HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2413 of 2017

ORDER:

This Criminal Revision Case is filed by petitioner/appellant under Sections 397 and 401 Cr.P.C. aggrieved by the judgment dated 16.08.2017 in Criminal Appeal No.7 of 2012 passed by the Principal Sessions Judge, Ranga Reddy District at L.B.Nagar, confirming the order dated 09.12.2011 passed by the District Collector, R.R. District in 6-A Case No.A7/746/CS/2011.

2) The brief facts of the case are that:

a) The 3rd respondent on receipt of credible information about illegal storage of PDS Rice by the petitioner, proceeded to the petitioner's rice mill at 8:00am on 11.09.2011 and on inspection, one M.Narsimha Rao, Gumastha of the rice mill produced only Food Grain Licence bearing No.106/Saroornagar/2008, which was valid upto 31.03.2012 but failed to produce records of the rice mill and informed that the proprietor of the mill was out of station. On physical verification of the said rice mill, the inspection party found FCI sealed 267 bags @ 50 kgs in each bag totalling 133.50 quintals, containing subsidy rice meant for Public Distribution System (PDS). Further, they found the following scheduled commodities within the Rice Mill and compound premises of the Mill:

S.No.	Commodity	No. of bags	Quantity in each bag (in KGs)	Total Quantity (in quintals)
1	Paddy	500	70	350
2	Sona Masuri	i) 360	50	180
		ii) 310	25	77.50
	Total Sona Masuri			257.50
3	Grade A Variety rice	972	50	486
4	Broken rice	29	50	14.15

Apart from the above stock, they also found the following quantity of Grade A variety rice in two (2) lorries in the Rice Mill premises:

S.No.	Lorry No.	No. of bags	Quantity in each bag (in KGs)	Total Quantity (in quintals)
1	AP 31 U 0977	340	50	170
2	AP 22 Y 2202	150	50	75
	Total	490		245

Thus altogether total number of 1462 bags @ 50 kgs in each bag containing total quantity of 731 quintals of Grade A variety rice was found during inspection. When questioned, the said Gumastha failed to produce relevant records and confessed that the stock is PDS rice. Thereby, the petitioner contravened the following provisions of control orders: i) condition 3(v) of FGL issued under APSCD (LS & R) Order, 2008, ii) clause 17 (A) of APSPDS (Control) Order, 2008 and iii) clause 3 of A.P Rice Procurement (Levy) Order, 1984. The inspecting officials seized the PDS rice and other essential commodities in the presence of mediators and handed over the PDS rice to Sri A.Veeraiah, MLS Point Incharge, Hayathnagar and other commodities and Lorries to Sri R.Ramanathan, Prop. of M/s. Laxmi Par Boiled Rice Industries, Seriguda, Ibrahimpatnam, under stamped receipt for safe custody. Thus a complaint was lodged under Section 6-A of Essential Commodities Act (for short "the E.C. Act") against the petitioner herein for necessary action.

b) The petitioner submitted his written explanation denying the contraventions alleged against him. He submitted that there was no cause for initiating proceedings under Section 6-A of the E.C.Act and that the panchanama was intentionally conducted on 11.09.2011, which being a holiday due to Ganesh Festival and also he was not called for verification to show the records within the reasonable time. He submitted that though he filed objections to the panchanama but the same were not considered while issuing show cause notice on 15.11.2011. He contended the charges under condition 3(v) of FGL under APSCD (LS & SR) Order, 2008 and clause 17(A) of APSPDS (Control) Order, 2008 are illegal and improper without verifying 6-A report. He also contended that there was no mention about the owner of the seized lorries in the show cause notice which shows that the Collector issued show cause notice without reading 6-A report. He submitted that as his objections were not considered, he filed Writ Petition No.26725/2011 before the High Court and the said petition was disposed of directing the District Collector to consider the objection petition and pass appropriate orders in accordance with law within a period of three (3) weeks.

c) Thereafter, the District Collector in his order dated 09.12.2011 while dropping charge no.3, held that charges 1 and 2 levelled against the petitioner were proved. Further, he exercised the powers conferred under Section 6-A (1)(a) of the E.C.Act and ordered confiscation of the entire 133.50 quintals of PDS rice and 15% of other seized stocks i.e, Rs.3,18,437/- out of the balance worth of Rs.21,22,910.50 in favour of the Government.

d) Aggrieved, the petitioner preferred Criminal Appeal No.7 of 2012 before the Principal Sessions Judge, Ranga Reddy District at L.B.Nagar but the same was dismissed by confirming the order passed by the District Collector.

