

(2015) 02 MP CK 0065
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 25/2015

Mangatram and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 10, 3(b), 37, 65, 71

Citation : (2015) 02 MP CK 0065

Hon'ble Judges : S.C. Sharma, J.; P.K. Jaiswal, J.

Bench : Division Bench

Advocate : A.K. Sethi, Learned Senior Counsel and Rishab Sethi, Learned Counsel, for the Appellant; M. Ravindran, Dy. G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. By this writ appeal under Section 2 of the M.P. Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, the appellants - writ petitioners are praying for setting aside of order dated 20.12.2014, passed by the learned Single Judge in W.P. No.8605/2014, whereby the writ court dismissed the writ petition.
2. The appellants are PS-II licensees of Mandsaur District. The licensees have been issued under Section 37 of Narcotic Drugs and Psychotropic Substances (M.P.) Rules, 1985 (for short "Rules"). The details of their Licences are as under:-
3. The licence issued to them for sale and purchase of poppy straw in terms of Rules of 1985, ie. Poppy Straw Licensees - II for sale and purchase of poppy straw for Mandsaur group for financial year 2014 - 15, ie., 1.4.2014 to 31.3.2015. Clause 5 of the Licensees is relevant which reads as under:-
4. In the year 2010 - 2011, the licenses for the purpose of sale and purchase of poppy straw in respect of Mandsaur and Neemuch Districts were issued in favour

of Maan Singh Rajput, Manoj Saxena and Bhagwat Singh, respectively. In the aforesaid financial year ie., 2010 - 2011 the entire poppy straw stock of Mandsaur and Neemuch Districts was not sold by the licensee and the same remained unutilized. Keeping in view the provisions as contained under the NDPS Act, 1985, read with NDPS Rules and the Government of India, Ministry of Finance Department of Revenue has issued directions in exercise of power contained under Section 74-A of the NDPS Act, 1985. Clause 6 (g), 6 (h) and 6 (l) of the aforesaid makes it very clear that poppy straw which remains unutilized shall be destroyed and a certificate to that effect and annual report of every calendar year shall be sent by the nodal officer of the State Government to the Narcotic Commissioner, Gwalior by the month of June of the following year. It is also not in dispute that the poppy straw retained by the farmers or traders beyond the period of licence becomes the property of the Government and has to be destroyed and it is done in order to ensure illegal trafficking of the drugs.

5. The contractors / licensee of 2010 - 2011 of Mandsaur and Neemuch Districts, challenged the order dated 13.5.2011 issued by the Collector Mandsaur and prayed that the entire stock be transferred to them.

6. The learned writ court by order dated 26.9.2014, after considering all the questions dismissed all the three writ petitions and upheld the order passed by the Collector District Mandsaur and the authorities were directed to ensure that the entire poppy straw available with the petitioner/s therein be destroyed within a period of 10 days from the date of order and the Collector Mandsaur was directed to ensure compliance of the order, as expeditiously as possible, preferably within a period of ten days, from the date of order. It is also directed that the entire poppy- straw shall be destroyed in presence of the committee constituted by the Collector. Para 7 to 33 of the order dated 26.9.2014 passed by the learned Single Judge reads as under:-

7. This court has carefully gone through the writ petition as well as the relevant statutory provisions governing the field. In the present case, the Central Government, by virtue of statutory provisions issued under the NDPS Act is permitting cultivation of poppy by the Cultivators and it is done under the control, supervision and permit, by the Central Government as well as the State Government. Section 9 of the NDPS Act, 1985 governing the field reads as under:-

9. Power of Central Government to permit, control and regulate.

(1) Subject to the provisions of Section 8, the Central Government may, by rules-

(a) Permit and regulate-

(i) The cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;

(ii) The cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) The production and manufacture of opium and production of poppy straw;

(iv). The sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) The manufacture of manufactured drugs (other than prepared opium,) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(vi). The manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) The import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

(b) Prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) Empower the Central Government to fix from time to time the limits within which licenses may be given for the cultivation of the opium poppy;

(b) Require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorised in this behalf by the Central Government;

(c) Prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefor; the authorities by which such licences may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding refusal or cancellation of licences shall lie;

(d) Prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorised in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;

(e) Empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;

(f) Provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (in any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with

regard to the weighment, examination, classification, deductions additions shall be made and the authorities before which appeals against such decisions shall lie;

(g) Require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorised in this behalf;

(h) Prescribed the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees that may be charged therefor;

(i) Prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import interstate, export inter- State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor;

(j) Prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India of transshipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificates, authorisations or permits may be granted and the fees that may be charged therefor.

