IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.9667 of 2010
Date of Decision.20.04.2017

Yaski International and others ....Petitioners
Vs
State of Punjab and another ....Respondents

2. **CRM-M No.20803 of 2010**

Atender Kumar Sharma ....Petitioner
Vs
State of Punjab and another ....Respondents

3. **CRM-M No.7681 of 2010**

Subhash Kumar ....Petitioner
Vs
State of Punjab ....Respondent

4. **Criminal Revision No.1246 of 2010**

Yaski International and others ....Petitioners
Vs
State of Punjab and another ....Respondents

5. **Criminal Revision No.789 of 2010**

Shri Bharat Bhushan ....Petitioner
Vs
State of Punjab and another ....Respondents

6. **CWP No.3058 of 2010**

M/s Kashipur Sugar Mills Limited ....Petitioner
Vs
State of Punjab and another ....Respondents

7. **CWP No.8030 of 2010**

Yaski International ....Petitioner
Vs
State of Punjab and others ....Respondents

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. A.S. Atwal, Advocate
for the petitioner(s) in CWP No.3058 of 2010.

Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aakriti Malik, Advocate and

Mr. Sonam Sharma, Advocate
for the petitioner(s) in CRR No.789 of 2010.

Mr. M.L. Sarin, Senior Advocate with
Ms. Ankita Sambyal, Advocate
for the petitioner(s) in CRM-M No.9667 of 2010.

Mr. J.S. Bedi, Senior Advocate with
Mr. Karan Sidhu, Advocate
for the petitioner(s) in CRM-M No.20803 of 2010 and 7681 of 2010.

Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate for the petitioner (s)
in CRR No.1246 of 2010 and CWP No.8030 of 2010.

Mr. Saurabh Arora, Advocate
for the Official Liquidator in CWP No.3058 of 2010.

Mr. Sukhdip Singh Brar, Addl. A.G., Punjab.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

This order of mine shall dispose of seven petitions, out of which three are criminal misc. petitions bearing Nos.9667 of 2010, 20803 of 2010 and 7681 of 2010, the former two are for quashing of FIR bearing No.311 dated 19.09.2009 under Section 7 of Essential Commodities Act, 1955 registered at Police Station Basti Jodhewal, Ludhiana and subsequent proceedings arising out of the said FIR and the latter one is for quashing of FIR bearing No.123 dated 16.09.2009 registered under Sections 420/467/468 IPC and Section 7 of the Essential Commodities Act, 1955 registered at Police Station Division No.2, Jalandhar and subsequent proceedings arising out of the said FIR; another two are criminal revision petitions bearing Nos.789 and 1246 of 2010 seeking setting aside of impugned orders dated 15.10.2009, 05.02.2010 passed by the Deputy Commissioner, Ludhiana and 27.02.2010 passed by the Sessions Judge whereby the appeals preferred against the orders of the Deputy

Commissioner, Ludhiana under Section 6C of the Essential Commodities Act have been dismissed and the remaining two are the writ petitions bearing Nos.3058 and 8030 of 2010 seeking the following prayers:-

"CWP No.3058 of 2010

"Civil Writ petition under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of writ of certiorari so as to quash the order dated 15.10.2009 (Annexure P-7) passed by respondent No.2, in exercise of powers under Section 6A of the Essential Commodities Act, 1955, so far as it relates to the stock of the sugar weighing 4200 quintals belonging to the petitioner Company and also to quash all the subsequent proceedings taken in pursuance to the said order dated 15.10.2009 (Annexure P-7) including the order dated 05.02.2010 (Annexure P-8) and also a writ of Mandamus directing the respondents to release said stock of sugar weighing 4200 quintals belonging to the petitioner Company."

CWP No.8030 of 2010

"Civil Writ petition under Articles 226/227 of the Constitution of India, praying for the issuance of a writ, order or direction, especially for the issuance of a writ in the nature of mandamus directing the respondents to de-seal the godown/premises of the present petitioner, which was sealed on 19.09.2009;

AND

Further issue a writ in the nature of mandamus directing the respondents to proceed with the auction of the sugar and to deposit the realized amount along with shortfall in the amount which may have accrued on account of the illegal seizure as regards the prevailing market rate on the date of seizure, if any with the Registrar of this Hon'ble Court pending further adjudication;

AND

Issuance of any appropriate writ, order or directions which *this Hon'ble Court may deem fit in the facts and circumstances of the present case."*

Since a common question of fact and law is involved in all the aforementioned petitions viz; whether in the absence of an Order issued by the State Government for licensing of the sugar dealers or in the absence of fixing any limit by promulgating the notification in consonance with the notification dated 16.07.2009 (Annexure P/2A) and under the Sugar (Control) Order, 1966 issued under Section 3 and 10 of the Essential Commodities Act, 1955, the State of Punjab can invoke the provisions of Essential Commodities Act or not, therefore, facts are being enumerated from the petition bearing No.CRM-M No.9667 of 2010.

