

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15180 of 2018

=====

Tarkeshwar Saha @ Tarkeshwar Sah, S/o Subalal Saha, Resident of
Pathlabadi, P.S.-Jokihat, District-Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Collector-Cum-District Magistrate, Kishanganj.
3. The Block Supply Officer, Kochadhaman, Kishanganj.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Radha Mohan Singh. Adv.
For the Respondent/s : AC to SC 4

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 2 28-01-2019 The present writ application has been preferred for setting-aside the order dated 19.12.2017 passed by the Collector-cum-District Magistrate, Kishanganj in Confiscation Case No.375 of 2017. By the impugned order the Mini Truck of the petitioner bearing Registration No. BR1L-2708 has been confiscated under Section 6A of the Essential Commodities Act, 1955 (hereinafter referred to as the E.C. Act). A further prayer has been made to direct release of the seized Mini Truck in favour of the petitioner on furnishing sufficient sureties during the pendency of the criminal case i.e., Kishanganj P.S. Case



No.485 of 2017 under Section 7 of the E.C. Act and prevention of Black Marketing Act.

Learned counsel for the petitioner submits that the Block Supply Officer, Alamnagar seized the Tractor in question when it was standing loaded with some bags of foodgrains i.e., rice and wheat. He lodged one F.I.R in which he alleged that the vehicle was loaded with PDS foodgrains kept in manually stitched bags, he suspected that the bags were containing the wheat of the Government scheme.

It is submitted that after lodging of the F.I.R. giving rise to Kishanganj P.S. Case No. 485 of 2017, the Collector, Kishanganj issued a notice under Section 6A of the E.C. Act giving rise to Confiscation Case No. 375 of 2017.

Learned counsel submits that in the said confiscation case the Collector has passed an order of confiscation of the vehicle in question but without there being any material whatsoever to support the order of confiscation. Learned counsel has relied upon the Judgment of a learned Coordinate Bench of this Court passed in C.W.J.C. No.16455 of 2014 a copy of which is available at Annexure '4' to the present writ application. It is submitted that in the said case the learned Coordinate Bench relied upon the order dated 11.11.2013 passed



in C.W.J.C. No. 5791 of 2013, relevant portion whereof is quoted herein for a ready reference:-

“Having heard the learned counsel for the petitioners, in my view, the writ petition must succeed. If we read the provisions of Section 6-A and 6-B of the Essential Commodities Act it would be manifest that the sine qua non for initiating the confiscation proceeding is an order issued with reference to Section 3 of the Essential Commodities Act and there must be violation of statutory order before the Collector gets the jurisdiction to initiate confiscation proceedings. Thus, the order of confiscation must note that which and what order has been violated. A reference to the impugned order of the Collector and the appellate order of the learned Judge would show that neither the Courts have referred to any order much less the statutory order which can be said to have been violated and in what manner the same has been violated. Thus, there being no finding of any order, which can be said to have been violated much less statutory order under the Essential Commodities Act, the initiation of confiscation proceeding and the order of the Collector becomes without jurisdiction.”

Learned counsel submits that a bare perusal of the impugned order passed by the Collector-cum-District Magistrate, Kishanganj would show that the impugned order nowhere indicates as to which provision of the control order has



been violated by the petitioner. It is submitted that trade of rice and wheat is free and have been delicensed, therefore, there is no requirement of maintenance of a stock register.

It is submitted that the seizure list and confiscation of the vehicle on a mere suspicion raised by the Block Supply Officer is nothing but an abuse of power by the Block Supply Officer which has caused harassment to the petitioner.

Learned counsel representing the State is present and from the impugned order passed by the Collector, learned counsel is unable to demonstrate as to which provision of control order has been violated by the petitioner.

Having heard learned counsel for the petitioner as well as learned counsel representing the State and on perusal of the records, this Court finds that in absence of there being clear stipulation as to which control order the petitioner has violated the impugned order becomes wholly without jurisdiction. This Court also finds that the criminal case is still pending. The impugned order nowhere indicates any basis to hold and declare that the vehicle in question was involved in an act in violation of the particular provision of the control order and further the impugned order nowhere indicates the basis of reaching to a conclusion that the rice and the wheat allegedly loaded on the



vehicle in question were the foodgrains meant for the Government schemes. Apparently it seems that save and except mere suspicion, the Block Supply Officer has not been able to demonstrate any material in course of confiscation proceeding to support his suspicion.

In the opinion of this Court, a mere suspicion cannot take place of a proof. It is not even a 'reasonable belief' in the mind of the Block Supply Officer. The tone and tenor of the allegation shows that when the vehicle was seized the Block Supply Officer had merely expressed his suspicion. In course of confiscation proceeding he could not support his suspicion by placing any good and cogent material. In the opinion of this Court, the Collector-cum-District Magistrate, Kishanganj has acted only mechanically and in a routine manner as there does not appear any exercise of judicious mind.

In the result, the impugned order dated 19.12.2017 passed in Confiscation Case No. 375 of 2017 by the Collector-cum-District Magistrate, Kishanganj is hereby set-aside and the matter is remitted to him for a fresh consideration of the entire case including the question of maintainability of a confiscation proceeding in absence of any cogent material to support the mere suspicion of the Block Supply Officer. He will hear the



parties giving them adequate opportunity of hearing and shall dispose of the confiscation proceeding within a period of three months from the date of receipt/production of a copy of this order.

Since, the vehicle in question has been seized in the year, 2016 itself and is said to be lying under open sky for last two years, in the nature of the present case, this Court is of the considered opinion that the petitioner will suffer gross injustice if the discretion of this Court is not exercised to direct the Collector-cum-District Magistrate, Kishanganj to release the vehicle in question provisionally on furnishing a surety bond to the extent of the value of the vehicle as per the insurance document.

This Court, thus, directs that pending finalization of the confiscation proceeding, let the vehicle be provisionally released in favour of the petitioner on the petitioner furnishing a surety bond to the extent of the value of the vehicle as shown in the insurance document with an undertaking that he will not deal with the vehicle in question and shall not create any third party interest or encumbrance over the vehicle during the pendency of the confiscation proceeding. He will also undertake to produce the vehicle as and when required by the authorities



concerned.

Let the vehicle be released within one week from the date of submission of the surety bond and the undertakings as indicated hereinabove subject to final outcome of the confiscation proceeding.

This application is disposed of in terms stated hereinabove.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

U			
---	--	--	--

