

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.433 of 2021

Arising Out of PS. Case No.-93 Year-2020 Thana- BHAPTIAHI District- Supaul

RAJ KUMAR RAM @ RAJ KUMAR S/O SRI MAHAVIR RAM @
MAHAVEER RAM R/O VILLAGE-NONPAR, P.S.-BHAPTIYAH, DISTRICT-SUPAUL.

... .. Petitioner/s

Versus

1. STATE OF BIHAR THROUGH PRINCIPAL SECTT., BIHAR STATE FOOD AND CIVIL SUPPLIES GOVT. OF BIHAR, PATNA.
2. THE SUB-DIVISIONAL JUDICIAL MAGISTRATE, SUPAUL
3. THE DISTRICT COLLECTOR SUPAUL.
4. THE SUPERINTENDENT OF POLICE SUPAUL.
5. THE SUB-DIVISIONAL OFFICER, SUPAUL.
6. THE BLOCK SUPPLY OFFICER, BLOCK-SARAIGADH BHAPTIYAH, DISTRICT-SUPAUL.
7. THE STATION HOUSE OFFICER, BHAPTIYAH POLICE STATION, DISTRICT-SUPAUL

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumar Goutam
For the Respondent/s : Mr.A.G

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 15-03-2021

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. This application has been filed for setting aside the order dated 03.12.2020 passed by District Collector, Supaul, in Supply Confiscation No. 16 of 2020 (Annexure-5 to the writ application) arising out of Bhaptiyahi P.S. Case No. 93/2020 registered for the offence under Section 7 of the Essential commodities Act, 1981.



3. Short facts which give rise to the present application is that the petitioner is the owner of the vehicle in question i.e., Bajaj Maxima Diesel Auto (Three Wheeler) bearing registration No. BR50P/4131, Engine No. BBYWKK71641 and Chassis No. MD2A95AYOKWKO1757 and the same is registered for commercial purposes as passenger carriage vehicle. The said vehicle was seized by the police in connection with Bhaptiyahi P.S. Case No. 93/2020. After investigation, police submitted chargesheet on 06.11.2020 of the offence under Section 7 of the E.C. Act against the petitioner. Subsequently, petitioner represented before the District Collector, Supaul, for release of the vehicle in Confiscation Case No. 16, but learned District Collector, Supaul, without going into the correctness and considering the procedure of law confiscated the vehicle of the petitioner and passed the impugned order.

4. The impugned order has been assailed on the ground that the same has been passed without taking into consideration second proviso to S. 6-A(1) of the Essential Commodities Act, 1955 (hereinafter referred to as the 'E.C. Act'). It is further contended on behalf of the petitioner that in terms of second proviso to S. 6-A(1) of the E.C. Act, the petitioner was not given an option to pay in lieu of confiscation



of the vehicle up to the market price of the vehicle and as such, the impugned order is not sustainable in the eye of law. It is further contended on behalf of the petitioner that the vehicle in question has been parked in open space and getting damaged day by day.

5. However, learned counsel for the State submitted that the petitioner has filed the present writ application without exhausting the statutory remedy of appeal provided under Section 6-C of the E.C. Act.

6. For better appreciation of the issue involved in the writ application relevant part of Section 6-A of the E.C. Act which is quoted hereinbelow:-

[Section 6A. Confiscation of essential Commodity-[(1)] Where any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order [may order confiscation of—

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]



Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:]

[Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.]

7. From bare perusal of second proviso to S. 6-A(1) of the E.C. Act, it is apparent that the District Collector, Supaul was obliged to give an option to the petitioner to pay in lieu of the confiscation of the vehicle, but in this case Respondent No. 3 (the District Collector, Supaul) straight way passed the order of confiscation of the vehicle. Moreover, this Court is of the view that no useful purpose will be served by keeping the vehicle in question in open space which is getting damaged due to exposure to sunrays and dust.

8. Taking into consideration, the rival submissions made on behalf of the parties and the material on record, this Court is of the considered view that the District Collector, Supaul, has committed gross error of law and has passed the order in violation of second proviso to S. 6-A(1) of the E.C. Act.



9. In view of the above, the impugned order dated 03.12.2020 passed by the Respondent No. 3 (The District Collector, Supaul) in Confiscation Case No. 16/2020 is hereby quashed and set aside.

10. The matter is remanded to the Respondent No. 3 (The District Collector, Supaul), to pass a fresh order after giving an option to the petitioner in terms of second proviso to S. 6-A(1) of the E.C. Act within a period of four weeks from the date of receipt of a copy of this order.

11. The writ petition is allowed with the aforesaid observations and directions.

(Prabhat Kumar Singh, J)

Saif/-

AFR/NAFR	
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