In order to lend support to the grounds raised in the petitions seeking quashing of the FIR and the orders under challenge, much less, the relief sought in writ petitions, the argument raised on behalf of Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. A.S. Atwal, Advocate has been that sugar, being the essential commodity, its production, supply and distribution is regulated under the Essential Commodities Act, 1955 (hereinafter called as the "Act of 1955") by the Central Government, who is empowered under Section 3 to issue orders which may provide certain Regulations and by making reference to provisions of Section 3. It has been submitted that while deriving powers from the aforementioned Act, the Central Government issued the Sugar (Control) Order, 1966 (hereinafter called as the "Order of 1966"), empowering it to issue general or special orders to any class of producer or recognized dealer regarding (i) production; (ii) maintenance of stock; (iii) storage and (iv) sale etc. as it may deem fit and the "recognized dealer" has been defined under clause 2 (e) of the Order of 1966, which reads as under:-

"Recognized dealer" means a person carrying on the business of purchasing, selling or distributing sugar and licensed under the Order relating to licensing of sugar dealers for the time being in force in a State or Union Territory."

Clause 15 of the aforementioned Order empowered the Central Government to delegate its powers through notification under the Order of 1966, subject to such restriction, exceptions and conditions, if any, as may be specified, to any officer or authority of the State Government.

The gist of the argument is that the Central Government by notification has been delegating its powers sub-section (2) of Section 3 of the Act of 1955 by making Orders to provide for matters including powers for regulating by licence, permits, storage, transportation, distribution, disposal etc and reference has been made to one of the notification dated 09.06.1966 (Annexure P-2). In order to appreciate the controversy, I would be failing in my duty in not reproducing the relevant definitions/clauses which are germane to the adjudication of the present writ petition:-

"Clause 11. Powers of inspection, entry, search, sampling, seizure etc. *Any officer authorized by the Central Government in this behalf may-*

(a) direct any producer or recognized dealer to maintain such records as he may specify;

(b) direct any producer or recognized dealer to furnish such information as he may require;

(c) inspect or authorize any person to inspect any books or any documents or stocks of sugar belonging to or under the control of a producer or a recognized dealer;

(d) enter and search or authorize any person to enter and search-

(i) any place where sugar is manufactured including the machinery installed therein;

(ii) any place in which there is reason to believe that sugar is stored in contravention of this Order;

(e) draw or authorize any person to draw, in accordance with the procedure laid down in Clause 12, samples in examination-

(i) from any stock of sugar belonging to, or under the control of a producer or recognised dealer,

(ii) from any consignment of sugar in the course of its delivery or despatch by a producer;

(f) stop and search or authorise any person to stop and search-

(i) any person transporting sugar; or

(ii) any vehicle, vessel or other conveyance used or capable of being used for the transport of sugar, in contravention of this Order;

(g) seize or authorise the seizure of any sugar in respect of which he has reason to believe that a conravention of this Order has been, is being or is about to be, committed, along with the packages, coverings or receptacles in which sugar is found or the animals, vehicles, vessels or other conveyance used in carrying such sugar and thereafter take or authorize the taking of all measures necessary for securing the

production of such packages, coverings, receptacles, animals, vehicles, vessels or other conveyances in a Court and for their safe custody pending such production.

(2) The provision of Sections 102 and 103 of the Code of Criminal Procedure, 1989 (5 of 1898) relating to search and seizure shall, so far as may be, apply to searches and seizures under this clause).

*"**Clause 15. Delegation of powers-** The Central Government may, by notification in the official Gazette, direct that all or any powers conferred upon it by this order shall, subject to such restriction, exceptions and conditions, if any, as may be specified in the direction, be exercisable also by -*

(a) any officer or authority of the Central Government;

(b) a State Government or any officer or authority of a State Government."

