IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 186 OF 2021

Sanjay S/o Mahadevappa Nila,
Age : 45 Years, Occ. Business,
R/o. Nilanga, Taluka Nilanga,
District Latur

..**PETITIONER**

V E R S U S

1. The State of Maharashtra
Through Collector,
Collector Office, Nanded.

2. Tahasildar,
Tahasil Office, Nanded.

3. Police Inspector,
Itwara Police Station,
Nanded. ..RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO. 187 OF 2021

Manpreetsingh S/o Harjeetsingh Rai,
age : 27 Years, Occ. Business,
R/o. Dashmeshnagar, Near Bafna T-Point
Nanded. ..**PETITIONER**

V E R S U S

1. The State of Maharashtra,
Through Collector,
Collector Office, Nanded.

2. Tahsildar,
Tahasil Office,
Nanded.

3. Police Inspector,
Itwara Police Station,
Nanded. .. **RESPONDENTS**

...
Mr. R.R. Chandak, Advocate for the Petitioner.
Mr. R. B. Bagul, learned Additional Public Prosecutor.
...

CORAM : SURENDRA P. TAVADE, J.
RESERVED ON : 03-09-2021.
PRONOUNCED ON :08-09-2021

COMMON JUDGMENT :

Rule. Rule taken for hearing forthwith, with the consent of the parties.

2. The petitioners are challenging the order passed by the District Collector, Nanded on the report submitted by Itwara Police Station, Nanded, dated 14.06.2020, whereby the District Collector seized 500 bags of rice and truck baring No. MH-AD-26-2589. Hence, the owner of rice has preferred Writ Petition No. 186 of 2021 and owner of Truck has preferred Writ Petition No. 187 of 2021. It appears that the District Collector, Nanded has released the truck on the bank guarantee to the extent of 50% of the value of the truck and surety bond of 25% of value of the truck. The said orders are impugned in these petitions.

The facts giving rise to the present petitions can be summarized, as under :

3. It is contended that the petitioner Sanjay Nila is engaged in the business of sales and purchase of agricultural produce in the market yard Nilanga under name and style as M/s. Sanjay Mahadevappa Nila, since last 10 years. He is having Licence from the Agricultural Produce Market Committee, Nilanga. Similarly, he is having License under the Bombay Shops Act and Food Safety and Standards Act. It is contended that the petitioner Sanjay Nila had purchased 500 bags of rice from open market namely ' Pravin Trading Company', a Commission Agent. *Adat* Market yard, Nilanga with G.S.T Tax Invoice Bill No. 13 on 10.06.2020. He also purchased 25 tons rice on 08.06.2020 by G.S.T Invoice Bill No. 11. He had also purchased 12 Tons rice from 'Santosh Rice Mill' vide its G.S.T Invoice No. 72 dated 11.06.2020. He also purchased 12 tons of rice on 12.06.2020 by G.S.T Invoice Bill No. 74. It is contended that, as per the business practice of Agricultural Produce Market Committee, Nilanga, petitioners paid tax towards supervision charges on the purchased 510 bags of rice and loaded the said bags of rice in truck bearing No. MH-26-AD-2589 for transporting to Tumsar, Bhandara. It is contended that as per usual practice of traders in the Agricultural Produce Market Committee, all over Maharashtra, after purchase of food grain

from the open market, the traders used to refill the said goods in the similar bags which they purchased from the open market. These bags are recycled bags, which are commonly available on very cheap rate at about Rs. 7 to 10 per bag, which may also include having certain stamps of the Government. It is contended that the petitioners received an order from Saibaba Industries, Tumsar, for the purchase of rice of 500 bags and accordingly the petitioners loaded the said rice bags in the truck bearing No. MH-26-AD-2589 and prepared Bags Invoice No. 134 dated 12.06.2020 in the name of Saibaba Industries, Tumsar. The Delivery Challan No. 69 was also prepared by the petitioners in the name of Saibaba Industries, as the goods were to be transported to the Tumsar, District Bhandara. The petitioner prepared E-Way bill on 14.06.2020 at about 8.55 a.m. and handed over it to driver of the truck.

4. It is contended that on 14.06.2020, the Truck bearing MH-26-AD-2589 was stopped by respondent No.3 and it was taken to the police Station on wrong assumption that it was carrying controlled commodity. It is contended that the police enquired with the driver, who produced Tax Invoice, Delivery Challan and E-way bill before police. But police illegally assumed that it is rationing rice, which may be going to sold in the black market. Accordingly, FIR bearing No. 216 of 2020 was registered against the petitioners,

driver of the truck under Section 3 and 7 of Essential Commodities Act .

