IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1893 OF 2018

M/s Jay Anand Food Industries
Having premise at A-3/2, Acorn Warehouses
and Logistics park at Dive-Anjur Village,
Opp. Dive Petrol Pump, Mumbai-Nasik Highway,
Bhivandi, Taluka Bhivandi, Dist. Thane,
through its authorized person Mohammad Vafid
Barkat Ali Khan, Age 40 Years, Occ. Business
Residing at Flat No. 604, City Towers, 6th Floor,
Vanjarpatta, Tal. Bhiwandi, Dist. Thane … Petitioner

Vs.

1. The State of Maharashtra
through the Controller of Rationing and
Director of Civil Supplies, 5th floor, Royal
Insurance Building, 14, J.D. Tata Marg,
Churchgate, Mumbai 400 020

2. The Sr. Inspector of Police, Narpoli,
Police Station, Bhivandi, Dist. Thane. … Respondents

WITH

CRIMINAL WRIT PETITION NO. 4199 OF 2015

M/s Jay Anand Food Industries
Having premise at A-3/2, Acorn Warehouses
and Logistics park at Dive-Anjur Village,
Opp. Dive Petrol Pump, Mumbai-Nasik Highway,
Bhivandi, Taluka Bhivandi, Dist. Thane,
through its proprietor Laxman Dharamshi Patel,

Age 38 Years, Occ. Business
Residing at 901, Mohan Heights,
Opp. Golden Park, Khadakpada,
Kalyan (W), Pin 421 301 … Petitioner

Vs.

The Sr. Inspector of Police,
Narpoli Police Station, Bhivandi, Dist. Thane … Respondents

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Mr. P.A. Pol I/by Pol Legal Juris for the Petitioner.
Ms. P.N. Dabholkar, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 11th JULY, 2018.

JUDGMENT

1. By consent matter was heard for final disposal.

2. The petitioner has challenged the order dated 1st December, 2015 passed by Respondent No.1 as well as the order dated 3rd March, 2018 passed by Additional Sessions Judge, Thane in Criminal Appeal No. 212 of 2015.

3. The relevant facts relating to issue involved in this petition are as follows :-

(a) The petitioner is proprietory concern engaged in the business of polishing raw rice into silky rice. The respondent No.1 is Controller of Rationing & Director of Civil Supplies, Mumbai.

The Respondent No.2 is the Senior Inspector of Police attached to Narpoli Police Station, Bhiwandi. The Rationing Inspector alongwith his team and police made a surprise visit to the business premises of the petitioner on 1st August, 2015. The premises were sealed on 2nd August, 2015. At the instance of Rationing Inspector FIR was lodged bearing CR-II-82 of 2015 with Narpoli Police Station on 2nd August, 2015 against the proprietor of petitioner for the offences under Section, 3, 7 and 8 of the Essential Commodities Act, 1955 read with Public Distribution System (Control) Order 2001.

(b) The petitioner had approached this Court by preferring Civil Writ Petition No. 7757 of 2015. By order dated 4th August, 2015, petition was disposed of on the statement being made by learned AGP of Assistant Rationing Officer from the office of Controller of Rationing that inventory of the seized goods shall be made in presence of authorised representative of the petitioner and after duly authorised the representative executes the bond (supratnama) in the prescribed form, the premises shall be unsealed and petitioner shall be put in possession thereof. The petition was disposed of with observations that this Court have not made any adjudication on the legality and validity of seizure of goods and it is for the petitioner to adopt appropriate remedy.

(c) On 7th August, 2015 the seal was removed and quantity was recounted. The statement of representation of the petitioner was recorded. Supratnama was executed.

(d) In the first information report it was alleged that there is violation of Public Distribution System Control Order 2001. The petitioner preferred an application before the Court of Judicial Magistrate First Class at Bhiwandi which was numbered OMA No. 3196 of 2015 for return of property under Section 451 of Code of Criminal Procedure. Learned Magistrate by order dated 9th September, 2015 had rejected the said application on the ground that in view of specific bar provided under Section 6-E of the Essential Commodities Act, 1955. The said Court has no jurisdiction to entertain such application under Section 451 of Code of Criminal Procedure. Thus, the application was rejected for want of jurisdiction.

(e) Being aggrieved by the aforesaid order, the petitioner preferred Criminal Revision Application No. 198 of 2015 before the Sessions Court, Thane. The said application was rejected on 28th September, 2015. While rejecting the said application, it was observed that if the rationing goods are found with anyone, the

Court has no jurisdiction to release the property. It was further observed that confiscation proceedings are already started and the Court has no jurisdiction to entertain such application. The Court also observed that petitioners have not made out case for releasing the property in their favour, though the property was kept in the custody of the petitioner on supratnama.

(f) Being aggrieved by the aforesaid orders, the petitioner preferred Criminal Writ Petition No. 4199 of 2015 to quash and set aside the said orders and to return the goods to the petitioner. The respondents were directed to submit their reply.