9A. Power to control and regulate controlled substances

[9-A. Power to control and regulate controlled substances

(1) If the Central Government is of the opinion that having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the power conferred by subsection (1), and order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import interstate, export interstate sale, purchase, consumption, use, storage distribution, disposal or acquisition of any controlled substance.

8. It is also pertinent to note that the relevant statutory provisions in respect of cultivation of poppy and in respect of other issues relating to cultivation of poppy's are based upon various international conventions called as the Single Convention on Narcotic Drugs, 1961 and the SAARC Convention for Narcotics Drugs and Psychotropic Substances, 1990 drawn by the United Nations in order to stop illegal trafficking of drugs. Article 22 and 25 of the Single Convention on Narcotic Drugs, 1961 reads as under:-

Article 22

SPECIAL PROVISION APPLICABLE TO CULTIVATION

1. Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.

2. A Party prohibiting cultivation of the opium poppy or the cannabis plant shall take appropriate measures to seize any plants illicitly cultivated and to destroy them, except for small quantities required by the Party for scientific or research purposes.

Article 25

CONTROL OF POPPY STRAW

1. A Party that permits the cultivation of the opium poppy for purposes other than the production of opium shall take all measures necessary to ensure: a) That opium is not produced from such opium poppies; and b) That the manufacture of drugs from poppy straw is adequately controlled.

2. The Parties shall apply to poppy straw the system of import certificates and export authorizations as provided in article 31, paragraphs 4 to 15.

3. The Parties shall furnish statistical information on the import and export of poppy straw as required for drugs under article 20, paragraphs 1 d) and 2 b).

9. Based upon the aforesaid provisions, various statutory provisions have been framed in order to ensure that no illegal trafficking take place and it also mandates destruction of the excess quantity. Section 74-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads as under:-

74A. Powers of Central Government to give directions

[74-A. Powers of Central Government to give directions The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act, and the State Government shall comply with such direction.]

10. In light of the aforesaid statutory provisions, the Government of India has framed guidelines dated 30-11-2009 (Annexure-P-9) and the same provides for destruction of poppy plant retained by a person beyond his licence period. State Government of Madhya Pradesh has also framed N.D.P.S. Rules, 1985 and Rule 37-M specifically provides for disposal of balance poppy straw. It also provides for a procedure for destroying the poppy straw retained by the licensee beyond the licence period.

11. The State Government in exercise of powers conferred under Sections 8, 10, 65, 71 and 78 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has framed the rules known as Narcotic Drugs and Psychotropic Substances Rules, 1985.

12. The contention of the petitioner is that Rule 37-M of the Rules of 1985 provides for a method of disposing of the balance poppy straw left with the licensee holding a license after the cancellation or determination of his license. Rule 37-M reads as under:-

37-M. Disposal of balance- The following conditions shall apply to the disposal of valance of poppy straw left with a licensee holding a licence under this Chapter after cancellation or determination of his licence:-

(a) If the licensee has obtained a new licence for the same article which is to come into force immediately on the expiry of the old licence and is granted for the same place or premises, he may retain his balance of stock of poppy straw for the purposes of the new licence; (b) If the licensee's new licence is for different place or premises he shall on the expiry of the old licence forthwith deposit has stock of poppy straw with such person as the District Excise Officer may, by general or special order appoint for the purpose and shall not remove it thence to the new shop except under a permit granted by an Excise Officer not below the rank of Sub-Inspector;

