BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.02.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.1109 of 2017
and
C.M.P(MD)No.7601 of 2017

1.The District Revenue Officer,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar (Flying Squad),
Virudhunagar.

3.The Inspector of Police,
C.S.C.I.D., Virudhunagar.

4.The Senior Regional Manager,
Tamil Nadu Civil Supply Corporation Ltd.,
Virudhunagar. : Appellants/Respondents

Vs.

Jeya Muthumani
W/o.Muthumani,
The Partner,
Jeya Muthumani Transport Contractor,
7-B, Jeyaraj Road, Tuticorin - 3. : Respondent/Petitioner

PRAYER: Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 01.03.2017 made in W.P.(MD)No.8544 of 2010.

Prayer in WP(MD). 8544/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records pertaining to the order passed by the first respondent vide his proceedings Na.Ka.C.S.2/23628/09 dated 12.06.2010 and quash the same as illegal.

For Appellants : Mr.M.Murugan
Government Advocate
For Respondent : Mr.T.Lenin Kumar

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JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

The respondents in W.P.(MD)No.8544 of 2010 are the appellants and challenging the legality of the impugned order dated 01.03.2017, in and by which the order dated 12.06.2010 passed by the first appellant herein came to be quashed, came forward to file this writ appeal.

2.Facts leading to the present litigation have been narrated in detail in the impugned order passed in the writ petition, which is the subject matter of challenge in this writ appeal and therefore, it is unnecessary to restate the said facts once again, except to cull out the facts which are necessary for the disposal of this writ appeal.

3.The second appellant herein had intercepted two lorries bearing Registration Nos.TN-69-4345 and TAC-2799, belonging to the respondent / writ petitioner, alleging that 320 bags of PDS rice were transported in the said lorries and the said lorries instead of proceeding from Virudhunagar to Aruppukottai, had proceeded from Virudhunagar to Tiruchirappalli, in violation of the agreement entered into between the writ petitioner and the Tamil Nadu Civil Supplies Corporation. In this regard, a case in Crime No.167 of 2009 was also registered on 29.08.2009 under Regulation 6(4) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982, against the driver of the said vehicle.

4.The first appellant herein by invoking Section 6(4) of the Essential Commodities Act, 1955, has passed the impugned order dated 12.06.2010, confiscating the rice bags and it was put to challenge in the said writ petition, which came to be allowed and hence, this writ Appeal.

5.Mr.M.Murugan, learned Government Advocate, appearing for the appellants / official respondents in the writ petition, has invited the attention of this Court to Regulation 13 of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 and would submit that in the light of the said Regulation coupled with Section 6(A) of the Essential Commodities Act, 1955, the first appellant herein is having authority under law to confiscate the essential commodity and without equally appreciating the factual aspects and the legal position, the impugned order came to be erroneously set aside and prays for interference.

6.Per contra, Mr.T.Lenin Kumar, learned Counsel appearing for the respondent would submit that the respondent / writ petitioner, on an earlier occasion filed W.P.(MD)No.8835 of 2009, praying for issuance of writ of Mandamus, directing the first appellant herein to release 640 bags of rice seized from the above said lorries and the said writ petition was disposed of on 10.09.2009, by directing the first appellant herein to return the rice bags, if the rice bags have not already been disposed of or sold out, subject to the petitioner furnishing immovable property security to the entire quantity of the seized rice at the rate of Rs.25/- per Kg. and challenging the legality of the same, the official respondents filed W.A.(MD)No.725 of 2009 and a Division Bench of this Court has allowed the writ appeal and thereby setting aside the order passed in W.P.(MD)No.8835 of 2009.

7.The learned Counsel appearing for the respondent would further submit that the Regional Manager of Tamil Nadu Civil Supplies Corporation has also passed final orders on 06.05.2011, blacklisting the respondent / writ petitioner for a period of five years and also ordered to adjust the loss amount from the deposit made by the respondent / writ petitioner and it was put to challenge before the Managing Director of Tamil Nadu Civil Supplies Corporation, who vide proceedings dated 08.08.2011, has dismissed the said appeal and challenge has been made to the said order by filing W.P.(MD)No.26071 of 2011 and the petitions for interim orders also came to be dismissed on 16.12.2011 and as on date, the writ petition is still pending.

8.Subsequently, the respondent / writ petitioner has delivered the rice bags to the correct destination and further pointed out that Section 6(A) of the Essential Commodities Act, 1955, can be invoked only in the event of violation of an order made under Section 3 of the said act and admittedly, the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1882, deals with distribution of essential commodities through family / ration cards and in the absence of any specific statutory provision, the first respondent cannot invoke Section 6(A) and the learned Single Judge has rightly taken note of the said legal position and allowed the writ petition and prays for dismissal of this writ appeal.

9.This Court has considered the rival submissions and perused the materials placed before it.

10.It is relevant to extract Section 6(A)(1) of the Essential Commodities Act, 1955:

> *"6.A.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:]"*

11.By virtue of power conferred under Section 3 of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1882, the Essential Commodities Act, 1955, came to be framed and as rightly contented by the learned counsel appearing for the respondent/writ petitioner, it only deals with the distribution of commodities through card system and the said order does not contemplate the eventuality like the present one.

12.In the considered opinion of this Court, in the absence of any specific violation pointed out by the official respondents in so far as the said order is concerned, the first respondent cannot invoke Section 6(A) of the Essential Commodities Act, 1955.

13.In the considered opinion of this Court, the learned Judge has correctly applied the said legal position and quashed the impugned order.

14.This Court on an independent application of mind to the entire materials placed before it, is of the considered view that there is no infirmity or error apparent in record and the reasons assigned by the learned Single Judge is sustainable and hence, find no merit in this writ appeal.

15.In the result, the writ appeal is dismissed confirming the order of the learned Single Judge made in W.P.(MD)No.8544 of 2010 dated 01.03.2017. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To
1.The District Revenue Officer,
Virudhunagar District, Virudhunagar.
2.The Tahsildar (Flying Squad), Virudhunagar.
3.The Inspector of Police, C.S.C.I.D., Virudhunagar.

+1cc to Mr.T.LENIN KUMAR,Advocate,SR.49749
+1cc to M/S.Special Government Pleader,SR. 50188

W.A.(MD)No.1109 of 2017
20.02.2018

MR
KK/SV MMS/SAR 3/27.02.2018/ 4P- 6C/