

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4697 OF 2015**

M/s. Oil Well Oil Centre

.....Petitioner

V/s.

The State of Maharashtra and another

.....Respondents

Mr. P. A. Pol a/w Mr. S. S. Suryavanshi, Mr. Rajesh Darvesh, Mr. Ranjit S. Hatkar, i/b Pol Legal Juris for the petitioner.
Mr. H. J. Dedhiya APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 12, 2018.

P.C.

In regard to Schedule Commodity, respondent authorities having noticed adulteration based on a report of analysis, seized the quantity of adulterated essential commodity and handed over in custody of the petitioner on Supurdnama. In the aforesaid background, action under section 6A & 6B of the Essential Commodities Act (Hereinafter referred to as “the said Act” for the sake of brevity) was initiated against the petitioner. The learned authority ordered seizure of the essential commodity to the extent found to be adulterated and directed auction of the same.

2 The appellate authority in an appeal against aforesaid order, modified the order of the first authority i.e. Controller of Essential Commodity and ordered that the amount towards consideration of mustered oil, RBD palm oil seized and valued by the authority to be deposited and confirmed the order of confiscation. The stock of groundnut oil since was not found to be adulterated was permitted to be retained and dealt with by the petitioner which was excluded from the order of confiscation. As such, this petition.

3 The learned counsel for the petitioner Shri. Pol would strenuously urge that show cause notice dated 16/06/2014 issued pursuant to the provisions of section 6A & 6B of the said Act was never served on the petitioner. So as to justify his claim, he would invite attention of this Court to the grounds raised in appeal before appellate authority under the said Act and submits that there was denial of opportunity of hearing to the petitioner. According to him, since there is violation of principles of natural justice, order of confiscation is liable to be quashed and set aside, particularly when the grounds which were formed to be basis for ordering confiscation

were never served on the petitioner. The next limb of submission of Shri. Pol is so far as the order of confiscation is concerned, the seized article was never removed from the custody of the petitioner. That being so, the articles which were ordered to be confiscated remained in the custody of the petitioner which according to him vitiates the entire action of seizure and confiscation. The next submission of Shri. Pol is the issue of adulteration cannot be dealt with under the Essential Commodities Act by ordering confiscation of goods as there is parallel mechanism provided under the Food Safety Act, 2006. Since order is without jurisdiction, the entire proceedings including that of order of confiscation against the petitioner is liable to be quashed and set aside.

4 The learned APP supports the order as according to him, the order is in tune with the provisions of the said Act. He submits that once the fact that the goods which were seized and confiscation order is passed are not disputed to be essential commodity, the orders impugned are in tune with the provisions of section 3, 6A & 6B of the said Act. He submits dismissal of the writ petition.

5 Considered rival submissions. This Court is proceeding to decide ahead the matter finally keeping in mind that the parties are in agreement with the seized and confiscated commodity is schedule commodity as per the said Act.

6 There are three items which were seized from the custody of the petitioner, (1) Groundnut oil (2) Refined palm oil (3) Mustered oil. Of these 3 essential commodities in the form of oil seized from the custody of the petitioner, upon report of the analysis, latter two i.e. palm and mustered oil were found to be adulterated. As a consequence of above, show cause notice came to be issued pursuant to the provisions of section 6A & 6B of the said Act on 16/06/2014. The said provisions of section 6A & 6B of the said Act reads as follows:

6A. Confiscation of essential commodity—[(1)] *Where any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the collector [may, if he 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 [may order confiscation of –

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found;

and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity;]

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 34 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

[Provided further that in the case of any animal, vehicle, vessel, or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.]

[(2) 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-

(i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force;

or

(ii) where no such price is fixed, order the same to be sold by public auction;

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(3) where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

(a) where no order or confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) 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.]

