

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.31 of 2018

Arising Out of PS.Case No. - 105 Year- 2017 Thana - Daudnagar District- SARAN

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Raushan Kumar @ Raushan Kumar Sah S/o Kanhaya Sah, Resident of Village- Bareja, P.S.-Daudnagar, District-Saran at Chapra Proprietor of M/s Rohit Traders, Daudnagar, Saran.

.... Petitioner/s

Versus

1. The State of Bihar Through The Secretary, Food & Consumer Protection Department, Government of Bihar, Patna.
2. The Collector, Saran at Chapra.
3. The Block Supply Officer, Manjhi.
4. The Food Corporation of India through its Manager Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D. N. Tiwari, Adv.
For the Respondent/s	:	Mr. Upendra Pratap Singh, AC to SC-4
For the F.C.I.	:	Mr. Prabhakar Tekriwal, Adv.
		Mr. Shashi Dhar Jha, 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. This writ application has been preferred by the petitioner for quashing of the seizure of 184 bags of wheat each of 50 Kg. and 18 bags of rice each of 50 Kg. seized on 20.05.2017 by the Block Development Officer, Manjhi in connection with Daudnagar P.S. Case No. 105 of 2017 under Section 7 of the Essential Commodities Act and 420 of the Indian Penal Code. It is the case of the petitioner that he is not a public distribution shop dealer and that the seized wheat and rice are not controlled items and, therefore, those



may be released in favour of the petitioner on such conditions as this Hon'ble Court deems fit and proper.

3. It reveals from the materials available on record that on 20.05.2017 the Block Supply Officer, Manjhi (Informant) received information that at Dharmpur More one Pick Up van is loaded with wheat having mark of F.C.I. and same is carrying illegal materials. It was informed that the wheat in question belong to Kanhaiya Sah, the father of petitioner who did not give any satisfactory answer to the informant and because he did not produce any paper, the informant seized the bags containing wheat and rice.

4. The petitioner claims that he is Proprietor of M/s Rohit Traders, Bareja, Daudpur in the District Saran and the firm of the petitioner has been granted TIN No. 10338141034. It also got GST registration being GST No. 10FFKPS7540D1JI. He has enclosed a copy of Form C-1 and Form of GST Registration 25 as Annexure-2 series in the writ application. According to the petitioner, he had purchased rice and wheat in question from the local agriculturist from the open market. By enclosing the copy of statement of bank account he has shown that the petitioner's firm maintains an account in the name of Rohit Traders and all the transaction are duly accounted for.

5. It is stated that Collector, Saran is likely to initiate proceeding under Section 6A of the E.C. Act. Referring to one order



dated 18.07.2017 passed by a Hon'ble Division Bench of this Court in L.P.A. No. 1647 of 2015 as Annexure-4 to the writ application the petitioner submits that this Hon'ble Court has passed the release order in the case where Section 6A proceeding under E.C. Act is pending. It is submitted that the wheat and rice has been seized on mere suspicion alleging that there is a mark of F.C.I. on the gunny bags. It is submitted that mere presence of the marks of F.C.I. on the gunny bags cannot lead to a conclusion that the petitioner has indulged in sale of government subsidized wheat and rice as there is no restriction on reuse of the bags bearing F.C.I. marks. It is also submitted that these are not the controlled items and do not belong to the F.C.I.

6. Relying upon another judgment of this Court in Criminal Miscellaneous No. 46771 of 2013 as contained in Annexure-5 to the writ application, it is submitted that in similar circumstance the learned co-ordinate bench of this Court has quashed the prosecution. In its order dated 24.05.2017 (Annexure-5) the learned co-ordinate bench has taken note of the admitted fact that the rice is not a controlled item and that the bags of F.C.I. are available in open market and that there is nothing on the record to show that any control order has been violated.

7. By filing of I.A. 583 of 2018 the petitioner has prayed for amending the prayer to the extent that he has challenged



the order dated 14.11.2017 passed in Criminal Revision No. 288 of 2017 by the IXth Additional Sessions Judge, Chapra affirming the order dated 08.09.2017 passed in Daudpur P.S. Case No. 105 of 2017 by which the petition filed by petitioner for release of the seized food grains have been rejected by the learned S.D.J.M., Saran at Chapra. Copy of the order passed by learned IXth Additional Sessions Judge, Chapra in Criminal Revision No. 288 of 2017 has been enclosed as Annexure-6 to the writ application.

8. In response to the statements made in the writ application, a counter affidavit has been filed on behalf of respondent no. 4 who is the Principal Officer of Food Corporation of India. In paragraph no. 6 of the counter affidavit he has stated that there is no theft in the godowns of the Food Corporation of India and all the stocks are intact, no shortage of gunny bags is in the godown.

