

**(1985) 04 MAD CK 0013**  
**In the Madras High Court**  
**Case No : W.A. No. 318 of 1985**

District Collector, Salem Dt.

APPELLANT

Vs

N. Periasami

RESPONDENT

**Date of Decision :** 17-04-1985

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Essential Commodities Act, 1955 — Section 6  
Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974 — Section 25

**Citation :** (1985) 04 MAD CK 0013

**Hon'ble Judges :** M.N. Chandurkar, C.J.;Sathiadev, J

**Bench :** Division Bench

**Advocate :** Govt. Pleader, for the Appellant; K. Doraiswami, for the Respondent

## **Judgement**

Chandurkar, C.J.—This is an appeal by the District Collector of Salem, challenging the order of the learned single Judge of this court

whereby he held that since the Collector has not taken any action under the provisions of Tamil Nadu Paddy and Rice (Regulation of Trade) Order

1974, hereinafter referred to as the 1974 Order, the respondent will be entitled to the return of the paddy bags that were seized. Having heard the

learned counsel for the State and the respondent, it appears to us that if only the correct facts were either disclosed by the respondent or were

brought to the notice of the learned Judge by the Government Pleader appearing in the case, the learned Judge would not have taken the view

which he has taken. We are not in this case concerned with the legality or otherwise of the seizure of 1645.50 quintals of paddy because short

question is whether the seized quantities of paddy are liable to be released as a result of the 1974 Order ceasing to be in force.

2. On 25th October, 1982 the above mentioned quantity of paddy was seized from the respondent. On the same day, the report was lodged with the Collector by the Inspector of Police under S. 25(e) of the 1974 Order. Clause 25 of the 1974 Order states that a competent Officer, if he has reason to believe that there is any contravention of the Order made ""seize the stock of paddy or rice along with the packages, coverings or receptacles in which such paddy or rice is found or the animals, vehicles, vessels, boats or other conveyances used in carrying such paddy or rice and thereafter send to the Collector of the district a report in writing as required under S. 6A of the Essential Commodities Act, 1955."" It is the report contemplated by this clause 25 of the 1974 Order, that has been made to the Collector. On 29-10-1982, the respondent through his counsel applied to the Collector praying for dropping of any further action and directing the return of the seized paddy to him. No further order seems to have been made by the Collector. But within 12 days of this application, the respondent came to this court by way of writ petition under Art. 226 of the Constitution contending that the action of seizure was illegal and that the seized paddy should be returned to him. It appears that at the stage of the argument, the contention advanced was that, the 1974 Order has been repealed and that under that order no action has been taken by the Collector, and therefore, no further action in respect of the seized paddy can be taken under the new Order, namely, the Tamil Nadu Essential Trade Articles (Regulation of Trade) Order 1984. It is this contention which has been accepted by the learned Judge when he directed that the petition should be allowed and the paddy bags should be returned.

3. The learned Judge has taken the view that nothing has been done and no action has been taken under the 1974 Order till now. When the learned Judge refers to "till now" it is obviously with reference to the date on which the judgment has been delivered, that is, on 14th February, 1985. Now undoubtedly there was no stay of any further proceedings. But we fail to see how the learned Judge was entitled to take the view that no action has been taken against the respondent. The seizure has been reported to the Collector as required by S. 6A of the Essential Commodities Act. The Collector had, therefore, a proceeding before him in the form of a report of the seizure, on which he could proceed in

accordance with the provisions of S. 6A of the Essential Commodities Act and make an order of confiscation of the seized foodgrains after notice

to the person concerned. What is argued by Mr. K. Doraiswami learned counsel for the respondent, is that, since no notice has been issued by the

Collector, no action must be deemed to have been taken by the Collector. This argument suffers, in our view, from over simplification. The

moment the report has been made to the Collector under S. 6A of the Essential Commodities Act, a proceeding must be said to commence in

which the necessary order for confiscation could be made if the Collector was satisfied that the circumstance warrant confiscation according to

law. The fact that the Collector has made no order is not of much importance. We must appreciate that the respondent had filed a writ petition in

this court and notwithstanding the fact that there was no order staying the proceeding before the Collector, it was quite possible that some Court

could have taken the view that the Collector had acted with impropriety in proceeding with the matter even though the writ petition was pending.

One cannot, therefore, blame the Collector for not taking any further actions in the proceedings before him during the time during which the writ

petition was pending in this court. But apart from that, we fail to see why the report made to the Collector does not amount to taking an action

under the old 1974 Order. Clause 31(2) of the 1984 Order which contains a saving provision reads as follows -

31(2). Notwithstanding such repeal, anything done or any action taken under the said order including any order or direction issued shall be

deemed have been made or issued under this Order.

The word of sub-clause (2) are clear that anything done or any action taken under the 1974 Order is saved by the saving provision and for

purposes of further proceeding such action must be treated as action taken or anything done under the 1984 Order. After the repeal of 1974

Order, the seizure itself must be treated as having been done under the 1984 Order, and the report made under 1974 Order must also be treated

as something done under the 1984 Order. A valid proceeding was therefore pending before the Collector on the date of the repeal of 1974 Order.

The learned Judge was, therefore, clearly in error in holding that nothing has been done under the 1974 Order in respect of the seizure of paddy

belonging to the respondent. In our view, the respondent was not entitled to any relief at all, and the only proper course for him was to take part in

the proceedings before the Collector in which he had already appeared, by making an application for return of paddy seized. Having gone through

the facts of this case, we are satisfied that the respondent who is duty bound to disclose all the facts did not bring it to the notice of the learned

Judge that he had already applied to the Collector for the return of the paddy seized on the report given to the Collector and that a proceeding was

pending before him.

4. The order of the learned Judge is therefore, set aside, the writ petition will stand dismissed and the writ appeal is allowed with costs. Counsel's

fee Rs. 500/-.

5. Appeal allowed.