HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.25550 OF 2009

ORDER:

Heard Mr.A.Prabhakar Rao, learned counsel for the petitioner and the learned Assistant Government Pleader for Civil Supplies.

The petitioner prays for Mandamus directing respondents to return 125 quintals of rice (250 bags) seized by 2nd respondent on 08.01.2004 from RMR Rice Mill, Fort Road, Warangal to petitioner, by declaring that the seizure of 125 quintals of rice on 08.01.2004, as illegal, arbitrary and unconstitutional.

On 24.11.2009, the petitioner filed the instant writ petition. It is matter of record and also not disputed by the respondents that against seizure of essential commodities on 08.01.2004, the Sub Inspector of Police, P.S. Mills Colony, prosecuted the petitioner in Calendar Case No.825 of 2004 in the Court of the I Additional Judicial First Class Magistrate, Warangal. On 23.10.2007, the Calendar Case was dismissed. The findings recorded by the Judicial First Class Magistrate read thus:

> "Therefore, the whole evidence of the case is based on PW.1 and admittedly, the Regional Enforcement Officer, Ramesh Babu is not examined and when the statements of A1 and the driver of the lorry was absconded and when the said documents are not exhibited, there is no confession and Exs.P.3,P.4 to P.5 are not in dispute and with respect of Ex.P2 which is in panchanama, where under, the lorry was seized and the independent witnesses did not support the version of PW.1 and there is no explanation given by the prosecution as to why Ramesh Babu who has the originally stopped the

> lorry, has not been examined and just because a lorry is present before a rice mill cannot be a ground for seizure of the lorry. Even though, it is alleged in the charge sheet that the enforcement officials inspected the mill of A1 not a single document has been produced to show that A1 is the owner of the G.M.R. Rice Mills and he was in possession of the excess stock without the valid authorization and even though PW.1 is not a witness right from the beginning and when the main witness i.e. Regional Enforcement Officer is not examined, the prosecution has utterly failed to prove that the accused have diverted the rice. Therefore, the accused are entitled for acquittal.
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> In the result, the accused are acquitted under Section 248(1) Cr.P.C. for the offence punishable under Section 420 of Indian Penal Code. The bail bonds of the Accused, if any, shall stand cancelled, after the expiry of appeal time."

Briefly stated, the grievance of the petitioner is that with the acquittal in criminal case, there is no justification in fact, or law for effecting seizure of 125 quintals of rice on 08.01.2004 and more particularly, with the dismissal of C.C. No.825 of 2004, the sum of Rs.64,010/- deposited with APSCS Corporation Limited, Warangal should have been returned to petitioner with accrued interest. According to petitioner, the petitioner has not committed any violation under the Essential Commodities Act or Control Order. According to petitioner, the stocks seized are not from the Public Distribution System or rice meant for 'Food for Work' scheme. It is further submitted that if the respondents desire to pursue the remedy of confiscation under Section 6-A of the Essential Commodities Act they would have issued notice to the petitioner and appropriate order passed in accordance with law. Since no action is initiated and having regard to the findings recorded by the criminal Court, the petitioner is entitled for the refund of amount together with accumulated interest.

The 2nd respondent filed counter affidavit and has broadly stated the circumstances leading to the filing of the present writ petition.

The counter affidavit is very much silent why and/or whether any independent action pursuant to the seizure dated 08.01.2004 is initiated against the petitioner and if so, what is the outcome of it. If no action as complained by the petitioner is taken against the rice seized on 08.01.2004, the authority must pass appropriate order returning the amount deposited with APSCS Corporation, otherwise the appropriation of deposited amount virtually amounts to unauthorized and unconstitutional appropriation.

I have perused the material available on record and taken note of the contentions of learned counsel appearing for the parties.

I am satisfied that the writ petition can be disposed of with the following order:

"The petitioner is given liberty to make representation, within four weeks from the date of a receipt of copy of this order, before 1st respondent for refund of Rs.64,010/- deposited with APSCS Corporation with interest as no case or violation under the Essential Commodities Act or Control Act is made out. Upon receipt of representation, the Joint Collector is directed to pass appropriate orders for refund of amount, if no case is pending against the seizure dated 08.01.2004. It is needless to observe that in the event of directing refund of the said amount, the petitioner is entitled to interest accumulated on the deposited amount of Rs.64,010/-. The petitioner is given liberty to enclose a copy of this order along with representation for expeditious disposal. The said exercise shall be completed within a period of two months from the date of representation."

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date:01.03.2016
Stp