Hence, the instant Crl.R.C.

3) Heard arguments of Sri V.H.V.R.R. Swamy, learned counsel for petitioner and learned Addl. Public Prosecutor for the State (Telangana).

4) The main plank of argument of learned counsel for petitioner is that both the Collector as well as the lower appellate Court committed grave mistake in holding: firstly, that the seized PDS rice of 133.5 quintals is an essential commodity and that the Collector had power to initiate proceedings under Section 6-A of the E.C.Act and secondly, that the other seized rice also is an essential commodity and the petitioner violated condition 3(v) of Food Grains Licence (FGL) issued under Andhra Pradesh Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008 (for short "APSCD (L, S & R) Order, 2008").

He vehemently argued that both the types of seized stocks do not come under the definition of essential commodity and thereby the Collector had had no power to initiate proceedings under Section 6-A of the E.C. Act. His submission is that by virtue of the Order in GSR 104(E) dated 15.02.2002 styled as "Removal of (Licensing requirements Stock Limits and Movement Restrictions) on Specified Food Stuffs Order, 2002" (for short "Order, 2002"), a dealer under Clause 3 of the said Order can freely deal with certain items of foodstuffs including paddy/rice, for which purpose, he does not require permit or licence under any Order issued under the Essential Commodities Act, 1955. Hence the order of the Collector which was affirmed by the lower appellate Court is illegal. He relied upon the decision reported in ***Sri Sai Traders, rep. by its Proprietor & others vs. Assistant Supply Officer, Circle-I, Vijayawada and others***[1].

5) Per contra, learned Addl. Public Prosecutor would argue that as per Clause 17-A of Andhra Pradesh State Public Distribution System (Control) Order, 2008 (for short "APSPDS (Control) Order, 2008"), interruption or interference with the process of smooth distribution of scheduled commodities under PDS system by any person shall be deemed to be a contravention of the APSPDS (Control) Order, 2008 and also an offence under Section 8 of the E.C. Act. Since APSPDS (Control) Order, 2008 was passed by the State Government in exercise of the powers conferred under Section 3 r/w 5 of E.C. Act, a contravention of the said Order of 2008, can be dealt with under Section 6-A of the E.C. Act and therefore, the Collector was well within his powers while initiating proceedings under Section 6-A of the E.C. Act. Learned Addl. P.P. would submit that it is true in ***Sri Sai Traders*** case (1 supra), the stock seized from the petitioner was PDS rice and in spite of the same, it was held that the rice was taken out of the list of essential commodities, thereby and also in view of the Central Government's Order dated 15.02.2002, removing the licence requirements for dealing with paddy/rice, Section 6-A of the E.C. Act can't be invoked but the authorities can take appropriate action as per law. Learned Addl. P.P would further submit that however, the judgment in ***Sri Sai Traders*** case (1 supra) was rendered on 22.06.2006. Subsequently, APSPDS (Control) Order, 2008 was passed and as per Clause 17-A of the said Order, interruption with the smooth

[1] 2006 (4) ALT 758

distribution of PDS rice was held to be a contravention of the said order, which can be dealt with under Section 6-A of the E.C.Act. Hence, the said judgment has no application.

a) Nextly, learned Addl.P.P would argue that so far as confiscation of 15% of other seized stock is concerned, no doubt the order dated 15.02.2002 gives liberty to dealers to deal with certain foodstuffs including paddy/rice without requirement of a permit or licence. However, the petitioner failed to produce any record showing his lawful possession of the said stock and thereby he contravened APSCD (L, S & R) Order, 2008. Hence, the said contravention was also dealt with under Section 6-A of the E.C.Act. He thus prayed to dismiss the revision.

