

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.18670 of 2017

ORDER :

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“...to issue, a Writ, Order or Orders more particularly one in the nature of Writ of Mandamus declaring the seizure of rice 971 bags (483.50 Qtls) worth of Rs.12,13,750/- and petitioners vehicles DCM No.AP28-TC-7730, Lorry No.AP-24U-1629, Bolero Trally No.AP22-TA-0124 and Bolero Trally No.AP22-TA-3486 worth of Rs.19,00,000/- by conducting the Panchanama on 14-4-2017 by the 3rd respondent is as illegal, improper and without any power or authority under the law and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard the learned counsel for the petitioners and the learned Government Pleader for Civil Supplies (Telangana) for respondents and perused the prayer and also the writ petition affidavit with enclosed material including panchanama of the seizure of the stock of the so called P.D.S. rice and also four vehicles and two machines in question.

The learned counsel for the petitioners also relied upon the expression of the Apex Court in Kailash Prasad Yadav v. State of Jharkhand¹, wherein paras 5 and 10 read, thus:

“5. Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made under [Section 3](#) of the Essential Commodities Act, 1955 (for short "the Act") are violated. When a vehicle is used for carrying an essential commodity, it may be seized and ultimately directed to be confiscated in terms of Clause (c) of Sub-Section (1) of [Section 6-A](#) of the Act. Violation of an order made under [Section 3](#) of the Act, therefore, is a pre-condition for passing an order of confiscation.

¹ AIR 2007 SC 2626

10. We have to consider the matter from another angle. The order of confiscation is not passed only because it would be lawful to do so. The authorities must arrive at a clear finding in regard to the violation made under [Section 3](#) of the Act. The issues which have been raised before us have not been considered either by the Deputy Commissioner or by the learned Sessions Judge as also by the High Court. The matter is pending before the criminal court. We, therefore, do not intend to delve further into the matter. Keeping in view the facts and circumstances of this case, we are of the opinion that it was not a fit case where an order of confiscation could have been passed.”

The interim order passed by this Court on 10.04.2017 in W.P.M.P.No.15419 of 2017 in W.P.No.12415 of 2017 shows that for release of 20 quintals of rice and the vehicles in question therein, the petitioner was directed to furnish immovable property security of its value. In the order dated 15.03.2011 passed by the Single Judge of this Court in W.P.No.181 of 2011, while referring the two expressions of the Apex Court viz., Deputy Commissioner Dakshina Kannada District v. Rudolph Fernandes (2000(3) SCC 306) AND Collector of Ganjam v. Ramesh Chander Pandhi (AIR 2009 SC 1850), it was observed that any release of the vehicle to the owner pending Section 6-A proceedings is subject to furnishing of bank guarantee for the amount equal to the value of the vehicle as on the date of seizure of the commodity but not the market price of the seized commodity.

Having regard to the above and in view of the fact that already section 6-B of the Essential Commodities Act (for short ‘the Act’) notice issued and the proceedings initiated under Section 6-A of the Act before the Collector (C.S.) stated pending, while directing earlier disposal of the same and to decide for the rice is P.D.S. or not and if at all P.D.S. rice, the question of release of the

rice does not arise, but for, if at all non-P.D.S rice, to release the same by the Collector (C.S.) subject to any orders being passed thereon and so far as vehicles concerned, it is subject to bank guarantee for the value fixed by the R.T.A. authorities and filing of an undertaking affidavit not to alienate the vehicles, they shall be released for interim custody, which is abide by the order of the Collector (C.S.) in 6-A proceedings, on submission of explanation if any by the petitioners.

With the above directions and observations, the Writ Petition is disposed of at the stage of admission.

Consequently, miscellaneous petitions, if any, pending shall stand closed. No costs.

Date: 12.06.2017

Note:

Issue C.C. in two days.

B/o.
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Dr. B. SIVA SANKARA RAO J,



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