

(2007) 07 JH CK 0056

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2567 of 2007

Bholi Kumar Bhojgariya

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Citation : (2007) 2 BLJR 2912 : (2007) 4 JCR 35

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; J.C. to S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the entire confiscation proceeding in Confiscation Case No. 23 of 2007, pending before the Deputy Commissioner, Hazaribagh, whereby the proceeding has been initiated to confiscate 275 bags of wheat, containing 50 Kg. each, and 8 bags of rice, containing 50 Kg. each.

2. Petitioner's case is that he has been doing retail business in food grains for the last several years. He purchased 280 bags of wheat and 20 bags of rice, both containing 50 Kg. each, on 12th March, 2007 from the wholesaler, supported by valid receipt (Annexure-1). The said articles were transported by the truck, bearing Registration No. BR-2A-9589, having valid road permit, were unloaded in the petitioner's godown. Suddenly, on 16th March, 2007, the Block Supply Officer, Barhi, raided the petitioner's godown and seized the bags of wheat and rice in spite of showing receipt of purchase and transportation. The seizure was made under the provisions of Essential Commodities Act. On the basis of the said seizure, the said confiscation case was initiated against the petitioner.

3. The petitioner then filed application for grant of bail and release of the said articles and he was released on bail, but his articles were not released. Submissions have been made that the wheat and rice do not come within the

ambit of essential commodities and purchase, sale or storage of the said articles under valid documents is not an offence and in violation of any provisions of the Essential Commodities Act. Thus, the respondents have no jurisdiction to initiate confiscation proceeding on the allegation of violating the provisions of Essential Commodities Act and as such, the same is wholly illegal and without jurisdiction.

4. A counter affidavit has been filed on behalf of the respondents. The stand of the petitioner that rice and wheat do not come within the ambit of essential commodities has not been disputed or denied by the respondents in their counter affidavit. They have specifically admitted that the said articles are not essential commodities within the provisions of the Essential Commodities Act. The only stand taken by the respondents is that the bags were having the seal of Food Corporation of India (FCI), which goes to show that the said articles belong to the FCI and the petitioner cannot sell or store the same. Since the said articles were found in the bags of FCI, the same were seized and confiscation proceeding has been initiated.

5. Mr. Nilesh Kumar, learned Counsel, appearing for the petitioner, submitted that the used bags having seal of FCI are easily available in the market and keeping the said bags or storing food grains in the used bags of FCI is not an offence. Therefore, the confiscation proceeding cannot be initiated only on the basis of the said allegation. He further submitted that the FCI has not claimed any theft of the articles or has not claimed the seized articles belonging to the FCI. The respondents have no jurisdiction to seize or confiscate the said articles only on the ground that the said articles were stored in FCI bags.

6. Learned J.C. to S.C. II, appearing for the respondents, on the other hand, submitted that though the rice and wheat are not the essential commodities, the petitioner cannot be allowed to store the food grains in the bags, having the seal of FCI. It has been submitted that since the food grains were found in the bags containing the seal of FCI, it can be presumed that the articles belong to the FCI.

7. After hearing the learned Counsel for the parties and considering the materials available on record, I am afraid that the contention of the learned Counsel for the respondents has any substance only because the food grains were kept and stored in the bags, containing the seal of FCI, without any other material on record, it cannot be presumed that the said articles belong to the FCI. The contention of the learned Counsel for the petitioner is that the used FCI bags are available in the market and that can be easily purchased, has not been denied or disputed by the learned Counsel for the respondents. In that view, I do not find any legal ground on which the confiscation proceeding can be allowed to proceed and the impugned seizure can be supported under the provisions of Essential Commodities Act.

8. It is thus held that the confiscation proceeding based on the impugned seizure is illegal and unsustainable. The seizure of the said articles i.e. rice and wheat, which admittedly belong to the petitioner, is also held to be illegal. For the

reasons aforesaid, this writ petition is allowed. The proceeding in Confiscation Case No. 23 of 2007, pending before the Deputy Commissioner, Hazaribagh is, hereby quashed. The respondents are directed to release the petitioner's articles forthwith.