(c) If the licensee has been granted no other licence he shall deposit his balance of poppy straw provided in clause (b) and with the prior sanction of the District Excise Officer may dispose it of in lump sum to any other licensee of the poppy straw. The stock shall then be transported to the place or premises of such licensee under a permit granted by an Excise Officer not below the rank of Sub-Inspector. In the event of the former licensee being unable to dispose of his balance of poppy straw within 30 days from the date of expiry of his stead or if no such new licence has been granted any licensee of the poppy straw may be required, under penalty of forfeiting his licence to purchase the article at such price as the District Excise Officer may, fix and in any quantity not exceeding that which the District Excise Officer may determine to be ordinarily saleable by him in two months:

Provided that if the poppy Straw is unfit for use the whole of it or, if the quantity is unreasonably large the excess may be destroyed under the orders of the District Excise Officer. The licensee shall not be entitled to any compensation for any loss suffered in consequence of action taken under this rule.

13. In the present case, Clause-A and B are certainly not applicable. Keeping in view the provisions of law, it is clear that the petitioner was not granted licenses for the next year i.e. 2011-2012.

14. The balance quantity, which is left with the petitioner is 17015.60 quintal. Proviso to Clause-C of Rule 37-M provides that in case quantity left is unreasonably large, the excess may be destroyed under the order of District Excise Officer.

15 Rule 37-M(b) provides for a disposal of poppy-straw within 30 days by the licensee after expiry of the license period in the manner and method dealt in

Section 37-M(a), 3(b) and after a period of 60 days no such disposal can be done. In the present case, the most important issue is in respect of the quantity left with the licensee after expiry of the license.

16. In the present case, the impugned order Annexure-P/8 and the reply filed by the State of Madhya Pradesh makes it very clear that balance quantity is 17015.60 quintal. The same is certainly unreasonably large quantity of poppy straw. A similar matter also come up before this Court in the case of Devendra Kumar Vs. State of M.P. and others, and in the aforesaid case a license was granted under rule 37-D of the Rules of 1985, which expired on 31.2.2001. The petitioner therein was in possession of unreasonably large quantity of poppy-straw. He was in possession of 265 quintal, 31 kg and 500 grms. He did submit an application for renewal of his license but his license was not renewed and in those circumstances, this Court has held that the Provision to Rule 37-M(c) confers power on the District Excise Officer to destroy the poppy straw, if the quantity unreasonably large. This Court in the case of Devendra (supra) in paragraph 6 and 7 has held as under :-

6.....Rule 37-M(c) of the Rules is pertinent. On a scanning of the said rule it is quite vivid that if a licensee who has been granted no other licence is under an obligation to deposit the balance of poppy-straw provided in clause(b) of the said Rules and he may dispose of the same with the prior sanction of the District Excise Officer in lump sum to any other licensee of the poppy-straw. Thereafter the provision lays down the procedure with regard to transportation of the stock. The consequences are provided if the licensee does not do it within 30 days. The proviso is of immense relevance as that confers powers on the District Excise Officer to destroy the poppy-straw if it becomes unfit for use the whole of it or, if the quantity is unreasonably large.

7. It is not disputed that the term of the licence expired on 31.3.2001. The petitioner might have applied for renewal as contemplated under Rule 37-R of the Rules. In this case, I am not concerned, whether licence should be granted or not. It is discernible that filing of an application for renewal does not enable the petitioner to get away from the mischief of the Rule as provided under Rule 37-MC (c). The said rule applies in full force. Hence submission of Mr. Manish Datt on that score is repelled.

The quantity in the aforesaid case which was only 265 quintal was treated to be as unreasonably large quantity and in the present case the quantity is 17015.60 quintal. It is certainly unreasonably large quantity and the same has to be destroyed.

17. It is true that the State Government is granting licenses under the provisions of Narcotic Drugs and Psychotropic Substances Rules, 1985. The rules have been framed by virtue of Section 10 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The rules relate to possession, transportation, purchase and sale of poppy straw.

