

HIGH COURT OF CHHATTISGARH, BILASPUR

Office Reference (CRMP) No.1650 of 2019 arising out of order passed in

CRMP No. 1213 of 2017

Sunil Kumar Jaiswal S/o Vedprakash Jaiswal, Aged About 38 Years R/o Old Bus Stand, Pali Police Station Pali, District Korba Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh Through Police Station Ratanpur., Chhattisgarh

---- Respondent

For Petitioner	:	Shri Faiz Kazi, Advocate
For State	:	Shri K.K.Singh, Govt. Advocate

Office Reference (CRMP) No.1651 of 2019 arising out of order passed in

CRMP No. 1475 of 2017

Amit Dubey S/o Ramesh Dubey Aged About 26 Years R/o Gond Para, Subhash Nagar, Bilaspur, District Bilaspur Chhattisgarh, Through The Power Of Attorney Holder Ramesh Kumar Dubey, Aged About 55 Years, S/o Lalmani Dubey, R/o Gondpara, Subhash Nagar, Bilaspur Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh Through The Police Station Ratanpur, District Bilaspur Chhattisgarh , Chhattisgarh

---- Respondent

For Petitioner	:	Shri Abhijeet Mishra, Advocate
For State	:	Shri K.K. Singh, Govt. Advocate

D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

C.A.V. Judgment

15/07/2019

Per Manindra Mohan Shrivastava, J.

1. Learned Single Judge of this Court, while adjudicating upon a dispute in the matter of disposal of property seized on the allegation of commission of offence under Section 3 & 7 of the Essential Commodities Act, 1955 (hereinafter referred to as "*the EC Act*") recorded its disagreement with the view taken by another coordinate Bench in CRMP No.1068 of 2014 (*Vishnu Prasad Vaishnav Vs. State of Chhattisgarh*) decided on 17.12.2014. The matter accordingly has been referred to this Bench for answering following two questions of law:-

"(A) In absence of confiscation proceedings pending, whether Section 6-E of the Essential Commodities Act, 1955 creates an absolute bar to deal with Section 457 of the Code of Criminal Procedure ?

(B) Whether Section 6-E takes away the Judicial Authority to grant custody of vehicle, goods etc., pending appeal under Section 6-C of the Act of 1955 ? "

2. Before we proceed to answer the stated questions of law in this reference, we consider it apposite to set-out brief resumption of relevant facts and the factual backdrop of events giving rise to present reference, as stated infra.
3. A truck was seized by Police Station- Ratanpur in connection with Crime No.159/2017 on the allegation of commission of offence punishable under Section 41 (1-4) of the Code of Criminal Procedure read with Section 379 IPC and Sections 3 & 7 of the EC Act as also Section 23 of the Petroleum Act 1934. An application under Section 457 Cr.P.C. for release of the vehicle was filed before jurisdictional Magistrate who rejected the application. Revision preferred against the said order was also dismissed by holding that the Courts do not have any jurisdiction to grant interim custody of the vehicle in view of bar created under Section 6-E of the EC Act. That gave rise to filing of CRMP 1213 of 2007 (*Sunil Kumar Jaiswal Vs. State of C.G.*).
4. In another incident, a truck was seized by the police from one godown

suspecting illegal transportation, storage of food grains in violation of provision of the EC Act and registered a criminal case alleging commission of offence under Section 3 & 7 of the EC Act as also Section 407 read with Section 34 IPC against the owner of the godown and the driver of the truck. There also, an application for interim custody of truck, filed under Section 457 Cr.P.C. before the Judicial Magistrate was rejected. The revision against said order was also dismissed holding that in view of bar created under Section 6-E of the EC Act, criminal Court has no jurisdiction to grant interim custody of the vehicle. That gave rise to filing of CRMP 1475 of 2017.

5. When both the matters came up for hearing before the learned Single Judge, upon examination of the statutory scheme of confiscation as engrafted in Section 6-A to 6-E of the EC Act and relying upon various decisions, held that Section 6-E of the EC Act takes away jurisdiction of the judicial authority with regard to possession, delivery etc. only when the confiscation is pending before the Collector and in the absence of pendency of confiscation proceeding before the Collector, the judicial authority shall have jurisdiction to grant possession of the vehicle, vessels, goods etc.

However, the afore view of learned the Single Judge in the aforesaid two cases came in conflict with the ratio of law laid down by coordinate Bench in CRMP No.1068 of 2014 (*Vishnu Prasad Vaishnav Vs. State of Chhattisgarh*), wherein it has been laid down that the Judicial Magistrate or any Judicial Authority shall not have any jurisdiction with regard to grant of custody of the vehicle under Section 457 Cr.P.C. or to dispose off the vehicle seized under the EC Act. This conflict view has occasioned reference to aforesaid two questions of law for being answered by this Bench.