6) In the light of above rival arguments, the points for determination are:

(i) Whether confiscation of 133.50 quintals of PDS rice by the Collector by initiating the proceedings under Section 6-A of E.C.Act is legally valid?

(ii) Whether confiscation of 15% of other seized stock of rice on the ground of violation of APSCD (L, S & R) Order, 2008 by invoking Section 6-A of E.C. Act is legally sustainable?

7) **<u>POINT No.1</u>**: In this case, the 3rd respondent seized 133.50 quintals of PDS rice and about 731 quintals of other rice from the premises of M/s.Bhagya Laxmi Rice Industries, Karmanghat village. Sofaras PDS rice is concerned, the Area Manager, who was examined stated that those rice

bags were with FCI label indicating that it was PDS rice, which was intended for distribution to card holders of BPL. The said rice was diverted for hoarding and black marketing. The crux of the contention of petitioner is that rice is not an essential commodity, it is only a scheduled commodity and by virtue of clause (3) of Order, 2002, a dealer can freely deal with various foodstuffs including paddy/rice without seeking any licence and therefore, even if PDS rice was found in his rice mill, the authorities cannot initiate proceedings under Section 6-A of E.C. Act. On an analysis of relevant provisions of the E.C. Act and other related orders issued under Section 3 of E.C. Act, I am unable to accept this argument. It is true that Section 2-A of E.C.Act, 1955 defining the term "essential commodity" was omitted by Act 54 of 2006 w.e.f. 12.02.2007. However, by virtue of same Amendment Act 54 of 2006 (w.e.f.12.02.2007), the term essential commodity was declared under Section 2-A. Section 2-A (1) reads that for the purpose of this Act, essential commodity means, a commodity specified in the Schedule. When the Schedule relating to Section 2-A is perused, a list of 7 categories of commodities was provided therein terming them as essential commodities. In category no.3, foodstuffs including edible oilseeds and oils are denoted as essential commodities. It is needless to emphasise that paddy/rice is a foodstuff and hence, it is an essential commodity. I am fortified by the decision of a Division Bench of this Court reported in ***Maimuna Begum v. The State of Telangana and others***[2], wherein, while discussing whether purchase of the rice meant for public distribution system from the cardholders

---

[2] 2016 (2) ALD (Crl.) 684 = 2016 (5) ALT 280

unauthorisedly would amount to contravention of provisions of E.C. Act, 1955 or Control Order, 2008, the Division Bench held that the rice being a foodstuff is an essential commodity. Therefore, it is preposterous to contend that PDS rice is not an essential commodity.

a) Now, the question is whether by virtue of Order, 2002, the petitioner can deal with PDS rice as he please without getting impunity under Section 6-A of E.C.Act. The Order, 2002, came into force w.e.f. 15.02.2002. Clause (3) reads thus:

> *"With the coming into effect of this order any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarse grains, sugar, edible oil seeds and edible oils and shall not require a permit or licence therefore under any order issued under the Essential Commodities Act, 1955."*

Thus with the advent of Order, 2002, a dealer can freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of the commodities mentioned in clause (3) particularly, paddy/rice and he shall not require a permit or licence therefor under any order issued under the E.C.Act, 1955. With reference to the Order, 2002, a learned single Judge of this Court in ***Sri Sai Traders*** case (1 supra), no doubt held that merely because PDS rice was found to be transported or in possession of the petitioners therein, that itself does not permit the respondents to invoke Section 6-A of E.C. Act because as per clause 16 of the Control Order, 2001, rice is only a scheduled commodity but not an essential commodity. The petitioner shores up his case on the aforesaid decision.

b) The petitioner's contention cannot be accepted for two reasons:

i) Firstly, as stated supra, the Division Bench in ***Maimuna Begum***'s case (1 supra), has held, the PDS rice as an essential commodity as it being a foodstuff. No doubt, in APSPDS (Control) Orders, 2001 & 2008, the PDS rice was shown as scheduled commodity. However, PDS rice basically being a foodstuff will not lose its character as essential commodity with reference to Section 2-A of E.C.Act.