18. Section 74(A) of Narcotic Drugs and Psychotropic Substances Act, 1985 empowers the Central Government to give direction to the State Governments regarding carrying into execution of the provisions of the Act and it is mandatory on the part of the State Governments to comply with the orders passed by the Central Government under Section 74-A. The Law Makers have used the word "shall" in the aforesaid statutory provision and it has been categorically mentioned that the State Governments shall comply with such directions issued by the Central Government under Section 74-A. The Central Government in exercise of power conferred under Section 74-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 after constituting an expert committee consisting of Drug Controller of India, Narcotics Commissioner, Doctors, from all India Medical Sciences, Post Graduate Medical and Research Institute Chandigarh, Ram Manohar Lohiya Hospital, Representatives of States has taken a policy decision on the basis of report submitted by the expert committee. The State Governments have been categorically directed to issue license for purchase and sale of poppy straw and it has also been directed that the licences shall specify the quantity that can be purchased or sold.

19. Clause-(i) of the order dated 30th November, 2009 issued by the Government of India in exercise of powers conferred under Section 74-A of the NDPS Act, 1985 reads as under :-

I) All poppy straw which remains unutilised shall be destroyed and a certificate to the effect and an annual report for every calendar year as at ANNEX to this order shall be sent by the nodal officer of the State to the Narcotics Commissioner, 19, the Mall. Morar, Gwalior (M.P.)-474006 (Fax:0751-2368111) by June of the following year. 20. The aforesaid order issued by the Central Government makes it very clear that all poppy-straw which remains unutilised shall be destroyed and a certificate to the effect and an annual report for every calendar year shall be forwarded to the Narcotics Commissioner of India. The aforesaid order of the Government of India is binding upon the State Governments and there can be no deviation from the order passed by the Central Governments. The entire world, not only India is struggling with the misuse of Narcotic Drugs and Psychotropic Substances and most of the fundings to various terrorist organizations are being done through out the globe from the money received on account of illegal trading of Narcotic Drugs and Psychotropic Substances, including opium. The abuse of opium is a cause of worry to the entire international community and various international conventions are being held from time to time. The United Nation has also issued various guidelines in respect of the illicit trafficking of drugs, which is going on throughout the globe and in order to ensure that the Narcotic Drugs and Psychotropic Substances are not being misused including opium, various measures have been taken by the State Governments as well as the Government of India.

21. Shri Piyush Mathur, learned Sr. Counsel has vehemently argued before this Court that the order passed by the Government of India is not having a statutory

force as it has not been issued in the name of the President of India.

22. Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads as under:-

8. Prohibition of certain operations. -No person shall

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

23. The aforesaid statutory provision of law makes it very clear that the prohibition has been imposed upon various activities relating to Narcotic Drugs and Psychotropic Substances and its cultivation and other activities are subject to the prohibitions under the Act or Rules or Orders issued from time to time. Section 8 read with section 74 of certainly empowers the Government of India to issue orders and the order issued by the Government of India though it is certainly not a notification, is certainly an order passed by the Government of India that too by a competent authority.

14. Hon"ble Shri Justice G.P. Singh has dealt with the mandatory and directory provisions in his most famous Principles of Statutory Interpretation. Chapter-V deals with Subsidiary Rules. Under Chapter-V Synopsis 6 (e) the use of shall, may, must and should have been considered by his Lordship. In the word of Hon"ble Shri Justice G.P. Singh, the use of word "shall" raises a presumption that the particular provision is imperative, however this prima-facie inference may be rebutted by other consideration such as object and scope of the enactment and the consequences flowing from such construction. In the present case Narcotic Drugs and Psychotropic Substances Act, 1985 is a Central Act and the

Government of India is infact having control over the sale, purchase etc., of Narcotic Drugs and Psychotropic Substances. The Law Makers in order to ensure that the State Governments which are empowered to make rules do not deviate from the basic object of the Act have placed Section 74-A on the statute book and Section 74-A uses the word "shall" and therefore, keeping in view the meaning of the word "shall" in a particular statute in light of its interpretation as given by Hon"ble Shri Justice G.P. Singh, the statute in question is certainly a directory provision and by no stretch of imagination, the State Governments can deviate from an order issued by the Government of India under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985.

