

(1994) 03 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 2552 of 1990-D

R. Ratheesan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Constitution of India, 1950 — Article 19
Essential Commodities Act, 1955 — Section 2
Kerala Cement Distribution (Licensing and Registration) Order, 1974 — Section 14, 14(1)

Citation : (1994) CriLJ 2564 : (1994) 2 KLJ 71

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : K.L. Narasimhan and Shaji P. Chaly, for the Appellant; Khader Kunju, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.J. Joseph, J.—The petitioner is a registered dealer in cement, doing the business under the name and style "S. R. Cement Traders," Pothencode at Trivandrum. The petitioner had got additional place of business at KP1-Uchkada P. O., Kottukal Panchayat, KPVI-812 Punnamoodu, Palliachal P.O., Kalliyod and 282 Vedicachancoil P.O. This is evident from Ext. P1 certificate of registration issued by the Sales Tax authorities under the Kerala General Sales Tax Rules, 1963. The District Collector, Trivandrum is the designated licencing authority under the Kerala Cement Distribution (Licensing and Registration) Order, 1974. The petitioner has applied for a licence as a stockist for the non-levy cement as per his application dated 26-3-1985. The said application was enquired into by the District Collector through the Tahasildar, Trivandrum before whom the petitioner has produced the appointment order obtained from M/s. Someswara cements and Chemicals Ltd., Hyderabad. After due enquiry by the Tahasildar, Tahasildar recommended the application of the petitioner. On the basis of the enquiry report by the Tanazildar, the 4th respondent District Collector,

Trivandrum as per Ext. P2 order dated 19-6-1985 appointed the petitioner as a non-levy cement stockist to stock and sell cement in building number PP VII / 425 of Pothencode Panchayath subject to the provisions of the Kerala Cement Distribution (Licensing and Regularisation) Order, 1974 amended as per G.O. No. 29333/78/ID dated 31-8-1978. The petitioner was further directed to remit the security deposit and licence fee.

2. On the basis of Ext. P2 order a licence was issued by the 4th respondent, District Collector in favour of the petitioner as the licensee for non-levy cement. The said licence is renewed from year to year. It is the case of the petitioner that on 8-12-1989, the petitioner had 49 bags of cement and the same was kept in his shop building bearing door No. X-282/Vedivachancoil. The 3rd respondent, the Revenue Inspector, Neyyattinkara, made a search of the above shop at 6.30 p.m. on the said date and asked the sales assistant in charge of the shop to go out of the shop and thereafter, he seized the entire stock of cement. He has also sealed the building in which the cement was stocked. According to the petitioner, there is no inventory or seizure mahazar was prepared and no copy of the same was also handed over either to the petitioner or his agent who was in charge of the shop. Neither the petitioner nor his agent was given any notice about the search and seizure by the 3rd respondent. He has also not stated any ground for making such a seizure of the cement.

3. Immediately thereafter, the petitioner met the Tahazildar, Neyyattinkara, the 2nd respondent and requested him to remove the lock put on the shop and to release the seized 49 bags of cement and also requested him to release the furniture and other articles seized from his shop, but the 2nd respondent did not take any action in the matter. Therefore, petitioner met the 4th respondent, District Collector on 11-12-1989, before whom also, he requested to release the seized articles and the cement. But he has also requested the District Collector to issue orders to return the cash that was recovered from the shop by the 3rd respondent, the Revenue Inspector. As instructed by the District Collector, the petitioner made Ext. P3 application dated 26-12-1989 requesting for stockist's licence in respect of Shop No. X-282 Vedivachancoil from where the cement and other articles were seized by the 3rd respondent and also for the other business places at Kottukal Panchayath, Kalliyur Panchayath and Vengannoor Panchayath. On the said application, the District Collector passed no orders so far. The request of the petitioner for return of the articles seized from his shop and also to remove the lock put on the building was not acceded to by the respondents and therefore, the petitioner was constrained to move this Court for appropriate reliefs in O.P. No. 871/90 wherein he has prayed for release of 49 bags of cement seized from his possession and also for return of the articles recovered from his business place.