5. The petitioners came to know about seizure of goods under the Essential Commodities Act, hence he made an application dated 11.08.2020, before respondent No.1 along with purchased bills and other relevant documents showing his ownership over the goods and prayed for release of seized rice. The petitioners came to know that the police took the samples from the seized rice and sent it to the Regional Health Laboratory at Aurangabad for testing. It was reported by the Laboratory ‘’ they are not in position to certify that the seized rice is rationing rice or not ‘’. It is contended that respondent No.1 heard the petitioner and passed impugned order dated 12.10.2020 and rejected the application of the petitioner for released of rice.

6. Petitioner in Writ Petition No. 187 of 2021 is owner of seized truck hence he applied for release of the truck. Respondent No.1 – District Collector, Nanded passed the order of release of truck but put stringent conditions. It is contended that the rice was not a controlled commodity, therefore, the truck should have been released simply on bond but respondent No.1 directed the petitioner to execute a Bank Guarantee to the extent of 50% of the value of the Truck and also directed him to furnish two sureties

worth 25% of the value of the truck. It is contended that the petitioner has applied for the release of the truck order and got the truck released but the order of the collector is not legal and valid, hence it is prayed that the said order may be set aside.

7. The Notice of these Petitions are issued to the respondents.

8. Learned A.P.P appeared on behalf of the respondent. He submits that the seized rice was controlled commodity and it was being transported to Tumsar for selling it in open market. He submitted that though the sample of the seized rice was taken by the revenue authority, but report is inconclusive. He submits that the laboratory cannot decide whether rice was of controlled commodity or not. The said fact cannot be decided by the chemical analysis. He submits that most of the bags are having Government trade mark of controlled commodity. He also submits that the purchaser namely Saibaba Trading Rice Mill has also written a letter dated 12.06.2020 to the petitioner Sanjay Nila and requested him to load essential commodity in truck bearing No. MH.26-AD-2589, which was very much required by him. On the basis of said letter, the learned A.P.P. submits that the rice was packed in gunny bags, having Government Stamp coupled with the letter of Saibaba Rice Mill,it is established that the rice was of controlled commodity, therefore, it was rightly seized by the police and confiscated by respondent No.1. The order of respondent

No.1 is legal, valid and it cannot be challenged by way of Writ Petition because the order of the Collector is appealable under Section 6-C of the Essential Commodities Act.

9. Heard learned counsel for the petitioners and learned Additional Public Prosecutor on behalf of the respondents.

10. Admittedly, petitioner Sanjay Nila had sent 510 Bags of rice through Truck bearing No. MH-26-AD-2589 belongs to the petitioner Manpreet Singh S/o Harpreet Singh Rai to Saibaba Rice Mill, Tumsar, District Bandara. The said truck was apprehended by the Itwara Police Station, Nanded, on 14.06.2020. On inquiry with the driver, the rice loaded therein, was seized by Itwara Police Station Nanded and registered Crime bearing No. 216 of 2020 against the driver and petitioner Sanjay Nila for the offences punishable under Sections 3, 7 of the Essential Commodities Act, 1955. It is the basic case of the petitioner Sanjay Nila that he had purchased the rice from the open market and sold it to Saibaba Rice Mill. The learned counsel for the petitioners submits that there is no bar to purchase rice and wheat from the open market. He relied on Government G.R dated 15th February, 2002, wherein it is mentioned that :

‘’ With the coming into effect of this Order any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarsegrain, sugar, edible oil seeds and edible oils and shall not require a permit or license therefore under any order issued under the Essential Commodities Act, 1955.''

11. The learned A.P.P. has not disputed the G.R. dated 15.02.2002. He submitted that the said G.R. is not applicable to the facts of the present case. The learned A.P.P submits that the seizure panchnama is very crucial to establish that the seizure rice was of controlled commodity. He invited my attention to the panchnama dated 14.6.2020, wherein, it is mentioned that the truck bearing No. MH-26-AD-2589 was loaded with about 500 bags of rice. Some of the bags were having an endorsement of Government of Maharashtra (*Kharip* season) 2019-2020. Some of the bags were having label of *Dalmiya* Sugar Crystal, so it can be said that some of the rice bags were having label of the Government of Maharashtra (*Kharif* season) 2019-2020. The investigating officer also recorded the statement of the owner of the truck namely petitioner Manpreetsingh, who stated that he was kept in dark by the petitioner Sanjay Nila and his driver and they loaded controlled rice in the truck. He also stated that on 14.06.2020, the truck was parked in front of his house. Police took search of the said truck and found that the rice was controlled commodity. He also stated that his driver and Sanjay Nila have