24. Ms. M. Ravindran, learned GA has drawn the attention of this Court towards Clause 25 of the terms and conditions of the tender notice and the same reads as under :-

25. She has also drawn the attention of this Court towards the terms and conditions which were applicable for the year 2009 and 2010 and the same is on record in Writ Appeal No. 6867/2014. The terms and conditions for the year 2009 and 2010 mentioned in Clause 20.6 reads as under :-

26. Meaning thereby that the terms and conditions of the tender document itself reflects that the balance poppy straw has to be destroyed after the license period is over. The petitioner once has participated in the tender process is estopped from challenging the terms and conditions of the tender. Not only this, it has been stated in the open court that trading in Poppy-husk after 2015 has been stopped in all states by the Government of India and there will be no licenses issued by the Government of India or by the state government for the next year.

27. The petitioner in the present case was granted a licence for the year 2010-2011 and the same expired on 31-03-2011. The petitioner has also submitted an undertaking, which is on record as Annexure-R-1 and as per the undertaking submitted by the petitioner the poppy straw which is available with the petitioner after expiry of licence period i.e. 31-03-2011 has to be destroyed.

28. Keeping in view the totality of the facts and circumstances of the case, this court is of the considered opinion that the State Government is justify in enforcing the statutory provisions under the NDPS Act and the NDPS Rules, 1985 as well as statutory directions issued by the Government of India. Petitioner whose licence period come to an end has not been able to place any statutory provisions of law on record which permits the petitioner to retain the poppy straw stock and to continue with sale and purchase of poppy straw stock available with him, even though he does not have a licence.

This Court is of the considered opinion that State Governments do not have a choice except to follow the directions issued by the Government of India. Otherwise also as in all of the writ petitions as the quantity is unreasonably large, no case for interference in the matter is made out.

29. In WP No. 4565/2011, the quantity, which is required to be destroyed is 6178.27 quintal and therefore, again the respondents have rightly passed the impugned order to destroy the quantity left which is unreasonably high. The quantity of poppy-husk which is left has to be destroyed in light of the Rule 37-M. Other wise also in light of the order issued by the Government of India dated 30th November, 2009 under Section 74 of Narcotic Drugs and Psychotropic Substances Act, 1985, no case for interference in the matter is made out.

30. In WP No. 6574/2011 the balance poppy straw available with the petitioner is 6210 quintal and the same again is unreasonably high quantity and it has to be destroyed in light of the Rule 37-M of Narcotic Drugs and Psychotropic Substances Rules, 1985.

31. Resultantly, this court does not find any reason to interfere with the order passed by the Collector, District Mandsaur and the authorities are directed to ensure that the entire poppy straw available with the petitioner is destroyed within a period of ten days from today and the Collector Mandsaur is directed to ensure compliance of his own order as well as this order, as expeditiously as possible, preferably within a period of ten days, from today.

32. The entire poppy straw stock shall be destroyed in presence of a Committee constituted by the Collector. The Collector Mandsaur shall constitute a committee for destruction of poppy straw and the learned Collector shall ensure that in the committee beside other members, the following officers shall also be included :-

- (a) An officer, not below the rank of Dy. Commissioner Narcotics,
- (b) An Officer from the Indian Police Services, not below the rank of Superintendent of Police/Additional Superintendent of Police,
- (c) An officer from the State Excise Department, not below the rank of Dy. Commissioner Excise/Assistant Commissioner.

The learned Collector shall monitor the destruction of the entire stock and shall direct the authorities to forward a comprehensive report to Narcotics Commissioner of India and to all other authorities as required under the law.

