

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.19 of 2018

Arising Out of PS.Case No. - 57 Year- 2017 Thana – Guraru District- GAYA

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Namita Kumari Wife of Kumar Shashi Shekhar, Resident of Village-Diha, Guraru Mills, Police Station-Guraru, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Food And Civil Supplies Department, Government of Bihar, Patna & Ors
2. The District Magistrate, Gaya.
3. The Sub Divisional Officer, Tekari Sub Division, District-Gaya.
4. The Senior Superintendent of Police, Gaya,
5. The Block Development officer, Guraru Block, District-Gaya.
6. The Block Supply Officer, Guraru Block, District-Gaya.
7. The Anchal Adhikari-Cum-Block Supply Officer, Guraru Block, District-Gaya.
8. The Officer in Charge, Guraru Police Station, District-Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar, Adv.
For the Respondent/s : Mr. S. Raza Ahmad, AAG-5
Mr. Alok Ranjan, AC to AAG-5
For the BSFC : Mr. Nirmal Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
Date: 31-08-2018

Heard learned counsel for the petitioner and the State.

2. In this writ application the prayer is for issuance of an appropriate writ/writs/order/orders/direction/directions to the respondent authorities particularly the Anchal Adhikari-cum-Block Supply Officer, Guraru Block in the District-Gaya (respondent no. 7)



to release 323.45 quintals of rice which had been seized from the truck bearing Reg. No. JH-02J-8207 and from godown of the *Puja Rice Mill*. The petitioner claims that total number of 651 bags has been seized by the informant in connection with Guraur P.S. Case No. 57 of 2017. The petitioner has prayed for any other relief or reliefs to which the petitioner may be found entitled to in course of hearing of this writ application. The petitioner claims that she happens to be proprietor of *Puja Rice Mill* who used to receive paddy in the rice mill and thereafter same had to be sent in the godown of Food Corporation of India. On 05.06.2017 a first information report was instituted by the Block Supply Officer, Guraru alleging that he had received a secret information and conducted a raid based on that in the permission of the *Puja Rice Mill, Diha*.

3. During the raid it transpires that on Truck No. JH-02J-8207, 450 bags of rice had been loaded and 201 bags rice has been kept in the godown. On enquiry it was observed that all the rice are subsidized rice and same had been kept in bag of rice mill. A seizure list had been prepared in presence of two witnesses and all the seized rice were handed over to the Assistant Godown Manager, Food Corporation of India, Guraru.

4. According to the petitioner 450 bags had been loaded on the truck, Annexure-1 is the first information report which



is based on the written complaint of the Anchal Adhikari-cum-Block Supply Officer, Guraru Block, District-Gaya who has alleged that the seized rice seems to be Grade 'A' rice which is supplied from the Food Corporation of India and those are not available at the local level. The allegation is that the petitioner and her husband had indulged in purchase of the rice from the public distribution shop dealers and by changing the bags and by putting the seal of her establishment, those were being sold as Custom Mill Rice (CMR) in the name of different PACs and *Vyapar Mandal*. A copy of the seizure list is also attached with the written complaint. It, further, appears that the seized rice were handed over to one Aavnish Kumar, Assistant Godown Manager of Food Corporation of India, Guraru on *Jimmenama*. It also appears that a Confiscation Case No. 13 of 2017 had been started for confiscation of the seized rice and vide order dated 12.08.2017 passed by the District Magistrate, Gaya (respondent no. 2) in the said confiscation case, a direction was issued to sell the seized rice and to deposit the proceeds thereof in the government treasury. On 09.11.2017 auction of the seized rice was notified fixing date of 13.01.2018 for auction sale. The auction sale was conducted and the amount of sale being Rs.3,02,426/- was deposited vide treasury challan No. 93 dated 27.01.2018.

This writ application seems to have been registered in



this Court on 03.01.2018, however, for the first time matter was taken on 06.02.2018 and a direction was issued to learned counsel representing the petitioner to serve the copy of the writ application on the learned counsel representing the B.S.F.C. On 16.02.2018 the District Manager, State Food Corporation, Gaya and the Sub-Divisional Officer, Tekari was directed to get the quality of the rice tested and to submit a report to this Court as to whether the rice seized are the government subsidized rice which are provided for supply through public distribution shop. This Court fixed 27.02.2018 as the date for taking the sample of rice in presence of the petitioner and other officials but later on the Court was informed on 19.03.2018 by filing a supplementary counter affidavit about the progress made in the confiscation case and the auction of the seized rice which had already taken place on 13.01.2018. It appears now that admittedly the rice in question have been sold in the auction sale without taking sample of the same and to get it tested to even *prima-facie* find out that those are the government rice purchased through the public distribution shop dealers.

5. Learned counsel representing the petitioner submits that not only the seizure of the rice in question is wholly illegal, arbitrary and without following the procedures established by law but even the manner in which the auction sale has been conducted



in the case when the case was pending before this Hon'ble Court would show that authorities were acting in hot haste and they have sold the rice in a hurry and 225 quintals of rice have been sold for a sum of Rs. 3,02,426/- only which is much less than price fixed by the government of Grade 'A' rice. It was alleged by the informant that the rice seized were looking like Grade 'A' rice, if it was so then how the rice could be sold only @ Rs. 935/- per quintal as against government sale of Rs. 2390/- per quintal. It is also submitted that the rice was kept safely in the godown of F.C.I., therefore, those rice were not going to perish with in a month or so. The procedure adopted for auction sale also do not inspire confidence.