6. Learned counsel appearing for the petitioners in the aforesaid two petitions have submitted that the provision contained in Section 6-E of the EC Act does not create absolute bar over Criminal Courts to deal with seized essential commodities and other articles, under Section 457 Cr.P.C. According to learned counsel, as long as confiscation proceedings are not initiated by issuance of notice under Section 6-B of the EC Act, confiscation proceedings cannot be said to be pending. Referring to the setting of words and expression "*pending confiscation under Section 6-A*", it has been

contended that the aforesaid expression deciphers legislative scheme that the ouster of jurisdiction of Criminal Court to deal with property under Section 457 Cr.P.C. would take place only with commencement of confiscation proceedings in the manner provided under Section 6-B of the EC Act. Merely upon seizure, as contemplated under Section 6-A of the EC Act or even till the stage of production and inspection of essential commodity before the Collector, ouster of jurisdiction does not take place and it is only when the Collector decides to initiate proceedings by issuance of show cause notice, as envisaged under Section 6-B of the EC Act that from that stage, Section 6-E steps in to confer exclusive jurisdiction on the Collector by putting embargo on the jurisdiction of other Courts, Tribunal and Authority in the matter of disposal of essential commodity and other articles mentioned in the provision. It has been argued that in view of judicial pronouncement, whether or not the confiscation proceedings have to be commenced, lies in the discretion of the Collector and it is not obligatory that in every case where essential commodity or other articles have been seized and produced before the Collector that he should necessarily proceed to initiate confiscation proceedings. It has also been contended that the exclusion of jurisdiction of Criminal Courts cannot be readily inferred unless such conclusion is completely irresistible and, ordinarily, even if under the statute, there exists special provision dealing with disposal of property in various proceedings, there is no embargo on jurisdiction of the Magistrate to deal with the property and pass appropriate orders for disposal invoking jurisdiction under Section 457 Cr.P.C.

As far as operation of provision contained under Section 6-E, at the stage of pendency of appeal under Section 6-C before the judicial authority is concerned, the argument is that, that is not a stage where confiscation proceedings can be said to be pending and, therefore, while adjudicating upon appeals against order of confiscation, in the absence of any special procedure provided under Section 6-C, the procedure laid down by the Code of Criminal Procedure would again come into play. The judicial authority is very much empowered to deal with essential commodity in relation to its disposal, release etc. as per the provision under Section 457 Cr.P.C. The sum and substance of the submissions is that during pendency

of the appeal against confiscation under Section 6-C of the Act, the competent authority would be a judicial authority and not the Collector to pass order with regard to disposal under the provision contained in Section 457 Cr.P.C.

In support of aforesaid submissions made on both the question of law stated before us, learned counsel for the petitioners has placed reliance upon catena of decisions¹.

7. On the other hand, learned counsel for the State argued that the question arising for consideration in this reference has been fully answered by the Supreme Court in its decision in the case of **Shambhu Dayal Agarwala Vs. State of West Bengal & Anr.** (1990) 3 SCC 549, where the Supreme Court had an occasion to elaborately deal with the scheme contained in Section 6-A to 6-E of the EC Act and upon examination of the said scheme including provision contained in Section 6-E, it has been authoritatively pronounced that Section 6-E completely ousts the jurisdiction of all the Courts, Tribunal and Authority and only the stated authority namely the Collector or the judicial authority, as the case may be, would have jurisdiction to the exclusion of all the Courts, Tribunal and Authority, to pass orders with regard to disposal of essential commodity and other articles mentioned in the provision. He further argues that the scheme of confiscation of essential commodity and other articles, as contained in Section 6-A to Section 6-E of the EC Act is very comprehensive and a complete code in itself. It is a special enactment. Therefore, to that extent, in view of

1 * Madhav Keshav Mirashi Vs. State of Maharastra, 1977 Cr.LJ 1800,
* Kailash Prasad Yadav & Anr. Vs. State of Jharkhand & Anr. (2007) 5 SCC 769
* Shambhu Dayal Agarwala Vs. State of West Bengal (1990) 3 SCC 549
* State of West Bengal and Ors. Vs. Sujit Kumar Rana (2004) 4 SCC 129
* P. Virudhachalam Vs. Management of Lotus Mills (1998) 1 SCC 650
* Aswini Kumar Ghosh Vs. Arabinda Bose, AIR 1952 SC 369
* Ramdev Food Products Private Ltd. Vs. Arvindbhai Rambhai Patel (2006) 8 SCC 726
* Raj Krushna Bose Vs. Binod Kanungo, AIR 1954 SC 202
* Tan Te Lam & Ors. Vs. Superintendent of Tai A Chau Detention Centre & Anr. (1996) 4 All. E.R. 256
* Veera Venkata Vs. State of Andhra Pradesh (1975) 2 AP LJ 127
* Noor Khan Vs. State of Rajasthan (1998) 1 ACC 362
* State of Madhya Pradesh & Ors. Vs. Rameshwar Rathod (1990) 4 SCC 21
* The Transport Commissioner, Andhra Pradesh, Hyderabad & Anr. Vs. S. Sardar Al,i Bus Owner , _
Hyderabad & 41 Ors (1983) 4 SCC 245
* State of Maharastra Vs. Manishkumar Babulal Biyani 198 Cr.LJ. 303 (Bom)
* Dhananjay Roy & Ors. Vs. The State of Assam (Criminal Revision Petition No.196/2013 [4] (web
copy)
* State (NCT of Delhi) Vs. Narendra (2014) 13 SCC 100
* Deputy Commissioner, Dakshina Kannada District Vs. Rudolph Fernandes (2000) 3 SCC 306
* Hari Khemu Gawali Vs. Deputy Commissioner of Police, Bombay AIR 1956 SC 559
* Thakur Das Vs. State of Madhya Pradesh (1978) 1 SCC 27