33. The writ petition is dismissed and other identical writ petitions are also dismissed.

7. The licensees of 2010 - 2011 dissatisfied with the order dated 26.9.2014 passed by the writ court and challenged the same by filing writ appeals No. 6759/2014, 760/2014 and 761/2014. All the aforesaid three writ appeals have been dismissed by order dated 8.10.2014 para 9 to 14 are relevant which reads as under:-

9. It is submitted that the learned writ court has materially erred in not considering that the directives of the Central Government. He further submits that directions under Section 74A of the Central Government is not binding on the State Government. The appellant cannot be deprived of his right to transfer

the balance stock of poppy straw as per Rule 35(M) of the M.P. NDPS Rules, 1985.

10. It is not in dispute that poppy straw is grown by the cultivators on behalf of the Central Government under the control, supervision and permit of the Central Government and State Government. The cultivation of the poppy is on behalf of the Government and the cultivator has the right over the seed only, rest of the entire plant and its product is of the Government and any sale or transfer of any of its product except seed is illegal and accordingly punishable under the NDPS Act. 11. Article 25 of the single convention of 1961 provided for control of poppy straw and further Article 22 mandates to destroy. Section 74A of NDPS Act empowers the Central Government to issue mandatory directions regarding carrying into execution of the provisions of the NDPS Act. By direction dated 30th November, 2009, the Central Government specifically directed to destroy all poppy straw, which remains un-utilized. Rule 37-M specially provide for disposal of the balance of poppy straw and in case the licensee is not able to utilize the same during his licence period, the same has to be destroyed.

12. In the present case, license granted to the appellant was for the year 2010-11, which expired on 31.3.2011. At the time of issuance of license the appellant gave an undertaking / consent that he shall abide by all the rules, conditions and restrictions laid down by the State Government. As per proviso to Clause (c) of Rule 37-M, if the quantity is unreasonably large the excess may be destroyed under the orders of District Excise Officer and the licensee shall not be entitled to any compensation for any loss suffered in consequence action taken under this Rule.

13. In view of the aforesaid, we are of the view that learned writ court has not committed any legal error in dismissing the writ petition and directing the Collector to monitor the destruction of the entire stock. Writ Appeal No. 759/2014, Writ Appeal 760/2014 and Writ Appeal No. 761 of 2014, are accordingly, dismissed.

14. However, Collector is also directed to maintain the whole record and prepare the C.D. while destroying the excess quantity of poppy straw and submit its compliance report to the Principal Registrar of this Court.

8. The licensee of 2010 - 2011, challenged the order of dismissal dated 8.10.2014 passed in the aforesaid 3 writ appeals by filing petition (s) for Special Leave to Appeal (C). The Hon''ble Supreme Court by order dated 31.10.2014 dismissed all the three Special Leave to Appeal filed by them.

9. After dismissal of SLP's on 31.10.2014, the respondents are bound to comply the orders dated 26.9.2014 and 8.10.2014. They failed to destroy the poppy-straw within a period of 10 days as per order dated 26.9.2014 nor they complied the order dated 8.10.2014, in-spite of the knowledge that no interim stay was granted by the Division Bench as well as by the Hon''ble Supreme Court. Due to their lethargic attitude, the present appellants who are the licensee for the financial year 2014 - 15 got the chance to challenge the action / order of the

Collector (order dated 13.5.2011) and to nullify the effect of earlier orders passed by this Court and challenged their action by filing fresh Writ Petition No. 8605/2014 on 24.11.2014, seeking a direction to the respondents to transfer the balance of the poppy-straw of the financial year 2010-11 in favour of petitioners, who are the PS-II licensees of the financial year 2014-15 on the ground that they had filed an application for transfer of unsold stock of poppy-straw of 2010 - 11 to them and when their application was not decided, they have approached the writ Court claiming the aforesaid relief. As per the averments made in the writ petition they are the licensees of wholesale of poppy-straw for the areas Reecha, Barkhedadevdungari and Piplyamandi of Mandsaur District, who had filed an application for transfer of balance of stock of poppy straw of 2010 - 11 to the extent of 5000 quintal, 4000 quintal and 6000 quintal respectively. They prayed for transfer of balance stock in terms of Rule 37-M(c) of NDPS Rules on the ground that the above quantity required by them for their lawful business as licensee and no one would be benefited if the balance stock of poppy straw is destroyed instead of transferring the same to petitioner which would fetch considerable amount to the State. It is also submitted by them that in the earlier orders 2006 - 2008 the balance stock was transferred to the subsequent licensee and that the orders of this Court dated 26.9.2014, 8.10.2014 and 30.10.2014 will not be applicable to them as they were not parties in those proceedings.

