

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10845 of 2023

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1. Digvijay Purwe Son of Ram Sharan Purwe Resident of Behata, Ahpur, P.S.- Benipatti, District- Madhubani.
 2. Beena Traders, through its proprietor Digvijay Purwe, at Behata Hat, Benipatti, P.S.- Benipatti, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. District Magistrate, Darbhanga.
4. District Supply Officer, Darbhanga.
5. Sub-Divisional Officer, Sadar, Darbhanga.
6. Block Supply Officer, Sadar Block, Darbhanga.
7. Marketing Officer, Sadar Block, Darbhanga.
8. Station House Officer, Sadar Police Station, Darbhanga.
9. Station House Officer, Mabbi O.P. under Sadar Police Station, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh
For the Respondent/s : Mr. S. Raza Ahmad (Aag 5)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

6 14-11-2024 Heard the learned counsel for the parties.

The present writ petition has been filed for the
following reliefs:-

*“(i) Issuance of a direction,
order or writ including with in the nature of
mandamus commanding the concerned
respondent authorities under the Food and
Consumer Protection Department of the
State Government to release 500 bags of
Mansuri Rice (HSN/SC Code-1006) each
containing 50 kgs. equivalent to total 25,000*



Kgs. amounting to Rs. 4,50,000/- (Rs. Four Lakh Fifty Thousand) in favour of the petitioners which was illegally and arbitrarily seized/confiscated by the concerned respondent authorities u/s 7 of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act");

(ii) Issuance of a direction, order or writ including writ in the nature of mandamus commanding to the concerned respondent authorities under the Food and Consumer Protection Department of the State Government to pay appropriate/reasonable compensation to the petitioners against their illegal act of aforesaid seizure/confiscation of rice legally owned and possessed by the petitioner for his business purpose;

(iii) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order dated 22/11/2022 passed u/s 6(A) of the Act, by the Court of Collector and District Magistrate, Darbhanga, in Case No. 352/2021, whereby, the Collector and District Magistrate, Darbhanga, has upheld the illegal action of seizure/confiscation of aforesaid bags of rice by the respondent no. 5 and instead of releasing the said bags of rice in favour of petitioners, directed the respondent no 5 to dispose off the same.

(iv) Any other relief/reliefs that the petitioners may be found to be entitled to in the facts and circumstances of the present case."

3. Learned counsel for the petitioners has stated that the petitioner No. 1 is neither a PDS dealer nor a miller in whose favour the authorities have allotted any paddy for milling the same into CMR. That the petitioner has purchased the rice for the purpose of supplying to one of the rice mills. That while



transporting the rice, there was a break down of the transport truck and the authorities under the mistaken impression have initiated the proceedings under the Essential Commodities Act (EC Act). Learned counsel has stated that the petitioner No. 1 cannot be prosecuted under the EC Act, as he is neither a PDS dealer nor a rice miller to whom any paddy has been allotted by the authorities. Learned counsel has stated that the authorities without considering the above legal position have rejected the application of the petitioner No. 1 for release of the rice in a mechanical manner. Learned counsel has relied on the judgment of this Hon'ble Court passed in Cr. Misc. No. 21936 of 2011 dated 14.08.2014 and also in LPA No. 499 of 2018 dated 10.07.2018 in support of his case.

4. *Per contra*, the learned counsel appearing on behalf of the respondent-State has vehemently opposed the very maintainability of the present writ petition and stated that as against the order passed under Section 6A of the EC Act, the petitioner No. 1 has alternative and effective remedy of approaching the Commissioner under Section 6C of the EC Act. That the petitioner No. 1 without availing the said remedy has straightway approached this Hon'ble Court. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present



CWJC.

5. This Court in Cr. Misc. No. 21936 of 2011 dated 14.08.2014 has held as under;

“It has been settled by several decisions of this Court that no prosecution under the Essential Commodities Act could be launched as against a private person. The petitioner, admittedly, is not a dealer under the Public Distribution System. He has offered his preliminary explanation about the circumstances under which the kerosene oil was so purchased. In the absence of any provision in the Essential Commodities Act for launching prosecution as against a private person, the petitioner cannot be tried for such offence.

The Essential Commodities Act has been framed for the benefit of consuming public. For any violation of the provisions of the Essential Commodities Act or the Control Orders, promulgated under the authority of the Essential Commodities Act, only the agents or the PDS Dealers could be prosecuted, Kerosene oil, being a controlled item, is governed by a necessary Control Order. However, since the petitioner is not a PDS dealer, he cannot be tried for the offence under Section 7 of the Essential Commodities Act.”

6. Further, the Hon’ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others*** reported in ***1998 8 SCC 1*** has held that the petitioner cannot be relegated to recourse to the alternative statutory remedy when there is a jurisdiction error in deciding the issue



involved.

7. Admittedly, in the present case, the petitioner No. 1 is neither a PDS dealer nor a rice miller in whose favour any paddy has been allotted by the authorities for the purpose of milling the same into CMR. The petitioner No. 1 is the trader. Further, it is to be noted that the petitioner No. 1 has produced the bills of purchase of the rice (Annexure-7 series) which evidences that the petitioner No. 1 has purchased the rice from one Bhagwati Galla Bhandar and Hanuman Bhandar.

8. Having regard to the above mentioned facts and circumstances, the impugned order dated 22.11.2022 passed by the respondent No. 3 herein is set aside, the authorities are directed to release the rice. In case the rice is already sold out, the petitioner No. 1 would be entitled to the amount equivalent to the value of the rice seized.

9. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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