4. This Court considered the matter in Ext. P5 judgment dated 30-1-1990 wherein this Court directed the petitioner to make a representation before the competent authority for the relief that is asked for in the Original Petition and

further directed the said authority to take appropriate action within a period of two weeks from the date of receipt of the said representation. It is the case of the petitioner that immediately on 2-2-1990, the petitioner made Ext. P7 detailed representation before the 4th respondent, District Collector requesting the said authority to direct the Tahazildar, Neyyattinkara, the 2nd respondent to remove the seal put on the shop building of the petitioner bearing Door No. X-282, Vedicachancoil, Pallichal Panchayath and to release the 49 bags of cement seized from the petitioner and to hold that the action of the 3rd respondent in seizing the stock and sealing the premises as illegal and void. He has also requested the District Collector to consider Ext. P3 application on merits and pass orders as directed by this Court in Ext. P5 judgment. But no orders have been passed and no action was taken by the 4th respondent, District Collector, Trivandrum wherein the petitioner requested to take immediate action in the matter and pass orders on Ext. P6 representation submitted by the petitioner as directed in Ext. P5 judgment of this Court dated 30-1-1990, wherein this Court has directed the said authority to take a final decision in the matter within a period of two weeks from the date of receipt of Ext. P6 application. But since no action was taken by the respondents to remove lock put on the building and Ext. P6 application was not considered by the District Collector and the furniture and other articles belonging to the petitioner were not returned to him, he filed this Original Petition before this Court on 14th March, 1990 praying for issuance of a writ of mandamus or other appropriate writ, direction or order leading to the search and seizure of 49 bags of cement from the petitioner's business premises at Door No. X-282, Vedicachancoil at Pallichal Panchayat and quash the entire proceedings being without authority of law and violative of Clause 14(1) of Kerala Cement Distribution (Licensing and Regulation) Order, 1974. He has also prayed for a declaration that the seizure of 49 bags of cement from the said premises by the 3rd respondent Revenue Inspector is illegal and ultra vires. He has further prayed for a declaration that the removal of the furniture and other articles kept by the petitioner in his shop room are also illegal and without any authority of law. The petitioner further prays to issue a direction to the respondents to remove the lock put on the shop building and return the materials removed from the said shop building and to pay the sale proceeds of the cement seized from him. The petitioner also moved a petition for a direction as C.M.P. No. 4660/90 wherein he had prayed for issuance of a direction to respondents 2 and 3 to return to the petitioner the furniture, steel drum, cash, etc. removed from his shop building at Door No. X-282 of Pallichal Panchayath and also to remove the lock put therein and for a further direction to the 4th respondent, District Collector to dispose of Ext. P3 application in accordance with law.

5. Both the Original Petition and the above C.M.P. had come up for orders before this Court on 15-3-1990. This Court after hearing preliminary arguments admitted the Original Petition and ordered urgent notice to the respondents on 15-3-1990. In the Civil Miscellaneous Petition also, this Court issued urgent notice and directed posting of the petition for hearing on 3-4-1990. Notice both

on the petition and C.M.P. were sent from this Court on 24-3-1990. Notice was served on the respondents. The Government Pleader filed a memo of appearance on behalf of respondents 1, 2 and 4. The interim direction has come up for further orders on 12-6-1990. But no counter affidavit has been filed by any of the respondents. Therefore, this Court passed the following order on 12-6-1990:

"Counter has not so far been filed. In the nature of the allegations, delay cannot be condoned. Counter affidavit, if any, will be filed within 10 days from today."

This Court has posted the above petition for further hearing and orders on 25-6-1990. But the respondents did not file any counter affidavit either in the Original Petition or in the interim direction petition. Therefore, when the matter has come up before this court on 25-6-1990, this Court passed the following orders in C.M.P. No. 4600/90:

"In view of the urgency of the matter, a direction was made to file a counter affidavit in the C.M.P. It has not been done. The C.M.P. has been pending for more than three months. In the circumstances, respondent will return the furniture, steel drum and cash removed from the petitioner's shop building No. X-282 of Pallichal Panchayath. This will be handed over to the petitioner under a list attested by two respectable persons. The premises will also be open and put in petitioner's possession." This order is sent to the respondents also."

6. Even though the said order passed by this Court as early as on 25-6-1990, the respondents did not comply with the said order or return the articles seized from the petitioner and the seal put on the building also was not removed. Therefore, the petitioner was constrained to file another application as C.M.P. No. 13450/90 before this Court on 18th August, 1990 wherein he has stated that the interim direction passed by this Court in C.M.P. No. 4600/90 dated 25-6-1990 was duly communicated to the respondents and in spite of receipt of the said order, the respondents wilfully violated the said order and ignored the directions issued by this Court in the above order. He has also produced the acknowledgement of the order by the 2nd respondent as Annexures C and D attached to the said petition. He, therefore, prayed to take necessary action against the respondents and to direct the 2nd and 4th respondents to comply with the directions issued by this Court in C.M.P. No. 4600/90 dated 25-6-1990. A copy of this petition was served on the learned counsel appearing on behalf of the respondents, 1, 2 and 4 on 18-8-1990 itself. The said petition has come up for orders before this Court on 22-8-1990, wherein this Court directed posting of the said petition on 27-8-1990 for the Government Pleader to get instructions. When the above petition has come up on 27-8-1990, learned Government Pleader submitted that a letter had been issued to the petitioner on 18-8-1990 to receive the articles other than cash from the respondents and recording the said submission, this Court directed the petitioner to collect the articles as directed in the notice.

