

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.14556 of 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking to call for the records pertaining to CMA No.6 of 2008 on the file of the Principal District Judge, West Godavari, Eluru, and quash judgment, dated 22.04.2008, passed in CMA No.6 of 2008, and consequently, restore orders, dated 06.02.2008, passed in Roc.No.CSI/ 152/ ECA/ 2007, by the District Collector, West Godavari, Eluru.

2. The facts of the case, in brief, are that on credible information with regard to selling of rice without completing 75% levy of the paddy purchased by M/s.Vijayalakshmi Rice Mill, Kunchanapalil Village of Tadepalligudem Mandal, the petitioners made surprise visit to the said Rice Mill and noticed certain irregularities and at that time the 1st respondent, who is the owner of the rice mill, was present. The petitioners verified the ground stock with reference to the entries made in the stock register and noticed certain variations. For the irregularities made by the 1st respondent, he was asked for explanation, and when he failed to give reply, the 1st petitioner seized the stock worth Rs.97,26,212/- and filed a case under Section 6-A of the Essential Commodities Act (for short 'the Act') for taking further action in the matter. The District Collector framed five charges against the 1st respondent, for which the 1st respondent submitted his explanation. After considering the explanation submitted by the 1st respondent, the District Collector passed order, dated 06.02.2008, directing to deliver 6,085 quintals of seized rice to the FCI since the same is to be given for

levy. Challenging the said order, the 1st respondent filed CMA No.6 of 2008 before the Principal District Judge, West Godavari, Eluru.

It was submitted by the learned counsel for the appellant – 1st respondent before the appellate Court that the Government of India deleted paddy and rice from the purview of the provisions of the Act from 15.02.2002 onwards; but, however, the State Government is directing the millers to supply levy to the government fixing the percentage on the quantity of paddy purchased by the millers to supply levy to the Government and that there was a control order for supplying the levy, and after deletion of paddy and rice from the purview of the Act, the said control order was also repealed and therefore, the proceedings under Section 6-A of the Act are not maintainable against the appellant.

Learned Government Pleader contended that all the rice millers and rice traders are governed by A.P. Rice Procurement (Levy) Order, 1984 and according to the guidelines issued by the Government the millers/rice traders shall have to deliver 75% of the rice derived out of the total paddy milled to the FCI under Mill Levy quota and the millers shall be eligible to sell 25% of levy rice.

After elaborate consideration of the submissions made by both the parties, the District Judge allowed the appeal and set aside the order passed by the competent authority and directed the petitioners to release the seized stock to the 1st respondent, vide judgment impugned. Challenging the same, the present writ petition is filed.

Heard and perused the material available on record.

The main contention raised by the learned counsel for the petitioners is that the appellate Court proceeded on the premise that the petitioners does not have any power to seize the stock of rice since it will not come under the Control Order and passed the impugned order, but the fact remains that by way of a circular, the Government of India has included the rice also in the Control Order, and the same is not disputed till date, and hence, he requested to allow the writ petition.

Learned counsel for the 1st respondent also conceded and informed that in any event, the order of the competent authority in seizing the entire stock is disproportionate and it causes prejudice to the 1st respondent, and therefore, he requested to reduce the confiscation ordered by the competent authority.

On perusal of the record, this Court finds no irregularity or illegality in the order passed by the District Collector, West Godavari. The appellate Court, without considering the power of the competent authority in seizing the rice, has set aside the order of the competent authority on the premise that the paddy/ rice was exempted from the purview of the Act and passed the impugned order setting aside the order passed by the competent authority, but the fact remains that the competent authority has the power to confiscate the rice in view of the circular issued by the Central Government.

Considering the facts and circumstances of the case this Court is inclined to pass the following order:

The writ petition is allowed and judgment, dated 22.04.2008, in CMA No.6 of 2008, passed by the District Judge, West Godavari, Eluru, is modified and the order of the District Collector, West Godavari, Eluru,

dated 06.02.2008, in ROC. No.CSI/ 152/ ECA/ 2007, is restored and the confiscation of 100% of the seized stock as ordered by the District Collector, Eluru, is modified and reduced to 30% of the seized stock and remaining 70% of the seized stock shall be returned to the 1st respondent.

Accordingly, the writ petition is disposed of. No order as to costs.
Miscellaneous petitions pending if any, shall stand closed.

RAJA ELANGO, J

March 06, 2017.
KTL

