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W.P.A. 10682 of 2021
(Through Video Conference)

Md. Isha
Vs.
State of West Bengal & ors.

Mr. Arijit Chakrabarti,
Mr. Nilotpal Chowdhury
...for the petitioner

Md. T.M. Saiddiqui,
Md. K.M. Hossain.
... for the State

This writ petition has been filed challenging the seizure, F.I.R. and proceedings being G.R. Case No.1016 of 2020 pending before the Additional Chief Judicial Magistrate, Lalbagh, Murshidabad. Further prayer for release of confiscated goods were also made.

Mr. Chakrabarti, learned advocate for the petitioner submits that the confiscation proceeding has been initiated pursuant to the seizure of 320 gunny sacks of wheat by the Collector but no notice has been given to the petitioner. He further submits that the learned Magistrate passed an order recording that the investigating authority has already approached the learned District Magistrate with a prayer for disposal of seized articles, which are perishable in nature. He also draws the attention of the Court to a letter written to the District Magistrate on February 15, 2021 for being given an opportunity of hearing before the confiscation order is passed.

Mr. Siddiqui, learned Senior Government advocate appearing on behalf of the State respondents submits a report which shows that the confiscation order has already been passed. It is the categorical submission of the petitioner that no hearing was granted to the petitioner nor was he allowed to submit a written representation before the authority before the order of confiscation was passed.

The report filed by the District Controller of Food and Supplies, Murshidabad be taken on record.

Admittedly, the order of confiscation was passed without issuance of a show cause notice under the provisions of 6B of the Essential Commodities Act, 1955. The petitioner ought to have been given an opportunity to answer the show cause notice before any confiscation order was passed. The petitioner ought to have been given time to file the written representation. It is also statutorily provided that the show cause notice to be given to the person concerned from whom the goods have been seized, should contain the grounds on which the proposed confiscation was contemplated by the authority.

Section 6B provides for three stages to be fulfilled before any order of confiscation is passed.

a) notice in writing informing the person the grounds on which the seized articles were proposed to be confiscated;
b) an opportunity to make a representation in writing within reasonable time and
c) A reasonable opportunity of being heard.

In this case, peculiarly, while considering the permission sought for by the investigating officer to dispose of the seized articles the sanction for confiscation was also allowed along with the permission. This power of granting permission to dispose of the articles was exercised under the provisions of Section 6A(2).

The law provides that the Collector on receiving a report of seizure of any essential commodity under Section 6A Sub-Section (1) may direct that the seized articles may be disposed of by auction/sale, if such goods were subject to the speedy and natural decay.

However, the order of confiscation could not have been passed without a show cause notice, an opportunity to the petitioner to file the written representation and finally without giving the petitioner a reasonable opportunity of hearing. Any order of confiscation thus passed in contravention of the other provisions of law is liable to be set aside. Thus the confiscation order passed in this case is set aside.

The concerned authority of the respondents are directed to issue a show cause notice upon the petitioner in terms of Section 6B of the Essential Commodities Act, 1955 and allow the petitioner to make a representation, within a specific time. Once such representation is made, an opportunity of hearing be given to the petitioner and the final order be passed in accordance with law and on the basis of submissions made by the petitioner.

The entire exercise should be completed within a period of two months from the date of communication of this order.

However, the power exercised under Section 6A(2) of the Essential Commodities Act, 1955 directing auction of the food grains which has reportedly been disposed of by a public distribution system, is not interfered with. But the respondents are directed to deposit the sale proceeds in the treasury after observing all financial norms under a separate head of account till the disposal of the confiscation proceedings.

If the petitioner fails to file the written representation within the date specified in the notice, then the authority concerned can proceed in accordance with law. At this stage, the other allegations in the writ petition are not taken up for consideration.

The writ petition is, thus, disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar,J.)