ii) Secondly, subsequent to the judgment in ***Sri Sai Traders*** case (1 supra), APSPDS (Control) Order, 2008 was passed. Clause 17-A of the said Order, reads thus:

> *"No Fair Price Shop dealer or card holder or any person shall be allowed to cause interruption or interfere with the process of smooth distribution of scheduled commodities under Public Distribution system or other Government schemes at any level right from Food Corporation of India godown point to Fair Price Shop point, till the scheduled commodity reaches the intended beneficiary. Any such attempt of interruption or interfering with such process shall be treated as an abetment and be deemed to have contravened this order, thereby committing an offence under Section 8 of the Essential Commodities Act, 1955."*

Thus as per the above Clause, no Fair Price Shop dealer or card holder or any person shall be allowed to cause interruption or interfere with the process of smooth distribution of scheduled commodities under Public Distribution System and any such attempt of interrupting or interfering with such process shall be treated as an abetment and be deemed to be a contravention of the APSPDS (Control) Order 2008 and punishable under Section 8 of E.C.Act. A learned Judge of this Court in ***Ilandula Sanjay vs. The State of Telangana and others***[3], explained the word "any person" as "every person". It is held thus:

> *"**Para 13**: Thus, transporting PDS rice before it reaches the intended beneficiaries i.e. card-holders amounts to interruption of Public Distribution process under A.P. State Public Distribution System (Control) Order 2008. The word 'any person' referred in Clause 17(A) of the Control Order, 2008 indicates every person, who interrupted Public Distribution Process is liable for punishment under Sections 7 and 8 of Essential Commodities Act."*

Thus in essence, interruption or interference with the process of smooth distribution of scheduled commodities under Public Distribution System by any person will amount to contravention of the APSPDS (Control) Order, 2008 and also a penal offence under Section 8 of E.C. Act. Since the aforesaid APSPDS (Control) Order, 2008 was passed by the State Government in exercise of the powers conferred under Section 3 r/w 5 of E.C. Act, 1955, the authorities are empowered to invoke Section 6-A of E.C. Act for its contravention. Since the decision in ***Sri Sai Traders*** case (1 supra) being prior to the advent of Clause 17-A of APSPDS (Control) Order, 2008, the petitioner cannot take recourse from it.

c) In the instant case, the petitioner could not satisfactorily explain for possessing the 133.50 quintals of PDS rice. Therefore, he must be held to have caused interruption or interference with the process of smooth distribution of scheduled commodities under Public Distribution System.

---

[3] MANU/AP/0594/2016

Therefore, invoking Section 6-A of E.C.Act against him in this regard cannot be found fault. This point is answered accordingly.

8) **POINT No.2**: The authorities apart from PDS rice also seized 731 quintals of other rice from the mill premises of the petitioner, when his Gumastha failed to produce the records and Registers showing the lawful possession of the said stock. Therefore, the complainant impugned him for violating the condition 3(v) of FGL issued under APSCD (L, S & R) Order, 2008. The contention of the petitioner is that after the advent of Order, 2002 (w.e.f. 15.02.2002), paddy/rice was deleted from the category of Essential Commodities and included in scheduled commodities and as per clause (3) of the said Order, he can freely deal with the said commodity without permit or licence and hence, the authorities cannot invoke Section 6-A of E.C. Act. This argument cannot be countenanced. As already discussed supra, the rice being foodstuff, does not lose its character as essential commodity within the purview of Section 2-A of E.C. Act, though for the sake of Order, 2002, it may also be regarded as scheduled commodity. Clause (3) of Order, 2002, only permits a dealer to deal with certain commodities including paddy/rice freely, buying, stocking, selling, transporting, distributing, disposing, acquiring, using or consuming any quantity without requirement of a permit or licence. That does not mean that he is exempted from maintaining the records as per APSCD (L, S & R) Order, 2008 to show his lawful possession. Due to the failure of his clerk to produce records, the authorities charged him for contravention of APSCD (L, S & R) Order, 2008 and consequently, initiated proceedings under Section 6-A of E.C. Act.

9) Thus on a conspectus, there are no merits in the Criminal Revision Case and the same is accordingly, dismissed.

As a sequel, miscellaneous applications pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 20.03.2018
scs