

Pathumma, vs District Collector,

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Court : Kerala

Decided On : Feb-20-2020

Judge : Honourable the Chief Justice Mr. Nitin Jamdar,Honourable Mr. Justice S.Manu

Appeal No. : WA/305/2020

Appellant : Pathumma,

Respondent : District Collector,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY THURSDAY, THE 20TH DAY OF FEBRUARY 2020 / 1ST PHALGUNA, 1941 WA.No.305 OF 2020 AGAINST THE JUDGMENT IN WP(C) 29918/2019(L) OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 PATHUMMA, W/O. A.B. BAKKER, AACHERIVAYALIL HOUSE, PEZHAKKAPPILLY P.O., MUVATTUPUZHA. 2 RAZACK A.B., S/O. A.B. BAKKER, AACHERIVAYALIL HOUSE, PEZHAKKAPPILLY P.O., MUVATTUPUZHA. 3 RAZEENA KUNJUMON, D/O. A.B. BAKKER, AACHERIVAYALIL HOUSE, PEZHAKKAPPILLY P.O., MUVATTUPUZHA. 4 RAFEEQU A.B., S/O. A.B. BAKKER, AACHERIVAYALIL

HOUSE, PEZHAKKAPPILLY P.O., MUVATTUPUZHA. 5 RIYAS A.B., S/O. A.B. BAKKER, AACHERIVAYALIL HOUSE, PEZHAKKAPPILLY P.O., MUVATTUPUZHA. BY ADVS. SRI.V.V.ASHOKAN (SR) SRI.K.I.MAYANKUTTY MATHER SRI.R.JAIKRISHNA SMT.SWATHI H.PRASAD
RESPONDENTS/RESPONDENTS: 1 DISTRICT COLLECTOR, ERNAKULAM, CIVIL STATION, THRIKKAKARA P.O., THRIKKAKARA-682 021. 2 DISTRICT SUPPLY OFFICER, ERNAKULAM, CIVIL STATION, THRIKKAKARA P.O., THRIKKAKARA -682 021. 3 TALUK SUPPLY OFFICER, MUVATTUPUZHA P.O., MUVATTUPUZHA - 686 661. BY SR. G.P. SRI.V.TEKCHAND THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 20th day of February, 2020 S.Manikumar, C.J. Instant writ appeal is filed challenging the judgement in W.P. (C)No.29918 of 2019 dated 14.1.2020, by which the writ court, dismissed the writ petition as hereunder:

10. When the legal heirs challenged Ext.P3 decision, this Court after considering the contentions held that there is no illegality in the decision taken to proceed for realization of the amounts which represent the value of the stock released on the basis on an undertaking and on the strength of an indemnity bond. The only direction in Ext.P8 judgment was to afford an opportunity to legal heirs of Sri.A.B. Bakker for hearing and to consider their contentions. Ext.P8 reveals that such an opportunity has been granted and all the contentions raised have been properly considered. The petitioners who are the legal heirs of Sri.A. B. Bakker who had obtained release of the rationed articles on a specific undertaking to provide their value subject to the result of the writ petition pending before this Court cannot be heard to contend that they are not legally bound to honour the undertaking given by their predecessor in interest. In view of the fact that all the contentions raised by the petitioners have been duly considered in Ext.P10, I am of the opinion that the challenge raised against Ext.P10 is not sustainable. The writ petition

therefore fails, the same is accordingly dismissed.

2. Short facts leading to the writ appeal are that, appellants are

the widow and children of deceased A.B.Bakker, who was doing business in open market with a foodgrain dealer's licence obtained in his name. Appellants have contended that on 8.2.2018, the 1 st appellant was served with a notice dated 31.1.2018 issued by the Taluk Supply Officer, Ernakulam Civil Station, Thrikkakara (3 rd respondent), requiring her to remit a sum of Rs.27,17,820/-, being the alleged dues of deceased A.B.Bakker. Appellants have contended that they have no information or involvement about any such proceedings, until they were served with the same on 8.2.2018. They have further contended that on enquiry it was revealed that there was a proceeding by the Civil Supplies Department implicating, A.B.Bakker, on the grounds that he had indulged in keeping certain stock of rice allegedly ration rice and in that context, A.B.Bakker had filed W.P.(C)No.11530 of 2007 before this Hon'ble Court.