7. Thereafter, an affidavit has been filed on behalf of the 2nd respondent by the 3rd respondent. Revenue Inspector, Neyyattinkara Taluk, one Shri Krishnan Nair.

Even though the said affidavit had been sworn to on 18-8-1990, the same was filed before this Court only on 27-8-1990, that too also, with defects noted on 27-8-1990 by this Court. The defects noted by this Court were not cured and the affidavit was represented only on 10th Sept. 1980 without curing all the defects. Again, this Court noted the said defect and affidavit filed by the 3rd respondent. Thereafter the affidavit was filed in this Court after curing all the defects only on 18-9-1990. In the said affidavit, what the 3rd respondent has stated is that, information regarding the posting of the case from the office of the Advocate General was received by the Government on 23-6-1990 at about 5.30 p.m. 24th August, 1990 was a holiday and hence an officer could not be deputed on 25-6-1990 with files for swearing the affidavit and this Court happened to issue an interim order in the absence of a counter affidavit directing the respondents to return the furniture, steel drum and cash removed from the petitioner's shop building No. X-282 of Pallichal Panchayath and open the premises and put the petitioner in possession. Third respondent has further submitted that the Revenue Inspector has seized 47 bags of unauthorised cement and necessary inventory had been prepared for the same at the time of seizure. The above 47 bags of cement seized were sold and the amount remitted into the Revenue deposit as per the directions give by the District Collector. He has also stated that he has removed from the shop one wooden table, one wooden chair, one plastic bucket and a mug and a steel drum and kept the same in the Village Office since the petitioner objected to receive the same. It is also stated that the owner of the shop has refused to accept the key and hence it is kept in the Taluk Office. He has further stated that there was no cash kept in the shop and the same was not taken by the Revenue Inspector. In the affidavit, it is stated that the above facts were intimated to the office of the Advocate General and request was made to appear before this Honourable Court. Subsequently, an officer was deputed to the Advocate General's office on 16-8-1990. But no counter affidavit was filed before this Court as the concerned Government Pleader has expressed the opinion that an affidavit to review the interim order dated 25-6-1990 shall be filed after "completing" the order to the extent possible. Accordingly, a letter dated 18-8-1990 was sent to the petitioner directing him to go over to the Village Office, Pallichal on 28-8-1990 to receive the articles mentioned in the mahazar. The deponent of the affidavit also stated that there is no wilful negligence or laches on the part of the respondents in filing a counter affidavit in the C.M.P. or in returning the articles as directed by this Court on 25-6-1990. Alongwith the said affidavit, a petition also was filed to review the order passed in C.M.P. No. 4600/90 dated 25-6-1990 as C.M.P. No. 15134/90.

8. Even though notice was ordered by this Court to the respondents in the O.P. and C.M.P. as early as on 15-3-1990 and the same was served on them, so far no counter affidavit was filed by any of the respondent before this Court controverting or affirming the statements contained in the Original Petition except the affidavit filed by the 3rd respondent in support of the petition for review viz. C.M.P. No. 15134/90.

9. I heard the learned counsel appearing on behalf of the petitioner as well as the learned Government Pleader for the respondents. According to the learned counsel for the petitioner, the entire action initiated by the respondents in conducting a search and seizure of the cement belonging to him by the 3rd respondent, Revenue Inspector is absolutely illegal and without jurisdiction. The learned counsel also submitted that there is no provision enabling the said officer to make a search and seizure of the cement from his building since he was not authorised to make any search or seizure under any of the provisions of the Kerala Cement Distribution (Licensing and Regulation) Order, 1974. He has also submitted that at any rate, there is absolutely no jurisdiction for the 3rd respondent, Revenue Inspector to seize and recover the furniture and cash from the business premises of the petitioner under any provision of law. He has also submitted that the action of the 3rd respondent in locking and sealing the building is an abuse of the powers conferred on the authorities constituted under Kerala Cement Distribution (Licensing and Regulation) Order, 1974, referred to above. According to the learned counsel for the petitioner, such a high-handed action has deprived of the right guaranteed to the petitioner under Article 19 of the Constitution of India. The learned counsel also submitted that in spite of specific orders issued by this Court, the respondents totally disobeyed the directions issued by this Court in the matter of returning the articles illegally seized and recovered from his business premises and some of the articles were ultimately handed over to the petitioner only on 10-9-1990. Even though, no counter affidavit has been filed in the case by any of the respondents in respect of the serious allegations levelled against the respondents especially against the 3rd respondent, I heard the learned Government Pleader who appeared on behalf of the respondents. The learned Government Pleader, with reference to the statements of facts which he had received from the respondents had submitted before me that the Tahazildar, 2nd respondent has authorised the 3rd respondent, Revenue Inspector to make a search and seizure of the cement stocked in Building No. X-282 of Vedivachancoil in Pallichal Panchayath on the basis of a petition that the Tahazildar, received from another stockist. Pursuant to the said authorisation, the 3rd respondent Revenue inspector made a search of the premises of the petitioner and seized 47 bags of cement which was keeping in that building without any licence. Learned Government Pleader also submitted that the Revenue Inspector had sealed the building and the matter was reported to the 4th respondent and as per the order of the District Collector dated 16-1-1990 the cement was sold and the sale proceeds were deposited in the Revenue Account. The learned Government Pleader also submitted before me that the furniture and other articles recovered from the shop of the petitioner, other than cash were returned to the petitioner on 10-9-1990 after obtaining proper acknowledgement from the petitioner.

