THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>WRIT PETITION No. 35281 of 2018</u>

<u>O R D E R</u>:

This writ petition is filed for the following relief:

> "…to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declare the inaction of the respondents in passing order on the petitioner application dated 26-7-2018 in releasing the non-confiscated stocks of 90% and confiscated stocks of 10% along with Vehicle Bolero Van bearing No. TSO8UA 0197 is illegal, improper and arbitrary and violation of principles of natural justice ……"

Petitioner asserts that he is the proprietor of Sri Datta Sai Rice Mill; that on the ground that he was involved in clandestine business of PDS rice, his rice mill was raided and 676.15 quintals of PDS rice was seized, invoking the provisions of the Public Distribution (Control) Order 2016; that thereafter, proceedings were initiated under the provisions of the Essential Commodities Act, and that after enquiry, an order came to be passed on 19.05.2018 by respondent No.2-District Collector, Medchal-Malkajgiri District, confiscating 10% of seized stocks and imposing penalty of Rs.50,000/- on the seized vehicle.

The grievance of the petitioner is that as the PDS rice is not an essential commodity, the very proceedings initiated under Section 6-A of the Essential Commodities Act is unsustainable and thus, the very seizure of the vehicle as well as initiating proceedings against the owner was illegal and unauthorized as the business of the petitioner was not in relation to the essential commodity.

Though the petitioner raised various grounds, he confined the same to non-passing of order on the application dated 26.07.2018 submitted by him, particularly, with respect to not releasing the non-confiscated stocks of 90% and 10% of the confiscated stocks along with the vehicle bearing No.TS 08 UA 0197.

The respondents have not filed any counter-affidavit. However, today, when the matter is taken up, learned Government Pleader for Transport has placed on record the instructions dated 26.03.2019, wherein the District Civil Supply Officer, Medchal-Malkajgiri District, has stated that as on date, there is no stock available with the respondent authorities as the entire stock was put to auction and sold to M/s.Narayana Agro, Maharashtra State, @ Rs.1,640/- per quintal. The learned Government Pleader, on oral instructions, submits that as the stock has already been sold, some time may be fixed by this Court so as to enable the authorities concerned to pay the petitioner the value representing 90% of the non-confiscated stocks.

Learned counsel for the petitioner submits that so far as the order, dated 19.05.2018, confiscating 10% of the stocks is concerned, challenging the same, the petitioner filed W.P.No.24104 of 2018 and it is pending before this Court and this case is limited only with respect to release of the 90% of the non-confiscated stocks other than the 10% of the confiscated stocks along with the seized vehicle.

In the order, dated 19.05.2018, respondent No.2, observed as under:

(1) Confiscation of 10% of seized stocks available in the rice mill in favour of Government.

(2) An amount of Rs.25,000/- (twenty five thousand only) is imposed as penalty on seized lorry bearing No.MH 24 F 6457.

(3) An amount of Rs.50,000/- (fifty thousand only) is imposed as penalty on seized Bolero Van bearing No. TS 08 UA 0197.

(4) An amount of Rs.5,000/- (five thousand only) is imposed as penalty on seized vehicle No. TS 09 UA 4894.

Accordingly, the case is disposed of.

From the above, it is evident that the confiscation is limited only to 10% of the seized stocks.

In normal circumstances, the seized stocks ought to have been released in favour of the petitioner subject to certain conditions. However, as the stocks seized were sold even before passing of the final order, value of 90% of the stock, which was directed to be released in favour of the petitioner, ought to be paid to the petitioner within a reasonable time.

Against the order of respondent No.2, the petitioner had an opportunity of filing an appeal within 30 days from the date of receipt of the said order. In view of the same, the value of the seized stock which was sold out within that time ought to have been paid to the petitioner, but the authorities did not do so. As the petitioner would have borrowed the amount from financial institutions for running his rice mill, this Court deems it appropriate to direct the authorities to pay the amount to the petitioner with interest. However, it is apt to cite the judgment reported in **Kerala State Electricity Board Vs. M.R.F. Limited**[1], wherein the Hon'ble Supreme Court had approved the principle of restitution as enunciated by the Privy Council in Rodger's case and relevant portion thereof reads as under:

> "There is no manner of doubt it is an imperative duty of the court to ensure that the party to the lis does not suffer any unmerited hardship on account of an order passed by the Court. The principle of restitution as enunciated by the Privy Council in rodger's case (Supra) has been followed by the Privy Council in later decisions and such principle being in conformity to justice and fair play be followed. It should, however, be noted that in an action by way of restitution, no inflexible rule can be laid down. It will be the endeavour of the Court to ensure that a party who had suffered on account of decision of the Court, since finally reversed, should be put back to the position, as far as practicable, in which he would have been if the decision of the put back to have been if the decision of the court adversely affecting him had not been passed. In giving full and complete relief in an action for restitution, the court has not only power but also a duty to order for mesne profits, damages, costs, interest etc. as may deem expedient and fair confirming to justice to be done in the facts of the case. But in giving such relief, the Court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitutions taken. In deciding appropriate action by way of restitution, the court should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practicable and does not bring about unmerited hardship to either of the party."

In those circumstances, the writ petition is allowed and the respondent authorities are directed to pay the petitioner a sum of

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[1] 1996 IAD SC 290

Rs.11,08,886/-, representing 90% of the seized non-confiscated stocks, with interest @ 12% per annum, within one month from the date of receipt of a copy of this order. However, with respect to the prayer of release of 10% of confiscated stocks is concerned, the same is not being dealt with in this case as the same is the subject matter of W.P.No.24104 of 2018 which is pending.

Miscellaneous petitions, if any, pending in this writ petition shall also stand closed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:04.04.2019

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