provision contained in Sections 4 & 5 of the Code of Criminal Procedure, provision of general application contained in Code of Criminal Procedure will have no application and, therefore, any essential commodity or other articles as mentioned in provision, once seized and there is allegation of contravention of orders made under Section 3 of the Act, from that stage itself, jurisdiction of all other Courts, Tribunal and Authority stands abrogated and, therefore, the Magistrate will not have any jurisdiction to pass any order with regard to disposal of seized essential commodity or article by invoking power under Section 457 Cr.P.C. He would submit that the decision of learned Single Judge in the case of **Vishnu Prasad Vaishnav Vs. State of Chhattisgarh** (2015) Cri.L.J. 961, which is in accord with the Supreme Court decision in the case of **Shambhu Dayal Agarwala** (supra) and number of other judgments of the Supreme Court on the same lines, must hold the field. It is further argued that the Supreme Court decision in the case of **State of Madhya Pradesh and Ors. Vs. Rameshwar Rathod** (1990) 4 SCC 21 was dealing with a different situation whereas the Supreme Court decision in the case of **Shambhu Dayal Agarwala** (supra) has elaborately dealt with the entire scheme of confiscation and the aspect of exclusion of jurisdiction of other Courts as contained in Section 6-E and would, therefore, hold the field.

8. Vide Act No.10 of 1955, Parliament enacted the Essential Commodities Act 1955, an Act to provide, in the interests of the general public, for the control of production supply and distribution of, and trade and commerce, in certain commodities. The manifest purpose of the Act is to ensure that the common man gets the supply of essential commodities without lot or hindrance on the part of the trade. The object is to check the inflationary trends in prices and to ensure equitable distribution of essential commodities. The Act deals with essential commodity of different types. While it deals with coal, textile, iron steel etc., it also seeks to control and regulate supply, distribution, trade and commerce of foodstuff, cattle fodder etc. Section 3 of the EC Act confers power on the Central Government to promulgate order providing for regulating or distributing, production, supply as also trade and commerce of any notified essential commodities. It also includes power to promulgate order so as to maintain and increase supply of any essential commodities or for securing their

equitable distribution and availability at fair prices. The Act contains special provisions with regard to confiscation of essential commodities, package, covering, receptacle, animal, vehicle, vessel or other conveyance used in carrying such essential commodities. Section 6-A to 6-E of the EC Act constitute self contained code dealing with confiscation, powers and authority and as also procedure to be followed by competent authority in the matter of confiscation of essential commodities and other things as mentioned above. The statutory scheme declares the Collector of the District to be the competent authority to order confiscation upon his satisfaction that there has been a contravention of the order made under Section 3 of the EC Act.

9. Contravention of orders made under Section 3 of the EC Act have been made punishable as an offence as provided under Section 7 of the Act. It provides for jail sentence as also fine. Section 7 not only provides for imprisonment and/or fine where a contravention of any order framed under Section 3 of the EC Act is made out but also provides forfeiture of any property in respect of which the order has been contravened, any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity. The Act, also contains certain special provision with regard to trial for commission of offence under Section 7 of the EC Act.
10. Chapter XXXIV of CRPC contains a provision with regard to disposal of the property pending appeal as well as at the conclusion of trial. While Section 451 Cr.P.C. contains a provision with regard to grant of interim custody or disposal of property in certain cases, Section 452 Cr.P.C. contains provision with regard to disposal of property upon conclusion of trial. Section 457 Cr.P.C. deals with the procedure by the police upon seizure of property whenever seizure of property by any police officer is reported to a Magistrate under the provision of the Code and such property is not produced before a Criminal Court during inquiry or trial, the Magistrate may make such orders as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained respecting the custody and production of such property. These are the provisions of

general application and by virtue of these provisions, a Criminal Court trying an offence punishable under IPC or under any State enactment, would normally have jurisdiction to pass order with regard to interim custody or disposal, as the case may be, of the property seized by the police or any other competent authority.

