

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.866 of 2015

=====

Dinesh Singh son of Durga Singh, resident of Bakhri Bazar, P.S. Bakhri Bazar, District Begusarai.

.... Petitioner/s

Versus

1. State of Bihar through the Collector, Begusarai,
2. The Sub Divisional Officer, Bakhri, District Begusarai.

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate

For the Respondent/s : Mr. Sanjay Pandey, G.P.21

Mr. Vivek Anand Amritesh, AC to G.P.-21

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 07-04-2015 Heard Mr. Alok Kumar Agrawal, learned counsel appearing on behalf of the petitioner and Mr. Vivek Anand Amritesh, Assisting counsel to G.P. 21 for the State.

The petitioner has prayed for quashing of the order bearing Memo No. 1354 dated 28.11.2014 passed by the Collector, Begusarai in purported exercise of power vested under Section 6A of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') whereby he has ordered for confiscation of the rice seized from the possession of the petitioner, the details of which are mentioned in the order of confiscation, a copy of which is placed at Annexure-5 to the writ petition.

Mr. Agrawal, learned counsel for the petitioner has



straightway raised a question of law and with reference to the provisions of Section 6B of the Act he submits that the provisions in no uncertain terms provides that no order of confiscation shall be passed under Section 6A unless the owner of such goods, vehicle etc. is given a notice in writing informing him of the grounds and is also given an opportunity of making a representation. He submits that even though the subject matter of rice now stands de-controlled and its search and seizure is not regulated under any 'order' issued under 'the Act' but yet in a complete misconception of legal position that the rice in question was seized by the Block Supply Officer giving rise to Bakhari P.S. Case No. 354 of 2014 registered under Section 7 of the Essential Commodities Act and Section 3/5 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act and the matter was referred to the District Magistrate for registration of a confiscation case under Section 6A of the Act. He submits that the District Magistrate, Begusarai without registering any confiscation case and without issuing any notice to the petitioner or giving him an opportunity of hearing, has simply on receipt of the seized rice, proceeded to pass the impugned order under Section 6A of the Act. He submits that not only an order of confiscation has been passed but even the seized rice has been



disposed of without his information. It is thus submitted that apart from the fact that the rice in question was not capable of seizure in view of the notification GSR No 5 dated 26.10.2002 issued under Section 3 of the Essential Commodities Act and the notification bearing Memo No. 2354 dated 17.7.2003 placed at Annexure-3 and 3/A to the writ petition, even the confiscation order has been passed in complete disregard of the statutory provisions.

A counter affidavit has been filed on behalf of the respondent Block Supply Officer who has merely reiterated the complaint which is the basis of the police case. It is also admitted that the seized rice has been auctioned in the local market and the proceeds have been deposited.

Although with reference to a notice placed at Annexure-A dated 8.11.2014 of the Sub Divisional Magistrate, Bakhari it is sought to be canvassed that a notice in respect of the confiscation proceedings had been issued to the petitioner who was not found at his residence nor his family members were prepared to accept the notice but the statement is apparently incorrect for the notice has been issued by the Sub Divisional Magistrate following the seizure and thus the notice of show cause is against seizure. There is nothing in the counter affidavit to show whether any notice was issued by the District Magistrate, Begusarai upon the



registration of the confiscation case which does not even bear any number and does not fulfil the requisites of an order passed in a quasi judicial proceedings. The records confirm the grievance raised by the petitioner that the confiscation order passed by the District Magistrate, Begusarai is without sanction of law.

Whereas the provisions underlying Section 6A of the Essential Commodities Act empowers the District Magistrate to pass an order of confiscation in respect of any essential commodities so seized, such power is to be exercised in the manner prescribed under Section 6B of the Act and which categorically prohibits any order of confiscation being passed without due notice and without due opportunity of hearing to the owner of the goods / vehicle as the case may be. It is rightly contended by Mr. Agrawal that since the petitioner was not afforded opportunity he could not demonstrate before the Collector that the rice in question was not even capable of seizure. The order is indefensible and cannot be upheld and in consequence the confiscation order bearing Memo No. 1354 dated 28.11.2014 as contained in Annexure-5 is set aside.

The writ petition is allowed. The matter is remitted back to the District Magistrate, Begusarai for consideration of the matter and its disposal afresh in accordance with law and after

giving an opportunity of hearing to the petitioner who would appear alongwith a copy of this order before the District Magistrate, Begusarai on or before 20.4.2015. It goes without saying that in case the District Magistrate, Begusarai is satisfied by the contentions advanced by the petitioner he would pass appropriate orders for recompensing the petitioner for the loss suffered by the seizure and sale of his rice.

(Jyoti Saran, J)

S.Sb/-

U			
---	--	--	--