<u>High Court for the State of Telangana</u>

<u>The Hon'ble The Chief Justice Raghvendra Singh Chauhan</u>

<u>and</u>

<u>The Hon’ble Dr. Justice Shameem Akther</u>

<u>W.A. No. 636 of 2019</u>

<u>Date: 09-08-2019</u>

Between:

The State of Telangana
Rep. by its Prl. Secretary
Consumer Affairs, Food & Civil Supplies
Secretariat, Hyderabad and another

…Appellants

and

Yenishetty Sudharshan

…Respondents

Counsel for the Appellant: **Mrs. Jyothi Kiran, G.P. for Civil Supplies**

Counsel for the respondent: **Mr. H.V.R.R. Swamy**

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The appellants are aggrieved by the order dated 04-04-2019, passed by a learned Single Judge in W.P.No.35281 of 2018, whereby the learned Single Judge has directed them to pay the respondent, the writ petitioner, a sum of Rs.11,08,886/-, representing 90% of the amount received by them after auction of the seized stock of rice, along with interest @ 12% p.a., within one month from the date of receipt of a copy of the said order.

Briefly the facts of the case are that the respondent is the proprietor of Sri Dattasai Rice Mill. He is the owner of the Bolero Van, bearing registration No. TS 08 UA 0197. According to the respondent, on 10-02-2018, the District Civil Supply Officer, Medchal, came along with the Special Operation Team (SOT), and seized the stocks lying with the respondent allegedly on the ground that he is purchasing the rice meant for Public Distribution System (PDS) from the card holders, and recycling the same in his rice mill. The District Supply Officer issued a show cause notice to the respondent on 17-02-2018 wherein he claimed that the respondent is indulging in clandestine business by collecting, storing and transporting the rice meant for PDS, and is thereby, causing a scarcity of the essential commodities in the market. By order dated 19-05-2018, the District Collector, the appellant No.2, confiscated 10% of the seized stocks available in the rice mill, and imposed a penalty of Rs.50,000/- on the Bolero van owned by the respondent.

The respondent further pleads that although he has approached the District Collector, Medchal-Malkajgiri District, the appellant No.2, to release his non-confiscated stock of 90%, and the confiscated stock of 10% along with the Bolero van, the said request had fallen on deaf ears. Therefore, the respondent was constrained to file the W.P. No. 35281 of 2018. As mentioned herein above, the learned Single Judge has allowed the writ petition in the terms aforementioned. Hence, this appeal before this Court.

Mrs. Jyothi Kiran, the learned Government Pleader appearing for the appellants, submits that under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act'), the Collector has the power to confiscate the goods. Under Sub-Section (2) thereof, the essential commodity, so confiscated, can be sold by public auction. Under Sub-

Section (3) thereof, the sale proceeds, after deduction of the expenses of any such sale or auction or other incidental expenses, shall be paid to the owner of the seized stock. Therefore, the learned Government Pleader claims that while auctioning the stock seized from the respondent, the Department had incurred an expenditure of Rs. 18,099/-.

Secondly, on 23-04-2018, the appellants had auctioned the total stock seized by them. They had realized an amount of Rs. 11,08,886/-. Since the order confiscating 10% of the seized stock is subject matter of another writ petition, namely W.P. No. 24104 of 2018, the petitioner would be entitled to receive only 90% of the said amount, after deducting the amount incurred by the appellants as incidental expenses. Therefore, the learned Single Judge is not justified in directing the appellants to deposit the entire amount of Rs.11,08,886/-. Moreover, the learned Single Judge is not justified in directing the appellants to pay an interest of 12% p.a. According to the learned counsel, the interest payable is on the higher side.

On the other hand, the learned counsel for the respondent submits that there is no evidence submitted by the appellants to prove the fact that they had incurred an incidental expense of Rs.18,099/- while carrying out the auction of the entire seized stock. However, the learned counsel does admit that according to Sub-Section (3) of Section 6-A of the Act, the appellants are entitled to deduct the incidental expenses incurred by them while carrying out the auction. Moreover, the learned counsel does admit that the respondent would be entitled to only 90% of the entire amount of Rs.11,08,886/-.

Lastly, the learned counsel pleads that the interest imposed @ 12% p.a., is not penal rate of interest. In fact, it is the normal interest rate, which is applicable presently.

Heard the learned counsel for both the parties, and perused the impugned order.

Section 6-A (3) of the Act is as under:

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall-

(a) Where no order of confiscation is ultimately passed by the Collector,

(b) Where an order passed on appeal under sub-section (1) of Section 6-C so requires, or

(c) Where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,

be paid to the owner thereof or the person from whom it is seized."

According to the above provision, the appellants are certainly entitled to retain the amount that they had incurred while carrying out the sale of the stock. Therefore, the appellants are certainly entitled to retain an amount of Rs.18,099/- incurred by them while carrying out the auction proceedings. Moreover, the appellants are also entitled to retain 10% of Rs.11,08,886/- for the confiscated stock. Hence, the learned Single Judge is not justified in directing the appellants to pay the entire amount of Rs.11,08,886/-. Therefore, the impugned order deserves to be modified as under:

The appellants are directed to pay an amount of Rs.9,81,708.30 ps. (sale proceeds of Rs.11,08,886/- minus incidental charges of Rs.18,099/- = Rs.10,90,787/-; 90% of Rs.10,90,787/- = Rs. 9,81,708.30 ps.).

As far as the direction to pay the interest @ 12% p.a., is concerned, suffice it to say, that it is the present rate of interest. Therefore, this particular part of the impugned order does not deserve to be interfered with by this Court.

For the reasons stated above, this appeal is partly allowed, and the order dated 04-04-2019, in W.P.No.35281 of 2018, is hereby modified as indicated above.

As a sequel to dismissal of the writ appeal, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, CJ)

(Dr. Shameem Akther, J)

Dt: 9th August, 2019
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