In pursuance of the powers delegated by the Central Government, the State of Punjab with prior concurrence of the Central Government has been issuing Licensing Orders by notifications for sugar dealers and one of the said notification dated 08.05.1992 has been referred to as Annexure P/2A whereby it thought necessary and expedient for the purpose of maintaining supplies and for securing equitable distribution and availability at fair prices of essential commodities and came out with such notification giving the definitions of dealer, commission agent, bulk consumer, licensing of dealers, restriction on possession of trade articles etc. and emphasis has been laid to definition of "dealer" defining a firm, an association of persons or a cooperative society engaged in the business of purchase, sale or storage for sale of any one or more of the trade articles and includes its representative or agent but not including (a) an agriculturist or cultivator or a producer of any of the trade articles specified in Parts A, B and C of Schedule 1; (b) a manufacturer of sugar kandsari and gur, in essence, the licensing dealer will not, after the commencement of the said Order, carry out the business in purchase, sale or storage of any of the articles specified in Schedule III, except in accordance with terms and conditions of the licence granted, in essence, he will not have in his possession at any point of time, any trade article in excess of the quantities specified by the Central Government or the State Government from time to time. As per Clause 9 of the notification (Annexure P/2A), the licence issues shall be valid for a period of five years.

The Central Government, as per the powers conferred under Section 3 of the 1955 Act came out with a Order of 2002 namely "The Removal of (Licensing Requirements, Stock Limits and Movement Restrictions) on Specified Food Stuffs order, 2002", which shall extend to all the States and Union Territories of India and shall come into force after thirty days from the date of its publication in the Official Gazette and the dealer after the promulgation of the aforementioned Order was held to freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy, rice and other items including sugar, which is relevant in the present case. It was also having a non-obstante clause envisaging that the provisions of this Order shall take effect notwithstanding anything to the contrary in any order made by a State Government before the commencement of this order except in respect of anything done, or omitted to be done. The aforementioned Order has been annexed as Annexure P-3.

It has been submitted that as and when deemed necessary, the Central Government while exercising its powers under Section 3 of the Act of 1955 read with Clause 5 of the Order of 1966, had been issuing the notifications from time to time passing general Orders laying down the minimum conditions to be followed and further delegating its powers under Clause 5 of the Order of 1966 and by aforementioned 2002 Order had kept in abeyance for a specified period. However, on 09.03.2009, an amending 2002 Order was passed by the Central Government, keeping in abeyance the provisions of Order of 2002 relating to removal of licensing requirements, stock limits etc. in regard to sugar for a period of "four months" from the date of issue of such Order i.e. before 09.07.2009 but on 12.03.2009, the Central Government issued a notification directing that no recognized dealer of sugar shall hold any stock of Vacuum Pan Sugar for a period exceeding "30 days" from the date of receipt by him of such stock and shall not keep any stock of Vacuum Pan Sugar at any time in the specified places in excess of quantity mentioned therein. For the States other than Calcutta, the limit imposed was 2000 qtls and as per Clause 15 of this Order, the Central Government authorized the State Government and the Union Territories to fix stock holding and turnover limits in their respective States and Union Territories, subject to the conditions that the stock limits shall not be less than the limit or period as specified by the Central Government and the stockholding limit of a recognized dealer dealing in retail trade shall be at a level less than that specified for a wholesaler. The aforementioned Order was to come in force after 15 days of its publication in the Official Gazette and shall remain into force for a period of “four months” thereafter.

In order to lend support to the arguments, it has been pointed out that in pursuance of the notification dated 09.03.2009, the Central Government issued a West Bengal Sugar Dealers Licensing order, 2009, noticing the licensing control for four months so as to bring the sugar dealers under the licensing control. The State of Punjab in pursuance of the aforementioned notification dated 09.03.2009 (Annexure P-4) and 12.03.2009 (Annexure P-5) through department of Civil Supplies and Consumer Affairs issued an Order dated 30.04.2009 w.e.f. 27.03.2009 (Annexure P-6) restricting fixing of the stock limit of 2000 qtls for the recognized dealers for four months.

Similarly on 16.07.2009 (Annexure P-7), the Central Government in exercise of power under Section 3 read with clause 5 of the Order of 1966 again came out with a notification not only for Vacuum Pan Sugar but Khandsari Sugar, as well, fixing the minimum quantity of stock limit 2000 qtls and turnover limit 30 days and delegated the powers to the State Government or Union Territory Administrations to fix the stockholding and turnover limits in their respective States or Union Territories subject to certain conditions. This notification came in operation immediately in respect of sugar (vacuum pan process) and with regard to Khandsari (open pan sugar) after 15 days of its publication in the Official Gazette and shall remain in force for a period of six months thereafter.