6. In the counter affidavit as well as supplementary counter affidavit filed on behalf of the respondents the only plea which has been taken in that the seized rice was found old having less moisture in comparison with the new rice. It was a grade 'A' rice which is supplied in F.C.I. and because the seized rice were perishable item, therefore, immediate sale of the seized rice was required to prevent any deterioration pending disposal of the confiscation proceeding.

7. It is submitted that the public auction was held in which the highest bid of Rs. 935/- per quintal was offered by one Sri Arvind Prasad and same was sold for said highest bidder. In



paragraph no. 11 of the supplementary counter affidavit it has been admitted that according to the report of the S.D.O., Tekari no sample was taken before such sale. In this regard the supplementary counter affidavit says that the S.D.O., Tekari has been called upon to submit a report with his comment after causing show cause to the concerned officers.

8. The petitioner has filed one I.A. No. 1138 of 2018 during pendency of the writ application whereby in the changed circumstances the reliefs prayed for, has been amended and the following reliefs have been prayed for :-

- “(a) For setting aside the order dated 12.08.2017 by which the learned Collector issue notice to the petitioner in Confiscation Case No. 13/2017 and further directed to sold the rice and deposit the money in treasury.*
- (b) For setting aside the order dated 15.01.2018 issued by the Block Supply Officer, Guraru by which the seized rice of the petitioner has been sold in open market without fulfilling proper procedure.*
- (c) For issuance of direction to the Respondent authorities to pay adequate compensation to the petitioner for damage caused to the petitioner on act of the respondent authorities by selling the seized rice in open market without adopting proper procedure and sold in lower rate.”*

9. The petitioner submits that in the confiscation



proceeding for the first time notice was issued to her fixing the date 15.09.2017 but while issuing notice to the petitioner on 12.08.2017 simultaneously the District Magistrate directed to sale the rice in question. Petitioner appeared in the confiscation proceeding on 21.11.2017 but prior to her appearance the order was already passed by District Magistrate, Gaya to sale the rice, the authorities below the Collector sold this seized rice without preserving the sample of food grains. It is, thus, submitted that the authorities did not try to even *prima-facie* satisfy themselves about the quality of the rice and the whole allegation in the first information report that the rice is a grade 'A+' rice which is a government rice normally made available to public distribution shop remains a mere allegation without there being any substance and *prima-facie* evidence. It is further submitted that the respondent authorities have caused heavy loss to the government by selling the grade 'A+' rice at the rate of Rs. 935 per quintal. In Paragraph No. 14 of the Interlocutory Application a statement has been made that the government rate of grade 'A+' rice is fixed Rs. 2390/- per quintal, and a question has been raised that if the case of the informant is true then what was the occasion to sale the seized rice in open market at the rate of Rs. 930/- per quintal.

10. It appears that in response to the Interlocutory Application filed by the petitioner the second supplementary counter



affidavit has been filed by respondent no. 3. It has been submitted that the petitioner neither approached the authorities nor assailed the order passed by the authorities initially in the writ application being full knowledge of same. It is admitted that the petitioner appeared in the confiscation proceeding on 24.11.2017 through her legal representative and sought time for filing show cause reply. Same old facts regarding seizure of grade 'A+' rice have been reiterated in the second supplementary affidavit. It is reiterated that the rice was sold through public auction on 13.01.2018 in which the highest bid of Rs. 935/- per quintal was offered. There is no denial that rate of grade 'A+' rice fixed by the government is Rs. 2390/- per quintal. The procedure adopted for auction sale have not been discussed or stated in the two affidavits of the State.

11. After hearing learned counsel for the parties and perusal of the records, this Court finds that in the present case the order dated 12.08.2017 was passed by the District Magistrate, Gaya directing sale of the rice in question while issuing notice to the petitioner has been challenged by way of I.A. The District Magistrate, Gaya was well aware that as per allegations the rice in question is grade 'A+' rice and the rice have been handed over to the Assistant Godown Manager of the Food Corporation of India on *Jimmenama*. The rice was kept safely and it was not such a perishable item that



even without giving an opportunity of hearing to petitioner, the District Magistrate was under any compulsion to order the sale of rice. In the opinion of this Court the power conferred on the District Magistrate under Section 6A(2) of the EC Act has to be exercised with due diligence and care. Only because power has been conferred upon the District Magistrate to pass an order for sale of an essential commodity which is likely to get perished if it is not immediately sold, the District Magistrate would not have exercised that power with respect to sale of the rice in question which was not going to decay or become useless or worthless within a month or so. This Court is of the opinion that the order for sale was passed in hot haste and contrary to the spirit of Section 6A(2) of the EC Act. This Court further finds that while directing sale no direction was issued to keep the sample of the rice and to get it tested in order to prove that *prima-facie* the allegation that the seized rice is a government subsidized rice had a basis. This is *prima-facie* a serious negligence and laches on the part of the District Magistrate, Gaya and the officers who ordered and indulged in the sale of the rice in question without keeping the sample of the rice. This is apparently a case of exercise of power in a most arbitrary and fanciful manner. It is also a case of non-application of mind on the part of the authorities. If seizure may be allowed to be made in this manner just by making an allegation and then selling of



the seized goods is allowed in hot haste, in the opinion of this Court it will be a chaotic situation and there will be no rule of law and anybody's property may be seized and sold by a person in power.