11. Though EC Act does contain certain special provision with regard to trial of offence punishable under Section 7 of the EC Act, it also contains special provision providing for confiscation of essential commodities and other goods mentioned in Section 6-A if the Collector, upon making enquiry, is satisfied that there has been contravention of the order promulgated under Section 3 of the Act. In such an eventuality, it is not only essential commodities but also any package, coverings, receptacle, animal, vehicle, vessel or other conveyance used in carrying the commodity which is liable for confiscation. The provision contained in sub-Section (2) of Section 6-A of the EC Act also confers power on the Collector to pass necessary orders of disposal of an essential commodity which, in his opinion, is subject to speedy and natural decay or where it is otherwise expedient in the public interest so to do. This power of disposal of essential commodity is available to the Collector upon receiving report of seizure or on inspection of any essential commodities.

Sub-Section (3) of Section 6-A of the EC Act provides for payment of sale proceeds when there is no order of confiscation or where an order passed on appeal so requires or where a prosecution instituted for contravention of the order in respect of which an order of confiscation has been made under the section, the person is acquitted, to be paid to the owner or the person from whom it is seized.

Section 6-B of the EC Act provides for the procedure to be followed before confiscation and it mandates issuance of a show cause notice and affording of opportunity of hearing to the persons from whom it was seized.

Section 6-C of the EC Act provides for an appeal against an order of confiscation.

Section 6-D of the EC Act provides that award of confiscation under

this Act shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act.

Section 6-E of the Act provides for bar of jurisdiction in certain cases. The aforesaid provision being important for our purpose is reproduced herein-below:-

“6E. Bar of jurisdiction in certain cases.—

Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or, as the case may be, [[the judicial authority appointed under section 6C] shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, [any other court, tribunal or authority] shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.]”

Section 6-E of the EC Act, as it reads, ousts jurisdiction of any Court, Tribunal or other authority to make orders with regard to the possession delivery, disposal, release or distribution of essential commodities package, covering, receptacle, animal, vehicle, vessel or other conveyance.

12.A careful reading of the aforesaid provision reveals that the provision has overriding effect in view of non-obstante clause that notwithstanding anything to the contrary contained in any other law for the time being in force, any Court, Tribunal or other authority shall not have jurisdiction to make orders with regard to possession, delivery, disposal, release and distribution of seized essential commodity, package, covering, receptacle animal, vehicle, vessel or other conveyance and the sole repository of

power in respect of disposal of such property would be the Collector or as the case may be, the judicial authority concerned under Section 6-C. However, centrifugal issue arising for consideration is whether jurisdiction of the other Courts including the Criminal Court would be ousted as soon as essential commodities or other things mentioned in provisions are seized or such ouster will take effect upon happening of any subsequent event or action.

The relevant provision contained in Section 6-E of the EC Act, as it reads is that whenever any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package, covering or receptacle in which such essential commodities are found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under Section 6-A, the jurisdiction of all other Courts would be ousted and the Collector or the Judicial Authority alone would have jurisdiction to deal with disposal of such essential commodity or any other thing mentioned therein. What is important to notice is that ouster of jurisdiction of all other Courts, Tribunal and Authority takes place when essential commodity or other articles are seized.

13. Section 6-A of the EC Act, on its plain reading, makes it clear that the jurisdiction of the Collector of the District to initiate confiscation is arrived at only where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto and the report of such seizure is made to the Collector. That means under the regime of law, seizure invariably precedes confiscation. Now if we read Section 6-E of the EC Act, particularly the expression "*such essential commodity is seized pending confiscation under Section 6-A*", it cannot be read to mean that it deals with a situation where pending confiscation, essential commodity has been seized.
14. The scheme of confiscation of essential commodity or any package, covering or receptacle in which such essential commodity is found or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity, as contained in Section 6-A to Section 6-E of the EC Act was examined and explained by the Supreme Court in the case of **Shambhu**

Dayal Agarwala Vs. State of West Bengal & Anr.(supra). The entire scheme and particularly the statutory scheme creating bar of jurisdiction of other Courts in the matter of release of essential commodity was closely and elaborately explained and interpreted. It is apposite to mention that the question which arose for determination in the aforesaid decision was whether the Collector to whom report of seizure of any essential commodity is made under Section 6-A of the EC Act, is empowered, by virtue of Section 6-E of Act, to release the goods seized in pursuance of an order made under Section 3 in relation thereto during the pendency of proceedings before the special Court. General scheme and object behind enactment of the Essential Commodities Act, 1955, was explained as below:

“4. In order to appreciate the rival view-points we may at the outset examine the scheme of the Act. The Act, as the long title reveals, was enacted to provide, in the interest of the general public, for the control of production, supply and distribution of, and trade and commerce in certain commodities. It extends to the whole of India. The dictionary of the Act is contained in Section 2. Section 2(i-a) defines 'Code' to mean the Code of Criminal Procedure, 1973. Section 2(f) says that words and expressions used but not defined in the Act and defined in the Code shall have the meanings assigned to them in the Code. Section 3 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the same is considered necessary or expedient inter alia for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. Sub-section (2) of Section 3 outlines what an order made under Sub-section (1) thereof may provide. Besides regulating by licences, permits or otherwise the manufacture or production of any essential

commodity or the storage, transport, distribution, disposal, acquisition, use, consumption, etc., thereof, the order may, inter alia, provide for controlling the prices at which the essential commodity may be bought or sold and may also require any person holding in stock any essential commodity to sell the whole or a specified part of the quantity held in stock or produced or received by him or likely to be produced or received by him to the Central Government or a State Government or to an officer or agent of such Government, etc. Sub-section (3) of Section 3 provides for determination of the price to be paid to the person from whom the essential commodity is so purchased. Section 6 lays down that an order passed under Section 3 will have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument.".....