It has been submitted that the aforementioned order was followed by many State Governments and example of that has been referred to, of Uttar Pradesh Government, which vide notification dated 25.09.2009 fixed the stock holding of vacuum pan sugar or khandsari sugar for not more than 30 days from the date of receiving such stock and will not stock more than 2000 qtls of sugar at any time. It has also been submitted that State of Punjab did not pass any specific order introducing the fresh licensing regime and mechanism after total decontrol by the order of 2002 nor fixed the stock limit or turnover limit in pursuance of delegated powers under Notification dated 16.7.2009, in essence, there has been no licensing regime and control on sugar dealers since decontrol by Order of 2002. Reference has also been made to the circular dated 08.09.2009 (Annexure P-9) of the Central Government to all the Secretaries of the State Government in reference to Notification dated 16.7.2009 reminding that those States who wish to notify the stock and turnover limit may do so immediately and also put in place the licensing mechanism.

The pith and substance of the argument of the senior counsel representing the petitioners had been that the State Government having not exercised its powers to put in place the licensing mechanism so as to bring the sugar dealers under the definition of "recognized dealers" or to fix any stock or turnover limit for its sugar recognized dealer at any district level including Ludhiana yet certain Administration at district level arbitrarily started conducting raids and seizures on the godowns of sugar dealers in pursuance of the notification dated 16.07.2009 of the Central Government under wrong premise/presumption that the aforementioned notification is enforceable in the State of Punjab.

On 17/19.09.2009, respondent No.2-District Controller, Food, Civil Supplies and Consumer Affairs, Ludhiana raided the godown of the petitioner namely Yaski International alleged to have found 8516 qtls of sugar stored therein, entailing of registration of FIR bearing No.311 dated

19.09.2009 (Annexure P-10) with following allegations:-

> *a) Assistant Food and Supply Officer, Ludhiana reported that on 17.9.2009, they had checked the godown of sugar in village Seerha, Rahon Road, Ludhiana and since no owner or their representatives were present, the godown was sealed.*
>
> *b) on 19.9.09, as per the directions of the Deputy Commissioner, Ludhiana, the Tehsildar-cum-Duty Magistrate, Shri Kanwar Narender Singh came to the godown and in the presence of the inspector Food and SHO PO: Basti, Jodhewal, Ludhiana opened the seal of the godown and the sugar bags were counted. On counting 2516 bags containing 1 quintal sugar each and 12000 bags containing 50 kgs sugar i.e. 6000 quintals of sugar totaling to 8516 quintal of sugar was found stored which was given in custody of SHO, P.S. Basti Jodhewal, Ludhiana.*
>
> *c) The firm has violated the Gazette Notification dated 16.7.09, issued by the Government of India and has also violated the provisions of Sections 3 and 10 of Essential Commodities Act, 1955.*
>
> *d) On the basis of above complaint, offence under Section 7 of the Essential Commodities Act is made out."*

An application stated to have been moved in the petition for anticipatory bail on behalf of the partners for carrying out the inspection of its godown again, was allowed and on 29.09.2009, inspection was carried out in the presence of the local staff of the Department of Food and Civil Supplies, police officials and two representatives of the petitioner-firm and it was found that sugar weighing 4316 qtls only was lying in the godown and the remaining sugar of 4200 qtls was lying in a separate godown which, according to the averments and the submissions in the petition, did not belong to the firm. However, the application for anticipatory bail was dismissed on 1.10.2009 but while rejecting the same, according to the submissions of Mr. Chadha, the Court accepted that 4341 qtls of sugar was stored in the godown of the Yaski International on the premise that 1500 qtls had already been sold to M/s Sadaana Enterprises on 16.09.2009 but erroneously rejected the contention to the effect that 1400 qtls lying in the godown belonged to M/s Kashipur Sugar Mills Ltd and 800 qtls having been sold to M/s Gulshan & Co. much prior to the date of seizure. Reference has been made to the order rejecting the anticipatory bail application as Annexure P-11. They approached this Court for granting anticipatory bail which was allowed on 08.02.2010 (Annexure P-12) granting anticipatory bail to petitioners No.2 and 3.

