

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR No. 3302 of 2022

**Dharam Raj Yadav
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Anirban Dutta
Mr. Mahesh Joshi
Mr. Sandeep Joshi

For the State : Mr. Debasish Roy
Ms. Rita Datta

Hearing concluded on : 31.01.2025

Judgment on : 28.03.2025

UDAY KUMAR, J.: -

- 1.** Petitioner has prayed for quashing of the criminal proceeding being Behala Police Station/EB Case No. 04 of 2020 dated 16th January, 2020, registered under sections 7 (i)(a)(ii) of the Essential Commodities Act, 1955, pending before the Court of Learned Additional Chief Judicial Magistrate, South 24-Parganas at Alipore and the order of cognizance taken on 26th July, 2021 on the charge sheet being number 106 of 2020 dated 28.05.2020 in connection with AEBGR- 06/2020 and the summons issued to the petitioner.
- 2.** Consequent to the secret information received from credible source, Sibram Dutta, Sub-Inspector of Enforcement Branch (Fuel Section) along with officers and staffs of the Enforcement Branch, and police, raided

Hotel Maa Ambey, at 184 Roy Bahadur Road Kolkata 34, in between 13.55 to 14.52, on 16th January, 2020. During raid they recovered 7 pieces of domestic gas cylinder of I.O.C.L, one iron made oven fitted with regulator from the kitchen of said hotel and seized them in presence of local witness between 14.20 to 14.40 hours, as those domestic gas cylinders were used for cooking food for commercial purposes. One Dharam Raj Yadav introduced himself as an owner of the hotel, was present there throughout the raid, search and seizure.

3. Paragraph 8 of West Bengal Cooking Gas (Licensing and Control) Order, 1985, hereinafter referred to as the Order 1985 prohibits commercial use of domestic gas cylinder in a hotel for cooking foods. Similar provision is made under paragraph 3(c) of Liquefied Petroleum Gas (Regulation and Supply and distribution) order 2000, hereinafter referred to as the Order 2000. It restricts an unauthorized possession, supply, consumption and use of liquefied petroleum gas for any purpose other than for which the consumer is registered with the distributor of a Government Oil Company. Thus, use of domestic gas cylinders in violation of these restrictive provisions are made punishable under the Essential Commodities Act 1955.
4. Consequently, Sibram Dutta informed the incident to the Officer-in-charge of the Behala Police Station by filing his written complaint, upon which Behala Police Station Case No. 04 of 2020, dated 16th January, 2020 under Section 7 (i)(a)(ii) Essential Commodities Act, 1955, was started against petitioner Dharam Raj Yadav, and the same was endorsed to S.I. Goutam Saha, Fuel Section, Enforcement Branch, for investigation. After

completion of investigation, I.O. submitted a charge sheet under Section 7 (i)(a)(ii) of Essential Commodities Act, 1955, on 28th May, 2020.

5. On the basis of said charge sheet, Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, had taken cognizance of the offence under Section 7 (i)(a)(ii) of Essential Commodities Act, 1955, on 26th July 2020; and ordered to issue summons against the sole charge-sheeted accused Dharam Raj Yadav.
6. As the complaint was filed by an officer below the rank of Inspector, is violative of the mandate of the Order 1985 and Order 2000, the proceeding is not maintainable and is liable to be set aside or quashed.
7. Mr. Anirban Dutta, Learned Advocate for the petitioner contented that Paragraph-13 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000, dated 26th April, 2000, provides that an officer not below the rank of Inspector, is only authorized for inspection of any premises, search and seizure of articles. Here the raid, search and seizure were conducted by S.I. Sibram Dutta, an officer below the rank of Inspector, who was not competent or authorized under the Order 2000, for that. As such the proceeding amounts to bad in law. Thus, is liable to be quashed.
8. He further submitted that complainant arraigned the petitioner in this without verifying any document to ascertain the name and identity of the ownership of said hotel. Petitioner is not owner of the said hotel.
9. In support of his contention, petitioner relied on the ratio decided in 2009 SCC Online Cal 1468 *Guin Brothers v. State of West Bengal* & 1966 SCC Online P&H 421 *Suresh Kumar v. State of Haryana*.

10. Mr. Debasish Roy, Learned Advocate for the State contended that domestic gas cylinders were illegally used by the petitioner in his kitchen for the purpose of cooking food commercially, in violation of the provisions of Order 1985, and Order 2000. The complainant apprehended the petitioner from the kitchen of the hotel, where domestic cylinders were used by the him for cooking foods. Sufficient materials are available on record to establish the charges against the petitioner. The incompetence of the complainant to conduct raid, search and seize are mere a procedural defect. Procedural lacuna cannot mitigate the culpability of petitioner. However, maintainability of this proceeding is disputed question of fact which needs to be decided by Trial Court on appreciation of evidence. Quashing of proceeding on the ground of procedural irregularities, would not be an appropriate step. So, he prayed for dismissal of this petition.
11. Apposite, question involved for determination is **‘whether conducting raid, search and seizure by the complainant without proper authority would amount to abuse of the process of law?’**
12. Indubitably, petitioner challenged entire process only on the technicality of the entitlement of complainant Sibram Dutta as to initiate prosecution against a person, because he was not an officer at the rank of Inspector at that material point of time.
13. It is the requirement of paragraph-13 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000, dated 26th April, 2000, that any officer of the Central, or State Government **not below the rank of Inspector** or any officer of Government Oil Company **not below the rank of Sales Officer**, could **enter and search of any place, stop**

and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product, enter and search any place, seize stocks of liquefied petroleum gas along with container and/or equipment, such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this Order has been, or is being, or is about to be made.