9. A counter affidavit has also been filed on behalf of Block Supply Officer, Manjhi in which he has reiterated the facts based on which the first information report has been lodged. The stand is that unless and until the matter has been decided by the competent court of jurisdiction the petitioner is not entitled for any relief. He has stated that a confiscation proceeding being Confiscation Case No. 09 of 2017 has also been registered by the District Magistrate, Saran at Chapara in the purported exercise of powers



conferred under Section 6A of the Essential Commodities Act. In paragraph 8 of the counter affidavit it is stated that pursuant to the order dated 18.08.2017 passed in Confiscation Case No. 09 of 2017 seized food grains containing 107 quintals wheat in 214 bags and 9.50 quintal rice in 19 bags along with 44 empty *Jute* bags have been sold through auction and the same has been auctioned in favour of the highest bidder Suresh Yadav.

10. The Assistant Godown Manager, Manjhi has been directed to ensure supply of the auctioned food grains in favour of Suresh Yadav. The counter affidavit of the Block Supply Officer, nowhere discloses the procedure followed in the matter of auction sale and the money collected in such auction sale. It nowhere says whether any sample of the food grains were taken in accordance with law and tested to find out that these food grains were the government subsidized food grains. It appears that the auction sale of the food grains were ordered even before disposal of the application for release by the learned S.D.J.M., Saran at Chapara, however, the auction sale could not be conducted and this Court vide order dated 29.03.2018 passed an interim order directing that the wheat and rice shall not be auctioned sold. This Court was, however, informed on 20.04.2018 that the seized food grains were sold through auction in favour of the highest bidder whereupon this Court took note of the facts and in the



nature of submissions advanced before the Court, the District Magistrate, Saran at Chapra was directed to file his own affidavit within a period of three weeks answering the submissions of the petitioner as were taken note of in the order.

11. The District Magistrate, Saran at Chapra was directed to demonstrate as to how rice and wheat may be brought in the category of perishable items or goods as envisaged under Section 6A(2) of the Essential Commodities Act and in case the exercise of power vested in the District Magistrate to pass an order under Section 6A(2) in respect of perishable goods has been exercised. He was directed to file a counter affidavit on the aforesaid issues and response to the order dated 20.04.2018 of this Court. The District Magistrate, Saran filed his counter affidavit in which save and except that the same old facts which were repeated by him in the affidavit, no answer has been offered with respect to the specific issues raised by this Court, a most vague kind of counter affidavit seems to have been filed without disclosing the procedure adopted in course of auction sale, when such auction sale was conducted and what was the highest amount on which the auction sale was finalized.

12. In the facts and circumstances of the case, taking note of the order dated 20.04.2018 passed by this Court it is found that even though the District Magistrate, Saran at Chapara was given



ample opportunity to defend his action by answering the specific queries raised by this Court, the same has not been availed by the District Magistrate and only a vague kind of reply has been submitted.

But having said so, this Court also finds that the present writ application was filed under an impression that the seized food grains are still in possession of the Assistant Godown Manager of the F.C.I. and no auction sale has been conducted so it may be released but now that the respondent no. 2 has come out with an information with regard to the auction sale having been conducted by him and the petitioner has not amended the writ petition, in view of the developments so far, learned counsel has though orally addressed this Court challenging the order by which food grains were sold and sought compensation but in absence of a proper amendment of writ, the reliefs prayed for release of the seized food grains has become infructuous.

13. Taking note of facts and circumstances of the case, this Court would direct the District Magistrate, Saran at Chapara to communicate the petitioner whether samples of the food grains seized were kept and tested in accordance with law, also about the procedures followed in the matter of auction sale of the food grains and the amount which has been collected through such auction sale with specific dates as to when the notice for auction sale was



published, how notice was brought to the knowledge of public at large and auction sale was conducted and amount which has been deposited in the treasury with the government. All documents with regard to sample test and auction procedure shall be made available to the petitioner within the prescribed period hereinafter. On receipt of the information from the District Magistrate, Saran at Chapara, the petitioner will be at liberty to file an appropriate proceeding, challenging the order(s) passed in confiscation proceeding, sale of food grains during pendency of the case, and claiming compensation in accordance with law.

14. The District Magistrate shall comply with the directions issued hereinabove within a period of 30 days from the date of receipt of the communication of this order, failing which the petitioner will have liberty to bring the violation of the order of this Court to the notice of this Court in an appropriate jurisdiction.

15. This writ application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

Ved/-

AFR/NAFR	NAFR
CAV DATE	03.08.2018
Uploading Date	31.08.2018
Transmission Date	31.08.2018

