS, that was the reason it was concluded that the prosecution failed to prove mens rea, as a result order for confiscation was held to be not sustainable.

7. Learned A.G.A. opposed the prayer as aforesaid and contended that in this case the facts are different to that of the case relied on by the learned counsel for the petitioner as aforesaid. In the present case, 277 gas cylinders belonging to Bharat gas, H.P. gas and Indane gas, domestic and commercial, were found to be stored in three rooms of the house of the petitioner regarding which he had no authority to collect them at his house. His vehicle was also being used for transporting these cylinders in which 28 domestic cylinders belonging to Indane company were laden. The raid was made in presence of the petitioner at his house from where the recovery was made but he could not show any document regarding his authority to store such number of cylinders at his house. The show cause notice was issued by the learned Collector and explanation was also filed

by the petitioner before the Collector which was taken into consideration and order in question was passed. The petitioner admitted the fact that the vehicle was being used for transporting the gas cylinders but he denied the fact that the cylinders were owned by him and were being black marketed. In this way, he cannot say that he had no mens rea regarding the storage of cylinders at his house and transporting them by his vehicle bearing No. U.P. 62 BT 7930. It is also contended that as per provisions contained in Section 6A of the EC Act, the Collector confiscated the cylinders as well as vehicle while giving an option to the petitioner to make deposit of market value of the vehicle and then to get it released in his favour as per proviso of Section 6A of the Act, in case of failure it is to be auctioned.

8. Learned appellate court also considered all these facts and the law as contained under Section 6A of the Act, as a result dismissed the appeal which cannot be said to be illegal or against the provisions of law and material on record. The orders passed by learned courts below not being illegal do not require interference by this Court but this petition being devoid of merit is liable to be dismissed.

9. Section 6A in The Essential Commodities Act, 1955

[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 that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:]

[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 owner 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.]

[(2) Where the Collector, on receiving a report of seizure or on inspection of any

essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

(i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

[Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.]

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

(a) where no order or confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner or the person from whom it is seized.]

10. Considering the facts and circumstances of the case and submission made by learned counsel for the petitioner as well learned A.G.A, material on record, the relevant law on the point along with Section 6A of the Act, it appears that gas cylinders domestic/ commercial, empty/ filled 277 in number were found to be stored in three rooms of the house of the petitioner and out of which 28 were found to be laden on the vehicle bearing No. U.P. 62 BT 7930. The raid was made in presence of the petitioner and other persons of the village. The cylinders along with aforesaid vehicle were taken into custody and after preparing recovery memo F.I.R. was lodged at the police station. On the basis of report filed by District Supply Officer for confiscation show cause notice was issued by the Collector on which explanation was filed by the petitioner before the Collector but nowhere it was disclosed that he was owner of the cylinders or how he stored the cylinders in three rooms of his house and were not being transported by the aforesaid vehicle. It was alleged by him that he used to transport the cylinders by his vehicle on the basis of slip of consumers to their addresses mentioned therein but on account of his vehicle being unfit he could not make delivery for a period of two days that was the reason a large number of cylinders were got stored and were taken into custody by the Supply Inspector under the charge of black marketing though he was not related to the recovery of cylinders from his residence. All the cylinders were placed for the supply of consumers. Nowhere, it has been mentioned in this explanation as to who was the dealer of gas agency from where those cylinders were got and stored at his house. All these facts were taken into consideration by the learned Collector

while passing the order for confiscation of the aforesaid cylinders and the vehicle being used for their transportation. Storage of such large number of cylinders in three rooms of the house of the petitioner does not show that there was no knowledge with the petitioner about the storage of cylinders but it was in his knowledge and were stored intentionally. Learned Collector passed the order as per provisions contained under Section 6 A of the Act and given an option to the petitioner/ owner of the vehicle to pay in lieu of this confiscation amount equivalent to the market price of the vehicle and then to get it released in his favour. This order cannot be said to be against the provisions of law as contained under Section 6 A of the Act and the material on record. Learned appellate court also considered all these facts and the relevant provisions of law and passed the order dated 06.10.2023 while dismissing the appeal which cannot be said to be against the law, therefore, these orders do not warrant interference by this Court. As a result, this petition being devoid of merit is liable to be dismissed.

11. Accordingly, this writ petition is ***dismissed***.

Order Date :- 17.11.2023

Suraj Srivastav