

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No.427/2009, CMP No.569/2009

Date of Order : September 09, 2009

Rakesh Kumar & Ors. Vs. State and Ors.

Coram

Hon'ble Mr. Justice Virender Singh

Appearing counsel:

For petitioner(s) : Mr. Abhinav Sharma, Advocate.

For respondent(s) : Mr. S.C. Gupta, AAG.

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| i) | Whether approved for reporting
in Press/Journal/Media | Yes/No |
| ii) | Whether to be reported in
Digest/Journal | Yes/No |

The present 47 petitioners claim themselves to be the consumers of HPCL, BPCL and INDANE Companies' being Gas connection holders. The case set up by them is that they used to keep their gas cylinders in the shop of one Bodh Raj, who runs a cement shop at Bishnah. All the representatives of the aforesaid Gas Companies used to come weekly to deliver the filled cylinders and collect empty cylinders from the said shop. It so happened that respondent-3 raided Cement Store of aforesaid Bodh Raj on 23-09-2008 and in that process seized 47 gas cylinders of the petitioners. This resulted into registration of FIR bearing No.145/2008 against Rakesh S/o Bodh Raj and two others for the offence punishable under sections 3/7 of the Essential Commodities Act, 1955 (hereinafter for short to be referred to

as the Act) and sections 406/407/409/411 RPC. The petitioners moved two different applications for the release of their gas cylinders before Judicial Magistrate First Class, Bishnah, which were dismissed vide two different orders (Annexure-C dated 22-01-2009 and Annexure-D dated 22-11-2008). Aggrieved of the said orders, the petitioners filed two different petitions under section 561-A Cr. PC in this Court for their quashment. Those petitions bear Nos.20/2009 and 21/2009. They came to be allowed by this Court on 24-02-2009 and while setting aside the aforesaid two orders gave a direction that the cylinders be given to the petitioners on Superdnama after verifying the documents with regard to their ownership/entitlement, as is clear from Annexures-E & F respectively. The petitioners assert that when they approached the Court for release of the gas cylinders by moving a formal application (Annexure-H), the SHO, Police Station, Bishnah was asked to submit his report and at that time, the petitioners were informed of order dated 21-01-2009 (Annexure-G) passed by Additional District Magistrate, Jammu, that their gas cylinders stood already confiscated by respondent-3. Therefore, through the medium of the instant petition, they seek quashment of the said order.

Mr. Sharma states that despite the fact that operation of the impugned order dated 21-01-2009 passed by respondent-3 has been stayed by this Court, the gas cylinders have not been released to the petitioners till date.

Pursuant to the notice, a detailed reply has been filed by respondent-4. Mr. Gupta has adopted the same reply on behalf of respondents-1 to 3 also. The pleadings are thus complete. Learned counsel for both the sides have also agreed to the disposal of the instant petition at pre-admission stage itself.

Heard learned counsel for both the sides and perused the record.

Mr. Sharma has questioned sustainability of the impugned order inter alia on the ground that respondent-4 was under statutory obligation to submit a report to respondents-2 and 3 immediately after seizing the gas cylinders, as is the requirement of section 6A of the Act. No such report was submitted by him. He then submits that respondent-3 was also under statutory obligation to record his subjective satisfaction before passing an order of confiscation of the cylinders in question. This exercise has also not been done in the present case and it appears that the impugned order has been passed merely on the asking of respondent-4. The learned counsel goes on to say that the order impugned herein appears to have been passed by respondent-3 taking it to be mandatory, whereas it was not necessary for him to pass this order.

Mr. Sharma then submits that another flaw which is equally fatal in this case is that no show cause notice was issued to the petitioners, who claim themselves to be owners of the essential commodity, as is the requirement under section 6B of the Act. The

requirement of the Act is that an opportunity has to be afforded to the owner of the essential commodity to make a representation in writing within a reasonable time, as may be specified in the notice against the grounds of confiscation and an opportunity of being heard in the matter is also to be afforded so that he can set forth his case to the satisfaction of the Collector. In the present case, neither respondent-3 issued any notice in writing to the petitioners informing the grounds on which he proposed to confiscate the commodity nor any opportunity was afforded to them of making a representation or of being heard. Therefore, the impugned order deserves to be quashed on this count also.

Mr. Sharma then submits that respondent-3 did not record any finding to the effect that there was any violation of section 3 of the Act before confiscation of the property and, therefore, in the absence of any such categorical finding, the impugned order cannot legally stand. In support of this argument, he relies upon a judgment of Apex Court rendered in case titled *Kailash Prasad Yadav & Anr. v. State of Jharkhand & Anr.*, AIR 2007 SC 2626.

