

GAHC010032872020



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/1133/2020**

MANIK BEPARI  
S/O- LATE NUR MOHAMMAD BEPARI, PROP M/S KMM TRADERS, DHUBRI,  
R/O- IDGAH MAIDAN ROAD, WARD NO. II, DHUBRI, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,  
FOOD, CIVIL SUPPLIES DEPTT, DISPUR, GUWAHATI- 781006

2:THE SUPERINTENDENT OF POLICE  
BUREAU OF INVESTIGATION (ECONOMIC OFFENCES)  
ASSAM SRIMANTAPUR  
GUWAHATI- 781032

3:THE OFFICER IN CHARGE  
BI(EO) POLICE STATION  
SRIMANTAPUR  
GUWAHATI- 78103

**Advocate for the Petitioner : MR. B D KONWAR SR. ADV.**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**Date : 30-07-2021**

The Court proceedings have been conducted through online court proceeding services.

2. Heard Mr. B.D. Konwar, learned Senior Counsel assisted by Mr. H. Agarwal, learned counsel for the petitioner and Ms. K. Phukan, learned Junior Government Advocate, Assam for all the respondents.

3. By order dated 16.07.2021, the case record of the writ petition, W.P.(C) no. 4196/2009 (since disposed of), filed by the writ petitioner earlier as the proprietor of M/s K.M.M. Traders was called for and the said case record has been received.

4. On perusal of the materials available on record in the writ petition, W.P.(C) no. 4196/2009 and the present writ petition, the following facts have emerged :-

4.1. The petitioner claims to be the proprietor of M/s K.M.M. Traders which is in the business of different food grains including rice, and it is in possession of a license issued under the provisions of Assam Trade Articles (Licensing and Control) Order, 1982.

4.2 According to the petitioner, after a sale transaction, it sent a consignment of rice, weighing 415 quintals and packed in 830 nos. of bags, to one of his customers in Shillong, Meghalaya by loading the rice bags in two trucks. The two trucks reached near Khanapara, Guwahati on 01.08.2009. Because of certain reason, the consignment from one of the trucks had to be shifted to another truck. At that point of time when the bags containing rice were in the process of being shifted from one of the two trucks to a third truck at Khanapara, Guwahati, the officials from the Bureau of Investigation (Economic Offences), Assam [BI(EO)] appeared at the place and seized all the 3 (three) trucks along with the consignment of rice. The 3 (three) trucks and the consignment of rice were thereafter, brought to the BI(EO) Police Station,

Guwahati and handed over to the Officer In-Charge, BI(EO) Police Station for custody. As the principal place of business of the petitioner is at Dhubri, a team of BI(EO) officials visited its principal place of business at Dhubri for making further investigation. The BI(EO) personnel along with officials from the Food & Civil Supplies Department had visited the office and the godowns of the petitioner at Dhubri. During such visit, the BI(EO) team seized 2050 quintals of rice stock in one of the godowns of the petitioner, vide a seizure list dated 02.08.2009. After such seizure, the said stock of rice was given in the custody to one Sri Mahendra Sethia, a Manager in the petitioner firm vide a *Zimmanama* dated 02.08.2009. The petitioner claims that the said 2050 quintals of rice, seized by the BI(EO), was stocked in pursuance of a purchase order dated 20.07.2009.

4.3. Thereafter, one First Information Report (FIR) came to be lodged at the BI(EO) Police Station, Guwahati on 04.08.2009 by an Inspector of Police, attached to the BI(EO) Police Station. In the FIR, the informant had, *inter-alia*, alleged that on the basis of a secret information, a team of BI(EO) Officials intercepted the trucks loaded with rice, suspected to be of PDS/TPDS category, at Khanapara, Guwahati on 01.08.2009 and the loading of rice was done at Dhubri. It was further found that some labourers were unloading the rice from one truck to another truck. A total of 420 bags of rice weighing 210 quintals were found and verified and suspecting the rice to be of PDS/TPDS category, the rice bags were seized. When asked, the driver of the truck stated that the rice bags belonged to the petitioner. Mention was made of the visit by the BI(EO) team to Dhubri and about the seizure made from one of the godowns of the petitioner in Dhubri. In the FIR, 7 (seven) persons including the present petitioner and Sri Mahendra Sethia, the Manager of the petitioner firm, were

named as accused. On receipt of the said FIR, a case being BI(EO) Police Station Case no. 08/2009, was registered under Sections 120B/406/420, Indian Penal Code (IPC) read with Section 7 of the Essential Commodities Act, 1955 on 04.08.2009 and the investigation ensued.

