

---

**(2014) 09 MP CK 0192**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petitions No. 4564, 4565 and 6574 of 2011

Mansingh Rajpoot

APPELLANT

Vs

State of M.P.

RESPONDENT

---

**Date of Decision :** 26-09-2014

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 10, 3(b), 65, 71, 74

**Citation :** (2014) 3 JLJ 282 : (2015) 1 MPHT 406 : (2015) 1 MPJR 284 : (2015) 1 MPLJ 78

**Hon'ble Judges :** S.C. Sharma, J

**Bench :** Single Bench

**Advocate :** Piyush Mathur and M.S. Dwivedi, Advocate for the Appellant; M. Ravindran, Government Advocate, Advocate for the Respondent

---

## **Judgement**

S.C. Sharma, J.—Regard being had to the similar controversy involved in above three cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter. Facts of Writ Petition No. 4564 of 2011 (O) are narrated as under. The petitioner before this Court is aggrieved by the order dated 13.5.2011 issued by the Collector, Mandsaur to make available remaining stock of poppy straw as on 31.3.2011.

2. Petitioner's contention is that a licence was issued to the petitioner for the purposes of sale and purchase of poppy straw by the respondents, in light of powers conferred under sections 8, 10, 71 and 78 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as "the NDPS Act, 1985").

3. Petitioner's contention is that every financial year, licences are issued for sale and purchase of poppy straw and a notification to that effect was issued on 17.2.2010. Petitioner was granted a licence in terms of Rules of 1985 i.e., Poppy Straw Licence II for sale and purchase of poppy straw for District Mandsaur group for the financial year 2010-2011 and he being the highest bidder was

granted a licence. The licence was valid upto 31.3.2011. The petitioner's contention is that the respondents be restrained from destroying the poppy straw stock stocked by the petitioner as it valued more than 25 crores and the respondents cannot be permitted to destroy the same. Petitioner has also stated that as he was not able to dispose of the entire poppy straw during the validity of the licence period and, therefore, the respondents be restrained from destroying the poppy straw, which is available with the petitioner. It is also been stated that in light of the meeting of Council of Ministers held on 18.3.2010 and the consequential communication later on received dated 25.3.2010, the petitioner is not required to destroy the poppy straw.

4. On the other hand, learned Government Advocate has argued before this Court that such licences are granted every year, keeping in view the provisions as contained under the NDSP Act, 1985 read with NDPS Rules and the Government of India, Ministry of Finance, Department of Revenue has issued directions in exercise of powers contained under section 74A of the NDPS Act, 1985 and clauses 6(g), 6(h) and 6(i) of the aforesaid makes it very clear that poppy straw, which remains un-utilized shall be destroyed and a certificate to that effect and annual report of every calendar year shall be sent by Nodal Officer of the State Government to the Narcotics Commissioner, Gwalior by the month of June of the following year. It is also been stated that every year a policy is framed by the State Government and the policy which was framed for the relevant year, which is the subject-matter of dispute was issued on 17.2.2010 and the contention of the learned Government Advocate is that the poppy straw retained by the farmers or by the 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. Heard learned counsel for the parties and perused the record. The matter is being disposed off with the consent of the parties.

6. 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 licences 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, therefore, 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 therefore;

(i) Prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, 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 therefore;

(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 transhipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transhipment; the authorities by which such certificates, authorisations or permits may be granted and the fees that may be charged therefore.

9A. 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 sub-section (1), and order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State sale, purchase, consumption, use, storage distribution, disposal or acquisition of any controlled substance."

7. 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. Articles 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) 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)."

8. 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 74A of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads as under:

74A. 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."

9. 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 NDPS Rules, 1985 and rule 37M 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.

10. 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.

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

"37M. Disposal of balance. -- The following conditions shall apply to the disposal of balance of poppy straw left with a licensee holding a licence under this Chapter after cancellation of 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 his 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 hence 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 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 licence being unable to dispose of his balance of poppy straw within 30 days from the date of expiry of his licence 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 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."

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

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

14. Rule 37M(b) provides for a disposal of poppy straw within 30 days by the licensee after expiry of the licence period in the manner and method dealt in sections 37M(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 licence.

15. 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 of poppy straw. A similar matter also came up before this Court in the case of Devendra Kumar Vs. State of M.P. and others, , and in the aforesaid case a licence was granted under rule 37D 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 licence but his licence was not renewed and in those circumstances, this Court has held that the provision to rule 37M(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 paragraphs 6 and 7 has held as under:

"6.....Rule 37M(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 37R 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 37M(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.

16. 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.

17. 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 Government to comply with the orders passed by the Central Government under section 74A. 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 74A. The Central Government in exercise of power conferred under section 74A 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 licence 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.

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

"(I) All poppy straw which remains unutilized 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."

19. 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 Government 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 findings of 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.

20. Shri Piyush Mathur, learned senior 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.

21. 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 transship 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.]

22. 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 the Act 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.

23. 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 in fact having control over the sale, purchase etc., of Narcotic Drugs and Psychotropic Substances. The Law Makers in order to ensure that the State Government which are empowered to make rules do not deviate from the basic object of the Act have placed section 74A on the statute book and section 74A 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.

23A. Ms. M. Ravindran, learned Government Advocate 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:

24. 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:

25. Meaning thereby that the terms and conditions of the tender document itself reflects that the balance poppy straw has to be destroyed after the licence 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.

26. The petitioner in the present case was granted a licence for the year 2010-2011 and the same expired on 31.3.2011. 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., 31.3.2011 has to be destroyed.

27. 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 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.

28. In Writ Petition 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 37M. Otherwise 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.

29. In Writ Petition 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 37M of Narcotic Drugs and Psychotropic Substances Rules, 1985.

30. 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.

31. 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 Deputy 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 Deputy 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.

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

No order as to costs.