

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8548 of 2017

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Brajesh Baranwal, S/o Sri Sukhilal Baranwal, Resident of Village- Soharga, PO- Soharga, PS- Guthani, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Siwan.
2. The District Magistrate-cum-Collector, Siwan.
3. The Supply Inspector-cum-Block Supply Officer, Guthani, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Shahi, Adv.
Mr. Arun Kumar Tiwari, Adv.

For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-07-2017

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

In this case, the petitioner is claiming for release of the vehicle bearing Registration No. BR-01-GC-0644 which has been seized in connection with E.C. Act Case No. 114 of 2017-18.

The vehicle, in question, was intercepted by the police, it was found that the wheat which was loaded therein which were subsidized grain meant for the purpose of distribution of the same to the poor class of people, was being carried for the purpose of black marketing. In pursuance thereof, the case was instituted as Guthani P.S. Case No. 12/2017. The Collector, Siwan has also initiated a confiscation proceeding for confiscation of the Truck vide BR-01-GC-0644 which was registered as E.C. Act Case No. 114/2017-18 who had issued a show-cause notice to the



petitioner. On receipt of the notice, the petitioner has appeared and made a request for release of the truck but, till date no final order has been passed.

In the present case, the question has been raised that the power of confiscation does not lie in favour of Collector under the E.C. Act rather it is completely a court's power and, for resolving the dispute, the matter has been referred to the Larger Bench in L.P.A. No. 2248 of 2016, wherein, four questions have been framed which reads as follows:-

- "(1) Whether the Collector, who has seized any animal, vehicle, vessel or other conveyance used in carrying essential commodity, has the jurisdiction to release such animal, vehicle, vessel or other conveyance, and if so, on what conditions?"*
- (2) Whether the Separation of judicial and executive functions will empower the Collector to confiscate the animal, vehicle, vessel or other conveyance without trial as the deprivation of a property can be ordered by a Court only after trial of the criminal case?"*
- (3) Whether the provisions of Section 6-D of the Act, so as to inflict any other punishment after confiscation, would stand the legal scrutiny on the touchstone of double jeopardy.*
- (4) Whether the power of confiscation of the goods and the vehicle vesting with the Collector as an Executive Authority can be said to be legal in view of the principle of separation of executive and judicial power and/or that the power of confiscation of the goods and the vehicle can be exercised only by the Court."*

The specific question relates to the power of confiscation with regard to vehicle involved in black marketing of the essential goods. The matter is before the Larger Bench, if the vehicle remains there for a



long time, it will be turned to junk and will not be of any use to any party.

In that view of the matter, let the vehicle be released in favour of the petitioner subject to condition that he will file an affidavit wherein he will make an statement that he will neither change the feature of the vehicle nor will create any third party right, whenever he will be asked to produce the vehicle, either by the Confiscating Authority or by the Criminal Court authority, he will be obliged to produce the same, if any repair will be required in the truck that can also be done after proper permission from the Collector. The release of the vehicle will be subject to furnishing of the sufficient security to the satisfaction of the Collector.

If the petitioner complies all the conditions aforesaid, in such circumstances, the vehicle will be released within a period of two weeks from the date of compliance of the conditions.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2017
Transmission Date	NA