4.4. A prayer was made by the seizing officer, an Inspector of Food & Civil Supplies, BI(EO), by submitting a report before the District Collector, Dhubri for disposal of the seized rice, weighing 2050 quintals, as per the provisions of the Essential Commodities Act, 1955. The District Collector, Dhubri by an order dated 18.09.2009 authorized an Additional Deputy Commissioner, Dhubri to conduct a public auction on his behalf for sale of 2050 quintals of rice, packed in 4110 nos. of bags, in exercise of the powers conferred under Section 6A(2) of the Essential Commodities Act, 1955, as it was found that the seized items were subject to speedy and natural decay.

4.5. At that point of time, the petitioner approached this Court by way of the writ petition, W.P.(C) no. 4196/2009. It was claimed that the seizure of the stock of rice was made purely on suspicion and the said stock of rice was purchased by the petitioner from various vendors. It was asserted that if the stock of rice was sold off by public auction then the petitioner would be prejudiced and deprived of from its legitimate property. The writ petition, W.P.(C) no. 4196/2009 was disposed of by an order dated 24.09.2009 by this Court. It was observed that keeping the stock of rice in storage for long time would reduce its quantity as well as quality. While observing that the said step taken up by the District Collector, Kamrup (Metro) was not unjust or improper and was within his statutory jurisdiction, the petitioner was allowed to participate in the public auction, if he so desired.

4.6. Subsequently, on 04.11.2009, the said 2050 quintals of rice were put to

public auction pursuant to the order of District Collector, Dhubri dated 18.09.2009 wherein the petitioner also participated. The petitioner's firm, M/s K.M.M. Traders by quoting an amount of Rs. 26,65,000/-, emerged as the successful bidder in the said auction. The petitioner's firm, M/s K.M.M. Traders deposited the quoted amount of Rs. 26,65,000/- accordingly, in the shape of an account payee Bankers' Cheque dated 06.11.2009. On receipt of the said amount through the Bankers' Cheque, the District Collector, Dhubri had passed an order on 10.11.2009 to deposit the Bankers' Cheque in the State Bank of India, Dhubri Branch in the Government Account through the Treasury against the concerned Head of Account and the stock of rice earlier seized, was ordered to be handed over to the petitioner. It was further observed that the amount would be kept in revenue deposit till an order of the Court wherein the case had been filed by the BI(EO), for refund to the firm, or confiscation to the State, as the case may be.

4.7. The other quantity of rice, weighing 415 quintals packed in 830 nos. of bags, seized by the BI(EO) at Khanapara, Guwahati was also sold in another public auction held on 30.01.2010 as per the order of the District Collector, Kamrup (Metro). The petitioner's firm, M/s K.M.M. Traders was also the highest bidder therein at his quoted price of Rs. 5,41,575/- and on payment of the said amount, the stock of rice of 415 quintals so auctioned, was handed over to the petitioner.

4.8. The investigation into the case i.e. BI(EO) Police Station Case no. 08/2009 was conducted against the petitioner, Sri Mahendra Sethia, M/s K.M.M. Traders and others and on completion of investigation, a final report being Final Report no. 01/2010 dated 24.03.2010, was submitted as no sufficient evidence was found to proceed against the accused persons. On submission of the said final

report, the informant filed an objection against acceptance of the final report and after hearing, the Court of learned Special Judicial Magistrate, Kamrup (Metro) vide an order dated 08.07.2011 directed the Officer In-Charge, BI(EO) Police Station to get the case further investigated, observing that there were *prima facie* materials against the accused persons. Pursuant to the order dated 08.07.2011, the case diary of the case was sent back to the BI(EO) Police Station and the case was endorsed to another Inspector of Police, BI(EO) Guwahati, Assam for further investigation.

4.9. As per the affidavit of the BI(EO) filed in this case, it was found in the course of further investigation that the petitioner was permitted to trade in rice in the open market, as per the license issued to him. It was further mentioned that M/s K.M.M. Traders brought the rice from an outside State and also used to collect rice in the local market. It was further mentioned in the affidavit that the alleged consignment of rice, seized on 01.08.2009 at Khanapara, Guwahati, was found to have valid road permit for transshipment. It was mentioned that no illegal motive of diversion could be established. With the above projections, the Investigating Officer (I.O.) of the case again submitted a final report being Final Report no. 01/2013 dated 02.05.2013, before the Court of learned Chief Judicial Magistrate, Kamrup (Metro) at Guwahati.

5. Mr. Konwar, learned Senior Counsel for the petitioner has submitted that after submission of the final report for the second time, no notice has been received by the petitioner from the Court of learned Chief Judicial Magistrate, Kamrup (Metro) till date. The petitioner having learnt about the submission of the final report along with his purported exoneration, had approached the Court of learned Chief Judicial Magistrate, Kamrup (Metro) to know about the acceptance of the final report or otherwise and to get back the amount of Rs.