10. The stand of the State was that the balance of stock of poppy straw is to be destroyed in terms of the order of Government of India, which has been issued under Section 74A of the NDPS Act.

11. The learned Single Judge considering the fact that the matter has attained finality dismissed the writ petition on the following grounds:

The above judgment of Single Bench in the matter of Mansingh Rajpoot has attained finality. The writ appeals No. 759/14, 760/14 and 761/2014 filed against the aforesaid judgment of learned Single Judge has been dismissed by the Division Bench by order dated 8/10/2014. The Special Leave Petition being SLP (Civil) No. 28601/2014 has also been dismissed by the Supreme court by order dated 31/10/2014. Thus, the aforesaid directions of the learned Single Judge has attained finality.

The judgment in the matter of Mansingh (supra) was in respect of same balance stock of poppy straw of the financial year 2010-11 for which the petitioners have filed an application in the present case. The main issues which the petitioners are raising in the present case have already been considered by the learned Single Judge in the order dated 26/9/14 in WP No. 4564/2011. The petitioners are not entitled to any direction or relief contrary to the order dated 26/9/14 passed in the matter of Mansingh Rajpoot (supra). Though the petitioners are not party in that writ petition but the same will have no effect since the writ petition was in respect of same stock involving the same issue and the issue has been decided on merit after examining all relevant provisions of law and the legal position settled in that judgment applies to the petitioners' case also.

Counsel for petitioners has placed reliance upon the judgments of the Supreme court in the matter of Gulam Abbas and Others Vs. State of Uttar Pradesh and Others, and A.C. Thalwal Vs. High Court of Himachal Pradesh and Others, in support of his submission that earlier decision will not act as *res judicata* and decision in former writ petition will not be binding on them but the petitioners are not entitled to the benefit of said judgments since the petitioners have not been ousted by this court on the ground of *res judicata* but in view of the earlier judgment of this court on same issue for the same stock no merit is found in the case of present petitioners.

Though earlier writ petition in the matter of Mansingh (*supra*) was at the instance of licensees of the financial year 2010- 11 but while examining the claim of said licensees, this court has duly considered the relevant provision in law and the reasons which are assigned by this court for rejecting the similar prayer by the licensees of 2010-11 are duly applicable to the case of present petitioners also who are claiming the same stock being licensees of 2014-15. In the present matter on examination of the claim of petitioners based upon Rule 37-M(c) of the Rules, 1985 the same is found to be devoid of any merit in view of the clear directions of the Central Government contained in the order dated 30/9/2009 as also the power of the Central Government to issue such direction under Section 74-A of Act, 1985.

Keeping in view the above, specially the conclusions arrived at in the earlier judgment of this court as also the order of Central Government dated 30th September, 2009, the petitioner's contention for transferring the balance stock of poppy straw on the ground that it will fetch additional revenue to the government cannot be accepted.

That apart the reply of the State Government also reflects that in pursuance to the directions issued by this court in writ petition No. 4564/2011 as affirmed by the order of the Division Bench in writ appeal and the Supreme court the State Government has already formed a committee and is taking expeditious steps for destroying the same. It cannot be ignored that the very purpose of destroying excess quantity of poppy straw is to avoid its illegal usage which has duly been considered by this court in the judgment noted above. The reliance of the counsel for petitioner on certain orders issued under Rule 37 M(c) between the year 2006 to 2008 is also of no help since they were issued on different fact situation that too prior to issuance of order of the Central Government dated 30/9/2009.

In view of the aforesaid analysis, I am of the opinion that the writ petitions are devoid of any merit which are accordingly dismissed. The signed order has been placed on the record of WP No. 8605 of 2014 and copy whereof has been placed on the record of connected writ petition.

