

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11462 of 2016

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Ram Chandra Sah, son of Late Bishun Sah, resident of Village- Andhrathahi, P.S.
Andhrathahi, District - Madhubani.

.... Petitioner

Versus

1. The State of Bihar through the Collector, Madhubani.
2. The Collector, Madhubani.
3. The Sub Divisional Officer, Jhanjharpur, Madhubani.

.... Respondents

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Appearance :

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Dhananjaya Nath Tiwari, Advocate
For the Respondents : Mr. Rajeev Shekhar, AC to GA 13

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-03-2018

Heard learned senior counsel for the petitioner as well as
learned counsel for the respondents.

2. The present writ petition has been filed for setting aside
the order dated 16.09.2008 passed in Confiscation Case No. 13 of 2007-
08/29 of 2008-09 passed by learned Collector, Madhubani ; for setting
side the order dated 20.02.2016 passed in Cr. App. No. 23 of 2010 by
learned Additional Sessions Judge, Madhubani by which the appeal
under Section 6C was dismissed and order of confiscation was
confirmed; and that the price of the seized fertilizer as on the date of
seizure may be paid in terms of section 6C(2) of the Act to the
petitioner.

3. Mr. N.K. Agrawal, learned senior counsel appearing on
behalf of the petitioner, makes a pointed submission to the effect that



the seizure in the present case has been made by the Block Supply Officer, Andhratharhi and the business premises of the petitioner sealed by him, as evident from the seizure list enclosed with the First Information Report (Annexure) as well as the subsequent notice dated 12.11.2007 issued by the District Supply Officer, Madhubani in Confiscation Case No. 13 of 2007-08 (Annexure-2). It is submitted that the very foundation of the confiscation proceeding is illegal inasmuch as the Block Supply Officer is not a person authorized to conduct inspection, search and seizure in terms of the Government notification as contained in File No. 5/F-33/85-507 dated 09.04.2010. Reliance has been placed upon a judgment of this Court rendered in *Surendra Prasad & anr. Vs. The State of Bihar & Ors.* (1985 PLJR 1077) in this regard, which was also a case relating to fertilizers.

4. Learned counsel for the respondents appears but is, however, unable to controvert the stand of the petitioner. It has merely been submitted that the action has been taken against the petitioner as he along with his two sons were indulging in illegal activity of sale of essential commodities at escalated price.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. Clause 27 of the Fertilizer (Control) Order, 1985 empowers the State Government to appoint inspectors of fertilizer for the purposes of this Order, pursuant to which the



Government has come up with its notification dated 09.04.2010 enumerating therein a list of officers, which however does not include the Block Supply Officer. It is therefore evident that the Block Supply Officer has no jurisdiction in terms of the notification to act as inspector of fertilizer for the purpose of inspection and seizure of the goods from the business premises of the petitioner.

6. In *Surendra Prasad & anr. Vs. The State of Bihar & Ors (supra)*, this Court upheld the contention of the petitioner therein that Anchal Adhikari was not a competent authority under the provisions of the Fertilizer (Control) Order, 1957 and therefore the seizure made by respondent no. 3 was wholly invalid and without jurisdiction and fit to be quashed. This Court also could take note of the earlier decision in *Suresh Prasad and another v. State of Bihar & & ors.* (1981 BRLJ 1) wherein it has been held that a valid seizure was a sine quo non for giving jurisdiction to a Collector for starting a proceeding for confiscation of essential commodities. In the above view of the matter, the issues involved in the present case are no longer res integra.

7. Accordingly, the impugned order dated 16.09.208 passed in Confiscation Case No. 13 of 2007-08/29 of 2008-09 passed by learned Collector, Madhubani (Annexure-3) as well as the order dated 20.02.2016 passed by learned Additional Sessions Judge, Madhubani in Cr. App. No. 23 of 2010 (Annexure-4) are hereby quashed with all consequential reliefs. The writ petition stands



allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.03.2018
Transmission Date	N.A.