Learned Government Pleader further submitted before me that the search and seizure were effected on the basis of the authorisation given by the 2nd respondent Tahazildar, in favour of the 3rd respondent Revenue Inspector and

the same is perfectly valid and the learned Government Pleader justified the action of the respondents.

10. Admittedly, the petitioner is a dealer in non-levy cement. The 4th respondent Collector himself has granted him a licence in the light of Ext. P2 passed by him as early as on 19-6-1985 wherein the District Collector had appointed the petitioner as a non-levy cement stockist to stock and sale cement. But the said licence was issued in respect of Building No. PPVIII-425 of Pothencode Panchayat where the petitioner is doing his business. Therefore, admittedly, there is no licence for the petitioner to stock cement in Building No. X-282 Vedivachancoil at Pallichal, even though the said building also is another business place of the petitioner in his possession and enjoyment as can be seen from Ext. P1 certificate of registration issued under the Sales Tax Rules, 1963. Therefore, the action of the petitioner in stocking non-levy cement in building No. X-282 of Vedivanehancoil without any proper licence issued by the 4th respondent to stock the same in that building is not legally correct or justified. Admittedly, the petitioner had applied for licence with reference to the said building only as per Ext. P3 application dated 26-12-1989 after the seizure of the cement on 8-12-1989.

11. But the main question that was argued by the learned counsel for the petitioner is even though the petitioner had stocked 47 bags of cement in the said building and that too without any licence with reference to the said building, whether the 3rd respondent, Revenue Inspector is justified in making a search and a seizure of the cement under the provisions of the Kerala Cement Distribution (Licensing and Regulation) Order, 1974. Admittedly, the petitioner has stockist licence in respect of non-levy cement as evident from Ext. P2 order and the licence issued pursuant to the said order. But the same is only in respect of the building in PP VIII-425 of Pothencode Panchayath and not in respect of Building No. X-282 of Vedivachancoil of Pallichal Panchayat. The question that has to be decided in this case is whether the 3rd respondent has got any authority to have any search in the business place of the petitioner and seize 47 bags of cement found in that place. Section 14 of the Kerala Cement Distribution (Licensing and Regulation) Order, 1974, gives powers of entry, search and seizure of levy cement. The said provision is extracted below:

"Section 14: Powers of entry, search and seizure of Levy Cement:

(1) The licensing authority or any other officer of the Industries Department not below the rank of Industries Extention Officer or any officer of the Revenue Department not below the rank of Tahazildar, or any officer of the Civil Supplies Department not below the rank of a Taluk Supply Officer or any officer of the Police Department not below the rank of Sub-Inspector or any other authorised by the Government in this behalf may with a view to securing compliance with the provisions of this Order.

(a) enter and search any premises or places where such authority or officer has

reason to believe that cement belonging to or in the possession or under the control of any person or stockist is stored or kept.

(b) inspect any books of accounts or other documents maintained by the stockist in the course of business or any stock of cement in his possession or under his control.

(c) seize any such books of account or other documents, which in its or his opinion would be useful for or relevant to any proceedings under this Order.

(d) stop and search any person or animal, vessel or vehicle or any other conveyance or receptacle engaged or intended to be engaged or used for the movement of cement;

(e) seize the stock of cement in respect of which any such authority or officer specified in this sub-clause has reason to believe that any provision of this order has been, is being, or is about to be contravened, along with the packages, coverings, or receptacles in which such cement is found or the animals, vessels, vehicles, boats or other conveyances, used in carrying such cement and thereafter take all measures necessary for securing the production of the stock of cement along with the packages, coverings, receptacles, animals, vehicles, vessels or of her conveyances so seized, before the appropriate court and for their safe custody pending such production.

Explanation: "Appropriate Court" in this sub-clause shall mean such Court as is specified in or under the Essential Commodities Act, 1955 in which proceedings would lie for contravention of the provisions of this Order.

(2) The provisions of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), relating to search and seizure shall so far as may be, apply to search and seizure under the clause.

