

**(2006) 10 AHC CK 0175****Allahabad High Court****Case No:** Criminal M.W.P. No. 11865 of 2006

Avnish Kumar and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Oct. 19, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 451, 457, 482
- Essential Commodities Act, 1955 - Section 6A

**Citation:** (2007) 3 ACR 2479**Hon'ble Judges:** Poonam Srivastava, J**Bench:** Single Bench**Advocate:** Prakash Padia, for the Appellant; A.G.A., for the Respondent**Final Decision:** Disposed Of**Judgement**

Poonam Srivastava, J.

Heard Sri Prakash Padia, learned Counsel for the Petitioners and learned A.G.A. for the State.

2. The Petitioner No. 1 is owner of the diesel to the extent of 12,000 litres, which was loaded in a tanker being No. U.H.Q. 0235. The Petitioner No. 1 claimed to be bona fide purchaser of the diesel from M/s. Baraut Service Station situated at Hapur Road, Baraut, district Baghpat. Baraut Service Station is a dealer appointed by Indian Oil Corporation Ltd. and the Petitioner No. 2 is the owner of the tanker, in which diesel was loaded and possesses a valid licence to transport petroleum to the extent of 12,000 litres, and the same is valid up to 11.2.2007. While the diesel was being carried in the tanker, an accident took place, whereby the first information report was lodged by D.S.O. Meerut at P.S. Kankar Khera and the loaded tanker was handed over to the Station Officer of concerned police station. Subsequently, an application was preferred on 19.12.2005 before the D.S.O. with a prayer to dispose of diesel in confirmation with the provisions of Section 6A of Essential Commodities

Act 1955 (hereinafter referred to as the Act). The diesel was handed over in supurdagi to Sri Himanshu Dwivedi, Regional Food Officer, Meerut on the next day, i.e., on 20.12.2005. A copy of supurdaginama has been annexed as Annexure-2 to the writ petition. Notices were issued to the Petitioners, who moved separate application before the Additional Chief Judicial Magistrate, Meerut. First application was at the instance of the Petitioner No. 2 Sandeep Kumar Jain on 30.1.2006 for releasing the tanker No. U.H.Q. 0235 and the second application was moved on behalf of the Petitioner No. 1 Avnish Kumar on 27.3.2006 for releasing the diesel to the extent of 12,000 litres. A report was called for regarding the genuineness and purity of high speed diesel oil. The report was submitted by D.S.O. on 15.4.2006 in favour of the Petitioners, confirming the registration, validity and licence of the tanker duly registered by the Regional Transport Officer. In spite of the aforesaid report, an order was passed on 29.4.2006 directing that the diesel loaded in the tanker be sold under the supervision of D.S.O. Meerut and money be deposited in the treasury. The said order u/s 6A of the Act was challenged in an appeal No. 177 of 2006 in the court of Additional Sessions Judge, court No. 15 Meerut, which was dismissed vide order dated 14.8.2006, whereby the order dated 29.4.2006 stood confirmed. Both the orders are impugned in the instant writ petition.

3. Besides, the prayer for quashing the aforesaid orders, a direction in the nature of mandamus is claimed for release of the tanker No. U.H.Q. 0235 and loaded diesel to the extent of 12,000 litres. It is brought to my notice that report of the public analyst was also brought to the notice of the authority/courts below to establish that the diesel was neither adulterated nor any violation of the provision of any control order is made out. However, the courts below passed an order that the Petitioners have violated the provisions of kerosene control order 1962. The Petitioners have also annexed copy of the receipt No. 257 dated 15.12.2005 depicting the purchase of the diesel from Baraut Service Station, which has been annexed as Annexure-10 to the writ petition.

4. Submission on behalf of the Petitioners is that since the courts below have not recorded any finding as to what provision of the control order has been violated. It is apparent that no offence has been committed by the Petitioners punishable under provisions of Essential Commodities Act and in the circumstances confiscation u/s 6A of the Act is absolutely illegal. The diesel is liable to be released in favour of the Petitioners. It is also brought to my notice that on some wrong legal advice, an application u/s 482, Cr. P.C. invoking inherent powers was moved vide Criminal Misc. Application No. 5670 of 2006, which was dismissed as withdrawn on 30.5.2006. No objection has been raised by the learned A.G.A. in this respect.

5. Learned Counsel for the Petitioners has cited a number of decisions M/s. New J.T.C. Corporation, Delhi v. State of U.P. and Ors. 1999 UP Tax Cases 1226, wherein the vehicle was released within six hours of the presentation of a certified copy of the order with a direction to the Respondents to pay damages to the Petitioners.

Two other decisions relied upon by the counsel for the Petitioners are [Rajendra Prasad Vs. State of Bihar and Another, Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat](#), wherein it was held that the powers u/s 451, Cr. P.C. should be exercised expeditiously and judicially. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation ;
2. court or the police would not be required to keep the article in safe custody ;
3. if the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail ; and
4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.
6. In the aforesaid decisions, it has also been held that liquor and narcotics drugs also requires prompt action and it should be released after preparing necessary panchanama if samples are required to be taken, and also to be kept properly after sending it to the chemical analyst but in no case much quantity should be stored at the concerned police station as no fruitful purpose would be served.
7. In the instant case, admittedly the diesel has not been found to be adulterated by the public analyst. It is also not a case, where charge-sheet has been filed under the provisions of E.C. Act for violation of the control order. The question of applicability of kerosene control order does not arise, as it is a case of diesel and not kerosene. Therefore, finding of the courts below in respect of kerosene control order is frivolous and useless. It is also noteworthy that no violation of control order could be established, as a consequence no proceedings could be initiated under the provisions of Essential Commodities Act. The proceedings under the provisions of E.C. Act, such as confiscation proceedings u/s 6A of the Act is uncalled for. The application for release should be taken to be one as u/s 451/457, Cr. P.C. So far as release of the vehicle is concerned, it is on account of accident and release application dated 30.1.2006 was in fact an application u/s 451, Cr. P.C. but the courts below have completely overlooked this aspect.
8. However, since the writ petition is being disposed of at this stage when it was filed as a fresh petition without affording an opportunity to the State to file counter-affidavit. I am not inclined to grant any compensation as it was done by a Division Bench of this Court in the case of M/s. New J.T.C Corporation, Delhi (supra).
9. In view of what has been discussed above, the writ petition is disposed of finally directing the Respondents to release the tanker no U.H.Q. 0235 in favour of the Petitioner No. 2 Sandeep Kumar Jain and diesel to the extent of 12,000 litres loaded in the tanker to the Petitioner No. 1 Avnish Kumar after taking adequate security to

the satisfaction of the concerned authority and also preparing panchanama of the vehicle and diesel. The order of confiscation dated 29.4.2006 passed in Case No. 7 of 2006, State v. Avnish Kumar, u/s 6A of the Act and order dated 14.8.2006 passed in appeal No. 177 of 2006 u/s 6C of the Act by the Additional Sessions Judge court No. 15, Meerut are quashed. The writ petition is disposed of accordingly.