

बिहार सरकार
खाद्य एवं उपभोक्ता संरक्षण विभाग

पत्रांक - प्र0 04-उ0 न्या0-47/2017 5330 खाद्य,पटना/दिनांक- 19-11-18
प्रेषक,

पंकज कुमार,
सरकार के सचिव ।

सेवा में,

सभी जिला पदाधिकारी,
बिहार ।

विषय - आवश्यक वस्तु अधिनियम, 1955 की धारा-6ए के संबंध में माननीय उच्च न्यायालय, पटना द्वारा एल0पी0ए0 संख्या-1647/2015 बालेश्वर राय बनाम् बिहार सरकार एवं अन्य में पूर्ण पीठ द्वारा पारित आदेश के संबंध में ।

महाशय,

उपर्युक्त विषयक श्री बालेश्वर राय बनाम् बिहार सरकार एवं अन्य में एल0पी0ए0 संख्या-1647/2015 के साथ एल0पी0ए0 संख्या-1783/2017 श्री सत्यनारायण साह बनाम् बिहार सरकार एवं अन्य के मामलों को निष्पादित किया गया है, जिसकी महत्वपूर्ण कंडिका निम्नवत है :-

61. "The upshot of the aforesaid discussion makes it very clear that no Court, even the High Court under the extraordinary powers under section 482 of the Cr. P.C., shall have any jurisdiction to direct for release of any seized article during the pendency of the confiscation proceedings."

62. It may, however, be added that Article 226 of the Consitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibiton, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part-III and for any other purpose). Similary Article 227 of the Consitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court execirses its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can effect the power of the High Court under Artcles 226 and 227 of the Constituion of Inda.

63. Despite such wide and untrammelled powers, without any circumcission by external restrictions, the Courts have evolved certain self-imposed limits while exercising these power. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibiton is basically ordeained, keeping in mind that there is a National weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constituion of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised

casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issues to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

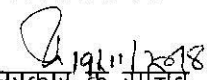
66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.

67. Before we part, it must be clarified that we have expressed no opinion or views with regard to the merits of the case which has been tagged along with the main matter, in which reference has been made."

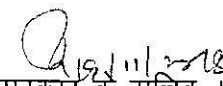
अतः आदेश की प्रति संलग्न करते हुए इस पर अग्रेत्तर कार्रवाई हेतु भेजी जा रही है।

अनु०— यथोक्त।

विश्वासभाजन


सरकार के सचिव।

पत्रांक — प्र० ०४-उ० न्या०-४७/२०१७ ५३३० खाद्य, पटना/दिनांक- १९-११-१८
प्रतिलिपि — सभी जिला आपूर्ति पदाधिकारी को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।
अनुरोध है कि आवश्यक वस्तु अधिनियम में दायर किये जाने वाले वादों में तथ्यों का अनुपालन सुनिश्चित हो सके।


सरकार के सचिव।

पत्रांक — प्र० ०४-उ० न्या०-४७/२०१७ ५३३० खाद्य, पटना/दिनांक- १९-११-१८
प्रतिलिपि — प्रधान सचिव, गृह विभाग को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित। अनुरोध है कि अपने स्तर से भी सभी पुलिस अधीक्षकों को आवश्यक कार्रवाई करने हेतु निदेश देना चाहेंगे।


सरकार के सचिव।

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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1647 of 2015

IN

Civil Writ Jurisdiction Case No. 2151 of 2015

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Baleshwar Roy, Son of Late Kusheshwar Roy, Resident of Village
- Dohatbari, P.S. - Uda Kishunganj, District - Madhepura.

.... Petitioner/Appellant

Versus

1. The State of Bihar.
2. The Collector, Madhepura.
3. The Sub-Divisional Officer, Madhepura.

.... Respondent/Respondent

With

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Letters Patent Appeal No. 1783 of 2017

IN

Civil Writ Jurisdiction Case No. 20339 of 2016

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Satyanarayan Sah, Son of Bhagwan Sah, Resident of Village -
Bishrampur (Tola), P.S. - Sasaram, District - Rohtas.

.... Petitioner/Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department
of Forest, Government of Bihar, Patna.
2. The District Magistrate, Rohtas.
3. The Divisional Forest Officer, Rohtas at Sasaram.
4. The Officer-in-Charge, Nokha Police Station, Rohtas, District -
Rohtas.

5. The Forest Inspector (Forester), Tilauthu, District - Rohtas.

.... Respondents

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Appearance :

(In L.P.A. No. 1647 of 2015)

For the Appellant : Dr. Sanjay Kumar Singh, Advocate

For the Respondents : Mr. Anant Prasad Singh, S.C.-15

Mr. S.D. Sanjay, (Addl. S.G.)

Mr. Satya Deo Kumar (S.C.-5)

Amicus Curiae : Mr. Y.V. Giri, Sr. Advocate

(In L.P.A. No. 1783 of 2017)

For the Appellant : Mr. Siddharth Harsh, Advocate

For the Respondents : Mr. Servesh Kr. Singh, A.A.G.-13

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 01-11-2018

A Division Bench of this Court, while deciding the correctness of the order of confiscation under the Essential Commodities Act, 1955 (*in short the E.C. Act, 1955*) of foodgrains and vehicles on which the same was being carried as well as the Appellate order and the order passed by the learned Single Judge in C.W.J.C. No. 2151 of 2015 (*Baleshwar*

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Roy Vs. The State of Bihar & Ors.) upholding the correctness of the aforesaid two orders, viz., the confiscation order as well as the appellate order, referred the matter to the Full Bench and framed the following terms of reference to be decided and answered by it:

(A.) *Whether the Collector, who has seized any animal, vehicle, vessel or other conveyance used in carrying essential commodity, has the jurisdiction to release such animal, vehicle, vessel or other conveyance, and if so, on what conditions?*

(B.) *Whether the separation of judicial and executive functions will empower the Collector to confiscate the animal, vehicle, vessel or other conveyance without trial as the deprivation of a property can be ordered by a Court only after trial of the criminal case?*

(C.) *Whether the provisions of Section 6-D of the Act, so as to inflict any other punishment after confiscation, would stand the legal scrutiny on the touchstone of double jeopardy?*

(D.) *Whether the power of confiscation of the goods and the vehicle vesting with the Collector as an Executive Authority can be said to be legal in view of the principle of separation of executive and judicial power and/or that the power of confiscation of the goods and the vehicle can be exercised only by the Court.*

2. While formulating the aforesaid terms of reference for the Full Bench, the Division Bench took note of the discordant notes in (i) ***Bishwanath Singh & Ors. Vs. State of Bihar & Ors.; 1978 (26) BLJR 717***, (ii) ***Jhabarmal Mukim Vs. The State of Bihar & Ors.; 1984 (1) PLJR (HC) 568***; (iii)



Shambhu Dayal Agarwala Vs. State of West Bengal & Anr;
(1990) 3 SCC 549; and a Division Bench decision of Punjab and Haryana High Court reported in (1999) 1 RCR (Cri) 1 (DB); **Rajesh Kumar Vs. State of Haryana** with respect to the provisions contained in Section 6-A, B, C, D and E as well as Section 7 of the E.C. Act, 1955.

