

(2013) 01 JH CK 0022**Jharkhand High Court****Case No:** Writ Petition No. 6784 of 2007

Kishori Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Jan. 3, 2013**Acts Referred:**

- Essential Commodities Act, 1955 - Section 3, 7

Citation: (2013) 1 AJR 761**Hon'ble Judges:** Aparesh Kumar Singh, J**Bench:** Single Bench**Advocate:** Nilesh Kumar, for the Appellant; Sunil Singh JC to SC-II and Ramit Satender, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. The petitioner has sought quashing of the Confiscation Case No. 30/2007, pending before the Deputy Commissioner, Hazaribagh (Respondent No. 2), whereunder the said respondent has proceeded to confiscate 320 bags of wheat weighing 160 Quintals, which were alleged to be seized from a Truck bearing No. BR-13G-7455 belonging to the petitioner, who was the transporter for Tandwa Block under the State Food Corporation.

2. The petitioner's case is that he was the transporter of wheat and other food articles engaged for transporting foodgrain from Hazaribagh to Tandwa by Bihar State Civil Supply Corporation Ltd. The truck was intercepted while carrying wheat at Ramgarh Road and the wheat was seized and a case u/s 7 of the Essential Commodities Act was initiated against him being Hazaribagh Sadar PS. Case No. 07 of 2007. Simultaneously, a confiscation proceeding being No. 30 of 2007 was also initiated for confiscation of the wheat which was seized from the said truck before the Deputy Commissioner, Hazaribagh. According to the petitioner, the wheat is not

an essential commodity as declared under any Control Order issued u/s 3 of the Essential Commodities Act on the date of alleged occurrence. It is further submitted that the Public Distribution System (Control) Order, 2001, which has been relied upon by the respondents in their counter-affidavit to support the confiscation of the vehicle, is inapplicable as the vehicle was not used for carrying any essential commodity. As such, the vehicle in question will not fall within the mischief of "diversion" under para 6 of the Control Order, 2001. It is further submitted that Control Order of 2001 has not been notified in the State of Jharkhand. Learned counsel for the petitioner also submits that the wheat, in question, belonging to the Food State Corporation, was duly released by the respondent No. 2 and it is not a subject-matter of confiscation any more, as the petitioner was not owner of the seized wheat. According to the petitioner, the vehicle belonging to him also cannot be subjected to confiscation as already stated hereinabove as it was not carrying any essential commodity.

3. Learned counsel for the petitioner has also relied upon the judgment rendered in the case of Kailash Prasad Yadav and Another Vs. State of Jharkhand and Another, According to him, as per the said judgment the Control Order of 2001 does not deal with the wheat or its transportation. In such circumstances, the confiscation of the truck of the said appellant, Kailash Prasad Yadav, upheld by the Appellate Authority and by the learned single Judge of the High Court was set aside and the appeal was allowed. According to him, the petitioner is not a fair price shop owner rather he is a transporter and even criminal proceeding initiated against him, are wholly misconceived.

4. The petitioner has also relied upon a judgment of single Bench of this Court in Cr. M.P. No. 228 of 2012, wherein a criminal case was initiated against the owner of the truck u/s 7 of the Essential Commodities Act and other proceedings of the I.P.C. where the truck was intercepted while carrying rice of the State Food Corporation. In that case, according to the petitioner, the F.I.R. itself was quashed by this Court vide judgment dated 7th November, 2012. In view of the aforesaid submissions, according to the petitioner, the confiscation proceedings are liable to be quashed.

5. The petitioner has also relied upon the judgment rendered in the case of Birendra Prasad in W.P. (C) No. 3800 of 2006 and an-other petitioner, Bholi Kumar Bhojgariya in W.R. (C) No. 2567 of 2007, (Bholi Kumar Bhojgariya Vs. The State of Jharkhand and Others, to support their contention that when the seized article is not an essential commodity the confiscation proceeding initiated would be without jurisdiction. The relevant judgments are annexed as Annexures-3 and 4 to the writ application.

6. Counter-affidavit has been filed on be-half of the District Manager, State Food Corporation (Respondent No. 4), while a separate counter-affidavit has also been filed on behalf of the respondent Nos. 1 to 3. The reliance has been placed upon the Public Distribution System (Control) Order, 2001 issued u/s 3 of the Essential Commodities Act, 1955 and Clause 6(4) thereof to submit that a person engaged in

the distribution and handling of essential commodities under the Public Distribution System and found indulging in substitution or adulteration or diversion or theft of stocks from Central Godown to fair price shop premises, is liable for proceedings under the Essential Commodities Act. The respondents, in their counter-affidavit, have taken a stand that the confiscation proceeding pending before the respondent No. 2 is in respect of confiscation of the vehicle, as the seized wheat meant for Public Distribution System has been released in favour of the State Food Corporation Authorities for distribution among beneficiaries in the District of Chatra.

7. However, the contention of the petitioner that wheat is not an essential commodity as declared under any Control Order on the date of occurrence is not being denied.

8. From the facts narrated above and after hearing counsel for the parties, it appears that the petitioner being a transporter of foodgrain from State Food Corporation, has been subjected to confiscation proceeding for confiscation of wheat seized from the Truck, in question, under the provisions of the Essential Commodities Act. Wheat as it stands is not an essential commodity as no Control Order declared it to be so on the date of occurrence. The vehicle, in question, was meant for transportation of wheat. Para 6(4) and the explanation thereto under the Public Distribution System (Control) Order, 2001, refers to unauthorized movement or delivery of essential commodities within the meaning of diversion. The commodity being transported not an essential commodity, the vehicle itself in question would not be liable to be covered under the mischief of diversion as indicated in Clause 6(4) and its explanation under the Public Distribution System (Control) Order, 2001.

9. The judgment relied upon by the petitioner rendered in Kailash Prasad Yadav and Another Vs. State of Jharkhand and Another, in similar circumstances appears to be applicable in the present case as well. In the said case also, owner of the truck was subjected to confiscation proceeding in transportation of the seized wheat. Hon'ble Supreme Court held that there is no provision for search of a vehicle and a valid seizure is a sine qua non for passing an order of confiscation of the property. In such circumstances, in the present case also confiscation proceeding for confiscation of the vehicle of the petitioner is also not sustainable in law and accordingly the Confiscation Case No. 30 of 2007, pending before the Deputy Commissioner, Hazaribagh (Respondent No. 2) is hereby quashed. Consequently, the writ petition stands allowed. However, it is made clear that any observation made hereinabove shall have no reflection on the criminal proceedings that are pending before the competent court.