32,06,575 (=Rs. 26,65,000/-+Rs. 5,41,575/-), deposited by him pursuant to the auction sales (supra), which, as per the final report, belongs to the petitioner only. It is submitted that since 30.04.2019, the petitioner sought to file an application under Section 452, Code of Criminal Procedure, 1973 (CrPC) praying for a direction for refund of the aforesaid amount to the petitioner but on each occasion, the application, Mr. Konwar submits, was returned to the petitioner on the ground that the connected case record had got misplaced and could not be traced out. Mr. Konwar has submitted that when no fruitful result could be achieved by the petitioner despite his repeated inquiries and approaches, the petitioner has been compelled to approach this Court by this writ petition seeking appropriate directions with regard to refund of the amount of Rs. 32,06,575/- deposited by him in order to purchase the stocks of rice and other consequential directions.

6. Notice was issued in the case on 17.02.2020. Ms. K. Phukan had sought instructions from the office of the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati. A communication dated 03.04.2021, received by her, has been placed before this Court. From the said communication, it is noticed that the case record of BI(EO) Police Station Case no. 08/2009 was put up before the Court on 25.09.2013 but thereafter, the case record was not put up before the Court for a considerable period of time. After receipt of the communication from the learned Junior Government Advocate, Assam, an effort was made to trace out the case record and finally, the case record was traced out. Thereafter, the Court of learned Chief Judicial Magistrate, Kamrup (Metro) had passed an order for issuance of a fresh notice to the informant directing his presence on 05.05.2021. From the communication dated 20.07.2021, placed before this Court by Ms. Phukan today, it is noticed that the case record of BI(EO) Police

Station Case no. 08/2009, was not put up on 05.05.2021 due to limited Court functioning in view of the Covid-19 pandemic and the case has been fixed again on 31.07.2021.

7. Section 452, CrPC has provided that when an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. In this connection, sub-sections (2) and (3) of Section 6A, Essential Commodities Act, 1955 are also of relevance and the same state as follows :-

- “(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—
- (i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or
  - (ii) where no such price is fixed, order the same to be sold by public auction:
- (3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—
- (a) where no order or confiscation is ultimately passed by the Collector,
  - (b) where an order passed on appeal under sub-section (1) of section 6C so requires, or
  - (c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,

be paid to the owner or the person from whom it is seized.”



8. It has emerged from the above discussion that the District Collector, Dhubri and the District Collector, Kamrup (Metro) had directed to conduct public auctions for sale bags of rice, seized from the petitioner, as keeping the same in storage would have reduced the quantities as well as qualities of the rice since those were subject to decay. After conducting the public auctions, as have been mentioned above, it transpires that the auction prices were deposited by the successful bidder, incidentally the petitioner herein, and after receipt the same were deposited in the Treasury. It has further emerged that in respect of the final report, submitted for the second occasion, a notice has already been issued to the informant directing his appearance as regards acceptance or otherwise of the same. When a final report is placed before a Magistrate, a number of situations are possible. This Court is not making any observation as regards the course that may be adopted by the Court of learned Chief Judicial Magistrate, Kamrup (Metro) after hearing the informant as regards the Final Report no. 01/2013 dated 20.05.2013 submitted in connection with BI(EO) Police Station Case no. 08/2009.

9. In the eventuality of acceptance of the said final report, the petitioner will definitely be at liberty to make an application for refund of the amount of Rs. 32,06,575/-, which he had deposited to purchase the stocks of rice through the two auction sales (supra) as he would stand acquitted with the acceptance of the final report.

10. From the fact situation obtaining in the case, it is evident that the investigation of the case was carried out since 04.08.2009 resulting in a final report on 24.03.2010 and after an objection was made by the informant, a further investigation was carried out and the further investigation too ended in a final report on 20.05.2013. Thereafter, a period of more than 8 (eight) years has

elapsed but no finality has been attained in the case till date. In the above view of the matter, it is expected that the Court of learned Chief Judicial Magistrate, Kamrup (Metro) shall make the necessary endeavour to conclude the inquiry as expeditiously as possible, preferably within a period of 6 (six) weeks from today.

11. As the investigating authority, BI(EO) is represented by Ms. K. Phukan, learned Junior Government Advocate, Assam, she shall communicate the information about passing of this order by this Court today to the concerned office of the BI(EO) as well as to the Court of learned Chief Judicial Magistrate, Kamrup (Metro) by tomorrow.

12. In the event of acceptance of the final report, the petitioner will be at liberty to file the application under Section 452, CrPC and in the event of filling such an application, the Court of learned Chief Judicial Magistrate, Kamrup (Metro) shall consider the same on its own merits and on the basis of the materials available in the case record of BI(EO) Police Station Case no. 08/2009 and dispose of the same, as expeditiously as possible.

**JUDGE**

**Comparing Assistant**