(g) During the pendency of Criminal Writ Petition No. 4199 of 2015, the respondent No.1 passed order of confiscation dated 1st December, 2015. In view of the said order, the petitioner preferred Criminal Appeal No. 212 of 2015 before the Sessions Court under Section 6-A of the Essential Commodities Act. The said appeal was dismissed by order dated 3rd March, 2018, hence, the petitioner has preferred the Writ Petition No. 1893 of 2018.

4. Shri Pol, learned counsel appearing for the petitioner submitted that the order of confiscation dated 1st December, 2015 and the order passed by the Sessions Court dated 3rd March, 2018 are contrary to law. The said orders are passed without

application of mind. The learned Sessions Court failed to consider the police report dated 20th August, 2017 which was submitted with regards to the purchase of rice viz. purchase bills and bank statements provided by the petitioners. The police conducted investigation by recording statement of the traders and submitted the report to the Court, which was ignored by the Court. He further submitted that the notification was issued by the Central Government declaring that the rice is not of 'scheduled commodity'. The provisions of Public Distribution Systems (Control) Order 2001 are not applicable. The power of such under clause 10 of the aforesaid Order is confined to fair price shop or any premises relevant to transaction of business of the fair price shop and therefore the seizure and confiscation was illegal. Although in the FIR, it has been alleged that there is violation of Public Distribution System (Control) Order 2001, but the FIR or panchanama is silent as to which clause of the said order were contravened by the petitioner. It is the routine practice of Food Corporation of India to sell the rice to private traders. In a similar way, the petitioner had purchased the rice which is supported by delivery orders and bills. The respondent had deliberately mentioned a wrong figure relating to stock without taking into account the stock book maintained for finished rice and arbitrarily detained the rice and sealed premises. It is submitted that while recounting it was noticed that there was less stock of rice then the quantum referred earlier. The rice was kept at one of the corner of the premises and the same was not sold although inadvertently the statement was made earlier by the advocate that the commodity was sold. It is submitted that rice however is not in good condition. The said fact is verified by police inspector alongwith their staff. Respondents are not liable to recover any amount from the petitioner. The requisite notice contemplated under Section 6B of the Essential Commodities Act was not served upon the petitioner before proceeding to pass the impugned order of confiscation. It is submitted that the petitioner had obtained requisite licence for the business. The provisions of Essential Commodities Act would apply if there is valid seizure of scheduled commodity under the provisions of said Act under orders issued under Section 3 of the said Act. Rice was not schedule commodity beyond 30th November, 2014 as the Central Government did not extend control order dated 29th November, 2013 which is apparent from office memorandum dated 29th October, 2014. The respondents had not counted the entire stock of rice which were in two different categories as well as raw and unpolished rice and for which two separate registers were maintained which were not verified by respondents. The process of cleaning and process of standard equipment is a normal practice and there is also appears to be a shortage of 1% of finished rice. Merely allegations that the bags with FCI stamp were found in the premises is not sufficient to apply the provisions of the said Order, 2001 to the petitioner.

5. Learned APP representing the respondents submitted that the confiscation order passed by the authorities as well as the order passed by the Sessions Court dismissing appeal are proper. It is submitted that notice under Section 6B of the Essential Commodities Act was given to the petitioner on 3rd September, 2015 and was directed to attend the hearing. Said hearing was adjourned till 11th September, 2015 meanwhile the petitioner filed OMA No. 3196 of 2015 before Judicial Magistrate First Class Bhiwandi. Said application was rejected on 9th September, 2015. Revision application preferred by the petitioner was rejected by the Sessions Court on 28th September, 2015. Even after ample opportunity by giving notice under Section 6B of the Essential Commodities Act none appeared for hearing. After going through the contents of notice and documents on record, the respondent

No.1 by order dated 1st December, 2015 confiscated the goods found in the godown of the petitioner. Learned APP pointed out the observations of the Sessions Court as well as observation made in the order of confiscation which according to her are correct and based on the material on record. Notices dated 24th August, 2015, 7th September, 2015, 21st September, 2015 and 12th November, 2015 were issued to petitioner. Petitioner was aware about the initiation of confiscation proceedings and in say filed to OMA 3196 of 2015 it was mentioned that hearing was fixed before the authorities on 3rd September, 2015 which was not attended. The respondents have also filed affidavit dated 20th November, 2015 in Writ Petition No. 4199 of 2015 and subsequent affidavit dated 1st January, 2016. In the affidavit dated 1st January, 2016 it is mentioned that prior intimation of hearing was given through Narpoli Police Station but petitioner did not attend the hearing before the Controller of Rationing and Director of Civil Supplies and hence the authorities proceeded to pass the order dated 1st December, 2015 for confiscation of goods. It is thus submitted that both the petition be dismissed.

6. Having heard both the parties and after going through the documents on record it can be seen that seizure in question was

made on 1st August, 2015. The petitioner is engaged in business of polishing of raw rice into silky rice. The First Information Report was registered with Narpoli Police Station on 2nd August, 2015 under Sections, 3, 7 and 8 of the Essential Commodities Act,1955 read with Public Distribution System (Control) Order 2001. The premises were sealed, which was subsequently unsealed in pursuant to order passed by this Court. The petitioner has placed on record Office Memorandum dated 29th October, 2014 in which it is stated that the department of Food & Public Distribution is of the view that the extension of the validity of Central Orders dated 29th November, 2013 in respect of paddy and rice beyond 30th November, 2014 is not required and may be allowed to lapse.

