IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 10408 of 2014 (A)

PETITIONER(S) :
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1. C.MUKUNDAN PILLAI,
   SHOP MANAGER, MAVELI STORE,
   KERALA STATE CIVIL SUPPLIES CORPORATION LTD.,
   PALLERI, KOILANDY.

2. B.PADMAKUMAR,
   SHOP MANAGER, MAVELI STORE,
   KERALA STATE CIVIL SUPPLIES CORPORATION LTD.,
   KERALAPURAM, KOLLAM.

   BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S) :
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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   DEPARTMENT OF FOOD AND CIVIL SUPPLIES,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. THE KERALA STATE CIVIL SUPPLIES CORPORATION LIMITED
   (SUPPLYCO), P.B.NO.2030, MAVELI BHAVAN, MAVELI ROAD,
   GANDHI NAGAR, KOCHI-682 020,
   REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.

3. THE GENERAL MANAGER,
   THE KERALA STATE CIVIL SUPPLIES CORPORATION LIMITED
   (SUPPLYCO), P.B.NO.2030, MAVELI BHAVAN, MAVELI ROAD,
   GANDHI NAGAR, KOCHI-682 030.

   R1 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
   R2 & R3 BY ADV. SHRI N.D.PREMACHANDRAN, S.C

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015, THE COURT ON 27-05-2015 DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 10408 of 2014 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF THE INSPECTION REPORT DATED 20.03.2013.

P2 : TRUE COPY OF THE ORDER NO.D21.7918/13 DATED 23.03.2013.

P3 : TRUE COPY OF THE RELEVANT PORTION OF THE AUDIT REPORT.

P4 : TRUE COPY OF THE CHARGE SHEET NO.D21.7918/13(3) DATED 05.07.2013.

P5 : TRUE COPY OF THE REPRESENTATION DATED 24.07.2013 SUBMITTED BY THE 2ND PETITIONER.

P6 : TRUE COPY OF THE ORDER NO.D21.7918/13 DATED 11.09.2013.

P7 : TRUE COPY OF THE COMMUNICATION NO.T3/3008/13 DATED 18.02.2014.

P8 : TRUE COPY OF THE REPRESENTATION DATED 24.02.2014 GIVEN BY THE 2ND PETITIONER.

P9 : TRUE COPY OF THE REPRESENTATION DATED 28.03.2014 GIVEN BY THE 2ND PETITIONER.

P10: TRUE COPY OF THE LETTER NO.E11-12731/02 DATED 06.09.2002.

P11: TRUE COPY OF THE RELEVANT PAGES OF THE CIRCULAR NO.2 OF 2013.

P12: TRUE COPY OF THE G.O.NO.103/11/ DATED 13.04.2012.

P13: TRUE COPY OF THE DEMAND NOTICE NO.D21.7918/13 DATED 29.03.2014.

P14: TRUE COPY OF THE COMMUNICATION DATED 11.11.2014 ISSUED BY THE ADDITIONAL GENERAL MANAGER TO THE DIVISIONAL MANAGER OF THE CORPORATION AND ENGLISH TRANSLATION.

P15: TRUE COPY OF THE REPORT DATED 21.01.2013 PREPARED BY THE VIGILANCE TEAM AND ENGLISH TRANSLATION.

P16: TRUE COPY OF THE RECEIPT DATED 13.11.2014 EVIDENCING THE REGISTRATION OF PETITION AGAINST THE PETITIONERS AND ENGLISH TRANSLATION.

RESPONDENT(S)' EXHIBITS

R2(A): A COPY OF INSPECTION REPORT DATED 20.03.2013.

R2(B): A COPY OF INSPECTION REPORT DATED 21.03.2013.

WP(C).No. 10408 of 2014 (A)

R2(C): A COPY OF THE AUDIT REPORT SUBMITTED BY THE AUDITORS.

R2(D): A COPY OF THE CIRCULAR NO.22/2012 DATED 17.11.2012.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 10408 of 2014

Dated this the 27th day of May, 2015

J U D G M E N T

Exts.P1, P3 and P13 issued by the General Manager of the respondent corporation are under challenge in this writ petition.

2. While the petitioners were working as Stock Custodian and Officer in charge of Supplyco, Sub Depot, Kollam, a surprise inspection was conducted on 20.03.2013 in the said depot. Ext.P1 report was prepared, which states that deficit as well as excess in stock were noticed. The petitioners allege that Ext.P1 report was prepared without following the mandatory provisions of the Rationing Control Order. On the basis of Ext.P1 inspection report, Ext.P3 audit report was prepared; and by Ext.P13 order, the petitioners have been asked to deposit an amount of ₹14,68,695.89/-. The petitioners further allege that they have been threatened

with initiation of criminal proceedings in the event of default. According to the petitioners, Ext.P13 order has been passed without jurisdiction and without taking note of Ext.P12 order.