(3) Where any of the authorities or officers specified in Sub-clause (1) effect any seizure under the said sub-clause, he shall prepare forthwith an inventory of the articles or materials seized and shall also issue a receipt for the same.

(4) Any books of account or other documents seized under the provisions of Sub-clause (1) shall be returned to the person from whom they were seized not later than sixty days from the date of seizure, after taking copies thereof or extracts therefrom, if necessary, provided that the person from whom they are so seized certifies as true such copies or extracts before taking back such books of account or other documents."

12. The said Section only authorises the power of entry, search and seizure of only levy-cement and not in respect of non-levy cement. Section 2(ee) defines "levy-cement", Section 2(i)(ii) defines "non-levy Cement" and Section 2(j) defines "stockists".

13. Therefore, the power of entry, search and seizure itself is confined to the levy-cement and not the non-levy cement. Admittedly, he petitioner was

appointed as a stockist for non-levy cement as per Ext. P2 order passed by the 4th respondent, Collector. Apart from that, under Clause 14 of the Cement Distribution (Licensing and Registration) Order, 1974, only specified authorities under the said clause alone are authorised to make a search and seizure. Such a power of entry, search and seizure is conferred on various officers of the rank and file specified in the said section. In respect of Revenue Department, only officers not belonging to the rank of Tahazildar, alone is competent to have the powers of entry, search and seizure in respect of any place where the said officer has reason to believe that the provisions of the Cement Distribution Order had been violated. Admittedly, in this case, the Revenue Inspector, 3rd respondent is not an authorised officer under clause 14 of the Order, 1974. According to the Government Pleader who appears on behalf of the respondents, it is on the basis of the authorisation given by the Tahazildar, Neyyattinkara, the 2nd respondent, the Revenue Inspector, 3rd respondent conducted the search and seized the cement and other articles. Under Clause 14 of the Order, the Tahazildar, is not competent to issue any such authorisation to any officer. The authorisation itself can be made only by the Government and not by any designated officer specified in Clause 14. Therefore, it is to be held that the search and seizure of the cement and other articles from the business place of the petitioner by the 3rd respondent is clearly unauthorised, illegal and done without any authority of law.

14. The power of seizure of cement is specifically conferred only on the Tahazildar, of the Revenue Department and not the Revenue Inspector who is far below the rank of the Tahazildar. The authorisation stated to have been given by the 2nd respondent in favour of the 3rd respondent is also clearly illegal and unauthorised. There is also no power even for the authorised officers under clause 14 to seize any articles and other than the articles contemplated under the Cement Distribution Order, 1974. The only provision under which the authorised officers have got the powers of entry, search and seizure is confined to the seizure of stock of cement in case the said officer or authority has reason to believe that any provision of the cement Distribution Order has been, is being or is about to be contravened, along with packages, coverings, or receptacles in which such cement is found or the animals, vessels, vehicles, boats or other conveyances used in carrying such cement. Admittedly, the articles seized from the petitioner's premises viz. furniture, steel drum, mug, etc. are not articles liable to be seized under Clause 14 of the Order, 1974. The seizure and recovery of those articles from the shop of the petitioner is, therefore, clearly illegal and without jurisdiction. So also, there is absolutely no power or authority conferred even on the designated officers under Clause 14 to seal or lock the building in which the cement is stored. Seizure and recovery of the cement along with packages, coverings, etc. and animals, vessels, vehicles or other conveyances used in carrying such cement can be seized and thereafter the authorised officer shall take all measures necessary for securing the production of the stock of cement along with packages, coverings, receptacles, animals, vehicles etc. so seized before the competent court and for their safe custody pending such

production. There is no case for the respondents before this Court even in the affidavit filed by the 3rd respondent in support of the review petition that the seizure of the furniture and locking of the business premises became necessary for securing the production of the stock of cement before the appropriate Court or for their safe custody pending such production. Admittedly, therefore, the recovery of the articles other than the cement and the locking of the business premises or high-handed actions done by the 3rd respondent under the cover of an authorisation stated to have been issued by the 2nd respondent, Tahazildar. Such a conduct on the part of the 3rd respondent is highly illegal and contrary to all norms of law. Such a highly arbitrary action cannot be tolerated in a country where rule of law prevails.

15. It is also the case of the petitioner that the articles illegally seized including the furniture belonging to the petitioner and the steel drum were subsequently removed by the 2nd and 3rd respondents to the Village Officer at Pallichal without even giving notice to the petitioner. There is absolutely no justification for removing those articles to the Village Office. As the seizure of these articles itself is illegal, there is absolutely no justification for respondents 2 and 3 to remove these articles belonging to the petitioner to the Village Office. I fail to understand the reason why such high-handed action was resorted to by the 3rd respondent under the pretext of an authorisation to make a seizure and search of cement kept by a licensed stockist, though the cement was stocked in a place where there is no licence. Even if there is justification to seize the cement stocked in a place where there is a licence, I see absolutely no jurisdiction or justification for the 3rd respondent to seize the other articles belonging to the petitioner or lock the room where the petitioner was conducting his business.