Paragraph-13 of Order, 2000 is represented as follows -

- (1) Any Officer of the Central or the State Government **not below the rank of Inspector duly authorized by a general or a special order, by the Central Government or the State Government, as the case may be or any officer of a Government Oil Company not below the rank of Sales Officer, authorized by the** Central Government, may, with a view to securing due compliance of this order or any other order made thereunder;*
- (2) The sales officer of a Government Oil Company shall be authorized to secure compliance of this order by the distributors appointed under the public distribution system and or by the consumer registered by them.*

- 14.** Moreover, West Bengal Cooking Gas (Licensing and Control) Order, 1985 provides for maintaining the supplies, and securing equitable distribution of cooking gas at fair prices in West Bengal. Paragraph 9 of the said Order, 1985 is related to the power of entry, search and seizure etc. is also relevant here. It is as follows -

- “(1) Any officer in the Department of Food and Supplies of the State Government, not below the rank of Chief Inspector, or any police officer, not below the rank of an Inspector, may with a view to securing compliance with the provisions of this Order, -*
- (a) inspect any books of account referred to in sub-paragraph (6) of paragraph 3 as well as any stock of cooking gas belonging to or under the control or possession of any person;*
 - (b) require any person to give any information in his possession with respect to any business or undertaking for purchases, sale, or storage, of cooking gas;*
 - (c) stop and search any person or vehicle or vessel used or suspected of being used for delivery of cooking gas from a*

godown or from premises or places where, he has reason to believe, cooking gas is stored;

(d) enter and search, with such aid or assistance as may be necessary, any such godown or premises or places; and

(e) seize and remove, with such aid or assistance as may be necessary, the entire quantity of any stock of cooking gas along with the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this Order has been, is being, or is about to be, contravened in respect of such stock and thereafter takes or authorize the taking of, all measures necessary for securing the production of the stock of cooking gas, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section 6A of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production:

Provided that in exercising the powers under this subparagraph. due regard shall be paid to the social and religious customs of the inmates or occupants of the premises or places concerned.

(2) The provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this paragraph.”

- 15.** Undoubtedly, it authorizes only to any officer not below the rank of Chief Inspector under the Department of Food and Supplies of State Government, or any Police Officer not below the rank of an Inspector, for inspection of any books of account, for collecting information from any person with respect to any business or undertaking to purchase, sale or storage of cooking gas, for stopping and searching any person or vehicle or vessel used or suspected of being used for delivery of cooking gas, for entering and searching any such godown or premises or places, seize and remove, the entire quantity of any stock of cooking gas along with the vehicles, vessels or any other conveyances used in carrying such stock, if he has reason to suspect that any provision of this Order is being violated.

- 16.** Admittedly, the complainant Sibram Dutta was Sub-Inspector, Enforcement Branch (Fuel Section) Behala at the time of raid. Since both Orders authorize 'any police officer, not below the rank of an Inspector' to conduct raids, search, seizure and for proper use and equitable distribution of L.P.G gas cylinders. Therefore, the raid conducted by an officer below the rank of the Inspector, is blatant violation of the mandate of the Orders. Basing on such inherent violation our High Court has opined in (2009) SCC Online Cal 4 1468 that proceeding initiated at the instance of a person without proper authorization of the competent authority, would be bad in law and liable to be set aside.
- 17.** A similar view was expressed by Punjab and Haryana High Court in 1996 SCC Online P & H 421 wherein it was held that Sub-Inspector of Police is neither an Inspector nor a person duly authorized and notified by a State and Central Government in furtherance to the statutory mandate of Clause 13 of the LPG (Regulation of Supply and Distribution) Order, 2000. Such violation would go to the root of prosecution case, so would be a fit case for quashing of proceeding and thereby order to quash the proceeding and petitioner was discharged without any order as to the cost.
- 18.** After anxious consideration, I conclude that raid, search and seizure conducted by the complainant without proper authority would be illegal and thus is amount to abuse of the process of law. As such, is liable to be quashed.
- 19.** As a result, this C.R.R 3302 of 2022 succeeds.
- 20.** Therefore, proceedings emanated from Behala Police Station/EB Case No. 04 of 2020 dated 16th January, 2020, under sections 7 (i)(a)(ii) of the

Essential Commodities Act,1955, the charge sheet being number 106 of 2020 dated 28.05.2020 filed under same sections in connection with AEBGR- 06/2020, the cognizance of the offences taken by Learned Additional Chief Judicial Magistrate, South 24 Parganas at Alipore, on 26th July, 2021 under the same sections, and the order of Learned Additional Chief Judicial Magistrate, South 24 Parganas at Alipore to issue summons to the petitioner on 26.07.2021, are hereby, quashed.

- 21.** However, petitioner is discharged from his respective surety/ sureties, if any.
- 22.** There is no order as to the cost.
- 23.** Case diary, if any, be returned forthwith.
- 24.** Interim order/orders, if any, stands vacated.
- 25.** All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.
- 26.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard

(Uday Kumar, J.)