3. In the writ petition, it was the definite case of the petitioner

therein that the rice and wheat seized from his shop were open rice/wheat supported by bills. To facilitate an enquiry under Section 6A of the Essential Commodities Act, 1955, this Hon'ble Court on 29.9.2011 passed an interim order, directing release of seized stock of rice and wheat, to the petitioner therein on furnishing security bond. A.B.Bakker thereupon obtained release of the seized stock from the Department, after furnishing a security bond. According to the appellants, no enquiry as contemplated under Section 6A of the Essential Commodities Act, 1955 was conducted. Pending W.P.(C)No.11530 of 2007, petitioner therein (A.B.Bakker) expired and the writ petition was dismissed as not pressed.

4. The appellants, thereafter, filed W.P.(C)No.8780 of 2018 and the

writ court disposed of the writ petition on 14.2.2019 by directing the District Collector, Ernakulam (1st respondent), to consider Ext.P2 communication to be a show cause notice and to afford an opportunity of hearing to the appellants and to

take into consideration Ext.P6 explanation submitted by the 1st petitioner (1st appellant herein), before passing a final order.

5. According to the appellants, the District Collector, Ernakulam (1 st respondent) has issued an order on 25.7.2019.

6. Challenging the said order, the appellants have filed W.P.

(C)No.29918 of 2019 and according to the appellants, writ court, without appreciating the contentions raised by them, has dismissed the writ petition on 14.1.2020 assuming that the contentions raised by the appellants, on merits, are concluded by the judgments in W.P. (C)Nos.11530 of 2007 and 8780 of 2018 respectively.

7. Being aggrieved, instant writ appeal is filed on the following grounds:

i) The judgment of the learned single Judge is contrary to law and facts. The learned single Judge did not endeavour to consider the contentions of the appellants on an incorrect assumption that such contentions on merits were concluded by the judgments in W.P.(C)11530/2007 and W.P.(C) 8780/2018. ii) The learned single Judge should have found that Exts.P3 and P10 proceedings of the 1 st respondent are totally irregular and vitiated by non consideration of relevant facts. iii) The learned single Judge should have found that the 1 st respondent did not at all consider or appreciate the submissions on behalf of the appellants, particularly about the very propriety and sustainability of the proceedings launched against A.B.Bakker alleging storage of ration articles in the shop while conducting the hearing pursuant to Ext.P8 judgment. The appellants even pointed out about the bills available on record, which would clinchingly show that the seized stock of rice/wheat was open rice/wheat procured from open market and cannot be treated as ration articles. There were no materials much less any enquiry by the 1st respondent to confirm about the nature of the seized stock whether it is ration article or not within the meaning of Clause 5A of the Kerala Rationing Order, 1966.

Had the 1st respondent considered those aspects, there would not have been any occasion to impose a penalty in the matter and unnecessarily burdening the appellants with huge financial liability for no fault of theirs. iv) On a perusal of the impugned orders assailed before the learned single Judge, it can be seen that the 1st respondent has not conducted an enquiry in the matter as visualized under Sections 6A and 6B of the Essential Commodities Act. Taking an erratic approach, the 1st respondent without conducting an enquiry about the very sustainability of the proceedings launched

against A.B.Bakker alleging storage of ration articles with him, after making a farce of hearing issued an order on 25.7.2019 and the same was served on the appellants on 14.10.2019. Even in this order there is no finding whether the seized stock of rice and wheat were ration articles warranting confiscation. v) The learned single Judge ought to have held that there was never an enquiry or investigation by respondents 1 and 2 to determine whether the seized articles are ration articles and that the order challenged by late A.B.Bakker in W.P.(C)11530/2007 was an interim order under Section 6A of Essential Commodities Act. vi) The learned single Judge ought to have held that the 1st respondent should have relied on the bills available on record, which would clinchingly show that the seized stock of rice was open rice procured from open market and cannot be treated as ration articles. There were neither materials nor any enquiry by the 1st respondent to confirm about the nature of the seized stock whether it is ration article or not. Had the 1st respondent considered those aspects, there would not have been any occasion to impose a penalty in the matter and unnecessarily burdening the appellants with a huge financial liability for no fault of theirs. Ext.P10 is totally illegal and unsustainable. vii) It is seen from Ext.P3 order of the 1st respondent that the predecessor in interest of the appellants (Mr.A.B.Bakker) had executed an indemnity bond and it is based on the same that the present proceedings are initiated. It is to be noted that the appellants are not parties to the indemnity bond and there was no

undertaking or guarantee given by the appellants to make any of them liable to the department for the alleged disputed amount.