16. Admittedly, no notice was issued to the petitioner till 18-8-1990, the date on which 3rd respondent states in his affidavit that a notice was issued to the petitioner to go over to the Village Office, Pallichal to take possession of the articles seized from the petitioner. After making an illegal seizure, it was highly unjust on the part of the respondents 2 and 3 to direct the petitioner to go over to a Village Office to receive his furniture and other articles illegally removed from his possession and custody under the pretext of an authorisation stated to have been issued by the 2nd respondent in favour of the 3rd respondent. The said authorisation is not even filed before this Court to find out the truth or otherwise of the statement made by the 3rd respondent in his affidavit before this Court that he was authorised by the 2nd respondent to conduct a search and seizure of the cement. If, as a matter of fact, there is such an authorisation, there is no justification for the respondents for not producing such an authorisation before this Court even though, the 3rd respondent was anxious to produce the notice stated to have been issued by him to the petitioner dated 18-8-1990 directing him to go over to the Village Office to receive the articles. Neither the 2nd respondent nor the 3rd respondent has produced such an authorisation before this Court so as to enable this Court to ascertain the scope and ambit of the delegation that had been made by the 2nd respondent to

conduct a search in the business premises of the petitioner. All the above actions of respondents 2 and 3 are highly illegal and quite unwarranted. The above action of the 3rd respondent is an absolute abuse of the powers conferred on him as a Government servant. By such illegal exercise of the powers by the 3rd respondent under the guise of an authorisation letter, the valuable rights of the citizen had been seriously impaired and his interest are adversely affected and he had suffered irreparable injury.

17. It is in this connection, the conduct of respondents 2 and 3 has to be considered and evaluated in the light of the interim order passed by this Court on 25-6-1990 in C.M.P. No. 4600/90. As stated earlier, notice on the said petition was served on the respondents as early as on April, 1990. They arranged their appearance before this Court through the Government Pleader by filing a memo appearance. Thereafter, when the said C.M.P. was posted for orders, after about three months on 12-3-1990, this court noted the fact that no counter affidavit has been filed by any of the respondents. This court further directed respondents to file counter affidavit, if any, within a period of 10 days from 12-6-1990. This Court also found that in the nature of the allegations, the delay cannot be condoned. So said, this Court ordered the C.M.P. to be posted for further orders on 25-6-1990.

18. But on 25-6-1990 also, the respondents did not care to file any counter affidavit or even admitted to justify their action in making the illegal seizure of the furniture and other articles belonging to the petitioner and locking up his business places. Therefore, when the matter has come up before this Court on 25-6-1990 this Court directed the respondents to return the furniture, steel drum and cash removed from petitioner's shop building. This Court also directed the respondents to open the premises, illegally locked by the respondents, and put the petitioner in possession of the same. This order was passed in the absence of Government Pleader who represented the respondents before this Court. In respect of such an order, by the recalcitrant attitude of the respondents, the articles were not returned till 10-9-1990. Obviously, the first notice that was issued to the petitioner to go over to the Village Office, Pallichal was dated only on 18-8-1990. It should be remembered that this Court has passed the order in C.M.P. No. 4600/-90 on 25-6-1990, to return the articles to the petitioner in the presence of the Government Pleader representing the respondents. Such conduct on the part of respondents 2 and 3 cannot be considered lightly by this Court while adjudicating ultimately the claims of the petitioner in this Original Petition.

19. Even though this Court directed to file a counter-affidavit in the above interim direction to petitioner and gave sufficient time to the respondents for the said purpose, they did not do so when the petition has taken up for hearing on 12-6-1990. Thereafter, this Court specifically directed the respondents to file a counter-affidavit in the petition within 10 days from that date. The respondents did not comply with the said direction also. The matter has again come up for orders before this Court on 25-6-1990. The respondents did not think it