12. As per terms of the contract the petitioner has to purchase poppy- straw from the Collector. The Government of India has issued directions on 30.11.2009

in exercise of the power conferred under Section 74A of the NDPS Act, 1985 and Clause 6 (g) 6 (h) and 6 (I) of the aforesaid Act, which makes it very clear that poppy-straw which remains un- utilized shall be destroyed and the certificate to this effect and annual report of every calendar year shall be sent by the Nodal officer of the State Government to the Narcotic Commissioner Gwalior by June of the following year. As per the policy framed for the relevant year, i.e. 2010 - 11 the poppy-straw retained by the farmers or by the traders beyond the period of license becomes the property of the Government and has to be destroyed in order to ensure illegal trafficking of the drugs.

13. It is not in dispute that poppy-straw is grown by the cultivator with the permission of Central Government under the supervision and permit of the Central Government and the State Government and the Cultivator has right over the seed only. The rest of the entire plants and its product is of the Government and any sale or transfer of any of its product except the seed is illegal and accordingly punishable under the NDPS Act. The provisions of the NDPS Act and the Rules made thereunder are in accordance with the international convention such as the Single Convention on Narcotic Drugs, 1961 and the SAARC Convention for Narcotics Drugs and Psychotropic Substances, 1990 drawn by the United Nation for international cooperation guided by the same principle and aimed at common obligation considering the effective measures against abuse of narcotic drugs. Article 25 of the Single Convention of 1961 provided for control of Poppy Straw and further Article 22 mandates to destroy.

14. Section 74-A of the NDPS Act measures the Central Government to issue mandatory directions regarding carrying into execution of provisions of NDPS Act. The respondents are bound to follow the directions of the Government of India. Rule 37-M also specifically provides for disposal of balance of poppy-straw and in case licensee is not able to utilize the same during his licensee period the same is to be destroyed. The license of 2010 - 11 was expired on 31.10.2011. After the expiry of license period of earlier contractor, the appellants who are the licensee of the financial year 2014 - 15 are not having any legally enforceable right to claim transfer of the stock of poppy-straw of 2010 - 11.

15. The question involved in this writ petition has been considered in the earlier round of litigation. After dismissal of writ petition on 26.9.2014, second writ appeal has been filed by the licensee of 2014 - 15, seeking substantial similar relief. The learned Single Judge after considering all the relevant issues raised by the petitioner dismissed the same. The appellants had knowledge of earlier round of litigations and, therefore, they filed copies of those orders. They knowing well that in view of the provisions of the NDPS Act and directions issued by the Central Government in pursuance to the provisions of Section 74A of the NDPS Act stock cannot be transferred to them, but inspite of that they filed a writ petition to nullify the effect of orders passed by this court.

16. As per the terms of the contract, which has been reproduced in the preceding paragraph the issue of transfer of stock is not within the purview of the terms

and conditions of the contract. Due to inaction of the respondents, the appellants got a chance to file an application for transfer of stock. They failed to establish any legal right.

17. It is well settled that writ only can be issued in favour of applicant who established illegal right not himself and issue against authority which has legal duty to perform, but has failed to do so. No legal duty is caste on respondents exercising power under NDPS Act, 1985 and Rules framed thereunder.

18. In respect of earlier Writ Appeals No. 759/2014, 760/2014 and 761/2014, we are not satisfied with the working of the respondents. At the time of hearing they were present and we directed them to file an affidavit explaining their conduct in not complying the orders passed by this Court on 26.9.2014 and 8.10.2014. The Special Leave Petition/s against the aforesaid order have been dismissed on 31.10.2014 and thus we direct the Collector, Superintendent of Police and Deputy Commissioner of Excise to destroy the entire stock in presence of the District Judge, Mandsaur and prepare a C.D. while destroying the excess quantity of the poppy-straw and submit its report within a period of 7 days. Compliance report to this effect be submitted before the Registrar of this Court within a period of 7 days from today.

19. For the above mentioned reasons, we are of the view that the writ appeal filed by the appellants is devoid of any merit and is accordingly, dismissed.