not disclosed him that the Truck was carrying controlled rice. The investigating officer has also seized the letter dated 12.06.2020 issued by Saibaba Rice Mill in favour of the petitioner Sanjay Nila, wherein, owner of Saibaba Rice Mill requested Sanjay Nila to load the truck bearing No. MH-26-AD-2589 with essential commodity which was very much required by him. Therefore, *prima facie* it appears that the truck was carrying controlled commodity namely rice. The learned counsel for the petitioner vehemently submits that the order of confiscation of rice passed by the Collector, Nanded is not legal and valid. He submits that as per the provision of section 6-A of the Essential Commodities Act, it was expected from the Collector to direct the police to produce the contraband rice for inspection before him and he should have satisfied himself that there has been contravention of the order, then he can seized the essential commodity, packages covering and other things. He also submits that the Collector should have issued show cause notice to petitioner under Section 6-B of the Essential Commodities Act. In present case, the notice was issued to petitioner Sanjay Nila dated 25.08.2020. On the basis of said notice the learned counsel for the petitioner submits that it is not show cause notice as expected under the provisions of Section 6-B of the Essential Commodities Act. It is true that the notice was issued on the basis of application submitted by the petitioner Sanjay Nila for return of rice. Admittedly, the petitioner has applied for the return of rice dated 11.08. 2020 wherein, he claimed that he had purchased the seized rice from the open market and to substantiate the said fact he had enclosed many documents. On the basis of said application say was called by the Collector, Nanded from the Police, Tahsildar and the owner of the truck. The petitioners were represented by their lawyer before the Collector. The Collector heard the petitioners and the police, who seized the rice and truck and thereafter passed impugned order of confiscation of rice on 12.10.2020. Similarly, respondent No.1 also passed order of released of truck dated 21.09.2020.

12. After seizure of rice and truck, petitioner Sanjay Nila applied for release of rice. Similarly, the petitioner Manpreet Singh also filed an application for return of the truck. Therefore, respondent No.1 issued show cause notices to police and Tahsildar, who caused the seizure of goods. The Collector did not issue separate notice under Section 6-B of the Essential Commodities Act. The applications of the petitioners were decided by the respondent No.1 wherein the impugned orders are passed.

13. The learned counsel for the petitioners submits that no order of confiscation is passed under Section 6-A of the Essential Commodities Act. On the other hand, learned A.P.P submits that the impugned orders were passed under Section 6-A of the Essential Commodities Act on 12.10.2020 and 21.09.2020

respectively. On perusal of the order dated 12.10.2020, it is crystal clear that, the Respondent No.1 - Collector had considered the say of the petitioner Sanjay Nila. He had heard his Advocate and also perused the documents produced by him. Respondent No.1 has categorically passed the order under Section 6-A (i) of the Essential Commodities Act. Respondent No.1 had categorically held that the rice was subject to speedy and natural decay, hence he directed to sale the said rice by public auction. So, it can be said that the seized rice was confiscated and as it was subject to speedy and natural decay it was directed to be sold in the public auction. Therefore, the impugned order passed under Section 6-A of the Essential Commodities Act and it was order of confiscation of essential commodity.

14. The learned Additional Public Prosecutor for the State submits that if the order is passed under Section 6-A confiscation of Essential Commodities, then the appeal lies under Section 6-C of the Essential Commodities Act, therefore, the impugned order cannot be challenged by way of these Writ Petitions. The petitioners are required to prefer an appeal before the Judicial authority appointed by the State Government. On perusal of provisions of Section 6-A, it is crystal clear that if any person aggrieved by an order of confiscation under Section 6-A of the Act, he may within one month from the date of communication to

him of such order an appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall after giving an opportunity to the appellant to be heard, pass such an order as it thinks fit, confirming, modifying or annually the order of appeal against. So it can be said that if the order passed under Section 6-A of the Essential Commodities Act, the petitioner is required to file appeal against the said order. On perusal of the impugned order it appears that both the orders were passed under Section 6-A of the Essential Commodities Act. Therefore, those are required to be challenged by way of appeal under Section 6-C of the Essential Commodities Act. I have already observed that the respondent No.1- District Collector heard petitioners in pursuance of their applications for release of rice/truck and then passed order under Section 6-A of the Essential Commodities Act. Respondent N.1- District Collector has categorically held that seized rice was controlled commodity, hence he confiscated it and ordered it to be sold in public auction. Similarly, seized truck was released on the condition to execute Bank Guarantee and furnishing two sureties. The said orders are passed under Section 6-A of the Essential Commodities Act, therefore, those are required to be challenged before the competent authorities under Section 6-C of the Essential Commodities Act. Therefore, present Writ Petitions are not maintainable. With these discussions I hold both the these Writ

Petitions are required to be dismissed. Hence I proceed to pass following order

O R D E R

Both the Writ Petitions are dismissed.

Rule is discharged.

(SURENDRA P. TAVADE)
JUDGE

Pronouncement had taken.

2. Learned counsel for the petitioners submits that during pendency of this petition, the interim stay was granted to the order passed by the Collector on 18-02-2021. The petitioner would file appeal as per the provision of Section 6-c and till that time stay order to continue.

3. On the other hand learned APP submits that the order is already passed. Therefore, it may not be granted.

4. It appears that since the passing of impugned order dated 12-06-2020 stay was in operation. Therefore, stay is continued for a period of two weeks from today.

(SURENDRA P. TAVADE)
JUDGE

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