

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04..09..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.18651 of 2009
and

M.P.No.2 of 2009 and M.P.No.1 of 2012

1.Duraisamy
2.L.Jayabalan

... Petitioners

-Versus-

1.The Ex-Officio Secretary to Government,
Food and Consumer Protection Department,
Fort St. George,
Chennai 600 009.2.The District Collector,
Cuddalore District,
Cuddalore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent dated 28.02.1997 in Na.Ka.K5/41718/1996 which was confirmed by the 1st defendant by order dated 10.08.2019 in G.O.Ms.NO.106, Cooperation, Food and Consumer Protection (J1) Department, dated 10.08.2009 and to quash the same.

For Petitioner : Mrs.Hemalatha for
Mr.C.Prakasam

For Respondent(s) : Mr.I.Sathish, AGP for R1
Ms.T.Girija, GA for R2

ORDER

This writ petition has been filed challenging the order dated 10.08.2009 passed by the 1st respondent in G.O.Ms.No.106, Cooperation, Food and Consumer Protection (J1) Department on the appeal filed by the petitioners under Section 6-C of the Essential Commodities Act, 1955 (in short, "the EC Act") confirming the order dated 28.02.1997 passed by the 2nd respondent under Section 6-A of The Essential Commodities Act,

1955, confiscating 135 bags of rice and imposing a fine of Rs.76,500/- on the 2nd petitioner for having contravened the provisions of the EC Act.

2. The case of the petitioners is that the 1st petitioner is a licensed Trader in paddy and rice, running his business at Vilamal Village in Tiruvarur District, also having a Modern Rice Mill in the name and style of Nivedha Vilas Modern Rice Mill. In the course of his business, he had transported 135 bags of rice to an another licensed trader by name Rahamath Trading Company, a Paddy and Rice Merchant, at Maduranthakam in Chengalpattu District through the lorry owned by the 2nd petitioner. On its way to Maduranthakam, the lorry was intercepted by the Inspector of Police, Civil Supplies Crime Investigation Department, Cuddalore, on suspicion and the entire rice bags and the lorry were seized by him on the ground that the rice was purportedly transported to Puducherry without valid documents. According to the petitioner, despite production of valid bills and necessary documents issued by the market committee, the Inspector of Police had seized the rice and lorry on the ground that the rice was transported in contravention of the provisions of the EC Act. Thereafter, an enquiry under Section 6-A of the EC Act was conducted wherein the petitioners explained their case by producing entire records and proved through witnesses that the rice was transported to a Trader at Madurantakam. But, without considering the same, the 2nd respondent confiscated the rice and also imposed a penalty on the owner of the lorry as stated supra. Challenging the same, the petitioners filed an appeal before the 1st respondent, who in turn, without assigning any reason, dismissed the appeal by a non-speaking order. Hence, this writ petition.

3. The respondents filed a counter affidavit wherein inter alia it is contended that 02.07.1996 at about 04.00 p.m. when the Inspector of Police, CS CID, Cuddalore District, was on surveillance duty at Check-post at Reddichavadi Village, near the State Border Check-post in Cuddalore Taluk, he noticed a lorry bearing Regn. No.TCO 6989 plying towards Puducherry. On checking the vehicle, trip sheet and other bills, the Inspector of Police, arrived at a conclusion that the lorry was forcing its entry into Puducherry State with 135 bags of rice without any valid permit. Hence, the rice and lorry were seized and a criminal case was also registered by him against the petitioners. After enquiry under Section 6A of the EC Act, the rice was ordered to be confiscated and a fine of Rs.76,500/- was also inflicted on the 2nd petitioner. The appeal filed by the petitioners was also dismissed by the 1st respondent.

4. It is further stated by the respondents that any lorry intended to deliver goods at Madurantakam from Vilamal Village of Tiruvarur Taluk and District, would not prefer the route Tanjore - Cuddalore - Villupuram, Tindivanam - Madurantakam as the mileage to be covered will be more when compared to other routes. The petitioners were unable to explain the reason for having preferred Cuddalore route. Further, according to the respondents, at the time of seizure, some witnesses were brought to the spot. Hence, the fact that mahazar procedures were followed in this case has been proved. The contention of the petitioners that the lorry was seized at Cuddalore Check-post and taken to Reddichavadi Check-post is baseless.

5. I have heard the learned counsel for the petitioners, the learned Additional Government Pleader for the 1st respondent and the learned Government Advocate for the 2nd respondent and also perused the records carefully.

6. It is an admitted fact that 135 bags of rice were transported in the lorry with valid bill and documents issued by the market committee. It is the case of the petitioners that the rice was transported to Rahamath Trading Company at Madurantakam. Per contra, it is the case of the respondents that even though the rice accompanied valid bills, instead of transporting the same to Madurantakam, the petitioners intended to transport the same to Puducherry for sale. On the side of the petitioners, they have examined the Trader from Madurantakam and another Trader from Puducherry, to whom the rice was alleged to have been dispatched. They have categorically stated that the rice was purported to be transported to Madurantakam and not to Puducherry. That apart, the attesting witnesses to the seizure mahazar have stated that they were not aware of the seizure and they were taken to that place and statements were obtained from them by the police. Absolutely, there is no material available on record to show that the petitioners intended to transport the rice to Puducherry. As already stated above, the lorry was seized only at a check-post near Cuddalore in the State of Tamil Nadu and the rice bags were accompanied by valid documents and there is no evidence to establish that the rice was intended to be transported to Puducherry. Only on assumption, the 2nd respondent had come to a conclusion that the rice was intended to be transported to Puducherry without valid document. That apart, the 2nd respondent, appellate authority, without considering none of the grounds raised in the appeal dismissed the appeal by a cryptic order without assigning any reason. In the above circumstances, the orders passed by the 2nd respondent and as confirmed by the 1st respondent are liable to be set aside.

7. In the result, This writ petition is allowed and the order passed by the 2nd respondent and confirmed by the 1st respondent are hereby set aside and the respondents are directed to refund the market value of the rice seized on the date of seizure to the 1st petitioner and also refund a sum of Rs.15,000/- being the cash security paid by the 2nd respondent pursuant to the order of this Court to the 2nd respondent forthwith. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Ex-Officio Secretary to Government, Food and Consumer Protection Department, Fort St. George, Chennai 600 009.

2.The District Collector, Cuddalore District, Cuddalore.

+1 cc to M/s.C.Prakasam, Advocate Sr.No. 76660

+1 cc to The Special Government Pleader Sr.No.76676

+1 cc to The Government Pleader, Sr.No.76875

AKM/30.10.19/3P-6C /

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