The Supreme Court further explained provision contained in Section 6-A, 6-B, 6-C and also 6-D as below:

"4.....Then comes Section 6A which provides for the confiscation of essential commodity. Sub-section (1) of this section may be reproduced for ready reference:

"6A-Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto it shall be reported without any unreasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied

that there has been a contravention of the order, may order confiscation of:

(a) the essential commodities 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; “

Sub-section (2) of the said section empowers the Collector to sell any essential commodity, if the same is subject to speedy and natural decay or it is otherwise expedient so to do in public interest, at the controlled price, if any, fixed therefor or by public auction if no such price is fixed. If the Central or the State Government has fixed the retail sale price of such commodity under the Act or under any other law, the Collector is empowered to order its sale through fair price shops at the price so fixed. Section 6B posits that no order of confiscation of any essential commodity or conveyance, etc., shall be made unless the owner or the person from whom it is seized has been served with a notice informing him of the grounds on which it is proposed to confiscate the same and he has been given reasonable time to make a representation in writing against the grounds set out in the notice and has been given a reasonable opportunity of being heard. This section incorporates the principles of natural justice to ensure that the owner of person from whom the essential commodity is seized has the fullest opportunity to satisfy the Collector

against passing a confiscation order under Section 6A. An appeal is provided by Section 6C against the order of confiscation passed under Section 6A. Section 6D clarifies that an award of confiscation under the Act by the Collector shall not prevent the infliction of any punishment to which the concerned person is liable under the Act.".....

15. Section 6-E of the Act was examined and interpreted as below:-

"4.....We then come to Section 6E which was inserted in the Act in place of the existing provision by Act 42 of 1986 with effect from 9th September, 1986. Since the incident in question relates to a date subsequent to 9th September, 1986, it is unnecessary to notice the earlier provision. Section 6E which confers exclusive jurisdiction on the Collector and in the State Government concerned under Section 6C to pass certain orders pending confiscation reads as under:

"6-E. Whenever any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under Section 6-A, the Collector, or, as the case may be, the State Government concerned under Section 6-C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any court, tribunal or other authority shall not have, jurisdiction to

make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.”

It is obvious on a plain reading of this provision that the same was brought on the statute book with a view to debarring the courts from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized under an order made under Section 3 of the Act.”

16. The Supreme Court also examined the broad scheme with reference to Sections 7, 10-A, 11, 12-A, 12-AA, 12-AC etc. of the EC Act. Their Lordships also noticed that under Section 6-A of the EC Act, provision has been made for disposal of essential commodity when the same is liable to be speedy decay and for that purpose, the Collector is empowered to sell it at the controlled price, if any, or by public auction or through fair price shops. It further examined that the provision contained in clauses (a) (b) (c) of sub-section (3) of Section 6-A of the EC Act with regard to payment of sale proceeds to the owner or the person from whom essential commodity was seized when there is no order of confiscation or where an order passed on appeal so requires or where prosecution has ended in acquittal. In para-6 of its judgment, the scope and ambit of Section 6-E of the EC Act was again explained thus:

“6.Section 6E was first enacted to debar courts from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized in pursuance of an order made under Section 3 in relation thereto. By the substituted Section 6E as it presently stands the scope of the provision has been enlarged by extending the bar of

jurisdiction of the Court, tribunal or other authority to the release, etc., of packages, coverings or receptacles as well as animals, vehicles, vessels or other conveyances also. It provides that whenever any essential commodity is seized under an order made in exercise of power conferred by Section 3 in relation thereto no court, tribunal or other authority shall have jurisdiction to make any order with regard to the possession, delivery, disposal, release or distribution of such essential commodity save and except the Collector pending confiscation under Section 6A, or the State Government concerned under Section 6C."

.....

Again in paragraph -8 of the judgment, it was observed as under:

"8. And now to the structural setting and context in which the word 'release' is used in Section 6E. While debarring courts, tribunals and other authorities from exercising power in relation to the seized commodity, power is conferred on the Collector or the State Government concerned under Section 6C, to make orders with regard to the possession, delivery, disposal, release or distribution of such commodity, etc. This power can be exercised pending confiscation."

17. In the aforesaid decision, upon examination of the entire scheme of confiscation under the EC Act, the Supreme Court held that the provision does not empower the Collector to release the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. It was observed as below:

"8.It seems to us that Section 6E is intended to serve a dual purpose, namely (i) to prevent interference by courts, etc., and (ii) to effectuate the sale of the essential commodity under Sub-section (2) and the return of the animal, vehicle, etc., under the second proviso to Sub-section (1) of Section 6A. In that sense Section 6E is complementary in nature."

