

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4479 of 2020

Md. Jahangir, aged about 63 years, Gender- Male, S/o Ahsamuddin, R/o
Village Mir Millick, Panchayat- Rangpura (South), P.S.-Mirganj, District-
Purnea.

..... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Bihar State Food and Civil Supplies, Government of Bihar, Patna
2. The District Magistrate, Purnea.
3. The Sub- Divisional Officer, Dhamdaha, District- Purnea.
4. The District Supply Officer, District- Purnea.
5. The Senior Deputy Collector, District Legal Cell, District- Purnea.
6. The S.H.O., Mirganj Police Station District- Purnea.
7. The Manager, State Food Corporation, Bihar Dhamdaha, District- Purnea.
8. The Assistant Manager, State Food Corporation, Bihar Dhamdaha, District- Purnea.

..... Respondents

Appearance :

For the Petitioner : Mr. Jitendra Kumar Giri, Adv.

For the Respondent/s : Mr. Prashant Pratap, GP-2

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

30.04.2020 The instant writ petition having been found extremely urgent by
Hon'ble the Chief Justice has been posted before me under his orders
for hearing via video conferencing.

2. The petitioner has prayed for issuance of a writ in the nature of
mandamus commanding and directing the respondents to release 2073
bags of wheat, which were seized in connection with Mirganj P.S. Case
No. 124 of 2019 registered for the offence punishable under Section 7
of the Essential Commodities Act, 1955 (for short 'E.C. Act') in his



favour and in case of decay/damage of the wheat kept in those bags, to make payment of the proceeds thereof to him in cash.

3. Mirganj P.S. Case No. 124 of 2019 was registered by the Officer-in-Charge of Mirganj Police Station on the basis of a written report submitted by one Md. Imdadul Haque, the Block Supply Officer, Dhamdaha wherein he has alleged that on 15.09.2019 at about 10.30 p.m. he had received telephonic information from the Officer-in-Charge of Mirganj Police Station that illegally procured wheat is being loaded on trucks from the residential premises of the petitioner situated in village Mir Millick falling within Rangpura panchayat. On receipt of the aforesaid information, the Block Supply Officer along with the police party rushed to the village Mir Millick and found that a truck bearing registration no. BR11G-5721 loaded with bags of wheat was parked outside the premises of the petitioner but the driver or the loaders (workers) were not found present near the truck. He also found three trucks loaded with bags of wheat in the premises of Bhaiya Jee Petrol Pump near *Dharmkanta*. On seeing the police party, the truck drivers fled away. Thereafter, the godown of the petitioner was inspected from where also 129 bags of wheat were recovered, which had the seal of Food Corporation of India (for short 'FCI') and State Food Corporation (for short 'SFC'). On being asked to produce relevant papers to justify the storage of wheat bags, the petitioner



failed to produce stock register and sale and purchase register. On enquiry regarding the trucks found in the premises of Bhaiya Jee Petrol Pump, the petitioner admitted that the wheat bags loaded on those trucks belong to him and were being sent to different destinations for sale. On inspection of the wheat bags loaded on the trucks, it was found that they also bore the seal of FCI and SFC.

4. In the concluding portion of the written report, the informant has alleged that the seal on the wheat bags made it apparent that there had been diversion of FCI and SFC subsidized grains for the purpose of black-marketing.

5. It would appear from the pleadings of the petitioner that the four trucks loaded with 2073 bags containing wheat weighing 1291.10 quintals were seized and handed over to the Assistant Godown Manager, Bihar State Food Corporation on certain conditions.

6. Mr. Jitendra Kumar Giri, learned counsel for the petitioner submitted that the seized wheat may be damaged in course of time. Hence, the same ought to be released in favour of the petitioner. He has further contended that the petitioner is a private person having no connection with any Public Distribution System shop and by his occupation he deals in selling of different types of grains purchased from the local cultivators. He submitted that the petitioner had stored the seized wheat in order to sell it in the open market. He has further



contended that the petitioner is legally entitled for the release of the aforesaid seized wheat and the proceeds thereof and the search and seizure of commodities made by the police on the basis of information of the Block Supply Officer are wholly without jurisdiction. He also contended that if the prayer of the petitioner is not allowed by this Court, the petitioner would suffer an irreparable loss and injury.

7. On query made by the Court, Mr. Giri, learned counsel for the petitioner has conceded that a confiscation proceeding in respect of the seized wheat has already been initiated by the Collector, Purnea in which he has already appeared pursuant to notice sent to him and has filed an application for release of the seized commodity, but no order has been passed till date.

8. Per contra, Mr. Prashant Pratap, learned counsel for the State submitted that the writ petition filed by the petitioner is misconceived. He contended that the confiscation proceeding in respect of the seized commodity has already been initiated by the Collector, Purnea and a notice in this regard has already been issued to the petitioner pursuant to which he has appeared and is contesting the matter. He contended that Collector, who was reported about the seizure of essential commodity under Section 6-A of the Act, has no power to order for release of the seized commodity in view of the ratio laid down by the Supreme Court in



Shambhu Dayal Agarwala Vs. State of West Bengal &Anr. [(1990) 3 SCC 549].

9. In reply learned counsel for the petitioner submitted that the powers of the high court cannot be curtailed under any circumstance and taking into consideration the decaying nature of the commodity this court should allow the prayer of the petitioner and direct the respondents to release the seized commodity during the pendency of the confiscation proceeding.

10. I have heard learned counsel for the parties and carefully perused the record.

11. The E.C. Act was enacted to safeguard the public interest considering it necessary in the interest of general public to control the production, supply and distribution and trade and commerce in certain commodities through the legislation.