necessary to file a counter in the case or to give necessary instruction to the Government Pleader who entered appearance on their behalf in the case. It is under such circumstances, taking into consideration the urgency of the matter, this Court passed the order on 25-6-1990 to return the articles to the petitioner and also to open the premises which was locked by the 3rd respondent and put him in possession of the same. The said direction also had not been complied with by the respondents. Thereafter, as late as on 18th September, 1990, the 3rd respondent had filed an affidavit before this Court along with a petition to review the order passed by this Court on 25-6-1990. In the said petition, what the 3rd respondent has stated is that the message sent from the Advocate General's Office intimating about the posting of the case to 25-6-1990 and the direction to file the counter-affidavit was received by the Government only on 23-6-1990 at about 5.10 p.m. It is pertinent to note that the State Government also is a party to this proceedings. But they did not file any counter-affidavit in support of the above statement made by the 3rd respondent. Again, the 3rd respondent in the affidavit had stated that since 24th June, 1990 was a holiday, an officer could not be deputed on 25-6-1990 with files for swearing an affidavit. I fail to understand how the 3rd respondent is competent to swear to the above fact also since he was not authorised by the first or the 4th respondent to swear to any such statement before this Court. What prevented the respondents from intimating the Advocate General regarding their inability to file the counter-affidavit within the aforesaid time even after receipt of the intimation from the Advocate General's Office admittedly on 23rd June, 1990 has not been stated at all by the deponent of the affidavit. It is pertinent to note that the affidavit itself had been sworn to by the 3rd respondent only on 18th August, 1990 long after the date fixed for hearing of the interim direction petition viz. 25-6-1990. What prevented the respondents including the 3rd respondent to file a counter-affidavit at least immediately after they received intimation from the Advocate General's Office on 23-6-1990 continues a mystery. It should also be remembered that notice on the Original Petition was served on the respondents in April, 1990 and the respondents were represented by the Government Pleader in this case at least from April, 1990 onwards. When this Court passed the order on 12-6-1990, the respondents were represented by the Government pleader in this Court and in spite of such representation, the 3rd respondent had taken time up to 18th August, 1990 even to swear to an affidavit requesting for review of the order passed by this Court on 25-6-1990. Even such an affidavit and petition were filed with defects and the same was represented after curing the defects only on 18th September, 1990. These facts would amply establish the deliberate negligence and delay in obeying the orders issued by this Court by the respondents including respondents 2 and 3. The affidavit of the 3rd respondent would further show that it is only when the Government Pleader expressed the opinion that an affidavit to review the interim order dated 25-6-1990 should be filed, respondents thought of filing even such an affidavit and petition to review the order passed by this Court. The conduct of the respondents especially the conduct of the 2 and 3 respondent is highly unbecoming to hold the post of a

public servant which they were occupying. At any rate, such a conduct on the part of the 3rd respondent cannot be tolerated by this Court in adjudicating his authority and conduct in seizing the furniture and other articles belonging to the petitioner from his shop and also locking his business place under the pretext of an authorisation issued by the 2nd respondent to search and seizure of the non-levy cement stocked by the petitioner. It is also pertinent to note that the 3rd respondent did not think it necessary to move this Court early even for reviewing the order passed by this Court on 25-6-1990. The conduct of the 3rd respondent in that regard is highly reprehensible. It took months together for the 3rd respondent even to inform this Court that he did not seize any money from the shop of the petitioner at the time of seizure of the furniture and other articles, even though it is the case of the petitioner that he kept money in his business place and the salesman attached to the shop was asked to go out of the shop room by the 3rd respondent when he made the search on 18-12-1989. This fact was not even denied by the 3rd respondent in his affidavit filed before this Court. So also, it took nearly 2 months time for the 3rd respondent even to inform this Court that he had seized the articles under a mahazar, even though, it is the case of the petitioner that no inventory or mahazar was prepared by the 3rd respondent at the time of seizure of his articles. It should also be remembered that the officer authorised under Clause 14(1) of the Cement Distribution Control Order, 1974 is obliged to comply with the provisions relating to search and seizure provided in the Code of Criminal Procedure, 1898 under Sub-clause (2) of Clause 14 while exercising the powers under Clause 14 of the Order. Sub-clause (3) to Section 14 makes it obligatory on the part of the authorised officer specified in Sub-section (1) to effect any seizure under the said sub-clause only on preparing forthwith an-inventory of the articles or materials seized and shall also issue a receipt for the same to the person incharge of the business or place where he conducted the search and seizure. The inventory or search mahazar stated to have been prepared in the affidavit filed by the 3rd respondent has not been produced before this Court by the 3rd respondent to ascertain the correctness or otherwise of the statement that he made in that regard in the affidavit filed in support of the review petition. The learned counsel appearing on behalf of the petitioner reiterates that no such inventory or mahazar was prepared and no copy was served on the agent of the petitioner or on the petitioner at any time either by the 3rd respondent or by the 2nd respondent.