6B. Issue of show cause notice before confiscation of essential commodity—

[(1)] No order confiscating 3[any essential commodity] shall be made under section 6A unless the owner of such [essential commodity] package, covering, receptacle, animal, vehicle, vessel or other conveyance] or the person from whom [it is seized]—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the [essential commodity] package, covering, receptacle, animal, vehicle, vessel or other conveyance];

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the ground of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

[(2)] Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6 A if the owner of the animal, vehicle vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.]

[(3)] No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.]

7 It is claimed by the petitioner that show cause notice dated 16/06/2014 was never served on the petitioner and as such, he was unable to deal with the grounds set up against him for ordering confiscation of goods viz. palm and mustered oil. For substantiating

the said contention, he has invited my attention to the reminder letters dated 09/07/2014 and 25/07/2014, issued by the respondent authorities, his reply which was received by the authorities on 05/08/2014 and grounds raised in his memorandum of appeal before the appellate authority. However, upon considering reply tendered by the petitioner which was acknowledged by the authority on 15/08/2014 speaks of the petitioner giving reply on merit to the said show cause notice. The document referred to in reply, disputing the claim that show cause notice was never served on him and giving reply on merit speaks voluminous about the conduct of the petitioner that he has replied to show cause notice. The learned APP has produced the original record for inspection of this Court. Though copy of show cause notice is not produced along with the petition, same was perused by this Court from the original record and proceedings of the authority, wherein specifically grounds are raised for ordering confiscation of the adulterated essential commodity. That being so, claim of the petitioner that he was never served with show cause notice and there is denial of opportunity of hearing does not hold any substance. As such, said contention is

liable to be rejected and accordingly rejected.

8 This takes me to the next limb of submission of Shri. Pol that the goods were not physically removed from the custody of the petitioner which were seized and continued to be in the possession of the petitioner.

9 If the aforesaid contention of the petitioner is appreciated, huge stock of essential commodity was seized from the custody of the present petitioner. The nature of essential commodity is oil which cannot be physically taken into custody and transported by the authorities immediately. The fact remains that the petitioner is a licenced holder for dealing in essential commodity. In such eventuality, it is always open for the authorities to record seizure, draw samples and Panchanama and then to hand over temporary custody of the seized material to the petitioner/may be even he is accused of commission of crime. One more aspect of the matter is, petitioner never denied handing over the custody of the seized material and it is only after the order of confiscation they trying to use the said decision of the authority of handing over the temporary

custody to the petitioner for gaining unlawful mileage out of the same. No statutory provision or any verdict is brought to the notice of this Court from where this Court can draw a conclusion that handing over of temporary custody of the seized material to the present petitioner by not physically removing the adulterated goods would vitiate the proceedings against including that of order of confiscation. As such, said contentions are also rejected.

10 So far as the last submission of Shri. Pol that the said Act does not confer any power *qua* confiscation of the adulterated goods is concerned, it is worth to observe here that parties are at *ad-idem* that goods which are seized and confiscated are covered within domain of the said Act. Upon plain reading of section 6A & 6B of the said Act which is reproduced herein above, gives power to the authority to seize and further upon following due process prescribed by law order confiscation. May be this remedy is in addition to the remedy one provided under the other Central Statute i.e. Food Safety Act. The only difference to be noted in the Essential Commodities Act and Food Safety Act is, Food Safety Act can be termed to be made

applicable to even Essential Commodity, but it is not other way round when it comes to a prosecution and action *qua* dealing with the essential commodity. In the case in hand, upon plain reading of the provisions of the Essential Commodities Act, various orders framed thereunder does not take this Court to the conclusion that action on the part of the respondent authority of ordering seizure and further confiscation of adulterated item is without any jurisdiction.

11 Both authorities below have concurrently held against the petitioner that it has power to confiscate adulterated essential goods which upon plain reading of section 6A & 6B of the said Act cannot be faulted with.

12 For the aforesaid reasons recorded, I hardly notice any substance which warrants interference in extra ordinary jurisdiction. Petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]