8. Mr.V.V.Ashokan, learned Senior Counsel for the appellants made submissions on the grounds and submitted that no opportunity was given either to the deceased A.B.Bakker or his legal representatives, before an

order under Section 6A of the Essential Commodities Act, 1955 was

passed. Mr.V.Tekchand, learned Senior Government Pleader made submissions to the effect that proceedings of the District Collector, Ernakulam dated 27.10.2015 is the order passed under Section 6A of the Essential Commodities Act, 1955.

9. Proceedings of the District Collector, Ernakulam dated 27.10.2015

(Ext.P3 in W.P.(C)No.29918 of 2019) reads thus: Proceedings before the District Collector, Ernakulam (Present: M.G. Rajamanikkiam, IAS) No.CS 5-1899/2007 Dated: 27.10.2015 Sub: Essential Commodities Act - Muvattupuzha Taluk - seizure of

unauthorised quantities of wheat and rice in Payippra Village - order

for recovery of the value of the seized stock - reg. Ref: 1. Report of District Supply Officer dated 26.3.2007.

2. Proceedings of this office with No.CS 5-1899/2007 dated 29.3.2007.

3. Order of Hon'ble Kerala High Court in W.P.(C)11530/2007 dated 3.4.2007.

4. The bond executed by Sri.A.B.Bakker on 18/4/2007.

5. Order of Hon'ble Kerala High Court in W.P.(C) 11530/2007 dated 25.2.2015.

On the basis of receiving information that unauthorised quantities of rice and wheat are kept in stock in godown no.X/539 in Payippra Village, Muvattupuzha Taluk, an inspection of the godown was conducted and 887.35 quintals of rice and 34.40 quintals of wheat were found to be in excess of the authorised quantity. The same were seized and entrusted to person running the ration wholesale dealer with shop no.27 in Muvattupuzha Taluk and they were reported vide reference (1). The District Collector vide reference (2) ordered the articles seized, 887.35 quintals of rice and 34.40 quintals of wheat to be sold through public distribution system and deposit the amount collected to revenue depository. The aforesaid order when challenged by the aggrieved, Hon'ble High Court vide order dated 03.04.2007 held that if the contentions of the aggrieved are accepted by the Court, the market value of the seized articles will have to be given to him. Pursuant to the order of the Hon'ble High Court and the perishable nature of the seized articles, District Collector released the stock to the aggrieved on execution of an indemnity bond stating that the value of the articles will be furnished at the time and place to be fixed by the District Collector. Vide reference (5) order dated 25.02.2015, the Hon'ble High Court held that: The learned counsel for the petitioner submits that the matter is not pressed. The writ petition is dismissed as not pressed. In such circumstances, it is held that: The market value (economic value as fixed by the Civil Supplies Department) of 887.35 quintals of rice - Rs.26,46,680.85/- and 34.40 quintals of wheat - Rs.71,139.2, totaling to Rs.27,17,820/- (Rupees twenty seven lakhs seventeen thousand eight hundred and twenty only) is ordered to be deposited within 15 days of receipt of this order.

This order is made u/Sec 6A of the Essential Commodities Act, 1955. Sd/- District Collector

10. Proceedings of the District Collector, Ernakulam dated 25.7.2019 (Ext.P10 in W.P.(C)No.29918 of 2019) reads thus: Proceedings of the District Collector,

Ernakulam (Present: Suhas S. IAS) C.S.9-1899/07 Date: 25.7.2019

Subject: Public Distribution - Essential Commodities Act - Muvattupuzha Taluk - seizure of hoarded rice and wheat - initiation of revenue recovery proceeding - reg. Reference: (1) Proceedings of the District Collector in C.S.9-1899/07 dated 27.10.2015 and 16.7.2016.