20. It is the case of the petitioner that the articles seized from the shop were returned only on 10-9-1990. Even though it is the ease of the 3rd respondent that on 28-8-1990, neither the petitioner nor his agent turned up, for receiving the articles as well as the key of the shop room, the correctness of which had been disputed by the learned counsel appearing on behalf of the petitioner. Whatever it be, for the first time, the respondents had issued a notice to the petitioner only on 18-8-1990 asking him to go over to the Village Office on 28-8-90 for receiving the articles and the key of the building as directed by this Court in its order in C.M.P. No. 4600/90 dated 25-6-1990. Such an inordinate

delay on the part of respondents 2 and 3 cannot be excused. There is no sufficient or justifiable reason or ground for excusing such a wilful disobedience of the orders issued by this Court by responsible Government servants. As stated earlier, I see no provision under the Kerala Cement Distribution Order, 1974, empowering any authorised officer, under Clause 14 to look or seal the business premises of a person who had stocked non-levy cement in a place where there is no licence, even though he is a licensed dealer. I also did not see any provision in the said order empowering even an authorised officer u/s 14 to seize or recover the furniture belonging to the person who stocked the cement and removing the same to the Village Office without even issuing any notice to the owner of the articles. The entire action done by respondents 2 and 3 are therefore, clearly illegal and is an abuse of the powers conferred on the 2nd respondent. If he had reason to believe that the petitioner has committed an offence or violated the conditions of the licence issued to him, under the Kerala Cement Distribution Order, 1974, the only power vested with the authorised officer is to make a search and seizure of the levy cement or non-levy cement along with its containers and if necessary, remove the same for production before the appropriate Court and for their safe custody pending such production. As submitted by the learned Government Pleader, the 2nd respondent has intimated the search and seizure of the cement to the 4th respondent, District Collector as early as on 14-2-1989 and as per the directions issued by the District Collector on 16-1-1990, the seized cement was sold and the sale proceeds were deposited in Revenue Account. At least from that date onwards, the respondents 2 and 3 would have been taken steps to handover the key of the building and the other articles seized from the petitioner's shop. Admittedly, no such attempt has been made by respondents 2 and 3 in that regard. The third respondent in his affidavit before this Court has stated that for the first time they issued a notice to the petitioner only on 18-8-1990 directing him to go over to the Village Office at Pallichal on 28-8-1990 to receive the articles seized from the shop and the key of the building. Even for sending such a notice, the respondents have taken more than 7 months time even after the disposal of the cement. I see absolutely no justification for the high-handed action taken by respondents 2 and 3 in this regard also. The above conduct of respondents 2 and 3 constrained me to arrive at the irresistible conclusion that respondents 2 and 3 have acted vindictively and without any bona fide in the whole matter and acted against the interest of the petitioner illegally.

21. Learned counsel submitted before me that even though the matter was reported before the District Collector by the 2nd respondent, he did not make any adjudication in respect of the above matter and the petitioner was not paid the value of the cement. Such a seizure and confiscation of the cement belonging to the petitioner, without even an adjudication of the same with notice to the petitioner are clearly illegal and without any authority of law. I see sufficient force in the said contention also. If the petitioner had contravened with any of the provisions of the Kerala Cement Distribution Control Order, 1974 or any of

the provisions of the Essential Commodities Act, it is perfectly open for the respondents to initiate appropriate proceedings against the petitioner for violation of any law or the conditions of the licence. No such proceedings were initiated by the respondents against the petitioner with notice to him. The confiscation, if any, of the value of the cement seized from the petitioner also is, therefore, illegal and unauthorised.

22. In the result, I declare that the search and seizure made by the 3rd respondent in the business premises of the petitioner at Door No. X-282, Vedicachancoil, at Pallichal Panchayath held on 8-12-1989 as illegal and without any authority of law. I also declare that the removal of the furniture and other articles belonging to the petitioner from his above business place and locking of the same by the 3rd respondent on 8-12-1989 as illegal, unjust and arbitrary. Such a seizure and sealing of the shop building are made by the 3rd respondent against the provisions of the Kerala Cement Distribution Control Order, 1974. Since the respondents have not satisfied me that there is any valid proceedings initiated against the petitioner, for violation of any provisions of the Essential Commodities Act, Cement Distribution Control Order, 1974 or the violation of the conditions of the licence issued to him, I declare that the petitioner is entitled to get the value of the cement seized from his business place on 8-12-1989. This amount shall be paid to the petitioner by the respondents within one month from today.

23. The Original Petition is, therefore, allowed with costs of Rs. 1,500/- to the petitioner. The said amount shall be paid by the first respondent and the same shall be recovered from the 3rd respondent in this Original Petition.

24. Before parting with this case, on the facts and circumstances proved in this case, I feel that this is a fit case where the Government shall take appropriate action against respondents 2 and 3 for their illegal actions in the matter of seizure of the articles belonging to the petitioner and closing his business place on the strength of an alleged authorisation stated to have been issued by the 2nd respondent in favour of the 3rd respondent. Such an action on the part of the Government will only inspire confidence to the people and a chance to evaluate the functioning of a Government established by law for the welfare of the people. A copy of this judgment is, therefore, directed to be forwarded to the Chief Secretary to Government for taking appropriate action against respondents 2 and 3 in the case forthwith.