It has further been submitted that in addition to registration of FIR, the Department of Food, Civil Supplies and Consumer Affairs, Ludhiana also simultaneously initiated the proceedings under Section 6A of the Act of 1955 and issued a notice of even date i.e. 25.09.2009 (Annexure P-13A) regarding sugar weighing 8516 qtls allegedly stored in the godown of the petitioner on account of violation of notification dated 16.07.2009 of the Central Government. Copy of the notice in this regard was received by the petitioner-firm on 28.09.2009 wherein he was given only 6 days time to file the reply i.e. upto 01.10.2009. However, a short reply dated 01.10.2009 was submitted to respondent No.2 vide Annexure P-13B and District Collector-cum-Deputy Commissioner, Ludhiana through a pubic notice in the newspaper dated 3.10.2009, invited objections against the sale of sugar through auction in the open market and three firms namely M/s Gulshan & Co., M/s Sadaana Enterprises and M/s Kashipur Sugar Mills Ltd. to whom the major part of the sugar belonged, filed their objections on 06.10.2009, which revealed that out of two godowns in which the alleged 8516 qtls sugar was stored, one belonged to M/s Kashipur Sugar Mills Ltd. in which 4200 qtls and out of 4316 qtls of sugar stored in the petitioner's godown namely Yasika International, major part of the sugar had already been sold to three firms. However, the Deputy Commissioner, according to the averments of petitioner-firm, in complete violation of the mandatory provisions and without affording any opportunity of the hearing, passed the impugned order dated 15.10.2009 (Annexure P-16), challenged in the writ petitions, whereby the entire sugar of 8516 qtls was confiscated by holding it to be belonging only to the Yasika International.

Both the petitioner firm and M/s Kashipur Sugar Mills Ltd. preferred appeals under Section 6C of the Act of 1955 before the Sessions Judge, Ludhiana, who vide order dated 27.02.2010 (Annexure P-19) dismissed the same without even referring to the legal written submissions.

Mr. Chadha further submitted that during the pendency of appeal under Section 6C of the Act of 1955, there was an interim order. Despite being an interim order there, the District Collector carried out the auction of the confiscated sugar on 27.02.2010. Even contempt petition was also filed, thus, submits that registration of FIR and alleged raid conducted are totally uncalled for, because the notification dated 16.07.2009 has not been made applicable to the State of Punjab, in essence, in pursuance of the aforementioned notification issued by the Central Government laying down the minimum conditions of stockholding and turnover limit, the State of Punjab has not fixed any limit. The State Government had not exercised the power and hence the condition having not been fulfilled to bring the sugar dealers within the purview of "recognized dealer", therefore, the proceedings initiated under Section 7 of the Act of 1955 are illegal, much less, raids and sealing of the godown, as the entire case of the respondent is based on the notification dated 16.07.2009 of the Central Government.

The learned senior counsel appearing for the petitioners made reference to judgment of Hon'ble Supreme Court in ***Kailash Prasad Yadav and another Vs. State of Jharkhand and another AIR 2007 SC 2626*** to contend that confiscation of the goods and vehicles can only be passed if authorities arrive at a clear finding in respect of violation made under Section 3 of the Act of 1955. In fact, there is no seizure order under the Essential Commodities Act, 1955. Once the provisions of the aforementioned Act has not been made applicable in view of the Control Order, the entire seizure and raid is totally without jurisdiction, in essence, when a vehicle is used for carrying any essential commodity, it can be seized and directed to be confiscated in terms of clause (c) of sub-section 1 of Section 6A of the Act of 1955 and there has to be a pre-condition for passing an order of confiscation. ***Smt. Basavva kom Dyamangouda Patil Vs. State of Mysore and another*** to contend that claim of the aggrieved party for restoration and compensation cannot be taken away, if it is found that the alleged action of the authorities/respondents under the Act was without jurisdiction and not in accordance with law, much less, illegal. ***Mukesh Kumar and others vs. State of Haryana and others (1999) 122 PLR 354*** to contend that the Collector had no jurisdiction to pass the order under Section 451 of the Code of Criminal Procedure. At the best, confiscation can be said to be a case property and therefore, cannot be sold in auction, in the absence of any seizure or confiscation order, particularly, when a criminal case has already been registered, in essence, the Collector has no jurisdiction to order for auction in the absence of any order under

Section 3 of the Act of 1955. Reference has also been made to an order of the Hon'ble Supreme Court passed in SLP No.5466 of 1999 on 31.01.2000 whereby the SLP challenging the aforementioned judgment of this Court in ***Mukesh Kumar's case*** (supra) has been dismissed. In a judgment passed by the Andhra Pradesh High Court in ***Venka Anantha Rao Vs. The State of Andhra Pradesh and others 1974 CriLJ 387,*** it has been held that once Criminal Court has jurisdiction to pass order under Section 516-A and 523 of Cr.P.C, the Collector in the absence of the order passed under Section 3-A, can exercise the power under Section 6-A of the Act of 1955. The expression "may be produced" has not taken the concurrent power of Collector, in essence, the commodities can be confiscated without seizure of the goods. Reference is also made to the judgment of Bombay High Court (Nagpur Bench) in ***Arvind Trading Company and others Vs. State of Maharashtra and others (1991) 93 BOMLR 403.***