(2) Judgment of the Hon'ble High Court of Kerala in W.P. (C)No.8780/2018 dated 14.2.2019. (3)Hearing before the District Collector dated 13.6.2019.

***** On receipt of information that unauthorised quantities of rice and wheat are held in stock in godown number X/539 in Payippra Panchayat, Muvattupuzha, an inspection of the godown on unauthorised quantity of 887.85 quintals of rice and 34.40 quintals of wheat. A request was submitted by Sri.A.B.Bakker before the District Collector raising claim and for release of the seized stock. On a belief that the seized articles are hoarded ration articles to be sold in black market, it was ordered by the District Collector on 29.3.2007 to sell the seized stock through public distribution system and deposit

the revenue received in Revenue Depository. Against the said order of the District Collector, A.B.Bakker filed W.P. (C)11530/2007 before the Hon'ble High Court of Kerala seeking an inerim relief of release of the seized stock. On 3.4.2007, the Hon'ble High Court ordered that if the case is found in favour of the petitioner therein, he will have to be paid the market value of the seized articles. Pursuant to the order of the Hon'ble High Court, District Collector released the stock to Sri. Bakker on execution of an indemnity bond stating that the value of the articles will be furnished at the time and place to be fixed by the District Collector by him. On 16.4.2007, after execution of the bond, the District Collector ordered release of the seized articles. On 25.2.2015, the Hon'ble High Court disposed of the matter before it by passing an order, The writ petition is dismissed as not pressed. For the said reason, District

Collector issued an

order on 27.10.2015 to recover the market value of the seized

articles i.e. Rs.27,17,820/-. When it was brought to the attention of District Collector that Sri.Bakker has expired on 29.9.2011, he passed an order dated 16.7.2016 for recovery of the said sum of money from the legal heirs of Sri.Bakker and to initiate revenue recovery proceedings against them if the payment is not made within the stipulated time. On receipt of the aforesaid order, the widow of Sri.Bakker, Smt.Pathumma gave a representation to District Collector for withdrawing the order for the reason that the order for recovery was passed by the District Collector after the expiry of Sri.A.B.Bakker, the legal heirs were unaware of any proceedings initiated against Bakker, Sri.Bakker had no self-acquired property and the ancestral property is already partitioned amongst his children. Raising these same contentions, Smt.Pathumma approached Hon'ble High Court of Kerala by filing W.P.(C)8780/2018. On 14.2.2019 it was

ruled by the Hon'ble Court that there is no impropriety in ordering revenue recovery proceedings against the legal heirs of A.B.Bakker but to afford an opportunity of hearing to the petitioners therein. Pursuant to the aforesaid judgment of the Hon'ble High Court, Smt.Pathumma and her sons Sri.Razack A.B., Sri.Rafeeq A.B. appeared before the District Collector and were heard. No new evidence was recorded. As the ancestral property of Sri.A.B.Bakker is already partitioned amongst his legal heirs, they are responsible to repay the sum of Rs.27,17,820/- owed by Sri. A.B.Bakker to the government. After conducting hearing and perusing the evidence it is ordered that:

ORDER

It is hereby ordered to recover the amount of Rs.27,17,820/- owed by Sri.A.B.Bakker to government from his legal heirs. If the payment is not made within the stipulated time after obtaining a copy of this order, revenue recovery proceedings will be initiated against them. It is hereby ordered that revenue recovery proceedings be initiated if the payment is not made within the stipulated time. Sd/- District Collector

11. Relevant portions of the statement filed by the District Supply Officer, Thrikkakara (2nd respondent) in W.P.(C)No.29918 of 2019 read thus:

4. Sri.A.B.Bakker could not produce any document at the time of seizure. Boiled rice and wheat were seized from A.B.Bakker and in his defence, he had produced invoice No.80 which was the invoice relating to raw rice wherein no raw rice was seized on the date of seizure. The seized bags were labelled either Food Corporation of

India or having flaps of Tamil Nadu Civil Supplies Corporation. Besides 550 plastic sacks stamped 'RKR, Mayuri' along with a stitching machine was also seized which clearly proved that Sri.A.B.Bakker was repacking and selling the rationed food grains procured illegally from open market for higher price. Since the case was before the consideration of this Hon'ble Court, the respondents did not finalize the case against A.B.Bakker. Later the case was dismissed and recovery was contemplated for the value of the stock as agreed when the stock was released to Sri.A.B.Bakker. Accordingly, notices were issued to the legal heirs and they were heard on 13.06.2019. Finally the first order impugned was passed by this respondent. The impugned order was passed after hearing the petitioners and also after considering the explanation submitted by the 1st petitioner on 09.02.2018.

