

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.26236 of 2019

G.Arunkumar

...Petitioner

Vs

1.State of Tamil Nadu,
Rep by its Inspector of Police,
Civil Supply CID, Chennai -P.S.

2.The Deputy Commissioner,
Civil Supply & Consumer
Production Department,
(Town) North Office,
Ezhilagam, Chepauk,
Chennai 600 005.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to release the Tanker Truck Lorry bearing Registration No.TN 05 BC 6885.

For Petitioner : Mr.T.S.Kani

For Respondents: Mr.C.Iyyapparaj
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The prayer in the Writ Petition is for issuance of Writ of Mandamus, directing the first respondent to release the Tanker Truck Lorry bearing Registration No. TN 05 BC 6885.

2. The learned counsel for the petitioner submitted that the mode of seizure itself is not in accordance with the provisions of Essential Commodities Act, 1955 as well as the Control Orders, namely, Motor Sprit and High Speed Diesel (Regulation of Supply & Distribution & Prevention of Malpractices) Order, 1998. Under Section 3(j) of the Essential Commodities Act, the seizure is required to be made by a person authorised. Clause 4 of the Control Order reads as follows:

"4.Power of Search and Seizure: (A) Any Gazetted Officer of the Central or State Government or any Police Officer not below the rank of Deputy Superintendent of Police (DSP) duly authorised, by general or special order by the Central Government or State Government as the case may be or any Officer of the concerned Oil Company not below the rank of Sales Officer may, with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this order or any order made thereunder has been complied with-

(i) enter and search any place or premises being made use of or suspected to be made use by a dealer, transporter, consumer or any other person who is an employee or agent of such dealer/ transporter / consumer or any other person, with respect to which there is reason to believe that the provisions of this order have been / are being or are about to be contravened.

(ii) stop and search any person or vehicle or receptacle used or intended to be used for the movement of the product.

(ii) inspect any book of account or other documents or any stock of the product used or suspected to be used in the business of the dealer, transporter, consumer or any other person suspected to be employee or agent of the dealer, transporter or consumer.

(iv) take samples of the product and / or seize of the stocks of the product which the officer has reason to believe has been or is being about to be used in contravention of this order and hereafter take or authorise the taking of all measures necessary for securing the production of stocks / items so seized before the collector having jurisdiction under the provision of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.

(B) While exercising the power of seizure provided under clause A (iv) the authorised officer shall record in writing the reasons for doing so, a copy of which shall be given to the dealer, transporter, consumer or any other concerned person.

(c) The provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, as far as may be, apply to searches and seizures under this order."

3. Since the Inspector of Police had seized the petitioner's Tanker without any authority, in view of Clause 4 of the Control Order, the seizure itself is illegal and consequentially the FIR requires to be quashed.

4. The learned Additional Public Prosecutor, on the other hand, would submit that under Section 102 of Criminal Procedure Code, the Inspector of Police is authorised to seize any property and in view of the same, the seizure made, as reflected in the FIR, does not suffer from any irregularity. The learned Additional Public Prosecutor submitted that under Section 5 of Essential Commodities Act, the Inspector of Police can be delegated the powers in relation to any matter under the Essential Commodities Act and even assuming that the Deputy Superintendent of Police alone is authorised to seize, such powers can be delegated to the Inspector of Police.

5. The Essential Commodities Act is a self contained Act, which provides for the Control of the production, supply, distribution etc., of certain Commodities. Section 3 (j) of the Essential Commodities Act empowers a person authorised, to seize any vehicle which is found to be carrying articles in violation of any of the provisions of the Act. The term referred to under Section 3 (j) is seizure by a "person authorised".

6. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, the Ministry of Petroleum and Natural Gas of the Central Government framed the Motor Sprit and High Speed Diesel (Regulation of Supply & Distribution & Prevention of Malpractices) Order, 1998. As seen from the extract of the provisions of Clause 4 of the order, the power of search and seizure has been authorised to a Police Officer not below the rank of a Deputy Superintendent of Police, duly authorised by a general or special order of the Central Government or State Government, as the case may be. When the Control Orders, which have been passed under the provisions of Essential Commodities Act, clearly stipulate the power of search and seizure of a vehicle, resorting to the general provisions under Section 102 of the Criminal Procedure Code may not be proper. Section 3 of the Essential Commodities Act, stipulates the procedure, as well as the authority of a police officer to search or seize a vehicle. While that being so, the stand of the respondents that the such power to search or seize is being derived from Section 102 of the Criminal Procedure Code is misplaced.

7. Though the learned Additional Public Prosecutor stated that under Section 5 of Essential Commodities Act the powers can

be delegated to any other officer below the rank of Deputy Superintendent of Police, such order notifying delegation of power has not been produced before this Court. As a matter of fact, when the case was adjourned for the last two hearings only for the purpose of verifying as to whether such delegation of powers was notified, the only reply from the respondents would be that in all cases, the Inspector of Police or the Officer in-charge of the police station are in exercising their powers under Section 102 of Criminal Procedure Code. In my view, such a reliance on the provisions of the Criminal Procedure Code, in cases where the Special Act itself provides for specific powers and procedures, is illegal.

8. At this juncture, the learned Additional Public Prosecutor submitted that a confiscation order also came to be passed on 17.09.2019 and in view of the appeal remedy available under Section 6C of the Essential Commodities Act, the remedy available to the petitioner would be to challenge the confiscation order. In the present case, the search and seizure, from the very inception, has been done by an authority who is not authorised to seize the vehicle and, therefore, all consequential actions taken based on such illegal search and seizure would also become unlawful and thereby the confiscation order cannot be sustained.

9. The learned Additional Public Prosecutor also made an attempt to impress this Court by referring to Section 6E of the Essential Commodities Act which bars jurisdiction in certain cases including seeking for return of the vehicles seized pending confiscation proceedings.

10. As stated earlier, when the Essential Commodities Act, which is a Special Act, provides measures for control of production, supply and distribution of certain commodities, the respondents ought not to have exercised their powers under the Criminal Procedure Code. When this Court has already held that the procedure adopted for search and seizure by an unauthorised person by exercising the power under Section 102 of Criminal Procedure Code is illegal, the bar of jurisdiction under Section 6E of the Essential Commodities Act does not restrain this Court from exercising its powers under Article 226 of the Constitution of India, when the Court has discovered the apparent illegality in the procedure adopted.

11. For all the foregoing reasons, the Writ Petition stands allowed. The respondents herein are directed to release the petitioner's Tanker Truck Lorry bearing Registration No. TN 05 BC 6885 forthwith, in any event, within a period of one week from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

To
Sub Assistant Registrar

1.The Inspector of Police,
State of Tamil Nadu,
Civil Supply CID, Chennai -P.S.

2.The Deputy Commissioner,
Civil Supply & Consumer
Production Department,
(Town) North Office,
Ezhilagam, Chempauk,
Chennai 600 005.

3. The Additional Public Prosecutor,
High Court of Madras.

Copy to:

The Director General of Police,
Civil Supplies, Chennai-5.

+1cc to Mr.T.S.Kani, Advocate sr.84620

W.P.No.26236 of 2019

rsi(co)
nr 04/10/2019

WEB COPY