

**THE HIGH COURT OF MADHYA PRADESH, PRINCIPAL  
SEAT AT JABALPUR**

<b>W.P. No.</b>	<b>9398 of 2021</b>
<b>Parties Name</b>	Nagendra Singh and another Vs. State of Madhya Pradesh and others
<b>Bench Constituted</b>	Single Bench
<b>Judgment delivered by</b>	<b>Hon'ble Shri Justice Vishal Dhagat.</b>
<b>Whether approved for reporting</b>	Yes
<b>Name of counsel for parties</b>	<b>For petitioner:</b> Shri Devendra Kumar Tripathi, Advocate. <b>For respondents/State:</b> Shri Vivek Kumar Sharma, Deputy Advocate General.
<b>Law laid down</b>	As per context of Clause 16(8) of Food Control Order, 2015, