

**Khokan Kumar Bera Vs. the State**

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**Court :** Kolkata

**Decided On :** Mar-09-1990

**Reported in :** (1990)2CALLT18(HC)

**Judge :** Jyotirindra Nath Hore, J.

**Acts :** [Constitution of India](#) - Article 227; ;Essential Commodities Act - Section 6A(2)

**Appeal No. :** C.R. No. 149 of 1985

**Appellant :** Khokan Kumar Bera

**Respondent :** The State

**Advocate for Def. :** Tapas Kumar Middy, Adv.

**Advocate for Pet/Ap. :** Debi Prosad Sengupta and ;Subhra Kamal Mukherjee, Adv.

**Disposition :** Petition allowed

**Judgement :**

**Jyotirindra Nath Hore, J.**

1. This is an application under Article 227 of the [Constitution of India](#) for setting aside the order dated 11,12.84 passed by the E.C. Collector, Contai in the

proceeding No. EC-9 of 1984. By the said order the Collector directed sale of the seized fertiliser.

2. On receipt of a report of seizure of 62 bags of Urea, 16 bags of Calcium, 8 bags of Sufala and other fertilisers from S.I. of Police, DEO, Egra, dated 6.12.84 the E.C. Collector, Contai initiated the impugned proceeding and passed the following order :

'As the said seized fertiliser may be confiscated, I, the Collector under E.C. Act, 1955 do hereby order that O/C, Egra P.S. will sell the said fertiliser through a licenced fertiliser dealer and deposit the sale proceeds in the Contai Treasury under Head R/D in favour of S.D.O., Contai, by 27.12.84.'

3. He did not order for issue of any notice under Section 6B of the Essential Commodities Act nor does it appear that the impugned proceeding was one for confiscation. The Collector did not also issue any notice on the petitioner from whose custody the fertiliser was seized before the impugned order for sale.

4. Mr. Sengupta learned Advocate for the petitioner submits that issue of notice is necessary before order for sale of the seized commodity can be made and the impugned order is bad in law in the absence of notice. In support of his contention he has referred to the decision of a Division Bench of this Court in Re : Swadeshi Sugar Supplies (P) Ltd. and Anr., reported in 1980(1) CHN 338. It has been held in the case referred to above that although the requirement of a notice before order of sale under Section 6A is not expressly mentioned at the time the Collector exercises his powers under Section 6A(2) of the Act, the principle of natural justice requires that a person whose right to property is being affected be given an opportunity of having his say. In view of the aforesaid decision it must be held that the impugned order for sale of the seized fertiliser without giving an opportunity to the petitioner of being heard is bad in law.

5. There is, however, another ground on which it must be held that the impugned order is bad in law. The Collector passed the order for sale as, in his opinion, the seized fertiliser might be confiscated. It appears that the Collector has not looked into the relevant provisions of Section 6. Under Section 6A(2) the Collector is

entitled to order the seized essential commodity to be sold at controlled price only when the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest to do so. The Collector has no jurisdiction to pass an order for sale simply because in his opinion the seized commodity may be confiscated. The Collector must form an opinion that the seized essential commodity is liable to speedy natural decay before he can pass an order for sale. The impugned order shows that he did not form any such opinion. He did not consider at all whether the seized commodity was liable to speedy natural decay justifying interim sale.

6. In view of what has been stated above it must be held that the impugned order of sale is bad in law. The revisional application is, therefore, allowed and the Rule is made absolute. The impugned order is set aside. The Collector is at liberty to proceed with the confiscation proceeding, if any.

7. The lower court records be sent down at once.

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