.....

18. The expression "*pending confiscation under Section 6-A*", after "*whenever any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package, covering, receptacle in which such essential commodity is found, or any animal, vehicle, vessels or other conveyance used in carrying such essential commodity is seized*", understood in its literal sense, creates ambiguity because, as discussed herein-above, in the setup of provision contained in Section 6-A, seizure invariably is prior to initiation of confiscation proceeding.

Further the expression "*pending confiscation under Section 6-A*" may be of some relevance when the confiscation proceeding has been initiated by issuance of show cause notice under Section 6-B, but, once an order of confiscation is passed and the aggrieved party chooses to invoke statutory remedy of appeal under Section 6-C and files an appeal, the aforesaid expression, if given literal meaning, will not only be meaningless but lead to absurdity because in such situation, by no stretch of imagination, it can be said to be pending confiscation. The non-obstante clause in Section 6-E seeks to override other provision contained in any other law for the time being in force and abrogates jurisdiction of any other Court, Tribunal Authority to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity or other articles and places it in the hands of the Collector or judicial authority as the case may be. That means, the bar of jurisdiction of other Courts and Tribunal operates not only at the pre- confiscation stage when the Collector is seized of the matter but also post confiscation stage of pendency of appeal under Section 6-C of the Act when the judicial authority is seized of the matter.

Therefore, expression "*pending confiscation under Section 6-A*" will have to be applied at both the stages i.e. pre-confiscation and post confiscation. If this expression is interpreted to attract bar only after initiation of confiscation proceeding by issuance of show cause notice under Section 6-B of the Act, it will only lead to absurdity, incongruity and incapable of ascertaining any meaning when it relates to the stage of pendency of an appeal against an order of confiscation, under Section 6-C of the Act before the appointed judicial authority. For this additional reason also, the expression "*pending confiscation under Section 6-A*" has to be rationally interpreted so as to save it from absurdity or incapable of conveying exact meaning under all circumstances and different stages and authority mentioned in Section 6-E of the Act.

There is yet another reason why expression "*pending confiscation under Section 6-A*" interpreted to attract bar only after initiation of confiscation proceeding by issuance of show cause notice under Section 6-B of the Act may give rise to conflict of jurisdiction and create friction in operation of different provisions relating to confiscation and lead to anomalous situation.

Keeping in forefront the legislative intention, as elaborately considered by the Supreme Court in the case of **Shambhu Dayal Agarwal** (supra), a rational and logical interpretation of Section 6-A would be that the Collector is in seizen of the matter as soon as seizure of essential commodity takes place. This is so because the provision obliges the authority who has seized the essential commodity to report such seizure without unreasonable delay to the Collector. This is clear from plain reading of provision that "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". Use of the word shall, leaves no manner of doubt that the authority who effects seizure has no option but to report the seizure that too without unreasonable delay, to the Collector. The spirit of the provision, therefore, is that as soon as an essential commodity is seized in pursuance of an order made under Section 3 in relation thereto it must be immediately reported to the Collector. Section 6-A further provides that the Collector may if he thinks it expedient so to do, direct the essential commodity so

seized to be produced for inspection before him. This power of the Collector is independent of whether or not a prosecution is instituted for the contravention of such order. The proximity of the events of seizure report and statutory discretion vested in the Collector to get the seized essential commodity produced for inspection before him clearly and loudly manifest the legislative intention that no sooner essential commodity is seized, the law requires the Collector to take control of the entire situation. In other words, the Collector is in seizen of the matter the moment seizure of essential commodity takes effect. On the face of provision contained in Section 6-A, it cannot be held that the Collector is seized of the matter only when he issues show cause notice proposing confiscation.

If the argument of learned counsel for the petitioners were to be accepted that the jurisdiction of the Collector would be ousted only when confiscation proceedings commence with issuance of notice under Section 6-B of the EC Act, it would mean that before commencement of confiscation proceeding by issuance of notice under Section 6-B, the Magistrate as well as the Collector both would be exercising jurisdiction to deal with essential commodity simultaneously, because under sub – Section (2) of Section 6-A of the EC Act, the Collector is empowered to order sale of essential commodity if he is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the interest of justice to do so. The aforesaid provision dealing with power of the Collector to sell the essential commodity is applicable even before commencement of confiscation proceedings by issuance of show cause notice under Section 6-B. That means, even if confiscation proceedings, in technical sense, are not pending because no show cause notice has been issued under Section 6-B, not only the Collector may exercise power to sell essential commodity as provided in sub-section (2) of Section 6-A, if the literal meaning is assigned to expression “*pending confiscation under Section 6-A*” even the Magistrate could pass an order under Section 457 Cr.P.C. Placing such interpretation on the scheme based on literal meaning, would create friction in the operation of the statue resulting in absurdity and create anomalous situation resulting in conflict of jurisdiction where despite an order passed by the Magistrate, the Collector may exercise power to sell the essential commodity and the vice

versa situation where after the Collector has passed an order of sale of essential commodity in exercise of powers under sub-Section (2) of Section 6-A, yet the Magistrate invokes jurisdiction under Section 457 Cr.P.C. and passes order with regard to release of essential commodity or other articles, to any person who claims to be entitled to the same which may include owner of the essential commodity or the person from whom such essential commodity is seized.