Before Mr. Chadha could conclude the arguments, he has drawn attention of this Court to the reply filed by the State, particularly, to paragraph 6 of the written statement, to lend support to the aforementioned averments, wherein it has been unequivocally admitted that there was no occasion for State of Punjab to issue fresh Order under Order of 1966 for putting a permissible limit of 2000 qtls as per notification dated 16.07.2009, as the notification of the Central Government is complete notification. The FIR had rightly been registered, for, there had been violation of the clauses of aforementioned notification.

On the contrary, Mr. Sukhdip Singh Brar, Addl. A.G., Punjab has raised objection that police has already filed final report and therefore, the FIRs cannot be quashed. At the best, the petitioners can prove their case by facing trial and they will be acquitted if charges against them fall flat on ground, but not, in the manner and mode as sought for. The notification dated 16.07.2009 has been made applicable to the State of Punjab vide letter dated 27.08.2009, which is annexed as Annexure R-1 and the aforementioned fact has been concealed, therefore, the petitions are liable to be dismissed. The factum of having issued the notifications and orders from time to time has not been denied, thus, urges this Court for dismissal of the all the petitions including the quashing petitions. Similar are the arguments of Mr. Sarin, Mr. Aggarwal, Mr. Bedi and Mr. Bhan, learned senior advocates.

I have heard learned counsel for the parties, appraised the paper book and judgments cited at bar. In order to appreciate the controversy and the contentions and rival contentions, it would be apt to refer Section 3 of the Essential Commodities Act, 1955 and particularly sub-section (5) of Section, Section 5, 6A and 6b of the aforementioned Act.

A plain and simple language of sub-section (5) of Section 3 provides that an order made under this section shall, in case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette and in the case of an order directed to a specified individual be served on such individual by delivering or tendering it to that individual or if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof, shall be prepared and witnessed by two persons living in the neighbourhood whereas Section 6-A deals with confiscation of essential commodity that where such essential commodity is seized in pursuance of an order made under Section 3, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district, in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, he may, if thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him and if he is satisfied that there has been a contravention of the order, my order confiscation of the essential commodity so seized in the manner and procedure prescribed therein, in essence, where the Collector on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may order the same to be sold at the controlled price but the sale proceeds thereof, after deduction of the expenses of any such sale, or auction or other incidental expenses relating thereto, where no order of confiscation is ultimately passed by the Collector or where an order passed on appeal under sub-section 1 of Section 6-C so requires or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner or the person from whom it is seized.

Section 6-B deals with procedure of confiscation that no confiscation order shall be passed unless and until the owner of such essential commodity or the person from whom it is seized is given notice in writing informing him of the grounds on which it is proposed to be confiscated and given a chance to make a representation in writing within a reasonable time as specified in the notice against the grounds of confiscation and also given a reasonable opportunity of being heard in the matter. Against that order, a remedy of appeal under Section 6-C is available to the said person.

The pith and substance of the stand taken by the State is culled out in paragraphs 5 and 6 of the written, which reads as under:-

"xxxxx xxxxx xxxxxx

5. that the contents of para No.5 of the grounds of petition are denied being incorrect. The notification bearing No.GSR 531 (E) dated 16.07.2009 issued by the Central Government was applicable to the State of Punjab, when 8516 qtls of sugar was confiscated on 19.09.2009. The FIR No.311 dated 19.09.2009, under Section 7 E.C. Act at P.S. Basti Jodhewal, Ludhiana has been recorded as the petitioners have violated the clauses of the notification bearing No.GSR 531 (E) dated 16.07.2009. The term recognized dealer has been misinterpreted and misunderstood by the petitioner, since no licensing regime exists in relation to sugar in India, therefore, no requirement of licence is required vis-a-vis sugar.