3. In order to answer the aforesaid questions, it would be first necessary to refer to the aforesaid relevant provisions, viz., Sections 6-A, B, C, D and E as well as Section 7 of the E.C. Act, 1955 (Central Act as well as the State Act).

4. The E.C. Act, 1955 was enacted by the Parliament to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.

5. For the sake of completeness and ready reference, the provisions contained in the aforesaid Sections of the E.C. Act, 1955 (Central Act as well State Act) are being reproduced hereinbelow in a tabular form:-

<u>Central Act</u>	<u>State Act</u>
6-A. Confiscation of foodgrains, edible oilseeds and edible oils. -(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	6.A. Confiscation of foodgrains, edible oil-seeds, edible oils, etc. -(1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto it shall be reported without any reasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied that there has been a contravention of the order, may

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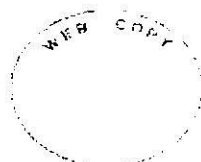
produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of— (a) the essential commodity so seized; (b) any package, covering or receptacle in which such essential commodity is found; and (c) any animal, vehicle, vessel or other 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 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	order confiscation of— (a) the essential commodities 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 seized in pursuance of an order made under section 3 in relation thereto from producer shall, if the seized foodgrains or edible oil-seeds have been produced by him, be confiscated under this Section. (2) Where the Collector, on receiving a report of seizure or in inspection of any essential commodity under sub-section (1), is of the opinion that such essential commodity is subject to speedy and natural decay or that it is otherwise, expedient in the public interest so to do, he may order the same to be sold at the controlled price if any, fixed under any law for the time being in force. (3) In the case of foodgrains, where there is no controlled price, the Collector, if he thinks fit, may order the foodgrains seized under sub-section (1) to be sold through fair price shops at the price fixed by the Central Government or the State Government, as the case may be for the sale of such foodgrains to the public through these shops or may order such foodgrains by public auction. (4) The Collector shall whenever it is practicable so to do having regard to the nature of the essential commodity take and preserve sample of the same in the prescribed manner before its sale or distribution. (5) Where any essential commodity is sold as aforesaid, the sale proceeds thereof, after deduction of all expenses of the sale or auction, as the case may be, shall— (a) where no order of confiscation is ultimately passed by the Collector; or (b) where an order passed on appeal under sub-clause (1) of section 6C so requires; or (c) in the case of prosecution being instituted for the contravention of the order in respect of which an order of confiscation has been made under
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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 or the person from whom it is seized. 6-B. Issue of show cause notice before confiscation of	this section and where the person concerned is acquitted to paid to the owner thereof or the person from whom it is seized: Provided that in the case of foodgrains sold through fair price shops in accordance with sub-sections (2) and (3) the owner shall be paid for the foodgrains so sold, the price fixed by the State Government, for retail sale of such foodgrains through such shops less all expenses of sale or auction under sub-sections (2) and (3). (6) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act II of 1974) when Collector or the appellate authority is seized with the matter under this section no court shall entertain any application in respect of essential commodities, any package covering, receptacle, any animal, vehicle or other conveyance used in carrying such commodities as far as its release, distribution etc. is concerned and the jurisdiction of Collector or the appellate authority with regard to the disposal of the same shall be exclusive. (7) The State Government may by notification in the Official Gazette, authorise any officer not below the rank of Sub-Divisional Magistrate, to discharge all or any of the functions of a Collector under this section. (8) The Collector shall for the purposes of this Act have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 when making enquiries under this section in respect of following matters, namely:— (a) receiving evidence on affidavits; (b) summoning and enforcing the attendance of any person and examining him on oath; and (c) compelling the production of documents. (9) All enquiries and proceedings under this section before the Collector and the appellate authority shall be deemed to be judicial proceeding and while discharging functions under this section the Collector and the appellate authority shall be deemed to be a Court. Explanation.—For the purposes of this section the Collector shall include 'Additional Collector' and any officer specially authorized under sub- section (7). 6.B. Issue of show cause notice before confiscation of
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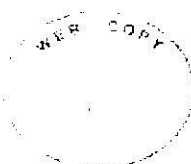


essential commodity.-No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6-A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized—	essential commodity.-No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6-A 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 or receptacle, animal, vehicle, vessel or other conveyance;	(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity package, covering or 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 grounds of confiscation; and	(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and
(c) is given a reasonable opportunity of being heard in the matter.	(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 6-A 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.	(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 6-A 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, provisions of that clause have been substantially complied with.	(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, provisions of that clause have been substantially complied with.
6-C. Appeal.—(1) Any person aggrieved by an order of confiscation under section 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.	6.C. Appeal.—(1) Any person aggrieved by an order of confiscation under section 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.
(2) Where an order under	(2) Where an order under section 6-A modified or annulled by such



section 6-A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such persons shall, except as provided by sub-section (3) of section 6-A, be paid the price therefor as if the essential commodity, had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined— (i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3-B) of Section 3; (ii) in the case of sugar, in accordance with the provisions of sub-section (3-C) of Section 3; and (iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of Section 3. 6-D. Award of confiscation not to interfere with other punishments.—The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act. 6-E. Bar of jurisdiction in certain cases.—Whenever any essential commodity is seized in pursuance 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 6-A, the Collector, or, as the case may be, the judicial authority appointed under section 6-C shall have and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, Tribunal or 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.	judicial authority, or where in a prosecution for the contravention of the order in respect of which an order of confiscation has been made under section 6-A, the person concerned is acquitted and in either case it is not possible for any reason to return the essential commodity seized, such person shall, save as provided by sub-section (3) of section 6-A, be paid the price thereof as if the essential commodity had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined— (i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of Section 3; (ii) in the case of sugar, in accordance with the provisions of sub-section (3C) of Section 3; and (iii) in the case of any other essential commodity in accordance with the provisions of sub-section (3) of Section 3." 6-D. Award of confiscation not to interfere with other punishments.—The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act. 6-E. Bar of jurisdiction in certain cases.—Whenever any essential commodity is seized in pursuance 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 6-A, the Collector, or, as the case may be, the judicial authority appointed under section 6-C shall have and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, Tribunal or 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.
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6. To put it simply, whenever any essential commodity is seized in terms of an order made under Section



3 of the Act, the same is required to be reported, without any unreasonable delay, to the Collector of the district in which the seizure has been made. The Collector, considering the expediency in the matter and irrespective of the fact whether any prosecution for the contravention of Section 3 of the Act has been launched or not, may order for confiscation of the essential commodity so seized, package, covering or receptacle in which such essential commodity is found and any animal, vehicle, vessel or any other conveyance used for carrying such essential commodity. This confiscation is subject to the satisfaction of the Collector regarding contravention of any order in terms of Section 3 of the Act.

7. The foodgrains/edible oilseeds is not to be confiscated, if it is found from the possession of any producer/agriculturist.

8. A special provision has been made in the Central Act for giving an option to the owner of the animal, vehicle, vessel or other conveyance, if such mode of transport is used for the carriage of goods or passengers for hire, to pay, in lieu of its confiscation, a fine not exceeding the market price on the date of seizure of the essential commodity sought to be carried by such mode of transport.

9. With respect to the foodgrains/edible oilseeds, the Collector has been empowered to direct for sale of the



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same on controlled price or through public auction, if he is of the opinion that it is necessary in order to prevent natural decay of such foodgrains/edible oilseeds or if it is expedient in public interest to do so. The price of the foodgrains, if sold by any mode prescribed under the Act, is required to be returned to the owner, if no confiscation order is passed by the Collector or the order of confiscation is set-aside in appeal under Section 6-C of the Act or if the prosecution instituted for such contravention of the order in respect of which confiscation has been made, the person concerned is acquitted.

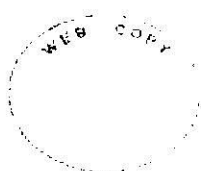
10. In the State Act, the provision with respect to giving an option to the owner of the vehicle/mode of transport, to pay fine, in lieu of its confiscation, has been omitted. The State Amendment has further clarified that when the Collector or the Appellate Authority is seized with the matter under this Section, i.e., with respect to confiscation, no Court shall entertain any application in respect to the essential commodities, package, covering etc. or vehicle carrying such commodities regarding its release, distribution etc. and such powers of the Collector and the Appellate Authority shall be exclusive as far as the disposal of the aforesaid is concerned.

11. No Officer below the rank of Sub-Divisional Magistrate, could be authorized by the State Government to

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discharge all or any of the functions of the Collector and the Collector shall have same powers with regard to receiving evidence on affidavits, summoning and enforcing the attendance of witnesses and examining them on oath and compelling the production of documents, as are vested in a Court under the Code of Civil Procedure, 1908. Obviously, therefore, the Collector and the Appellate Authority shall be deemed to be the Courts and the proceedings thereof, as judicial proceedings.

12. Section 6-B of the E.C. Act, 1955, in both the Acts (Central as well as State) provides that notice has to be issued to the owner of the essential commodity/package/conveyance in writing, informing him of the grounds for the proposed confiscation and to give him opportunity of representing in writing within such reasonable time against the grounds for confiscation. The owner thereof is also to be afforded hearing in the matter. This Section provides that no confiscation of the aforesaid shall be ordered under Section 6-A of the Act, if the owner of the vehicle/conveyance proves to the satisfaction of the Collector that the same was used in carrying essential commodity without the knowledge or connivance of the owner or his agent and that the person in-charge of the vehicle/conveyance had taken all reasonable and necessary precautions against



such use/misuse. However, the order of confiscation is not to be rendered invalid only for the reason of there being some irregularity or defect in the notice, provided the provisions of the Section are substantially complied with.

13. The provision of appeal is provided under Section 6-C of the E.C. Act, 1955.

14. What is necessary to be noted is that if any order of confiscation is modified or annulled or where the prosecution launched for the contravention of the order, in respect of which an order of confiscation has been made under Section 6-A of the Act, results in acquittal and if it is not possible for any reason to return the essential commodity seized, the owner shall be paid the price thereof as if the essential commodity had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and the price has to be determined in accordance with the terms of Section 6(2).|

15. The award of any confiscation under Section 6-D of the E.C. Act, 1955, by the Collector, cannot be substituted for any punishment to which the person concerned may be liable.

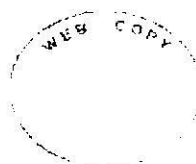
16. Section 6-E of the E.C. Act, 1955 proscribes the exercise of jurisdiction by any Judicial Authority with respect to possession, delivery, disposal, release or distribution of the

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essential commodity, package, covering, receptacle, vehicle, vessel or other conveyance.

17. The criminal intent and offence regarding contravention of an order under Section 3 of the Act has been made punishable under Section 7 of the E.C. Act, 1955. Apart from sentencing, the Court concerned has also been vested with the power of forfeiture of the property or the vehicle, to the Government. A distinction in this regard has been made between forfeiture of any property or vehicle/conveyance. So far as property in respect of which the order is said to have contravened is required to be forfeited to the Government, but so far as package, covering or receptacle in which the property is found or the vehicle/conveyance used in carrying the property could be forfeited only by the specific order of the Court.

18. A plain reading of Section 6-A, B, C, D and E as well as Section 7 of the E.C. Act, 1955 leaves no room for doubt that under the State Act, there is no provision of release of the vehicle so seized under Section 6-A of the Act, pending confiscation proceeding. The Collector does not have the authority to release the vehicle even after the confiscation proceedings are over and there is no order of confiscation of the vehicle as it must await the verdict of the Court where the prosecution has been launched and the Court concerned only



has the power to direct for its forfeiture. If the vehicle is released by the Collector, then it shall not remain in actual physical position for the Court to pass any order of forfeiture. This is evident from Sections 6-A and 6-C of the Act.

19. In ***Bishwanath Singh & Ors. Vs. State of Bihar & Ors.***; 1978 (26) BLJR 717, confiscation of foodgrains and vehicles, in which the same was being carried, was challenged on the ground that the Collector, while recording the order of confiscation, omitted to mention as to which order was contravened or that the petitioners were not the *bona fide* consumers/agriculturists for the order of confiscation to be passed. The further challenge to the order of confiscation was with respect to the sale of the vehicles so seized, as being without jurisdiction.

20. It may be noted that the vehicles which were seized were sold pending confiscation proceedings. The Division of this Court, in the aforesaid case, though justified the order of confiscation on the ground that the police report clearly disclosed that huge quantity of foodgrains was being carried in the vehicles and since the Collector had taken note of the aforesaid police report, it would be presumed that the Collector was satisfied that the order in that regard, under Section 3 of the Act, was contravened and that the petitioners were not agriculturists or consumers. However, the sale of



the vehicle was not justified as the Division Bench was of the view that if ultimately the criminal case would fail, then the vehicles will have to be returned to the owner thereof.

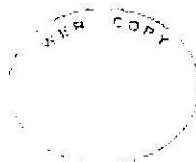
21. In ***Shambhu Dayal Agarwala Vs. State of West Bengal & Anr.; (1990) 3 SCC 549***, a question arose before the Supreme Court, viz., whether the Collector who was reported about the seizure of essential commodity under Section 6-A of the Act, has the power by virtue of Section 6-E of the Act to release the goods seized during the pendency of the proceedings before the Special Court. In the aforesaid case, several bags of mustard seeds and several tins of mustard oil were seized from the factory premises of the petitioner for purported infraction of the conditions of license as well as orders issued under Section 3 of the Act. Before the submission of the charge-sheet, the petitioner approached the concerned High Court for interim orders of release which was disposed of with a direction to the petitioner to approach the Collector for the release of the goods, pending confiscation proceedings. Thus, an application was made under Section 6-E of the Act by the petitioner before the Collector for the release of the seized commodities. The confiscation proceedings were dropped, subject to the prosecution pending before the Special Judge and the seized goods were directed to be released in favour of the petitioner. The aforesaid order



of release by the Collector was challenged by the State Government before the High Court. The order of release of the goods was set-aside by the High Court by holding that under the provisions of Section 6-A read with Section 6-E of the Act, the Collector had no power to order for release of seized commodity. The reason assigned by the High Court was that no such power of release was vested in the Collector under Section 6-A of the Act since Section 6-E was to be read in the perspective of Section 6-A of the Act and because of the phrase "*pending confiscation*" under both the Section 6-A and Section 6-E of the Act, the power of the Collector to release the seized items could not be read into the provisions of Section 6-E of the Act.

22. The Supreme Court in **Shambhu Dayal Agarwala** (supra), while dealing with the issue relating to the powers of the Collector to release goods/vehicle so seized, pending confiscation and after the confiscation, held in paragraphs 7 and 8 as follows:-

7. The Act was enacted to safeguard public interest. It was thought necessary in the interest of the general public to control the production, supply and distribution of, and trade and commerce in, certain commodities through legislation. With that in view, powers to control production, supply, distribution, etc., came to be conferred on the Central Government by Section 3 of the Act. As pointed out earlier, in order to deter persons dealing in such essential commodities from contravening any order made under Section 3, the law



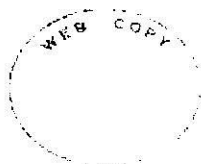
envisages two independent proceedings, namely, (i) confiscation under Section 6-A and (ii) prosecution leading to punishment provided by Section 7 of the Act. In order to ensure that the steady supplies of essential commodities to the members of the general public is not disrupted, provision is made in Sub-section (2) of Section 6-A that the Collector may, if it is expedient and in public interest so to do, sell the seized commodity at the controlled price or by public auction if no such price is fixed or through the public distribution system if the retail sale price is fixed for the said commodity. Similar powers can be exercised if the commodity is subject to speedy and natural decay. The obvious purpose of conferring this power on the Collector without waiting for the completion of the confiscation proceedings is to maintain the smooth supplies of essential commodities to the consumer public, avoid artificial shortages, maintain the price line and secure equitable distribution thereof through fair price shops. If such a power was not conferred and if the seized commodity could not be dealt with till the completion of the confiscation proceedings, it would defeat the very object and purpose for which the Act was enacted. By the conferment of this power a duty is cast on the Collector to see that essential commodities are not locked up in proceedings under the Act; artificial scarcity is not created to hike up prices; a close watch is kept on the supplies to the general public; when necessary in public interest the stock of seized commodities is released to combat short supply and in general to ensure the availability of essential commodities at fair prices to the general public. To ensure that this objective of maintaining supplies and securing equitable distribution of essential commodities is not defeated, the legislature has entrusted the task to the Collector in its entirety and has ruled out interference by courts, tribunals and other authorities by placing an embargo on their jurisdiction in this behalf by Section 6-E of the Act. While conferring wide powers as



above on the Collector, the legislature has also protected the dealer's interest by providing that in the event it is ultimately found that he was not guilty of contravention of any order made under Section 3, he shall be paid the price realised with reasonable interest. But if the prosecution ends in a conviction, Section 7(1)(b) enjoins that the property in respect of which the order was contravened 'shall be forfeited' to the Government. The language of this clause is clearly mandatory and leaves no option to the Court but to order forfeiture. This becomes clear if we read this clause in juxtaposition with Clause (c) which confers a discretion on the Court to order forfeiture of any packing, covering or receptacle in which the essential commodity was found or any animal vehicle, vessel or any other conveyance which was used to carry the same. If the property is returned to the owner or the person from whom it was seized in exercise of power under Section 6-E, it is difficult to understand how the Court would implement the mandate of Clause (b) of Sub-section (1) of Section 7 of the Act. But the learned Counsel for the appellant argued that even in cases where the Collector sells the essential commodity under Sub-section (2) of Section 6-A and retains the price thereof, the essential commodity ceases to be available for forfeiture under Clause (b) of Section 7(1) of the Act. He, therefore, submitted that the Act itself contemplates a situation which renders Clause (b) of Section 7(1) otiose where the essential commodity is disposed of by the Collector under sub-section (2) of Section 6-A of the Act. He, therefore, saw no harm in releasing the commodity to the owner or the person from whose possession it was seized on condition that such person deposits the market price of the commodity on the date of seizure or gives a bank guarantee for the said sum. In this connection reference was also made to the provision in Sub-section (5) of Section 452 of the Code which inter alia provides that the term 'property' shall include, 'in the case of

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property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise'. This definition can be invoked in view of Section 2(f) of the Act which is not inconsistent with any provision of the Act. But this submission overlooks the fact that the power conferred by Sub-section (2) of Section 6-A to sell the essential commodity has to be exercised in public interest for maintaining the supplies and for securing the equitable distribution of the essential commodity. If the essential commodity is returned to the person from whom it was seized or to the owner thereof, the very objective of the Act would be defeated and the purpose of seizure would be frustrated. The seizure has to be effected not for the sake of earning revenue, i.e. the market price of the commodity at the date of seizure, which may be ultimately forfeited, but to prevent hoarding of essential commodities, avoid artificial shortages, maintain a steady supply to the community and ensure equitable distribution at fair and reasonable prices. If the seized commodity is returned by merely securing its value, this objective of the act will be wholly defeated. That is why Section 6-A does not empower the Collector to give an option to pay, in lieu of confiscation of the essential commodity, a fine not exceeding the market value of the commodity at the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by Sub-section (2) of Section 6A is granted. This shows that the legislature did not intend to confer a power on the Collector to return the essential commodity to the owner or the person from whose possession it was seized. That is for the obvious reason that



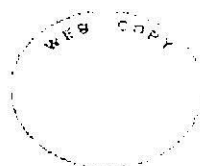
it would run counter to the very object and purpose of the enactment.

8. And now to the structural setting and context in which the word 'release' is used in Section 6-E. While debarring courts, tribunals and other authorities from exercising power in relation to the seized commodity, power is conferred on the Collector or the State Government concerned under Section 6-C, to make orders with regard to the possession, delivery, disposal, release or distribution of such commodity, etc. This power can be exercised pending confiscation. The power conferred by this section is unqualified. The word 'release' is preceded by the words 'possession, delivery and disposal' and followed by the word 'distribution'. The setting and context in which the word 'release' is used makes it clear that it is not used in the sense of 'return'. In the first place as pointed out earlier it would completely defeat the purpose and object of the Act if the essential commodity seized for suspected contravention of the order made under Section 3 is returned to the owner or person from whom it was seized even before the confiscation proceedings were completed. Such an intention cannot be ascribed to the legislature. Secondly, it is not possible to believe that the legislature would confer unqualified and unrestricted power to return the essential commodity to the owner or the person from whose possession it was seized before a decision whether or not to confiscate the same is taken. As the section stands, if the interpretation put by the learned Counsel for the appellant is accepted, it would be permissible to the Collector to return or restore the commodity without imposing any condition, pending confiscation proceedings. We are unable to persuade ourselves to accept the interpretation placed by Mr. Rao on the word 'release'. The scheme of Sections 6-A, 6-B and 6-C makes it clear that after the essential commodity is seized and the same is inspected by the concerned Collector, the

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latter has to decide, after complying with the procedure set out in Section 6-B, whether or not to confiscate the essential commodity. Since the procedure delineated in Section 6-B is time consuming, the Collector has been given special power to sell the essential commodity as stated in sub-section (2) of Section 6-A if it is subject to speedy and natural decay or it is expedient in public interest so to do. If the Collector decides not to confiscate the commodity and if no prosecution is launched or contemplated the commodity has to be returned to the owner or person from whom it was seized. If in the meantime it is sold in exercise of power under Sub-section (2) of Section 6-A, the price of the commodity has to be paid as provided by Sub-section (3) of Section 6-A. If the Collector has ordered confiscation but the order is reversed in appeal under Section 6-C and no prosecution is pending, sub-section (2) of Section 6-C enjoins that the essential commodity should be 'returned' and if that is not possible its price together with 'reasonable interest'. It is pertinent to note that Sub-section (2) of Section 6-C uses the words 'return the essential commodity seized' and not the words 'release the essential commodity seized'. It seem to us that having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard against the word 'release' is used in the limited sense of release for sale, etc., so that the same becomes available, to the consumer public. There could be no question of releasing the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding, for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. Such a view would render Clause (b) of Section 7(1) totally nugatory. It seems to us that Section 6-E is intended to serve a dual purpose, namely (i) to prevent interference by courts, etc., and (ii) to effectuate the sale of the essential commodity under Sub-section (2) and the return of the animal, vehicle,



etc., under the second proviso to sub-section (1) of Section 6-A. In that sense Section 6-E is complementary in nature. We are, therefore, of the opinion that the High Court was right in the ultimate conclusion it reached.

(Emphasis provided by us)

23. The Supreme Court, therefore, drew a distinction between the words "return" of the essential commodity seized with the words "release" of the essential commodity seized. The Supreme Court was, thus, of the view that having regard to the scheme of the Act, the object and purpose of the Statute and the mischief it seeks to guard against, the word "release" is used in a limited sense of release for sale, etc., so that the same becomes available to the consumer public. There is no question of release of the commodity by returning it to the owner before the proceeding for confiscation as well as the termination of the prosecution resulting into acquittal of an offender.

24. Thus, from a conspectus of the aforesaid decision rendered by the Supreme Court as well as on a plain reading of the Statute, it is clear and obvious that in case of seizure of any foodgrains for contravention of any order, in terms of Section 3 of the Act, from a non-consumer/non-agriculturist, it could only be sold on satisfaction of the Collector as an interim measure under the prescribed mode of sale and in case the order of confiscation was modified or



annulled in appeal and the prosecution instituted for contravention of the order in respect of which the confiscation has been made, ends in acquittal of the offender, the price, so realized after deducting the expenses in the process of sale, could be returned to the owner.

25. So far as the vehicle is concerned, under the Central Act, the owner has an option to pay the market value of the vehicle on the date of the seizure, in lieu of its confiscation. However, if the aforesaid option is not exercised by the owner under the Central Act, the same could only be released after the confiscation proceedings failed or the confiscation order was annulled/modified and the prosecution also failed. Any other interpretation would render the provisions of Clause (b) and Clause (c) of Section 7 of the E.C. Act, 1955, absolutely redundant and nugatory.

26. Needless to state that in the State Act, even the option of sale, as provided under the Central Act, is not available.

✓ 27. Thus, the first question, viz., Question No. (A.) of the reference, is answered accordingly. To specify: the Collector, under the Central Act, has the power to release the vehicle, animal, vessel etc. in case of the option exercised by the owner thereof to pay the market price at the date of seizure. There is no such corresponding provision in the State



Act. Otherwise, the Collector does not have the power to release the vehicle, vessel or other conveyance till the conclusion of the criminal prosecution and if no prosecution is launched, until when the Collector decides not to confiscate the vehicle, and if the order of confiscation is passed, then only on the annulment of the aforesaid order of confiscation by the Appellate Authority.

28. For answering Question Nos. (B.), (C.) and (D.) of the reference, it would be necessary to refer to Articles 245, 246 and 254 of the Constitution of India. Articles 245, 246 and 254 of the Constitution of India deal with the extent of laws made by the Parliament and by the Legislature of the States and in case of inconsistency between the laws made by the Parliament and laws made by the Legislature of States.

29. Articles 245, 246 and 254 of the Constitution of India are being reproduced hereinbelow for ready reference:-

245. Extent of laws made by Parliament and by the Legislatures of States.-(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.-(1) Notwithstanding anything in clauses (2) and (3),

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Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the

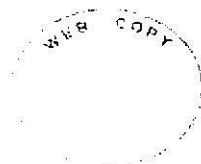


Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

30. Entry-33 of List III (Concurrent List) of Seventh Schedule deals with foodstuffs including edible oilseeds and oils. Thus, the Parliament as well as the State Legislature have the competence to enact laws concerning production, supply and distribution of foodstuffs including edible oilseeds and oils. The Central as well as the State Legislature are perfectly within their legislative competence to enact any law with respect to Entry-33 of the List.

31. But for one provision, viz., the powers of the Collector in the Central Act to afford an option to the owner of the vehicle, which has been seized in connection with any contravention of an order under Section 3 of the Act, to pay the market value of such vehicle on the date of the seizure as fine, in lieu of its confiscation, all other provisions in the State Act are in *pari materia*. For the absence of the aforesaid provision in the State Act, it cannot be said to be repugnant to the Central Act. For any State law to be held repugnant to the Central law, it must be shown that the two enactments contain



inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field. If the two Statutes occupy a particular field, but there is room or possibility of both the Statutes operating in the same field without coming into collision with each other, the State Act would not be dubbed as repugnant to the other.

32. In **Deep Chand Vs. State of U.P.; AIR 1959 SC 648**, the Supreme Court laid down that repugnancy between the two Statutes could be ascertained on the basis of three principles, viz., (i) whether there is direct conflict between the two provisions; (ii) whether the Parliament intended to lay down an exhaustive Code in respect of the subject matter replacing the Act of the State Legislature; and (iii) whether the law made by the Parliament and the law made by the State Legislature occupy the same field. —

33. In **State of Orissa Vs. M.A. Tulloch & Co.; AIR 1964 SC 1284**, the Supreme Court has observed as follows:-

"Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, they only criterion of repugnancy, for if a competent Legislature with a superior efficacy



expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other Legislature whether passed before or after would be overborne on the ground of repugnancy."

34. The pronouncements of the Supreme Court in (i) **Javeri Bhai v. State of Bombay; AIR 1954 SC 752**, (ii) **T. Barai v. Henry An Hoc; (1983) 1 SCC 177**, (iii) **Hoechst Pharmaceuticals Ltd. v. State of Bihar; (1983) 4 SCC 45**, and (iv) **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamikal Medical Education and Charitable Trust v. State of Tamil Nadu; 1996 (3) SCC 15**, make it very clear that the entry in any List demarcates only the field of the Legislation and not the power to legislate. The entries in the List are to be given fullest scope and amplitude in cases of any overlapping of the subject matter. It is always the duty of the Court to find out the true intent and purpose of a particular Legislation by pressing into use, the doctrine of pith and substance to determine whether the Legislation is made in the correct field.

35. Between the two Acts of the Centre and the State, there does not appear to be any repugnancy.

36. The provisions contained in Section 6-A to 6-E of the Central Act as well as of the State Act, read with Section 7 of the Act, do not curtail any freedom or make any inroad into the basic structure of the Constitution. No right of

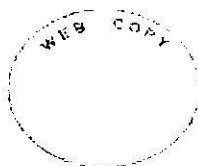


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any Citizen under any one of the provisions of Chapter-III of the Constitution of India appears to have been impeded or restricted without any reasonable cause. Effecting equilibrium supply and distribution of foodgrains/edible oilseeds is the job of the Government (Central as well as the State). It is only for the interest of general public that there should be control of production, supply and distribution and trading and commerce in certain commodities, that the E.C. Act 1955 was enacted.

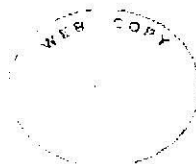
37. In order to prevent and avoid hoarding and black-marketing and thereby, artificially raising the price of foodgrains/edible oilseeds and oils, provisions have been made for confiscation of the foodgrains, any package/covering or receptacle in which such essential commodity is found in contravention of the law in that regard and any vehicle or conveyance used for carrying such essential commodity.

38. Necessary safeguards, but have been provided so as to prevent an untrammelled exercise of power by the executive. The provisions contained in Section 6-A to 6-E of the Act provide for sale of the foodgrains under certain conditions, notice to the owner/offender before confiscation, affording him an opportunity of written representation as well as hearing and making provisions for excluding the agriculturists/consumers from the application of the Act. In



the Central Act, there a provision for the owner furnishing the market value of the vehicle in lieu of its confiscation. The provision of appeal is a further check on any misuse of the powers of confiscation in the hands of the Collector. The Appellate Authority is, more often not, a Judicial Officer. Lastly, in the event of launching of criminal prosecution, there is provision for trial and in case the so-called offender is acquitted, the seized items are restored to him. Thus, restrictions, if at all, which have been imposed on the rights of the Citizens, have to be viewed in the context of the implementation of and the requirement of law with regard to trade and commerce as well as production, control and supply of foodgrains. The restrictions are neither arbitrary nor excessive and do not go beyond the requirement of interest of general public. There is also a direct and proximate nexus between the restrictions imposed and the object which is sought to be achieved, viz., control of supply of foodgrains/edible oilseeds/oils, which are essential commodities.

39. Viewed in the light of these principles, the provisions contained in Section 6-A to 6-E as well as in Section 7 of the Act, conform to the test of reasonableness and constitutionality. It cannot be said by any stretch of imagination that the Collector has been conferred with an



unguided power for confiscating seized goods and vehicles. The provision regarding exclusion of interference by any Court or Tribunal, during the pendency of the confiscating proceeding, is also reasonable as there is a provision of appeal against the order of confiscation before a Judicial Officer. It would not have been possible to effectuate speedy and effective control of supply of foodgrains, if pending confiscation proceedings, the Courts or Tribunals would also have been clothed with the power of passing orders with respect to release and disposal of such confiscated items/goods.

40. The Confiscating as well as the Appellate Authority under the Act have been invested and clothed with powers vested in any Court under the Code of Civil Procedure, 1908 while making inquiries in that regard in respect to matters, viz., (i) receiving evidence on affidavits; (ii) summoning and enforcing the attendance of any person and examining him on oath, and (iii) compelling the production of documents. Section 6-A enjoins that all inquiries and proceedings before the Collector and the Appellate Authority shall be deemed to be judicial proceeding and while discharging functions under the Section, the Confiscating as well as the Appellate Authority shall be deemed to be the Court.



41. In this context, it would also be necessary to expatiate that "confiscation" and "forfeiture" are not similar and synonymous terms. "Confiscation" envisages a civil liability, whereas, an order of forfeiture of foodgrains or vehicle is preceded by a judgment of conviction. Etymologically speaking, confiscation means appropriation to the use of State which is adjudged forfeited. Though, confiscation also amounts to appropriation of private property to public Treasury, but it is not by way of penalty. This can be said on the basis of the two different provisions which have been made under the Act, viz., (i) for confiscation for which an Executive Authority, the Collector, has been authorized, and (ii) forfeiture of the property in question along with conviction and sentence for the offender by the competent Court of law.

42. The statement of the object of the Act makes the distinction between the two terms, viz., confiscation and forfeiture rather obvious. For achieving the object for which the Legislation has been enacted, provision of confiscation has been made. A separate provision has been carved out for criminal prosecution (Section 7 of the E.C. Act). The power of confiscation is independent of the launching of prosecution with regard to contravention of any order in terms of Section 3 of the Act. Thus, by no analogy or logic can "confiscation" be said to be punishment or penalty, even though, the net result



of the confiscation is the deprivation of the said property from the hands of the owner/person from whom it has been seized and appropriation of the same to the State/Public Treasury. If this is so, then vesting the power of confiscation in an Executive Authority, viz., the Collector, cannot be said to be in derogation of the provisions contained in Section 3 sub-Clause (4) of the Cr.P.C.

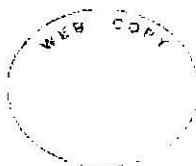
43. Section 3 sub-Clause (4) of the Cr.P.C. reads as follows:-

3. Construction of references.-(4) where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate;

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

44. Though, while proceeding with confiscation, some amount of shifting of evidence or appropriation thereof is inherent, but the proceedings do not end in any punishment or penalty or detention in custody. In that event, such power of confiscation can be exercised by Executive Authority and



the construction of reference in Section 3 of the Cr.P.C., with respect to such powers being exercised only by a Judicial Officer, does not apply. The power of confiscation by an Executive Authority can further be justified in view of Section 5 of the Cr.P.C., which is in the nature of savings.

45. Section 5 of the Cr.P.C. reads as follows:-

5. Savings.—*Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.*

46. The E.C. Act, 1955 is a special law and there is no interdict for any specific provision to the contrary, for the application of the Code affecting such Special Act.

47. The aforesaid issue, viz., whether the powers of confiscation could be left in the hands of an Executive Authority in view of Section 3 sub-Clause (4) of the Cr.P.C. was raised and answered in **Jhabarmal Mukim Vs. The State of Bihar & Ors.; 1984 (1) PLJR (HC) 568**. The Division Bench of Patna High Court in the aforesaid case, after examining the entire resume of the Act, held that confiscation in the present Act was not in the nature of penalty or punishment which operated in a different field and, therefore, even in view of Section 3 (4) of the Cr.P.C., there was no illegality in vesting that power (of confiscation) in an Executive Authority, viz., the



Collector. The Division Bench also held that since the E.C. Act, 1955 was a special Act, providing a separate forum of confiscation in Section 6-A of the Act, thereby vesting the power in Collector to exercise such power, the provisions of Section 5 of the Cr.P.C. would not render it contaminated by Section 3 (4)(a) of the Cr.P.C.

48. While referring the issues at hand to the Full Bench, the Division Bench has also made reference of a judgment delivered in **Rajesh Kumar Vs. State of Haryana; (1999) 1 RCR (Cri) 1 (DB)**. In the aforesaid case, the virus of certain provisions, contained in the Punjab Excise (Haryana Third Amendment) Ordinance, 1997 (Haryana Ordinance No. 4 of 1997), was questioned. In the aforesaid case, the learned Division Bench, after making a survey of unamended and amended provisions of the principle Act, found that by virtue of the amending Ordinance, the Courts were denuded of their jurisdiction and the Executive Authorities were given unguided powers to confiscate the seized goods/vehicle before initiation of prosecution and that there was absence of requirement of giving notice and opportunity of hearing to the owner and making the order of confiscation final irrespective of the result of prosecution and simultaneous denial of redressal to the aggrieved party in a Court of law. The Bench, therefore, held that those were not reasonable restrictions under Article 19(5)



or (6) of the Constitution of India; rather those provisions only imposed unreasonable restrictions on the rights of the Citizens to move freely throughout the territory of the Country and to carry on their trade, business or occupation. In such circumstances, those provisions of the Haryana Ordinance No. 4 of 1997, referred to above, were struck down as being violative of Articles 14 and 19 of the Constitution of India. As a consequence of that, the Division Bench declared that a criminal Court shall have the competence to exercise powers under Chapter-XXXIV of the Cr.P.C. in deciding applications for release of vehicle seized on the allegation of commission of offences under the principle Act.

49. Without commenting upon the aforesaid decision, it can only be said that in the present legislation, i.e., the E.C. Act, 1955, especially under Section 6 of the Act, there is no conferment of unguided power upon the Executive Authority. Provision of notice to the offender/the owner of the seized commodity before confiscation and affording such persons the right to make written representation and hearing are sufficient safeguards against any unbridled powers in the hands of the executive. The order of confiscation has been made subject to the result of the criminal prosecution and there is no denial to the offender of the opportunity of defending himself in a Court of law.



50. With the aforesaid discussion, Question Nos. 2, 3 and 4 referred to above, stand answered. To tie the strings together, it is, hereby, declared that:-

(A.) *The provisions contained in Section 6-A to 6-E of the E.C. Act, 1955 do not run counter to the principle of separation of judicial and executive functions;*

(B.) *Since confiscation under the Act is not in the nature of punishment or penalty, for which separate provision has been made in the Act, the conformant of the powers of confiscation in the Executive Authority, viz., the Collector, does not run counter to the constitutional policy of separation of judicial and executive functions;*

(C.) *Section 6-D of the Act which provides for infliction of punishment to the offender, apart from awarding the order of confiscation, does not run counter to the provisions contained in Article 21 of the Constitution. Article 20 sub-Clause (2) of the Constitution of India and Section 300 of the Cr.P.C. and the provisions contained in Section 6-A to 6-E of the E.C. Act are in consonance with the provision that no person can be punished twice for the same offence.*

51. Since along with L.P.A. No. 1647 of 2015 (*Baleshwar Roy Vs. The State of Bihar & Ors.*), L.P.A. No. 1783 of 2017 (*Satyanarayan Sah Vs. The State of Bihar & Ors.*), relating to Indian Forest Act, 1927 has also been tagged, in which, there has been some difference of opinion with respect to the powers of the Court to direct for release of



the vehicle or items seized, pending their confiscation under the respective Acts, we deem it necessary to refer to the provisions of the Indian Forest Act, 1927 as well.

52. Chapter-IX of the Indian Forest Act, 1927 prescribes penalties and procedure with respect to the offences under the Indian Forest Act. Section 52 of the Indian Forest Act empowers Forest Officer or the Police Officer to seize forest produce together with all tools, arms, boats, vehicles, ropes, chains or any other articles used in committing any such offence, if they have reasons to believe that a forest offence has been committed of any forest produce. Under Section 53 of the Indian Forest Act, an Officer not below the rank of Ranger, has been vested with the powers to release the property seized on execution by the owner thereof, a bond for the production of the property so released for its production before the Magistrate, trying the offence. The Magistrate, on receiving such report with regard to forest offence, is required to take such measures as are necessary for arrest and trial of the offender and disposal of the property according to law (*Section 54*). All the goods which are seized are liable to be confiscated and by virtue of Section 55(2), such confiscation would be in addition to any other punishment prescribed for such offence.

53. The State of Bihar *vide* Bihar Act No. 9 of 1990,

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in Section 6, inserted the provisions 52-A to 52-D after noting that there had been wide spread abuse of the forest produce by the offenders.

54. The aforesaid amendment in the Bihar Act are as hereinbelow:-

6. Insertion of new Sections 52-A, 52-B, 52-C and 52-D in Act XVI of 1927.-After section 52 of the said Act the following new sections shall be inserted, namely:-

52-A. Appeal against the order of confiscation.-An person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed, alongwith the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as the Appellate Authority) of the District in which the forest produce has been seized.

52-B. Petition for revision before Secretary, Forest and Environment Department, Government of Bihar against the order of the Appellate Authority.-(1) Any party to the appeal, aggrieved by final order or order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Secretary, Forest and Environment Department, Government of Bihar.

(2) The Secretary, Forest and Environment Department, Government of Bihar may confirm, reverse or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for



taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Secretary, Forest and Environment Department, Government of Bihar shall as far as may be, exercise the same powers and follow the same procedure as exercised and followed while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) the order passed under this section shall be final and shall not be called in question before any Court.

52-C. Bar of jurisdiction of Court etc. in certain circumstances.—(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Revision Authority referred to in sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to which proceedings for confiscation are initiated in this Act, or any other law for the time being in force.

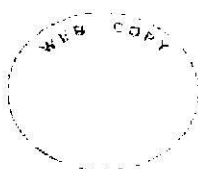
(2) Nothing in sub-section (1) shall affect the power save under section 61.

52-D. Power of entry, inspection, search and seizure.—Notwithstanding anything contained in any other law for the time being in force and Forest Officer not below the rank of a Range Officer of Forests or any Police Officer not below the rank of Sub-Inspector may, if he has reasonable grounds to believe that any forest offence has been committed in contravention of this Act enter upon, inspect and search any place, premises, appurtenances thereto, land, vehicle or boat and seize any illegal forest

produce and all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence.

55. It is required to be noted that Section 52-C of the Bihar Act excludes the jurisdiction of the Courts to pass any orders with regard to possession, delivery, disposal or distribution of property with regard to which proceedings for confiscation have been initiated under Section 52, notwithstanding anything to the contrary contained in the Act or any other law for the time being in force. The essential safeguards with respect to the persons charged of the offence have been incorporated in the aforementioned provisions. No order of confiscation could be passed if the person concerned proves to the satisfaction of the Forest Officer that such machinery, arms, tools etc. were used without his or his servant or agent knowledge or connivance and that all reasonable and necessary precautions have been taken against such misuse.

56. A provision of appeal before the District Magistrate has been provided for, who has been invested with the powers of conforming, reversing or modifying the order of confiscation. The proposed offender has also been given the right of revision before the Secretary, Forest and Environment Department against the Appellate order. The Revisional order, it has been provided in the Act, shall be final and shall not be called in question before any Court. The savings of power to



release property seized in Section 61 of the Indian Forest Act,

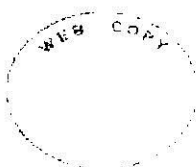
further declares that at any time, an empowered Officer can direct for the release of the property so seized under Section 52. Thus, the powers to the Executive authorities under the Indian Forest Act, 1927 also cannot be said to be untrammelled by any restriction. The confiscation is subject to intimating in prescribed form about the initiation of the proceeding to the Magistrate, having jurisdiction to try the offence, on account of which the seizure has been made.

57. In ***State of W.B. & Ors. Vs. Sujit Kumar Rana; (2004) 4 SCC 129***, the Supreme Court, while dealing with Section 59-G of the W.B. Act 22 of 1988, which is almost identical to Section 52-C of the Indian Forest Act, 1927, as amended by Bihar Act 9 of 1990, has held that the provision of confiscation and the exclusion of the jurisdiction of the Courts, during the pendency of the confiscation proceeding, has been brought about with a laudable object, viz., to conserve the forest and forest procedure and, thereby, maintaining the ecological balance.

58. After referring to many decisions of the Supreme Court, viz., in (i) ***Divisional Forest Officer Vs. G.V. Sudhakar Rao; (1985) 4 SCC 573***, (ii) ***Indian Handicrafts Emporium Vs. Union of India; (2003) 7 SCC 589***, (iii) ***Balram Kumawat Vs. Union of India; (2003) 7 SCC 628***, (iv) ***State of***

Bihar Vs. Kedar Sao; (2004) 9 SCC 344, (v) State of W.B. Vs. Gopal Sarkar; (2002) 1 SCC 495, State of Karnataka Vs. K.A. Kunchindammed; (2002) 9 SCC 90, and (vi) State of Karnataka Vs. K. Krishnan; (2000) 7 SCC 80), their Lordships held that the order of confiscation of forest produce does not amount either to penalty or punishment and that sufficient safeguards, both substantive and procedural, have been made against any arbitrary exercise of such power. The Supreme Court also conclusively held that the power of confiscation is independent of any proceeding of prosecution for the forest offence committed.

59. In the aforesaid case, the Supreme Court also examined the provisions contained in Section 482 of the Cr.P.C. and, thereafter, pronounced that once a confiscation proceeding is initiated in terms of Section 59-G of the W.B. Act, the jurisdiction of the criminal Court in that regard stands excluded. The criminal Court though, indisputably, has the jurisdiction to deal with property which is the subject matter of offence in terms of the provisions of Cr.P.C., but once a confiscation proceeding is initiated, the power cannot be exercised by a Magistrate. Once, it was held that the criminal Court had no power to deal with property seized under the Act, the question of the High Court exercising its jurisdiction under Section 482 of the Cr.P.C. also would not arise.



60. In **State of Karnataka Vs. K. Krishnan; (2000)**

7 SCC 80, however, dealing with a similar provision, the Supreme Court observed in paragraphs 7 and 8 of the decision as follows-

7. Learned counsel appearing for the appellant-State has submitted and we agree that the provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorised Officer or the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattle, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar the officers and the authorities under the Act including the Appellate Authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered

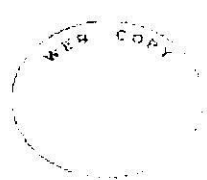
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view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.

(Emphasis provided by us)

8. The approach adopted both by the Authorised Officer and the High Court completely ignores the importance of the forests and the purpose of the object for which the Act was made. As the appellant-State has not prayed for quashing the order of the Authorised Officer we refrain to deal with that even though we do not approve it. We are, however, satisfied that the High Court had adopted a very casual approach while disposing of the petition under Section 482 of the Code of Criminal Procedure. Besides that the order impugned is contrary to law, we have our reservations with respect to the powers of the High Court under Section 482 CrPC in the matter which we do not express in this case.

61. The upshot of the aforesaid discussion makes it very clear that no Court, even the High Court under the extraordinary powers under Section 482 of the Cr.P.C., shall have any jurisdiction to direct for release of any seized article during the pendency of the confiscation proceedings.



62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a

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national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as *sentinel on the qui-vive*, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary

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power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.

67. Before we part, it must be clarified that we have expressed no opinion or views with regard to the merits of the case which has been tagged along with the main matter, in which reference has been made.

(Ashutosh Kumar, J)

Mukesh R. Shah, CJ :- I agree

(Mukesh R. Shah, CJ)

Dr. Ravi Ranjan, J :- I agree

(Dr. Ravi Ranjan, J)

Praveen-II/-

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