

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11087 of 2008

and

W.M.P.No.1 of 2008

1.A.Angammal

2.Sakthivel

... Petitioners

Versus

1.The District Collector,
Erode District, Erode.

2.The Special Tahisldar,
Flying Squad (Civil Supplies),
Erode,
Erode District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No.Na.Ka.No.17731/2007/K-3, dated 20.08.2007 which was confirmed by the District and Sessions Court, Erode in C.A.Nos.202 of 2007 and 203 of 2007, dated 29.11.2007 and quash the same.

For Petitioners : Mr.C.Prakasam

For Respondents : Mrs.Thanga Vadhana Balakrishnan,
Additional Government Pleader.

O R D E R

The petitioner has filed this Writ Petition seeking issuance of Writ of Certiorari to quash the impugned order passed by the first respondent, in proceedings No.Na.Ka.No.17731/2007/K-3, dated 20.08.2007, which was confirmed by the District and Sessions Court, Erode in C.A.Nos.202 & 203 of 2007, dated 29.11.2007.

2. The first petitioner Angammal, who is residing at Erode District, Bhavani, had sworn to an affidavit filed in support of this writ petition contending that she is the owner of the Mini

Lorry Bearing Registration No.TN-28-J-2965, which was handed over to the second petitioner, who is the Sub-contractor, arranging coolies under the SGRY scheme. The first petitioner submitted that on 24.03.2007, when the second petitioner was trying to transport 152 bags of rice each weighing 50 kg for the purpose of distributing the same to the coolie workers under the SGRY scheme with valid documents, the lorry was seized by the second respondent on suspicion that the rice is PDS rice. Therefore, the first petitioner alone sent a representation to the first respondent, to release Mini Lorry and since the first respondent has not passed any orders, the petitioners were forced to file the Writ Petitions in W.P.No.12141 of 2007 for release of the Mini Lorry, wherein they had obtained an interim relief in respect of release of lorry, on furnishing cash security of Rs.20,000/- and W.P.No.12759 of 2007, for release of rice bags, and the same was disposed with a direction to the District Collector, Erode to dispose the enquiry under Section 6 (A) of the Essential Commodities Act, 1955, within 8 weeks.

3. The first petitioner further contended that herself, the sub-contractor/second petitioner and the driver had appeared before the first respondent and produced all the documents and narrated the entire facts. The first respondent had confiscated the entire goods and imposed fine amount of Rs.25,000/- (Rupees Twenty five thousand only) on her. Against which, the petitioners herein preferred Statutory Appeal under Section 6 (C) of the Essential Commodities Act, 1955 before the District and Sessions Court, Erode in C.A.Nos.202 & 203 of 2007, which were also went against the petitioners and dismissed, by, confirming the order passed by the first respondent. Assailing the correctness of the same the petitioners have approached this Court by way of this Writ Petition raising various grounds.

4. The learned counsel for the petitioners would contend that 152 bags of rice, which were meant for distribution to the coolie workers under the SGRY scheme and the Mini Lorry in question was running from Brammadesam to Bhavani where the lorry was intercepted and seized by the second respondent.

5. Further, the learned counsel for the petitioners would contend that the first petitioner did not have any knowledge of the said rice bags accepted by driver for transportation on hire and the first petitioner being the owner of the lorry cannot be penalized for the said incident. Apart from that, the learned counsel for the petitioners would also contend that the lorry driver had produced the entire records which were considered by the second respondent and he has not taken any steps to verify the same with the other officials. The Police have registered a case against the petitioners under Section 6 (4) of the TNSC (RDSC) order, 1982 r/w Section 7(1) (a) (ii) of Essential Commodities Act, 1955 on the ground that seized stock of rice is

meant for distribution in the Ration shop for common public.

6. The learned counsel for the petitioner would also contend that the respondents have no Jurisdiction to seize the commodities and the seizure is illegal.

7. The first respondent / District Collector filed a counter wherein it is stated that:

(i) While the Special Tahsildar (flying squad), Erode was conducting a vehicle check in Anthiyur privu, Bhavani Municipality, at Erode on 24.03.2007 along with his team, he intercepted one Mini Lorry bearing registration No.TN-28-J-2965, at about 4.00 p.m coming from Anthiyur to Bhavani, and the lorry was carrying 152 bags of rice each weighing 50 kg.

(ii) While interrogating with the said driver, it was found that the lorry owner is one Angammal, who is the first petitioner herein and the documents and evidences produced by the lorry driver to the second respondent were not sufficient to substantiate the claim, that the rice transported is for workers under the SGRY scheme executed at Brammadesham Panchayat in Anthiyur Panchayat Union and there was no explanation given by the driver as to why the rice meant for SGRY workers of Brammadesam, were brought to Bhavani Municipality area.

(iii) It is also stated in the counter that under the SGRY scheme, 5kg of rice is given to one person per day as part wages and coolie workers, were given coupons, which they could present before the P.D.S retail shop and get their respective share of rice. As quantity of rice that was brought and transported through the Mini Lorry, did not satisfy the SGRY rice distribution specifications and the rice resembled as P.D.S rice, the Special Tahisldar (flying squad) seized the Mini Lorry and sent a detailed report to the Collector, Erode District for taking necessary action under the Essential Commodities (E.C.,) Act, 1955.