6. That the contents of para No.6 of the grounds of petition are denied being incorrect. There was no ground or occasion for the Punjab Government to issue fresh order under Sugar Control order 1966. The clauses of notification bearing No.GSR 531(E) dated 16.7.2009 are very much clear in terms of quantity/storage of the sugar. The petitioners were possessing and storing excess quantity of sugar and as per the notification, the permissible limit was only 2000 qtls. The FIR bearing No.311 dated 19.09.2009 u/s 7 E.C. Act at P.S. Basti

Jodhewal, has been rightly registered because the petitioners have violated the clauses of the notification bearing No.GSR 531(E) dated 16.7.2009, which was fully applicable and operational in the State of Punjab at that time."

From perusal of the aforementioned averments, one thing is clear that in view of provisions of clause 15 of the Order of 1966, the Central Government authorizes the State Government or Union Territories to fix the stockholding and turnover subject to certain conditions but the State of Punjab has not issued/caused any notification in conformity with the notification dated 16.07.2009, except a reference made to letter dated 27.08.2009 (Annexure R-1), which reads as under:-

"*From*

The Director,
Food, Civil Supplies and Consumer Affairs Department
(Punjab).

To
1. All Deputy Commissioners of Punjab State,
2. All Deputy Directors (Field) of Food Civil Supplies and Consumer Affairs in Punjab State.
3. All Distt. Controllers of Food, Civil Supply and Consumer Affairs, Punjab State.

Memo No.6 DIR (1247)-2009/1701 dated 27.08.2009.

Subject: Regarding the fixation of the stock limit of sugar.

Reference to office Memo No.6DIR(1247)-2009/1319, dated 22.07.2009 in connection with the subject cited above.

In connection with the letter cited above the Notification GSR 531(E) dated 16.07.2009 issued by the Central Government is hereby sent for further action.

The instructions should be complied with in their letter and spirit.

Notification attached. *sd-*

Deputy Director,
(Distribution for Director Food Civil Supplies, Punjab, Chandigarh)
Dated 27-08-2009

In my view, such letter would not be construed to be issued in compliance of the provisions of the aforementioned Order i.e. there has not been any notification issued and the notification as indicated above is nothing but of the Central Government dated 16.07.2009 i.e. not of the State of Punjab.

The notification dated 16.07.2009 as indicated above is only applicable to "recognized dealer" which has been defined under the Order of 1966 i.e. a person dealing in purchasing, selling or distributing of sugar and licensed under the Order issued by the State Government relating to licensing of sugar dealers for the time being in force in the State. Since the Central Government has not issued any Order, keeping in abeyance the order of 2002 for the sugar during the period of duration provided in the notification dated 16.07.2009, therefore, the notification aforementioned would not be applicable to the State of Punjab, mutatis mutandis, without there being any notification by the State Government fixing any stock limit, in essence, the State Government has not exercised the powers delegated to it by the Central Government, thus, the proceedings initiated under Section 7 of the Act of 1955 could not have been fastened upon the petitioner(s) by lodging FIRs, in essence, the registration of FIRs is gross abuse of process of law.

It is settled law that a valid seizure is well known and basically is a *sine qua non* for passing an order of confiscation of the property. The order of confiscation can only be passed after authorities arrived at a clear finding in regard to violation made under Section 3 of the Act of 1955. All these points have not been taken into consideration either by the Deputy Commissioner or by the learned Sessions Judge.

With regard to confiscation of 8516 qtls, the authorities found 8516 qtls of sugar recovered from the godown of Yaski International whereas while seeking the protection of life and liberty, an application was moved for issuing a direction for carrying out the inspection again. The said application was allowed for the purpose of carrying out the inspection and as per inspection, it was found that only 4316 qtls of sugar was lying in the godown of the petitioner firm and remaining sugar weighing 4200 qtls was lying in a separate godown which did not belong to the petitioner, hence despite the aforementioned fact, there has not been adherence to the provisions of Section 6-B of the Act of 1955 i.e. issue of show cause notice before confiscation of essential commodity. In my view, there has been a transgression of the procedure prescribed under the aforementioned provisions of law. The entire action of the police in registration of the FIR in view of the fact that there has been violation of the Control Order of 1966, in my view, is gravest jurisdictional error.