Mr. Sharma lastly submits that respondent-4 has not brought the impugned order dated 21-01-2009 to the notice of the Judicial Magistrate when the second application on behalf of some of the petitioners was considered and order dated 22-01-2009 (Annexure-C) passed. He then submits that this fact was not even brought to the notice of this Court, when the aforesaid two petitions filed by the petitioners

under section 561-A Cr. PC were considered. Otherwise this aspect could also be considered, while disposing of the said petitions. Therefore, the order impugned should not now stand in the way of the petitioners for getting the gas cylinders released in their favour.

On the basis of the aforesaid submissions, Mr. Sharma prays for quashing of the impugned order dated 21-01-2009 (Anneure-G), with a further prayer that all the gas cylinders seized in case FIR 145/2008 dated 24-09-2008 be released to the peitioners on verification of requisite documents.

Mr. Gupta strongly refutes the submissions advanced by Mr. Sharma and submits that in this case one Rakesh Kumar S/o Bodh Raj was found in possession of 47 gas cylinders in the shop of his father and said Rakesh Kumar was not authorised to collect the empty cylinders or deliver the filled cylinders to any of the gas consumers. Since he was indulging into illegal profiteering, the matter was reported to District Magistrate. This all resulted into registration of a criminal case. The Additional District Magistrate (respondent-3), who was seized of the matter, directed handing over the gas cylinders to the Area Managers of the concerned LPG Companies on Superdnama, as is clear from the impugned order. He then submits that two trucks were also seized during the raid. According to Mr. Gupta, the directions given by this Court while disposing of the two petitions filed by all the petitioners under section 561-A Cr. PC for the release of the gas cylinders would

stall the confiscation proceedings at least which are initiated under the Act independently by following the due procedure. Even otherwise, in a case registered under Essential Commodities Act, the release of the property or confiscation is within the domain of the Collector only and no other authority. Therefore, the petitioners cannot make out any ground for quashing the impugned order dated 21-01-2009 passed by respondent-3.

At the very outset, I may observe here that I would have been in agreement with the submissions advanced by Mr. Sharma, had one important aspect not escaped his notice that the order dated 21-01-2009 (impugned herein) passed by respondent-3, in fact, is not an order of confiscation passed under section 6A of the Act. It is just the start of the confiscation proceedings under the Act by respondent-3 on the request of S.H.O. concerned (respondent-4). Therefore, all the submissions advanced by Mr. Sharma at the Bar are of no relevance. The judgment handed down by Apex Court in Kailash Prasad Yadav's case (supra) does not put him on any advantageous position, as in the said case, the order already passed for the confiscation of the vehicle was set aside on the ground that finding as regards to violation of section 3 of the Act was not arrived at by the concerned authority before passing the order. That is not the factual position in the case on hand. The proceedings are at their initial stage, as is clear from the order itself and during the pendency of these proceedings, respondent-3 has directed SHO, Police

Station, Bishnah to hand over all the 47 gas cylinders (one filled and 46 empty) to the concerned Area Managers of the concerned LPG Companies on Superdnama against proper receipts. It is just a temporary arrangement and the final order of confiscation under section 6A is still awaited. All the statutory exercise, thus, is yet to be completed in due course.

Since this Court has stayed the operation of the impugned order by way of interim relief to the petitioners, this is the reason that respondent-3 stayed his hands from proceeding further. Needless to say that the petitioners shall now be afforded an opportunity of being heard or making a representation in writing, as per the requirement of section 6B of the Act before any order of confiscation is finally passed. These proceedings are independent in nature, whether or not any prosecution has been instituted for the contravention of the order.

I do not intend to enter into any discussion with regard to the effect of the order passed by this Court in the aforesaid two criminal petitions filed under section 561-A Cr. PC because it has no relevance to the issue in question. More so when the order sought to be quashed is at its pre-mature stage and not attained its finality.

As a sequel to the aforesaid discussion, I do not find any statutory infirmity in the impugned order dated 21-01-2009 passed by respondent-3 on any count and uphold the same. Resultantly, the

petition on hand deserves to be dismissed having devoid of any merit in it. Ordered accordingly.

It is, however, expected of respondent-3 that he would conclude the confiscation proceedings already initiated by him within a reasonable time, preferably within one month from the date, a copy of order is served on him. Needless to say that he would afford an opportunity to the petitioners of being heard and is also expected to verify the documents of each of the petitioner vis-a-vis the entitlement to possess the gas cylinder(s). This, in my view, would also facilitate the investigation being carried out by the concerned police in the criminal case (FIR No.145/2008) registered against aforesaid Rakesh Kumar and others.

JAMMU
09.09.2009
T.Arora, Secy.

(Virender Singh)
Judge