8. It is further stated that aggrieved by the seizure of the lorry, the first petitioner herein filed the W.P.No.12141 of 2007, is and by which, this Court passed an order dated 03.04.2007, directing the District Collector, to release the Mini lorry, and the second petitioner, aggrieved by the seizure of rice, filed the W.P.No.12759 of 2007, wherein this Court passed an order dated 05.04.2007, dismissing the Writ petition and directing the District Collector, Erode, to pass an order on the proceedings under Section 6(A) seeking to release 152 rice bags seized by the Special Tahisldar (flying squad), within 8 weeks. Pursuant to the order of this Court, the then Collector, after affording reasonable opportunity to put forth the case of the petitioners and their claim, passed an official order on 20.08.2007 in proceedings No.Na.Ka.No.17731/2007/K-3

confiscating the seized rice and levying fine of Rs.25,000/- to the vehicle owner.

9. It is also stated that aggrieved by the above said order of the Collector, Erode District, the petitioners preferred appeals before the I Additional Sessions Court, Erode in C.A.Nos.202 & 203 of 2007. The said appeals were dismissed, confirming the order passed by the District Collector, Erode as no modus-operandi of the distribution under the SGRY Scheme was followed and the documents were not adequate to prove the claim of the petitioners that the rice transported is only under SGRY scheme and not the PDS rice. There was no explanation given by the petitioners as to why the rice was brought to Bhavani all along from Brammadesam. Hence, in the absence of any supporting evidence produced by the petitioners, the first respondent had come to conclusion that the rice had been transported to sell it in black market. Hence, the order of confiscation was ordered by the Collector, Erode District.

10. The learned counsel for the petitioners would contend that the Authority has not followed due process and procedure contemplated, while seizing the rice and no quality certificate has been furnished till date.

11. The next contention raised by the learned counsel for the petitioners is that no family card holders were examined and the respondents did not collect any of the rice bags samples from the seized materials and send for analysis report and no report was served on the petitioners.

12. However, the learned counsel for the respondents contended that the seized PDS rice was sent for quality analysis report, wherein it is reported that the seized rice is PDS rice and also submitted their contention that it is for the petitioners to prove that seized rice is not PDS rice and it is transported only for the purpose of distributing it to the workers under SGRY scheme. But the counsel for the petitioners also failed to prove that the rice is not PDS rice. Hence, he sought for dismissal of the writ petition.

13. Heard, the learned counsel for the petitioners and the Additional Government Pleader for the respondents and perused the materials placed on records.

14. It is seen that the rice was transported from Barmmadesam to Bhavani and it was seized. The contention of the petitioners is that they were transporting the rice to the workers under SGRY's scheme, who were engaged in the work at Brammadesam and not to the place in Bhavani. The contention of the first petitioner, that the said rice was meant for distribution to the coolies, who were under the SGRY scheme and

it was entrusted by the Panchayat Officials, and the second petitioner is a Sub contractor, who has taken this contract without the knowledge of the first petitioner, cannot be accepted.

15. Further, the petitioners contented that the lorry was coming from Brammadesam Panchayat to Anthiyur Panchayat, Union and it has passed through various Villages called Paruvachi, Mayilambadi, Kadayampatty and then come to Bhavani Municipality.

16. The contention of the second petitioner, at the time of enquiry, is that as per the Union contracts, a contractor has hired the above said vehicle for taking SGRY rice from Brammadesam to the Ration shop, Bhavani. From there, after reaching Bhavani, he would inform him regarding destination where the rice could be distributed. The persons, who were travelling along with the rice bags, Cleaners and Coolies have given statements, which are contrary to each other.

17. The contention of the first respondent is that the documents and evidence produced by the driver of the Mini Lorry were not sufficient to substantiate the claim and there was no explanation as to how and why they transported SGRY scheme rice from Bhrammadesam to Bhavani Municipality, which also raised suspicion about the transportation of rice bags.

18. The Collector, Erode District, after affording an opportunity to the parties, has correctly come to the conclusion that the rice, which was seized by the Special Tahisldar (flying squad) is PDS rice and ordered confiscation of the rice and also imposed fine to the vehicle owner, since there is no truth in the statements of the petitioners regarding transportation of the said rice, which is illegal and it meant for supply of Essential Commodities being distributed by the Government through PDS scheme.

19. When the order of the first respondent was challenged before the Additional and Sessions Court, Erode, the learned Judge also confirmed the order of the first respondent after conducting trial. Hence, when there is an order passed by the authority and the Court confirming the action committed by the petitioners being illegal, the contention of the petitioners are unacceptable by this Court.

20. Further, from the materials, it could be seen that the procedures have been followed by the authorities and samples have been taken and quality analysis report for the seized rice was done, which is also found to be PDS rice and the petitioners had not proved contrary to the same.

21. Since the petitioners have not produced any documents to prove their case to substantiate their claim that the seized rice is not PDS rice and it is meant for SGRY scheme and since necessary procedures have been followed by the respondents, who came to the conclusion that the petitioners claim cannot be accepted, and the petitioners approached this Court with unclean hands, the petition deserves to be dismissed.

22. Accordingly, this Writ Petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Erode District, Erode.
- 2.The Special Tahisldar,
Flying Squad (Civil Supplies),
Erode,
Erode District.

+1cc to Government Pleader sr.no.36049

W.P.No.11087 of 2008
and
W.M.P.No.1 of 2008

nr 26/07/2018

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