There is another aspect of the matter. The Government of India vide letter dated 08.09.2009 (Annexure P-9) had written letter to all the Secretaries, Food and Civil Supplies/Sugar of all States and Union Territories regarding the imposition of stock limit on large consumers of sugar for carrying out the purpose of notification dated 16.07.2009. The reproduction of relevant paragraph of the letter would be necessary to lend support to my observation, which reads as under:-

> "*.....Sir,*
>
> *I am directed to refer to this Department's letter of even number dated 28.07.2009 forwarding therewith the notification dated 16.07.2009 extending stockholding and turnover limit on dealers of sugar and imposing these limits on dealers of khandsari sugar for a further period of six months. You are*

aware that these measures have been taken to check hoarding of sugar/khandsari sugar by unscrupulous dealers of sugar/khandsari sugar. Many States/UTs have already implemented these measures in their respective areas. Such action by States/UTs in assisting the Central Government to moderate prices of sugar in the country is highly appreciated. However, it is once again requested that those States/UTs which are yet to notify the stockholding and turnover limits and put in place the necessary licensing mechanism to implement the same, should do so immediately."

Once the State in its clear terms admitted the non-promulgation of the notification, the entire exercise of alleged disposal of sugar and registration of the FIRs is wholly erroneous, illegal, arbitrary, against the settled provisions of law and judgments cited at bar, much less, provisions of the Act. Nothing prevented the State to promulgate the notification, as it had been done in past i.e. notification dated 08.05.1992 (Annexure P/2A). The reply of the State is bereft of any of pleadings, much less, any order passed under the provisions of Section 3 of the Act of 1955, in essence, the order of the District Magistrate in disposing of the sugar, in my view, is also bad in law, though the orders are concurrent. Once being a case property, it is the Court, who has the power to deal with it i.e. by taking up the proceedings under Section 451 of the Code of Criminal Procedure. This would be only when there is no order under Section 3 of the Cr.P.C. The alleged raid was conducted by the officials of department of Food and Civil Supplies with the help of police. Such raid would not tantamount to comply with the provisions of Section 3 i.e. passing of order of seizure or confiscation. There has to be a specific order with regard to seizure or confiscation.

The order of the District Magistrate is also bereft of the reference of documents submitted along with objections by M/s Kashipur Sugar Mills Ltd. wherein quantity of 4200 qtls of sugar had been lying and all the aforementioned quantity of sugar was sold to M/s Sangam Impex Pvt. Ltd., M/s Sangam Enterprises and Shree Ambika Enterprises. Even the District Collector had caused a public notice in "The Tribune" Punjabi and English Edition and "Ajit" instead of sending show cause notice as per the provisions of Section 6-B of the Act of 1955. The finding of creation of documents in order to save the firm and with an intention to mislead the department, as indicated in the order of Deputy Collector, is also not backed by any reasons, much less, cogent reasons. It cannot even be believed that vide Annexure R-1, the State of Punjab is stated to have complied with the notification dated 16.07.2009 as Uttar Pradesh Government had also caused a separate notification by applying the notification dated 16.07.2009 to its State.

Reference has also been made to the order dated 01.10.2009 whereby while dismissing the anticipatory bail application, it was found that only one godown belongs to M/s Yaski International whereas the second godown belongs to Kashipur Sugar Mills Ltd. Reply of the State is also silent with regard to affording of personal hearing to the petitioners before passing the order of sealing of the godown of Yaski Interntional, which was required to be done in terms of Section 6-B of the Act of 1955.

A cumulative reading of the aforementioned facts and position leads to an irresistible conclusion that entire action of the respondent-State in selling the sugar by erroneously applying the notification dated 16.07.2009 of the Central Government, mutatis mutandis, to be applicable to the State of Punjab without promulgation of the separate notification, much less, registration of the FIR, by giving no adherence to the provisions of Act of 1955 and Order of 1966, is wholly erroneous and gross abuse of process of law.

Therefore, in these cases, inherent power of Section 482 Cr.P.C, though it has been held from time to time by Hon'ble Supreme Court to be sparingly used, is being exercised and the FIR bearing No.311 dated 19.09.2009 under Section 7 of Essential Commodities Act, 1955 registered at Police Station Basti Jodhewal, Ludhiana and FIR bearing No.123 dated 16.09.2009 registered under Sections 420/467/468 IPC and Section 7 of the Essential Commodities Act, 1955 registered at Police Station Division No.2, Jalandhar and all the consequential proceedings arising out of the aforementioned FIR are quashed and the impugned orders dated 15.10.2009, 05.02.2010 passed by the Deputy Commissioner, Ludhiana and order dated 27.02.2010 passed by the Additional Sessions Judge are set aside. The money collected by way of auction is ordered to be refunded to the petitioner in terms of provisions of sub-section (3) of Section 6-A and the godown of the petitioner i.e. Yaski International is ordered to be de-sealed, if not.

All the petitions are allowed in the above terms.

(AMIT RAWAL)
JUDGE

April 20, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No