

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 653 OF 2012

Dilip Nathu Chaudhari
Age-54 years, Occ. Business & Social Work,
R/o 40-B, Vrundavan Colony,
Nandurbar, Dist-Nandurbar **... Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
Food & Civil Supplies Department
Mantralaya, Mumbai – 32
2. The Additional Collector,
Nandurbar, Dist-Nandurbar
3. The Tahsildar, Nandurbar
Dist-Nandurbar
4. The Police Inspector,
Nandurbar City Police Station,
Nandurbar, Dist – Nandurbar **... Respondents**

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Mr. R. N. Dhorde, Senior Advocate i/b Shri V. R. Dhorde, Advocate
for petitioner.

Mr. S. P. Sonpawale, APP for respondent Nos. 1 to 4

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 01st MARCH, 2022

PRONOUNCED ON : 08th MARCH, 2022

J U D G M E N T :-

. The challenge in this petition is to the order dated 31.03.2010, passed by the learned Additional Collector, Nandurbar under Section 6-A of the Essential Commodities Act, 1955 (for short, 'EC' Act) and partially modified by the learned Additional Sessions Judge, Nandurbar vide its order dated 01.03.2012, passed in Criminal Appeal No.4 of 2010.

2. The petitioner runs a fair price shop. He also holds a license/permit as a Sugar Nominee. He is also the Chairman of Bhushan Sevabhavi Cooperative Society, Nandurbar, which runs a fair price shop.

3. The District Supply Officer (D.S.O.), Tahsildar, Nandurbar accompanied by some revenue officials, paid surprise visit to the godown and shops. During inspection, it was found that food-grains, namely, wheat, rice, sugar and pulse, were found in excess of the quantity supplied to the petitioner for being distributed to the fair price card-holders. It was further found that the food-grains were either not supplied/distributed to some of the cardholders and/or supplied less than the required quantity. The

food-grains, therefore, came to be seized. The petitioner was called upon to explain the deficiencies in the record. The petitioner failed to offer any explanation or come clean within a reasonable time. The Additional Collector, therefore, issued him a notice to show cause as to why the stock of food-grains (quantified in the notice) be not forfeited.

4. The petitioner gave his reply in writing on 17.04.2010. The learned Additional Collector, after having considered the reply given by the petitioner and on hearing him as well, passed the order of confiscation of the food-grains, such as, 30 quintal wheat, 75 quintal rice, 7 quintal pulse (toor dal) and 19 quintal sugar. It was also directed that 145 quintal sugar, though was released, to be distributed by the Tahsildar to the fair price shop owners.

5. The petitioner challenged the said order in appeal, being Criminal Appeal No.4 of 2010. The learned Additional Sessions Judge, upheld the order passed by the Additional Collector, except the order in relation to 143 quintals of sugar.

6. Heard.

The learned Senior Advocate would submit that the

petitioner has been acquitted of a criminal charge. A certified copy of judgment and order dated 16.01.2015 passed in Criminal Appeal No. 2 of 2014 has been placed on record. According to him, the license of the petitioner to run fair price shop has been renewed. The learned Senior Advocate meant to say that the fair price shop license of the petitioner has not been cancelled. According to him, the notice issued under Section 6-B of the EC Act, does not contain what action was proposed against the petitioner. In short, according to the learned Senior Advocate, the notice to show cause, is bad in law and therefore, action taken pursuant to the show cause notice must fail. In support of his contentions the learned Advocate has relied on the following authorities:

- (i) Gorkha Security Services Vs. Government (NCT of Delhi) and others – (2014) 9 SCC 105;
- (ii) Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh and another – (2021) 1 SCC 804.

7. The learned APP would, on the other hand, submit for dismissal of the writ petition.

8. Considered the submissions advanced. Perused the material relied on. Since it being a petition under Article 227 of the Constitution of India, no factual matrix could be gone into. The

learned Senior Advocate has even not adverted to the factual matrix. It is however to be stated that both the authorities below, namely, Additional Collector and the Appellate Court as well, on appreciation of the factual matrix, held the petitioner to have failed to explain the grounds averred in the show cause notice for confiscation of the food-grains (essential commodities).

9. True, the petitioner has been acquitted of a criminal charge. A certified copy of the judgment and order dated 16.01.2015, passed in Criminal Appeal No.2 of 2014, has been placed on record. Para 9 thereof, reads thus:

“9. The complainant the Dist. Supply Officer is examined at Exh.12. He has stated in his evidence about the excess stock found in the fair price shop of the accused. In the cross examination he has admitted that the Stock Registers maintained by the accused in his fair price shop were taken into custody. He has admitted that the said record was not handed over to the investigating officer. He has further admitted that he does not know in whose custody at present the said record is. If the complaint at Exh.13 is perused then it would appear that very basis of it is the said record. The Trial Court in the absence of the said record was not justified in convicting the appellant.”

10. Section 6-A(1) of the EC Act reads thus:

“6-A. 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

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(a)....

(b)....

(c)....”

11. The phraseology of provisions of Section 6-A would undoubtedly indicate, whether or not the prosecution is instituted for contravention of such order, the proceedings for confiscation of essential commodity is an independent one.

12. The petitioner has been acquitted of the criminal charge merely on the ground that the stock registers were not placed before the criminal Court. The Additional Collector and the learned Additional Sessions Judge have after going through the concerned stock registers, passed the orders impugned herein. The petitioner's acquittal would therefore be of no consequence.

13. It is informed that the fair price shop license has been renewed by the authorities concerned. Nothing has been placed on record in that regard. The same would have no bearing on the

matter in hand. The show cause notice was taken exception to on the ground that mandatory requirement to mention therein the grounds on which the proposed action was to be taken, have in fact, not been averred therein. For such objection, one has to have a look at the show cause notice dated 25.01.2010. The details of shortcomings noticed during the surprise visit have all been quoted in the show cause notice. It has specifically been averred therein that the stock of food-grains was found in excess of the one supplied for distribution. It has also been averred that food-grains have neither been distributed to the cardholders and in some cases the same has been distributed in less quantity. After going through the show cause notice, this Court doesn't find it to be lacking in any material particular. For better appreciation, Section 6-B of the EC Act, is reproduced below.

“6-B. Issue of show cause notice before confiscation of essential commodity - [(1)] No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under Section 6-A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized.

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

.....”

14. The petitioner was specifically called upon to explain the deficiencies lest the food-grain stock may be forfeited to the Government. The petitioner had, in fact, filed his response to the said notice and after giving him full opportunity of hearing, the orders impugned herein came to be passed. After going through both the orders and considering the submissions advanced by the learned Senior Advocate for the petitioner, this Court finds no reason to interfere therewith.

15. In the result, the petition fails. The same is dismissed. Rule discharged.

16. In view of dismissal of the writ petition, Criminal Application No.1594 of 2019 does not survive, therefore, the same is disposed of.

[R. G. AVACHAT, J.]