
(2002) 09 JH CK 0043

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4271 of 2002

Indra Deo Prasad Keshri

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6C, 7

Citation : (2002) 09 JH CK 0043

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.L. Agrawal and A.K. Pandey, for the Appellant; Ritu Kumar, GP. IV, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner has challenged the order dated 28th November, 2001 passed by the Deputy Commissioner, Chatra in Misc. Case No. 89/99. According to petitioner, in pursuance of Itkhori P.S. Case No. 49/97, the aforesaid case was initiated by Deputy Commissioner, Chatra for punishable offence u/s 3 and 7 of the E.G. Act. The grievance of the petitioner is that the case has been instituted without initiating any proceeding u/s 6-A of the EC, Act and without any notice u/s 6-C of the Act.

2. Further case of the petitioner is that there being no restriction in respect to rice, wheat and edible oil, in absence of control order, it cannot be confiscated, nor any proceeding under EC, Act can be instituted. Reliance has also been placed on the decision of this Court in Ashok Kumar Barnwal v. State of Bihar and Ors., reported in 2002 (2) JCR 303 (Jhr.).

3. According to respondents, the proceeding under EC, Act has been initiated and notice was issued to the petitioner vide Annexure-B dated 8th July, 2001.

4. From the notice aforesaid as contained in Annexure-B, it appears that no show cause has been issued alleging any violation of provisions of law. It has been mentioned that the petitioner is not appearing in the case since long.

5. So far as the question relating to confiscation of items, such as rice, wheat and edible oil under EC, Act is concerned, no reply has been given by the respondents.

6. In the case of Ashok Kumar Barnwal v. State of Bihar and Ors., (supra), this Court taking into consideration the earlier decision in Ram Narayan Saw v, State of Jharkhand fit Ors.. reported in 2001 (2) JLJR 432: 2001 (3) JCR 261 (Jhr), held that the authorities cannot allege violations of the provisions of the EC Act for keeping excess stock of rice or wheat, nor can confiscate such goods under the provisions of the EC Act.

7. In the case of Mali Ram Agarwal v. State of Bihar, reported in 2001 (I) East Cr C 24 in respect to seizure of edible oils and pulses, this Court taking into consideration the Notification No. S.O. 772 (E) dated 10th November, 1977 issued by the Central Government and direction of the State Government given to all Commissioners and Deputy Commissioners and District Officers vide letter dated 7th June, 1998 held that the earlier order stands repealed and the State Government's notification repealing the same. The Court further held that the Central Government is competent to withdraw or repeal any order or regulation issued by the State Government, the State Government being the delegatee of the Central Government.

8. In view of the aforesaid decisions, I hold that the proceeding in respect to rice, wheat, edible oils and pulses was not maintainable before the Deputy Commissioner, Chatra. The order dated 28th August, 2001 passed in Misc. Case No. 89 of 1999 is accordingly set aside with direction to the respondents to release rice, wheat, edible oils and pulses as confiscated to its owner immediately.

9. So far as fertilizer is concerned, the respondent may proceed with Misc. Case No. 89 of 1999 and the petitioner is given liberty to raise objection as he thinks fit and proper.

10. The writ petition stands disposed of, with the aforesaid observations and directions.