5. It is untrue that the petitioners were not heard. The

petitioners were heard on 13.06.2019. The statements submitted by the petitioner at the time of hearing are produced herewith and marked as Annexure R2(a). Thereafter the petitioners challenged the preliminary orders passed before this Hon'ble Court in W.P. (C)No.8780/2018 dated 14.02.2018. This Honourable Court directed the 1st respondent to afford an opportunity of hearing to the petitioners after considering the explanation submitted by the 1st petitioner on 09.02.2018 before the final orders were. an opportunity of hearing to the petitioners and to take into consideration Ext.P6 explanation submitted by the 1st petitioner, before the final orders were passed. Thereafter, the legal heirs of Sri.A.B.Bakker were issued with notices for hearing and the petitioners Smt.Pathumma, Sri.Razak, Sri.Rafeeq were heard on 13.06.2019 and final proceedings were issued considering the explanation submitted by the 1st petitioner on 09.02.2018. The documents were also verified which were seized from the shop of

late Sri.A.B.Bakker which proved that the rationed food grains were illegally procured by the predecessor of the petitioners. No records of the case were available at the time of inspection and seizure. It is mandatory to keep records of the available stock in the godown and production of the same is mandatory if asked by the authority concerned.

12. Sections 6A and 6B of the Essential Commodities Act, 1955, read thus:

6A. Confiscation of essential commodity. (1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that

there has been a contravention of the order may order confiscation of (a) the essential commodity so seized; (b) any package, covering or receptacle in which such essential commodity is found; and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity: Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section.

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

(2) Where the Collector, on receiving a report of seizure or on

inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may

(i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by

public auction: Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(3) where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall

(a) where no order or confiscation is ultimately passed by the Collector, (b) where an order passed on appeal under sub-section

(1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the

order in respect of which an order of confiscation has been made

under this section, the person concerned is acquitted, be paid to

the owner thereof or the person from whom it is seized. 6B. Issue of show cause notice before confiscation of food grains, etc.(1) No order confiscating any essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the ground of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order

confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(3) No order confiscating any essential commodity package,

covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.

13. We have given our anxious consideration to the pleadings and

submissions of the contesting parties. Writ court appears to have adverted to the pleadings pertaining to the realisation order and not considered as to whether a confiscation order has been passed under Section 6A of the Essential Commodities Act, 1955, in accordance with the procedure contemplated under the Act. Unless and until, the procedure contemplated under Section 6A of the Essential Commodities Act, 1955, is followed and an order is passed, we are of the view that realisation order cannot be said to have been validly issued. Procedure contemplated in Sections 6A and 6B of the Essential Commodities Act, 1955 has not been fulfilled. There is a violation of principles of natural justice. Though Ext.P3 is claimed to be an order passed under Section 6A of the Essential Commodities Act, 1955, we are not inclined to accept the said contention.

14. When the order passed by the District Collector, Ernakulam (1 st respondent) is faulty, consequently, the recovery proceedings have to be set aside. In the light of the above discussion, writ appeal is allowed.

Order of confiscation dated 27.10.2015 is set aside. As there is

violation of Sections 6A and 6B of the Essential Commodities Act, 1955, the matter is remitted back to the District Collector, Ernakulam. District Collector, Ernakulam to cause notice under the Essential Commodities Act to the appellants and pass appropriate orders in accordance with law. This exercise shall be completed within six weeks from the date of receipt of a copy of this judgment. No costs. Sd/- S.Manikumar, Chief Justice Sd/- Shaji P.Chaly Judge vpv /true copy/ P.A. To Judge

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