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THE HIGH COURT OF MADHYA PRADESH
WP No. 2732/2015
Naresh Rawat and Others vs. State of MP & Others

Gwalior, Dated 18/12/2018

Shri Sanjay Bahirani, counsel for the petitioners.

Smt. Nidhi Patankar, Govt. Advocate for the respondents/
State.

This petition under Article 226 of the Constitution of India has been filed against the order dated 20/03/2015 (Annexure P-1) passed by the respondent No.2 in Case No.7467/complaint/ 2015, by which it has been directed that necessary action be taken against Seva Sahakari Samiti, Bhatnavar, District Shivpuri for certain illegalities. As per the allegations, 19,081 liters of kerosene oil was found in excess and there were some discrepancies in the records of lead Society.

It is submitted that in compliance of the said order, FIR in Crime No.72/2015 was lodged in the Police Station Pohri, District Shivpuri for offence under Section 3/7 of the Essential Commodities Act, whereas under sub-clause (11) of Clause 11 of MP Public Distribution System (Control) Order, 2009 [in short" the Control Order, 2009"], no such action can be taken without issuing show cause notice in writing and giving an opportunity to the Officer concerned.

It is the case of petitioners that there are Officers of the lead Society. During inspection, 19,081 liters of kerosene oil was found in excess and certain discrepancies were found in the records and accordingly, the FIR in Crime No.72/2015 at Police Station Pohri, District Shivpuri has been lodged, which is in contravention of sub-clause (11) of Clause 11 of the Control Order, 2009 and thus, the criminal prosecution may be quashed. The counsel for the petitioners has further relied upon the order dated 28/08/2015 passed by this Court in the case of **Ramsevak vs. State of MP and Others (Writ Petition No.7720/2014)**.

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Per contra, it is submitted by the counsel for the State that provisions of sub-clauses (8), (9), (10) and (11) of Clause 11 of the Control Order, 2009 are not applicable. Furthermore, a preliminary enquiry was conducted and the FIR has been lodged on the basis of enquiry report and it is incorrect to say that the petitioners were not given any opportunity.

In reply, it is submitted by the counsel for the petitioners that during the preliminary enquiry, no opportunity of hearing was given to the petitioners. However, he fairly conceded that there is no such averment in the writ petition.

Heard the learned counsel for the parties.

Sub-clauses (8), (9), (10) and (11) of the Control Order, 2009 read as under:-

"(8) In the event of a lead society contravening any provision of this order, action may be initiated against the concerned along with suspension of the person concerned and further a portion or the entire security deposit may be forfeited.

(9) In the event of lead societies being unable to lift the food grains and transport the same or in the event of delay, prosecution proceedings may be initiated against the society.

(10) In the event of a reasonable officer of the authorized nominee of the State Government, not being able to store the essential commodities of the Public distribution system in time, or failing to transport the same in time, or for any other irregularity, prosecution proceedings may be initiated against him.

(11) The authorized nominee of the State Government shall issue show cause notice in writing and give an opportunity to the officer concerned, before institution of prosecution under sub-clauses (8), (9) and (10)."

Sub-clause (11) of Clause 11 of the Control Order, 2009 provides that before institution of prosecution under sub-clauses

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(8), (9) and (10) a show cause notice in writing and an opportunity of hearing shall be given to the Officer concerned. In the present case, the petitioners have relied upon heavily on sub-clause (9) of Clause 11 of the Control Order, 2009 which provides that in the event of lead Society being unable to lift the **'Food-grains'** and transport the same or even in the event of delay, prosecution proceedings may be initiated against the Society. Thus, it is clear that where the lead Society does not lift the "Food-grains" and transport the same to the fair-price shop or in case of delay in lifting the food grains and transportation of the same, then the Officers can be prosecuted. Thus, prosecution proceedings for the charges mentioned in Clause 11(9) of the Control Order, 2009 can be initiated against the Society only after giving an opportunity of hearing to the Officer concerned. However, in the present case, the allegations are not with regard to not lifting the "Food grains" or transportation of the same or there is any delay, but the allegations are that 19,081 liters of kerosene oil was found in excess with the lead Society, which clearly show that this excess kerosene oil was not distributed by the lead Society and in view of discrepancies in the records of the Society, it is clear that there was some misappropriation. Further, in sub-clause (9) of Clause 11 of the Control Order, 2009, the words " Food grains" have been mentioned. The words "Food grains" have not been defined in the Control Order, 2009. Under these circumstances, we can look for the general dictionary meaning of words "Food grains", whereas the present case is of "kerosene oil" and not "Food grains". The general meaning of " Food grain" is a grain grown for human food, whereas "kerosene oil" is not a human food. Thus, kerosene oil as defined in clause 2(i) of the Control Order, 2009 cannot be imported in sub-clause (9) of Clause (11) of the Control Order, 2009, so as to

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include "kerosene oil" along with "food grains". Thus, this Court is of the considered opinion that even otherwise, sub-clause (9) of Clause (11) of the Control Order, 2009 would not apply in the case of "kerosene oil" and is applicable only in the case of "food grains".

Under these circumstances, this Court is of the considered opinion that sub-clause (11) of Clause 11 of the Control Order, 2009 has no application in the facts and circumstances of the case. Therefore, no prior show cause notice in writing nor opportunity of hearing was required to be given to the petitioners before registration of FIR. Even otherwise, in the entire writ petition, it is nowhere mentioned that the petitioners were not given any opportunity of hearing at the time of preliminary enquiry.

So far as the order dated 28/08/2015 passed by this Court in the case of **Ramsevek(supra)** is concerned, it appears that the said case was duly covered by sub-clause (9) of Clause 11 of the Control Order, 2009, and hence is distinguishable.

Thus, this Court is of the considered opinion that no relief can be granted to the petitioners. Accordingly, this petition is **dismissed** being misconceived and devoid of merits.

(G.S. Ahluwalia)
Judge