12. The E.C. Act envisages two independent proceedings against a person charged with contravention for violation of an order made under Section 3 in relation to an essential commodity. Under Section 6-A, the Collector can confiscate the seized commodity. He has been empowered under Section 6-A, if it is found to be expedient, to sell the seized commodity, which is subject to natural decay at a controlled price or by a public auction or dispose of through public distribution system to avoid artificial shortages, maintain the price



line and secure equitable distribution thereof through fair price shops in the interest of general public.

13. The provision of penalty and prosecution for the offences relating to essential commodity are contained in the E.C. Act and the Prevention of Black-marketing And Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'Act of 1980').

14. Section 6-A of the E.C. Act confers a discretionary power on the Collector to confiscate the seized essential commodity ,if the seizure is on account of contravention for violation of an order made under Section 3 of the E.C. Act.

15. The principle of audi alteram partem is embedded in Section 6-B of the E.C. Act, which provides that notice has to be issued to the owner of the essential commodity/package/conveyance in writing, informing him of the grounds for the proposed confiscation and to give him opportunity of representing in writing within such reasonable time against the grounds for confiscation. The owner is also to be afforded hearing in the matter.

16. The provision of appeal is provided under Section 6-C of the E.C. Act.

17. Section 6-E of the E.C. Act proscribes the exercise of jurisdiction by any Judicial Authority with respect to possession, delivery, disposal, release or distribution of the essential commodity, package, covering, receptacle, vehicle, vessel or other conveyance.



18. The criminal intent and offence regarding contravention of an order under Section 3 of the E.C. Act has been made punishable under Section 7 of the E.C. Act. Apart from sentencing, the Court concerned has also been vested with the power of forfeiture of the property or the vehicle, to the Government.

19. A plain reading of Sections 6-A to 6-E of the E.C. Act makes it clear that there is no provision of release of the commodity so seized under Section 6-A of the E.C. Act, pending confiscation proceeding. The Collector does not have the authority to release the commodity even after the confiscation proceedings are over.

20. In *Shambhu Dayal Agarwala* (Supra), the Supreme Court held that whenever any essential commodity is seized pending confiscation under Section 6-A of the E.C. Act, the Collector has no power to order release of the commodity in favour of the owner. It held that no unqualified and unrestricted power has been vested on the Collector to release the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. Such a view would render Clause (b) of Section 7(1) totally nugatory and would completely defeat the purpose and object of the Act. The view that the Act itself contemplates a situation which would render Clause (b) of Section 7(1) otiose where the essential



commodity is disposed of by the Collector is misconceived. Section 6-A of the E.C. Act does not empower the Collector to give an option to pay, in lieu of confiscation of the essential commodity, a fine not exceeding the market value of the commodity at the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by Sub-section (2) of Section 6A is granted. The power conferred by Section 6-A(2) to sell the essential commodity has to be exercised in public interest for maintaining the supply and for securing equitable distribution of essential commodities.

21. The provision for penalty and prosecution under the E.C. Act has been supplemented by enactment of Act of 1980. The object of the Act of 1980 is to deal effectively malpractices like black-marketing, hoarding, profiteering, etc. and to arrest the unjustified rise in prices of essential commodities by providing for the preventive detention of person likely to indulge in such practices.

22. The instant case has been filed by the petitioner invoking Article 226 of the Constitution of India. Indisputably, the powers of the High Court under Article 226 of the Constitution of India cannot be curtailed under any circumstance as it flows from the Constitution itself. An order for release of essential commodity may be passed by the High Court under Article 226 of the Constitution of India even during confiscation



proceeding, but only when it is established that the procedure prescribed in law has been completely flouted or when there is complete violation of the procedure prescribed for confiscation or when no opportunity of hearing is given to the offender concerned.

23. A Full Bench of this Court in ***Baleshwar Roy Vs. State of Bihar [2018(4) PLJR 970]***, dealing with the power of the High Court under Articles 226 and 227 of the Constitution of India in the matter of release of vehicle and commodities pending confiscation proceeding, held as under :-

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.



63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as *sentinel on the qui-vive*, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been



completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

24. Thus, it would be apparent from the ratio laid down by the Full Bench of this Court that the release of goods seized should not normally be ordered in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India, even though the powers under Article 226 are wide and unraveled by any limitation. It is only in rare and exceptional cases that such a direction would be issued. The Court would not go into the disputed questions of fact for the purpose of release of any commodity. If the seizure is wholly outside the provision of the Control Order or the E.C. Act, an order for release of the commodity can be passed in exercise of jurisdiction under Article 226 of the Constitution of India.



25. In the instant case, the petitioner has failed to demonstrate that the procedure prescribed in law has been flouted in the search and seizure of the wheat bags or that no notice was issued to him in the confiscation proceeding or that any substantial injustice has been caused to him or that any exceptional case is made out for the release of wheat bags during pendency of the confiscation proceeding.

26. Hence, in view of the ratio laid down by the Supreme Court in ***Shambhu Dayal Agarwala*** (Supra), and by a Full Bench of this Court in ***Baleshwar Roy*** (supra), I am of the considered opinion that no case for issuance of mandamus for the release of bags containing wheat during the pendency of the confiscation proceeding is made out. The writ petition being devoid of any merit is dismissed.

27. There shall be no order as to costs.

28. It is needless to say that the Collector, Purnea shall dispose of the pending confiscation proceeding as early as possible.

(Ashwani Kumar Singh,J.)

Pradeep/

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.05.2020
Transmission Date	