3. In the counter affidavit filed by the respondents, it was contended that the surprise inspection made in the the Supplyco, Sub Depot, Kollam, revealed huge irregularities, swindling and misappropriation of stock worth more than ₹14,68,695.89/-. At the time of inspection, the 2nd petitioner was present and the stock was verified in his presence. He has also signed the inspection report accepting the statements contained. The Chairman and the Managing Director, having convinced about the irregularities and misappropriations, directed the Vigilance Officer attached to the Civil Supplies Corporation to conduct an inspection and submit a report. He ascertained the stock position again on 21.03.2013. It also revealed huge stock variation as reported in the surprise inspection report. The 2nd petitioner was also present throughout the stock taking.

Thereafter, the 2nd respondent corporation conducted an audit of the accounts of the sub depot, which also brought out shocking revelation regarding the manipulation, irregularities and misappropriation. The irregularities and variation in the stock of commodities detected in the inspection were as follows;

Supplyco Main sub-depot	Supplyco Pai Godown, Kollam
1. Excess of APL (Boiled Rice) - 192.90 Qtl	BPL (BR) - shortage - 3.91Qtls
2. Shortage of APL (Raw Rice) - 12.32 Qtls	APL (W) - shortage - 2.40 Qtls
3. Excess of APL (Wheat) - 49.80 Qtls	APL (RR) - Excess- 5.35 Qtls

Stack card is not kept.

According to the respondents, the petitioners were aware that there are huge variations and irregularities in the stock. In the inspection report, the officers have calculated the price of the ration articles. As the petitioners were the custodians, they are bound to remit the price of the ration articles. All the representations filed by the petitioners were considered and personal hearing was also provided. It was found that there is no merit in the contentions of the petitioners; and thus, proceedings were initiated against the petitioners.

4. Arguments have been heard.

5. The main argument advanced by the learned counsel for the petitioners is that Ext.P1 inspection report has been prepared without following the procedure laid down in the Government Orders. According to the learned counsel for the petitioners, compliance with the provisions as laid down in the order including the preparation of mahazar has been insisted upon by the Government as could be seen from Ex.P12. It was also stated that though the petitioners have raised several contentions as could be seen from Ext.P9, none of them finds a mention in Ext.P13.

6. According to the learned counsel for the petitioners, apart from signing the stock register produced as Ext.P1, the petitioners have not signed any other document. The learned counsel for the respondent corporation, per contra, would submit that the petitioners

have also signed the inspection statement, which have all the ingredients of a mahazar. It was pointed out that the petitioners have signed the stock register and statement prepared; and they have fully cooperated with the inspection and signed the reports and statements without any demour. Therefore, the petitioners cannot now contend that the documents were prepared behind their back. Even assuming that the petitioners were compelled by anybody to sign on a false statement, there were other remedies open to the petitioners, which they have not resorted to; it was contended.

7. The weights of the ration articles were arrived at by weighing counting. The exact weight of the articles were taken by the officials in the presence of the petitioners as per rules; and the petitioners have also accepted stock register and statement prepared. After having signed it as a token of acceptance, they cannot subsequently wriggle out of the responsibility by making different allegations. All essential ingredients of mahazar are there in the statement

signed by the petitioners. The statement was prepared by responsible officials of the Civil Supplies Department. If the petitioners were not satisfied with the procedure of stock taking, they could have objected and refrained from signing the statement and insisted for an outside witness.

8. On detecting the variation in the inspection report, the Additional General Manager (P&A) had directed to conduct a detailed audit of accounts of the sub depot. Accordingly, reconciliation of stock has been made by preparing trading particulars for the period from 01.04.2012 to 20.03.2013, 01.04.2012 to 25.03.2013, 26.03.2013 and 27.03.2013. It is specifically averred in the counter affidavit that for preparing trading particulars, actual receipt from the Food Corporation of India as per release orders, receipt of seized articles, physical stock arrived at the time of inspection of Deputy Controller of Rationing, physical stock noticed as per charge handing over report and stock verification report, sale as per nalvazhi, seized quantity etc. were taken into account. It

was also contended that the stock reconciliation for the period from 01.04.2012 to 20.03.2013 till the time of inspection of Deputy Controller of Rationing has been made by auditm. Evidently, there was 'excess' with regard to some items and 'shortage' with regard to other items. According to the respondents, 'excess' shall be due to the accumulation by the short issue and under weighing and it can also be by creating false issue entries in the records and registers. According to the respondents, the intension and action for making 'excess' is misappropriation. It was also pointed out that as per Clause C of Circular No.22/12 dated 17.11.2012, the corporation is free to initiate police case and vigilance case as per the direction of the Managing Director. According to the respondents, the inspection report would clearly reveal that there is fraudulent conduct on the part of the petitioners in maintaining the stock and they cannot escape from the responsibility.

9. Evidently, a petition has been lodged before the

concerned the authority against the petitioners to set the criminal proceedings in motion. Therefore, this Court is not inclined to interfere with the action initiated by the respondents against the petitioners at this point of time.

Therefore, the writ petition is dismissed.

However, it is hereby made clear that it shall be open to the petitioner to challenge the validity of criminal action initiated against the petitioners in appropriate proceedings.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-