12. In the counter affidavit and supplementary counter affidavit filed on behalf of respondents nothing has been brought on record to show as to what procedure has been adopted in the matter of auction sale of the rice in question. The rice has been sold in favour of one Arvind Prasad who is the said to be a highest bidder at the rate of Rs. 935/- per quintal. It has not been denied by the respondents in their counter affidavit that the grade 'A+' rice has a price of Rs. 2290/- per quintal fixed by the government as claimed by the petitioner in her Interlocutory Application. Non-denial of this fact would lead to a belief in the mind of this Court that rice in question has been sold without following a transparent procedure as also without keeping in mind the rate fixed by the government for grade 'A+' rice. The respondents have not brought on record the copies of notice inviting public to participate in the auction process, further no reserve price seems to have been fixed based on even a tentative valuation. The statement made to the effect that rice was sold to highest bidder is a totally vague statement which do not inspire confidence.

13. In the case of **Bihar Deed Writers Association**



vs. The State of Bihar and others reported in **1988 (1) PLJR (HC) 671** on which reliance has been placed by learned counsel representing the petitioner, this Court has held that rice is not a perishable item and hence the power conferred on the District Magistrate under Section 6A(2) of the EC Act could not have been exercised in haste. The ratio of the judgment in the case of **Bihar Deed Writers Association** (supra) is equally applicable in the facts of the present case.

14. In result this Court of the considered opinion that the order dated 12.08.2017 passed by the District Magistrate, Gaya in Confiscation Case No. 13 of 2017 directing sale of the rice in question was illegal and had been passed in complete conflict with the spirit of Section 6A(2) of the EC Act. The District Magistrate, Gaya has acted arbitrarily in directing sale of rice while issuing notice to the petitioner in the confiscation proceeding. There was no reason for him to act in such hot haste. The subsequent auction of sale conducted by the Block Supply Officer, Guraru vide order dated 15.01.2018 is also illegal and this Court is of the view that the entire auction process was vitiated due to non-observance of the established procedure in the matter of auction sale of goods. Non-observance of a transparent procedure has caused loss to the government exchequer.

15. Since, the counter affidavit and supplementary



counter affidavit no where state about the procedure adopted by the Block Supply Officer, Guraru in the matter of sale of rice in question, this Court has reasons to believe that the auction sale was conducted without giving a wide circulation or causing advertisement about the proposed sale of rice, the Block Supply Officer sold the rice in question to the auction purchaser by showing the highest bidder. No reserve price was fixed in this case, sale has been made to an individual even though the provision are there to sale through Public Distribution System Sale to an individual should have been done only in a transparent manner. Since there is no denial of the assertion of the petitioner that grade 'A+' rice had a price of Rs. 2290/- per quintal fixed by the government, the sale at the rate of Rs. 930 per quintal to an individual has caused loss to the government exchequer, if the government loses it's case the petitioner will be required to be compensated by the amount at the rate fixed by the government i.e. Rs.2290/- per quintal.

16. This Court would, therefore, hold the District Magistrate, Gaya as well as the Block Supply Officer, Guraru responsible for directing and holding the auction sale in haste without following a transparent procedure as such this Court would direct the State Government to take appropriate steps in accordance with law to recover the difference amount from the erring officials in equal



proportion. Those who are totally negligent in selling of rice in question without keeping sample of the rice and without taking steps to get them tested to even *prima-facie* show and satisfy themselves that those are grade 'A+' rice which were allegedly purchased by the petitioner from the public distribution shop dealers are also required to be proceeded against in accordance with law.

17. In the given facts and circumstances of this case, the impugned order dated 12.08.2017 and 15.01.2018 are set aside. Now the entire amount which has been collected by auction sale of the rice in question and which would be recovered from the District Magistrate, Gaya and Block Supply Officer, Guraru shall be kept in deposit in the government treasury till conclusion of the criminal case and only when on conclusion of criminal case, if it is found that the petitioner is not guilty of the offences alleged against her, the petitioner will be entitled to make a prayer before the learned trial court for release of the amount lying in the treasury with the government. Failure of the government in realizing the amount from erring officials shall not disentitle the petitioner from getting the entire amount as per her entitlement.

18. This Court makes it clear that observation of this Court in the present case while considering the facts and circumstances pleaded before this Court would not be considered in



course of trial of the criminal case.

19. This writ application as well as I.A. No. 1138/2018 stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Ved/-

AFR/NAFR	NAFR
CAV DATE	03.08.2018
Uploading Date	31.08.2018
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