IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20764 of 2012

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Sudhir Kumar @ Sudhir Singh S/O Rajendra Prasad Sao resident of Mohalla- Ghoshi Tola, P.S.- Kasim Bazar, District- Munger

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Munger
3. The Sub Divisional Officer, Sadar, Munger
4. The Block Supply Officer, Jamalpur, Munger

.... Respondents

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Appearance:

For the Petitioner : Ms. Sushmita Mishra,
Mr. Surya Narayan Sah, Advocates

For the Respondents : Mr. Anant Prasad Singh, SC 15
Mr. Sanjay Kumar, AC to SC 15
Mr. Avinash Kumar, AC to SC 15

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-10-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Learned counsel for the petitioner seeks permission to delete the name of petitioner no. 2 from the array of parties, who has been inadvertently impleaded at the time of filing the writ petition. As prayed, learned counsel for the petitioner is permitted to delete the name of petitioner no. 2 from the array of parties in the writ petition in course of the day.

3. The present writ petition has been filed for a direction to the respondent authorities to make payment of the price of rice of 635 quintals seized in connection with Kasim Bazar P.S. Case No. 129 of 2011 for alleged offence under Section 7 of Essential Commodities

Act, 1955 (for short " the Act"), together with interest thereon.

4. According to the petitioner who is not a PDS dealer, the short facts are that he purchased the rice in question from the open market for his business purposes and the same were packed in hand stitched gunny bags and loaded onto the trucks for being transported to his business premises. It appears that the rice, in all amounting to 600 quintals in 200 bags of 50 kg. each from each of six loaded trucks, came to be seized on 18.08.2011 on the ground that it had the appearance of rice issued by the S.F.C. to PDS dealers. The S.H.O., Kasim Bazar P.S., in his report dated 25.09.2011 stated that the seized rice had a bad smell. A confiscation proceeding in Confiscation Case No. 08 of 2011-12 was initiated in the Court of Collector, Munger on or about 14.11.2011 on the basis of a letter dated 16.10.2011 received from the Superintendent of Police, Munger, which however, ultimately came to be dropped by order dated 22.06.2012/ 08.08.2012 (Annexure-C) passed by the Collector, inter alia, further directing that the rice be released after retention of sample thereof by the S.H.O. in view of the bad smell emanating from the rice kept at the police station and the petitioner having stated that even though the rice was of low quality, the same could be sold in the prevailing flood situation.

5. Learned counsel for the petitioner submits that the respondents are liable to pay the price of 600 quintals of rice which were admittedly seized merely on suspicion that the same had the

appearance of rice issued by SFC. The rice being a commodity which is prone to speedy and natural decay, was kept at the police station under open sky resulting in the rice becoming completely rotten by the time the confiscation proceeding was concluded. As a matter of fact, the rice was admittedly not of high quality and the S.H.O. in his report dated 25.09.2011 had noticed that the rice had a bad smell. It is submitted that in view of the provisions of Sections 6A and 6C of the Act, it was incumbent upon the authorities to report the seizure of the rice to the Collector without unreasonable delay, who, in turn, was required to inspect the seized commodity. In case the commodity was subject to speedy and natural decay, the same was required to be sold at the controlled price or at the fair price, as the case may be, and the sale proceeds had to be handed over to the owner of the commodity or the person from whom it was seized. It is further submitted that the respondents by failing to take timely action for sale of the rice have allowed it to decay resulting in considerable loss to the petitioner.

6. Learned counsel for the respondents, on the other hand, submits that the authorities have acted bonafide and the confiscation proceeding was concluded within a year of the seizure and it was not expected that the rice would become rotten within such a short span of time. It is further pointed out from the order passed in the confiscation proceeding that notice was issued through the S.H.O. as well as through public notice, granting opportunity to the petitioner

to appear before the Collector on 02.12.2011 but the petitioner did not turn up on that date nor on 05.12.2011 subsequently fixed. It appears that the petitioner finally appeared through his counsel on 12.12.2011, when written submissions were filed and he was heard. It is submitted that the petitioner had admitted that the rice in question was of low quality and hence the respondents cannot be held responsible for its deterioration during the period the same was kept in custody.

7. Having heard the parties and on careful consideration of the materials on record, this Court finds considerable merit in the writ petition. It is not in dispute that the rice was seized only on the ground that the same had the appearance of the SFC-issued rice, and ultimately the confiscation proceeding was dropped as no offence under Section 7 of the Act was found to have been committed by the petitioner. It is also not in dispute that the petitioner had requested for release of the rice in course of the confiscation proceeding in terms of his letter dated 12.12.2011 but neither the rice was released at that stage nor sold by the authorities. The rice was admittedly not of high quality and had been kept under open sky at the police station which fact has not been controverted. Under such conditions, the respondents could well have foreseen that the rice would suffer deterioration.

8. Moreover, Section 6A of the Act specifically enjoins a duty upon the concerned authority to report the seizure of an essential commodity to the Collector without unreasonable delay whereupon an

inspection of the goods is required to be made if the Collector so thinks fit. Section 6A(2) contemplates that upon receiving a report of the seizure of an essential commodity which is subject to speedy and natural decay, the Collector may order the same to be sold at the controlled price, or through fair price shop in absence of any controlled price, as provided in Section 6A(3). Upon such sale being made, the sale proceeds are required to be paid, after deduction of expenses, to the owner or the person from whom the seizure was made.

9. In the instant case, however, the seized rice was allowed to remain in the custody of the respondents even though the same continued to rot under open sky at the police station. In similar circumstances, this Court in *Shyam Jha alias Shyam Kant Jha vs. The State of Bihar & ors*., 2012 (1) BBCJ 277 came to the conclusion that the respondents would be liable to pay the price of the seized goods. It was held as follows —

> "A State Amendment has been introduced in Section 6A of the Act vide Bihar Act 9 of 1978. Sub section (2) and (3) thereof casts obligation on the Collector to inspect and sell the seized commodity in case of the same being subject to natural decay, at a controlled price or through Fair Price Shops. By the same Amendment, section 6(C) was also substituted by providing for payment of reasonable interest to be calculated from the date of seizure until the payment thereof."

10. In the above circumstances, this Court directs that the respondents shall make payment of the price of 600 quintals of rice to the petitioner, keeping in view the provisions of Section 6A of the

Act. The petitioner shall file a representation before District Magistrate, Munger (respondent no. 2) within a period of three weeks from today for the purpose of quantification of the price thereof on the basis of the rate prevailing on the date when the order for release of the rice to the petitioner was passed. If such a representation is filed, the same shall be considered and disposed of after grant of opportunity of hearing to the petitioner in accordance with law within a further period of four weeks thereafter.

11. The writ petition stands allowed with the aforesaid observations and directions.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
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