7. Clause 10 of the Public Distribution System (Control) Order 2001 read as follows :-

> ***"10. Power of search and seizure.***
>
> *(1) An authority authorized by State Government, shall be competent to inspect or summon such records or documents as may be considered by him necessary for examination and take extracts of copies of any records or documents produced before him.*
>
> *(2) If the said authority has [reasons to believe on receipt of a complaint or otherwise] that there has been any contravention of the provisions of this Order or with a view for securing compliance with this Order, he may enter, inspect or search the fair price shop or any*

premises relevant to transactions of business of the fair price shop.

(3) The said authority may also search, search, seize or remove such books of accounts or stocks of essential commodities where such authority has reason to believe that these have been used or will be used in contravention of the provisions of this order.

[(3A) The authority conducting search and seizure under sub-clause (3) shall inform the State Government or an officer authorized by it in this behalf, the details of the search conducted and the stocks of essential commodities so seized by them under that clause.]

(4) The provisions of section 100 of the Code of Criminal Procedure 1973, relating to search and seizure shall so far as may be, apply to search and seizure under this Order."

Apparently, the search is related to fair price shop or any premises relevant to transaction of business of the fair price shop. The respondent had not pointed out that there is any embargo in purchasing rice from Food Corporation of India. On the application of the petitioner, the appellate Court had directed the police to submit the report of investigation with regard to purchase of rice viz purchase bills and bank statement provided to them. The police conducted the inquiry by recording statement of traders and submitted the report to the Court. The said report has been annexed to this petition. The report indicated that inquiries were made with petitioner about the stock seized and during that inquiry the traders from whom the stock was handed over remained present at Police Station and their statements were recorded. The bills and receipts of payment tendered by them were verified. It was mentioned in the said report that on perusal of the documents and evidence submitted by the petitioner, it appears that the complainant had not verified the furnished goods register which was available in the godown and the complaint was filed on the basis of stock found in the godown and raw material register. Apparently, the report is not dealt with by the Court in proper prospective. From the letter issued by Food Civil Supplies and Consumer Protection Department, State of Maharashtra dated 5th January, 2015 categorically mention that the restriction of stock of rice and other essential commodities is applicable till 30th November, 2014 and the extension of the restriction is refused by the Central Government. There is no evidence to show that the stock was rationed good. The rice is apparently not scheduled commodity. In the earlier order passed by Sessions Court dated 29th September, 2015, it was observed that as per the provisions of Essential Commodities Act and PDS Order 2001 permission may not be required to deal with the business of rice. But, one has no right to purchase the goods which were available in rationing shop. The Appellate Court has failed to decide the issue as to whether the rice is scheduled commodity and whether the provisions of Public Distribution System (Control) Order 2001 is applicable in the present case. The power under clause 10 of the said Order is confined to fair price shop or any premises relevant to transaction of business of the fair price shop. The other issue raised by the petitioner is that notice under Section 6B of the Essential Commodities Act was not served upon the petitioner before proceeding to pass the order of confiscation. The affidavit in reply referred herein above refers to the date of hearing fixed by the respondents. It is also mentioned that the notice was served upon the petitioner and petitioners were aware about the pendency of confiscation proceedings. It is contended that the notice was served through the police Station. Learned APP tendered the purported acknowledgments in support of submissions that notice under Section 6B was served upon the petitioner. On perusal of the said documents, it appears that the acknowledgements are with regards to the documents being served upon the Narpoli Police Station on 3rd September, 2015, 16th September, 2015 and 9th November, 2015 which bears the acknowledgement of Narpoli Police Station. Inspite of giving an opportunity, the respondent could not point out to the Court any acknowledgement serving notice on the petitioner under Section 6B of the Essential Commodities Act. The provisions are required to be strictly followed for adhering to the principle of natural justice. As per Section 6B of the Essential Commodities Act, no order of confiscating any essential commodity, package, covering etc shall be made under Section 6A unless the owner of such commodity or the person from whom it is seized, is given a notice in writing informing him of the ground on which it is proposed to confiscate the essential things and an opportunity of making presentation in writing and given a reasonable opportunity of being heard in the matter.

8. For all these reasons, the impugned orders are required to be set aside. Hence, I pass the following order.

ORDER

i) Criminal Writ Petition No. 1893 of 2018 and Criminal Writ Petition No. 4199 of 2015 are allowed;

ii) Impugned order dated 1st December, 2015 passed by Respondent No.1 in Case No. 25 of 2015 as well as impugned Judgment and Order dated 3rd March, 2018 passed by Additional

Sessions Judge, Thane in Criminal Appeal No.212 of 2015 are set aside.

iii) Criminal Writ Petition No. 1893 of 2018 and Criminal Writ Petition No. 4199 of 2015 stand disposed off.

Sachidanand Kuttan Nair Digitally signed by Sachidanand Kuttan Nair Date: 2018.08.02 10:25:46 +0530

(PRAKASH D. NAIK, J.)