

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25668 of 2019

Vijay Shah, S/o Lukho Sah, resident of Power Sub Station Mahisaudhi, P.S.
Jamui, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar. Bihar.
2. The District Magistrate, Jamui.
3. The Sub Divisional Officer, Jamui.
4. The Block Supply Officer, Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs.Sushmita Mishra Mr. Surya Narayan Sah
For the State	:	Mr. S.Raza Ahmad (AAG-5) Mr. Alok Ranjan, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 13-02-2020

The petitioner has filed the present writ petition seeking
the following reliefs:-

“(i) For the issuance of a rule in the nature of writ of certiorari for quashing the order dated 5.11.2019 passed by Respondent No. 2, the District Magistrate, Jamui in Essential Commodities Act 6A Case No. 03/2019 whereby and whereunder 541.85 quintal rice and 16.17 quintal wheat of the petitioner has been confiscated on the basis of seizure of the same under Jamui P.S.Case No. 110 / 19 without even whispering about the violation of any order under Section 3 of the Essential Commodities Act (For short- E.C.Act)



which is a condition precedent for initiation of any proceeding under Section 6 A of the E.C. Act and the aforesaid proceeding was void ab initio and clear abuse of process of law in view of the judgment rendered in the case of Ranjeet Kumar vs. The State of Bihar-2009 (4) P.L.J.R.-310, Pritam Lal Yadav and Others vs. The State of Bihar and others-1982 P.L.J.R.-304 and Dharamdeo Yadav and others vs. The State of Bihar and others vs The State of Bihar and others-1990 (2) P.L.J.R.-169, 2007 (5) S.C.C.-769 (Kailash Prasad Yadav Vs The State of Jharkhand) and various other judgments rendered by this Hon'ble Court as well as Hon'ble Supreme Court of India.

(ii) For the issuance of a rule in the nature of writ of Mandamus commanding the respondent authorities to release the bonafide food grain of the petitioner forthwith which has been illegally seized and confiscated.”

2. The learned counsel for the petitioner has submitted that the petitioner is neither a PDS dealer nor the rice and wheat bags, which have been seized, contain the mark of any government agency for that matter FCI. It is further submitted that rice and wheat seized by the confiscation authority are



contained in handmade synthetic bags and belong to the petitioner herein. It is also the case of the petitioner that the impugned order dated 5.11.2019, nowhere states that the seized rice and wheat bags were being ferried by the petitioner for the purposes of black marketing and moreover, there is no material on record to suggest that there has been violation of any circular / notification / government instructions/ order. It is further submitted that rice and wheat are not controlled items, hence, there is no prohibition in either dealing with the same or ferrying the same from one place to another.

3. Per contra, the learned counsel for the respondents-State, referring to the paragraph no. 9 of the counter affidavit, has submitted that the petitioner has failed to establish his claim regarding transfer of ownership of the rice and wheat bags.

4. At this juncture, the learned counsel for the petitioner has submitted that the aforesaid submission made in the counter affidavit does not find place in the impugned order dated 5.11.2019 inasmuch as there is no finding of the learned Collector, Jamui to the effect that the petitioner has not been able to establish his ownership over the seized food-grains.

5. The learned counsel for the petitioner has also referred to a judgment reported in *(2007) 5 SCC 769 (Kailash Prasad*



Yadav and Another vs. State of Jharkhand and Another),

paragraph nos. 5 and 7 whereof are reproduced hereinbelow:-

“5. Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made under Section 3 of the Essential Commodities Act, 1955 (for short “the Act”) are violated. When a vehicle is used for carrying an essential commodity, it may be seized and ultimately directed to be confiscated in terms of clause (c) of sub-section (1) of Section 6-A of the Act. Violation of an order made under Section 3 of the Act, therefore, is a precondition for passing an order of confiscation.

7. A valid seizure, as is well known, is a sine qua non for passing an order of confiscation of property.”

6. Having regard to the facts and circumstances of the case and considering the materials on record as also the submissions advanced by the learned counsel for the parties, this Court is of the view that the seizure of the rice and wheat bags itself is not valid inasmuch as the impugned order dated 5.11.2019 neither shows that there has been violation of any circular /notification /



government instructions / order nor the same shows that the rice and wheat bags were being ferried for the purposes of black marketing or for that matter belong to some government agency, so as to have precluded the petitioner from dealing with the same.

7. This Court further finds that the rice and wheat are not controlled items, hence, there is no prohibition upon any citizen to deal with the same in a manner so desired. This Court also finds that there has been no violation of Section 3 of the Essential Commodities Act, 1955. This Court further finds from a bare perusal of the gazette notification dated 15.2.2002 (at Annexure-5 of the writ petition) that rice and wheat are not controlled items. Thus, this Court finds that the Collector, Jamui, in the impugned order dated 5.11.2019, has failed to come to a finding regarding the reason for confiscation of the food-grains, apart from recording a passing reference to the effect that the seized food-grains were kept in the house of the petitioner for the purposes of black marketing, however, without any evidence to the said effect.

8. Considering the facts and circumstances of the case as also for the reasons mentioned hereinabove, I deem it fit and proper to quash the order dated 5.11.2019 passed by the



Collector, Jamui, being un-sustainable in the eyes of law.

9. The writ petition stands allowed.
10. It is needless to state that since the food-grains have not yet been sold, the same shall be released in favour of the petitioner forthwith, upon furnishing of adequate security to the satisfaction of the Collector, Jamui.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.3.2020
Transmission Date	NA

