(1998) 08 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12353 of 1998

Sh. Mukesh Kumar and Others — APPELLANT

Vs

The State of Haryana and Another — RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 481
Essential Commodities Act, 1955 — Section 10, 7

Citation : (1998) 120 PLR 654 : (1998) 4 RCR(Criminal) 80

Hon'ble Judges : V.K. Bali, J;B. Rai, J

Bench : Division Bench

Advocate : M.L. Sarin and Jaishree Thakur, for the Appellant; A.P. Manchanda, Addl. A.G., for the Respondent

Judgement

V.K. Bali, J.—Challenge herein is to order dated 21.7.1998, Annexure P-8 passed by the Collector, Jind vide which 21,300 bags of rice seized pursuant to an FIR registered against the petitioners and some officers of the Food Corporation have been ordered to be auctioned. The operative part of the order passed by the Collector reads as under :-

"As per the report given by the experts the rice is subject to speedy and natural decay and, therefore, I order that the same be sold by public auction. For this purpose action as detailed below would be taken up by the District Manager, FCI, Rohtak.

For the purpose of auction advertisement would be placed in atleast four National Dailies, two in English and two in Hindi apart from two local newspapers. Adequate time should be given between the date of advertisement and the date of auction. Adequate publicity should be given by pasting auction notice at prominent places in district Jind as well as other district headquarters of the State. Procedure regarding auction proceedings would be decided by the DM, FCI alongwith DFSC, Jind and DDA who would help him in the whole process of auction. Regarding safety of the stock the DM, FCI Rohtak would also take action to shift the stock lying outside in the open into the godown so that it is saved from rain. He would also ensure fumigation of stock to save it from mites and pests. All the expenses on the above would be deducted from the sale proceeds and the balance would be deposited in the treasury".

2. Brief facts culminating in filing of present petition need necessary mention. It is the case of the petitioners that they are licensed millers/owners of rice mills in the vicinity of Tehsil Narwana, District Jind and are engaged in rice milling for last about 10 to 15 years. In accordance with the State Government instructions/ notification issued from time to time, rice miller''s are enjoined to supply levy rice to the State Government at a fixed price. Food and Supplies Department issued 71 contract numbers to the petitioners to supply 71 consignments of levy rice of approximately 21,300 bags. It is further the case of the petitioners that from 25.4.1998 to 30.4.1998 petitioners supplied 71 consignment of rice as per contract and left the same at FCI godown, Narwana. A complaint came to be lodged against the petitioners on 4.5.1998 on the basis of which police sealed the consignments of rice and had the same analysed by Public Analyst on its own. Procedure for testing and sampling of goods as .provided for in the Haryana Rice Procurement (Levy) Second Amendment Order, 1996 was not properly followed, nor petitioners were associated when the samples were taken by the police. On 9.5.1998 a seizure report was submitted by the DSP to Collector Narwana. The Collector returned the said report to SP Jind asking for a detailed report of seizure so that further action could be initiated. On 14.5.1998 report was furnished to the Collector giving details of the F.I.R. lodged and of invoking Sections 7/10/55 of the Essential Commodities Act. After receipt of the report by Collector, as referred to above, show cause notice was issued to the petitioners on 17.6.1998. Notice was issued under Sections 6-A and 7 of the Essential Commodities Act. The report of Public Analyst was also enclosed with the notice. The petitioners filed reply to the show cause notice on 17.7.1998. They pleaded that the provisions of clauses 6 and 7(4) of Levy Order were not followed and that seizure of consignment was illegal. It was also pleaded that provisions of Essential Commodities Act were not applicable. It is further the case of the petitioners that meanwhile the Investigating Officer vide letter dated 25.6.1998 recommended rice to be returned to the rice millers on supurdari as in normal course rice which had been declared as "beyond rejection limit" is returned to the suppliers. Vide impugned order dated 21.7.1998 the collector ordered auction of consignment. As mentioned above, it is thus order of the Collector which has been challenged in the present writ petition.

3. Pursuant to notice issued by this Court, respondents have entered defence and contested the cause of the petitioners by filing written statement.

4. Number of points have been raised in support of the petition but what has primarily been contended by Mr. Sarin representing the petitioners is that order passed by the Collector, Annexure P-8, is without jurisdiction. Section 6 of the Essential Commodities Act under which Collector has exercised his powers do not

clothe him to pass such an order, contends the learned counsel. In the same strain, Mr. Sarin contends that once a case under Essential Commodities and some provisions of IPC had since been registered against the petitioners and some of the officers of the FCI, the order with regard to case property could only be passed by criminal court under the provisions of Section 451 of Code of Criminal Procedure.

5. In as much as Mr. Sarin has at this stage, raised point only with regard to the jurisdiction of the Collector there is no need at all to give detailed facts of the case and contents of the written statement wherein details leading to the passing of impugned order have been given. Mr. Manchanda, Addl. A.G. Haryana, representing respondents in support of Annexure P-8 relies upon Section 6E of the Essential Commodities Act. The section aforesaid reads as follows :-

"6E. Bar of Jurisdiction in certain cases- Whenever any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation u/s 6A, the Collector, or, as the case may be, the State Government concerned u/s 6-C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force any court, tribunal or other authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance".

6. Sine-qua-non of applicability of Section 6E is that there must be an order passed prior in point of time, u/s 3 of the Essential Commodities Act. Relevant portion of Section 3 of the Act aforesaid reads as follows:-

"3. Powers to control production, supply, distribution etc. of essential commodities.- If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodities or for securing their equitable distribution and availability at fair prices, (or for securing any essential commodity for the defence of India or the efficient conduct of military operations) it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

7. During the course of arguments it could not be disputed that no order as such u/s 3 has ever been passed in this case. It could also not be disputed during the course of arguments that Section 3 is not applicable to the facts of this case. In as much as neither Section 3 is applicable to the facts of this case nor any order as such has actually been passed in the said case, we are of the view that impugned order could not be passed u/s 6E of the Essential Commodities Act. We find merit in the contention of the learned counsel representing the petitioners that Section 451 of the Code of Criminal Procedure was applicable to the facts of

the case particularly when concededly, criminal case has already since been registered under the Essential Commodities Act and some provisions of Indian Penal Code and investigation is going on, Section 451 of Code of Criminal Procedure reads as under :-

"451. Order for custody and disposal of property pending trial in certain cases- When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of".

8. We are not commenting on the merits of the controversy and are deciding this writ petition only on question mooted by the counsel representing petitioners with regard to jurisdiction of Collector in passing order Annexure P-8. As to whether under the facts and circumstances of this case an order for auction of case property should have been passed or not is in the sole domain of the concerned Magistrate and it would not be appropriate to comment anything on the merits of the case at this stage.

9. In totality of the facts and circumstances of the case while quashing order Annexure P-8 being without jurisdiction we direct the Investigating Officer to move an appropriate application under the provisions of Code of Criminal Procedure to obtain order with regard to case property from the concerned Magistrate. Let this application be made on 20.8.1998, on which date we direct both the parties to be present in the concerned court. Petitioners would be given only two days to file reply and after receipt of the reply if the Magistrate might think that recording of evidence is necessary, he will give one opportunity to both the sides which should not be of more than of two days. The concerned Magistrate will pass the order in accordance with law within three days from the date the parties conclude their evidence. It is conceded at all ends that rice that has been seized and is of value of more than one crore or so, is in bad shape and likely to be ruined if not sold as early as possible. While allowing this petition, we quash order Annexure P-8 and auction that has taken place during the pendency of this case. As mentioned above, the parties through their counsel have been directed to appear before the concerned Magistrate on 20.8.1998. Disposed of accordingly.

