

(14) All those petitions in which three years tenure of the Committee had not come to an end on or after 2nd February, 1995 shall, thus, stand allowed. However, writ petitions wherein the tenure or three years had come to an end on 1st February, 1995 or prior thereto, the said writ petitions shall stand dismissed.

S.C.K.

Before V. K. Bali & B. Rai, JJ

MUKESH KUMAR & OTHERS,—*Petitioners*

versus

THE STATE OF HARYANA & ANOTHER,—*Respondents*

CWP 12353 of 1998

18th August, 1998

Constitution of India, 1950—Art. 226/227—Haryana Rice Procurement (Levy) Second Amendment Order, 1996—Cls. 6 & 7(4)—Essential Commodities Act, 1955—Ss. 3, 6, 7 & 10—Rice seized by Collector—Samples taken and FIR lodged—Collector ordered auction of seized rice under the Essential Commodities Act—Challenge thereto as no seizure orders were passed by the Collector—Order quashed being without jurisdiction—As criminal case pending orders in regard to return of case property to be obtained under S. 451 Cr. P.C.

Held that the impugned order could not be passed under Section 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.

(Para 7)

Further held that in totality of the facts and circumstances of the case while quashing order 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.

(Para 9)

M.L. Sarin, Sr. Advocate with Ms. Jaishree Thakur, Advocate, for
the Petitioner.

A. P. Manchanda, Additional A.G. Haryana, for *the Respondent.*

JUDGMENT

V.K. Bali, J. (Oral)

(1) Challenge herein is to order dated 21st July, 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 at least 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 D. M., FCI Rohtak would also take action to shift the stock lying outside in the open into the godowns 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 a 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 millers 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 25th April, 1998 to 30th April, 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 4th May, 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 9th May, 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 14th May, 1998 report was furnished to the Collector giving details of the FIR 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 17th June, 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 17th July, 1998. They pleaded that the provisions of clause 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 25th June, 1998 recommended rice to be returned to the rice millers on *suprdari* as in normal course rice which had been declared as “beyond rejection limit” is returned to the suppliers.— *Vide* impugned order dated 21st July, 1998 the Collector ordered auction of consignment. As mentioned above, it is this 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 case 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 cloth 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) Inasmuch 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 commodities is seized in prusance of an order made under Section 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 under section 6A, the Collector, or, as the case may be, the State Government concerned under Section 6C shall have, and, notwithstanding any thing 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-quo-non of applicability of Section 6E is that there must be an order passed prior in point of time, under Section 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 commodity 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 under Section 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. Inasmuch 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 under Section 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 the question mooted by the counsel represent 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 20th August, 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 20th August, 1998. Disposed of accordingly.

J.S.T.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

N. K. DHANRAJ,—*Petitioner*

versus

UNION OF INDIA & ANOTHER,—*Respondents*

CWP 5579 of 1998

The 30th September, 1998

Army Act, 1950—Ss. 40 (a) & 63—Punishment of ‘severe reprimand’ awarded under section 40 (a) on 1st February, 1992—Later the Commanding Officer ordering that the punishment be deemed to have been awarded under section 63 and an entry accordingly made in the service book—This order cancelled and original order under section 40 (a) restored—Petitioner making statutory complaint for mitigation of punishment to the Chief of the Army Staff—The Commanding Officer recommending complaint (keeping in view the good conduct, hard work and future career) which however, rejected on 7th December, 1995—Copy of the order not supplied despite representation—Petitioner approaching Madhya Pradesh High Court in 1997 in a writ petition—Petition dismissed on 12th February, 1998 for lack of territorial jurisdiction—Delay & laches—Present petition filed in 1998 cannot be said to suffer from delay & laches—Section 40 laying down that whenever a soldier uses criminal force to assault his superior officer, punishment can be awarded “on conviction by Court Martial”—No Court Martial proceedings held, therefore, no punishment could have been imposed—Award of penalty of ‘severe reprimand’ set aside and direction issued to consider the petitioner for promotion from the date juniors stand promoted.

Held that, the sequence of events shows that the petitioner was diligently pursuing his remedy. He was not sitting idle. He cannot be accused of unreasonable delay so as to disentitle him to claim the relief under the law. Consequently, the objection as raised on behalf of the respondents is rejected.

(Para 7)