There is another weighty reason why expression "*pending confiscation under Section 6-A*" interpreted to attract bar only after initiation of confiscation proceeding by issuance of show cause notice under Section 6-B of the Act may thwart and defeat the legislative intention with regard to the manner in which any essential commodity upon being seized has to be dealt with. In the case of **Shambhu Dayal Agarwala** (supra), the Supreme Court has made it very clear that the Act was enacted to safeguard public interest as it was thought necessary in the interests of the general public to control the production, supply and distribution of, and trade and commerce in certain commodities through legislation and further that if power of the nature as contemplated under sub-Section (2) of Section 6-A was not conferred on the Collector and if the seized commodity could not be dealt with till the completion of the confiscation proceedings, it would defeat the very object and purpose for which the Act was enacted. It was further observed that by the conferment of such power, a duty is cast on the collector to see that essential commodities are not locked up in proceedings under the Act; artificial scarcity is not created to hike-up prices; a close watch is kept on the supplies to the general public; when necessary in public interest the stock of seized commodity is released to combat short supply and in general to ensure the availability of essential commodities at fair prices to the public. Their Lordships further declared to the effect that to ensure that this objective of maintaining supply and securing equitable distribution of essential commodities is not defeated, the legislative has entrusted the task to the Collector in its entirety and has ruled out interference by Court, Tribunal and other Authority by placing an embargo on their jurisdiction in this behalf by Section 6-E of the Act.

19. There can be no dispute that normally language of the statute should be read as it is. However, this general rule of interpretation is also subject to certain exception and departure from this rule of literal construction, may become unavoidable where literal interpretation become meaningless or it frustrates the object of legislation or where it results in absurdity inconvenience, injustice or any anomaly. These are only illustrative and not exhaustive. Thus, in discharging its interpretative function, the Court can correct obvious drafting error and so in suitable cases, the Court will add or omit words or substitute words. In the case of **Siraj-ul-Haq Khan & Ors. Vs. The Sunni Central Board of Waqf UP and Ors.** (AIR 1959 SC 198), it was held that a departure from the rule of literal construction may be legitimate so as to avoid any part of the statute becoming meaningless. In the aforesaid decision, laying down an important rule of interpretation, the Supreme Court observed that it is well settled that in construing the provisions of a statute, Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. It was further propounded that where literal meaning of words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative.

In the case of **State Bank of Travancore Vs. Mohammed Mohammed Khan**, (1981) 4 SCC 82, it was held that the Court would normally hesitate to restructure the provision but when there is no escape from that course, since that is the only rational manner by which meaning and content can be given to the provision, so as to further the object of the act, such a course of liberal construction would be permissible.

The construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system, which the statute propose to regulate, has to be rejected and preference should be given to that construction which avoid such results, as held in the case of **D. Saibaba Vs. Bar Council of India & Anr.** (2003) 6 SCC 186.

20. The Supreme Court's decision in the case of **Shambhu Dayal Agarwala** (supra), as has been referred to in extenso herein-above, leaves no scope of further interpretation of Section 6-E of the EC Act nor it allows us to venture into any other possible interpretation much less an interpretation that the jurisdiction of other Courts, Tribunal and Authority would be ousted only when confiscation proceedings actually commence with issuance of notice under Section 6-B of the Act. We have, therefore, to hold that irrespective of whether or not proceedings of confiscation have commenced, as soon as the essential commodity or other things, as mentioned in Section 6-E, are seized, the jurisdiction of all Courts, Authority and Tribunal is ousted and it lies in the exclusive jurisdiction of the Collector to deal both with essential commodity and other things like package, covering, receptacle, animal vehicle etc. According to the Supreme Court's decision in **Shambhu Dayal Agarwala** case, essential commodity could not be released until conclusion of the proceedings of confiscation. This will equally apply in respect of package, covering, receptacle, animal, vehicle, vessel or other conveyance, as specified in Section 6-E of the EC Act.

21. All the arguments which have been raised before us by learned counsel for the petitioners, based on meaning of words "*pending confiscation*" and several decisions, cannot be accepted as all those suggested interpretations are contrary to the dictum of the Supreme Court in the case of **Shambhu Dayal Agarwala** (supra).

The Supreme Court verdict in the case of **Shambhu Dayal Agarwala** (supra) has been reiterated and followed in the case of *State of Bihar & Anr. Vs. Arvind Kumar & Anr.* (2012 AIR SCW 4239) and *Oma Ram Vs. State of Rajasthan* [AIR 2008 SC (Supp.) 1844].

22. Learned counsel for the petitioners have placed heavy reliance on Supreme Court decision in the case of **Rameshwar Rathod** (supra). What has been observed in para-6 of that judgment goes to show that provision contained in Section 6-A and Section 7 of the EC Act were pressed into service to advance that jurisdiction of the Criminal Court would be ousted, to which Their Lordships replied by observing that under the Criminal Procedure Code, the Criminal Courts of the country have the jurisdiction and the

ouster of the ordinarily Criminal Court in respect of a crime can only be inferred if there is irresistible conclusion flowing from necessary implication of the new Act. The observation were made repelling the argument of ouster of jurisdiction of Criminal Court in respect of a crime. In the case of **Shambhu Dayal Agarwala** (supra) the statutory scheme contained in Section 6-A to 6-E was considered in great details that jurisdiction of all Courts, Tribunal and Authority would be ousted.

23. The provision relating to bar of jurisdiction under Section 6-E of the EC Act has an overriding effect in view of non-obstante clause. True it is that this non-obstante clause using the expression "*notwithstanding anything to the contrary contained in any other law*" refers to any law other than the Act in which the provision with non-obstante clause exists, but it is equally well settled that the special provision attracted by non-obstante clause will have overriding effect on any other law of general application on the subject to the extent it is inconsistent therewith.

25. An order of confiscation passed under Section 6-A of the EC Act is appealable under Section 6-C of the Act. The remedy of appeal, as Section 6-C of the EC Act reads, is available only to the person aggrieved by an order of confiscation under Section 6-A. The appellate authority has been empowered to pass such order as it thinks fit, confirming, modifying or annulling order appealed against. During the pendency of the said appeal, the status of essential commodity or other things is that of a confiscated good. Therefore, the power of jurisdiction under Section 6-E of the EC Act puts an embargo on the jurisdiction of any Court, Tribunal, Authority and it is only the judicial authority concerned, which shall have exclusive jurisdiction at the stage of pendency of appeal, in the same manner as the Collector had prior to passing of the order of confiscation. This is the only conclusion which can be drawn in view of interpretation of Section 6-E of the EC Act by the Supreme Court in the case of **Shambhu Dayal Agarwala** (supra).

The proceedings of confiscation or the proceedings in appeal under Section 6-C of the Act against an order of confiscation are not matters of investigation, inquiry or trial for alleged commission of any offence under Section 7 of the EC Act. As has already been discussed herein-above, the

prosecution for alleged commission of offence under Section 7 of the EC Act and scheme of confiscation as contained under Section 6-A to 6-E are independent, different and are governed by separate set of provisions. Once an essential commodity or incidental property is seized under Section 6-A or where an appeal is pending before the judicial authority, as provided under Section 6-C of the Act, the sole repository of power would be the Collector or Judicial authority as the case may be and only those authorities, to the exclusion of all, are empowered to pass appropriate order regarding disposal, release etc. as provided under Section 6-E of the EC Act.

In the ultimate analysis, we are of the considered opinion that the bar of jurisdiction as envisaged under Section 6-E of the EC Act gets attracted no sooner any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized. From that stage, till disposal of the appeal as provided under Section 6-C of the Act, the Collector or the Judicial Authority, as the case may be, depending upon the stage of proceedings, alone have power, authority and jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle animal vehicle, vessel or other conveyance. In other words, the bar of jurisdiction of any Court, Tribunal and Authority is not inoperative until a formal show cause notice as envisaged under Section 6-B is issued.

26. We must, however, hasten to add and clarify that our opinion, as expressed herein-above, should not be understood as Section 6-E of the EC Act barring constitutional jurisdiction under Articles 226 or 227 of the Constitution of India, for the reason that such constitutional jurisdiction of the High Court is far beyond the reach of Section 6-E of the Act, notwithstanding the purported broad sweep and apparent amplitude of provision under Section 6-E. The constitutional jurisdiction under Articles 226 & 227 is untrammelled and survives with all its magnitude despite all legislative onslaughts creating bar of jurisdiction of ordinary Courts, Tribunal and Authorities. In taking this view, we respectfully agree with the

verdict of the High Court of Calcutta rendered in the case of **Achinta Kumar Saha Vs. State** (1992 Cr.L.J. 3).

27. In view of the above consideration, we answer the stated questions of law under reference, as below:-

(A). Section 6-E of the Essential Commodities Act, 1955, creates an absolute bar and puts embargo on the jurisdiction of the Magistrate or any other Court, authority or Tribunal to make any order with regard to possession, delivery, disposal, release or distribution of seized essential commodity, any package, covering, receptacle, animal, vehicle, vessel or other conveyance, to the persons entitled to possession thereof under Section 457 of the Code of Criminal Procedure or under any other law for the time being in force dealing with such essential commodity or other articles.

(B). Pending appeal under Section 6-C of the Essential Commodities Act, 1955, in view of bar created under Section 6-E of the Act, the Judicial Authority appointed by the State Government as provided under Section 6-C alone is empowered to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance and no other Courts, Tribunal, or Authority has jurisdiction to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/
(Rajani Dubey)
Judge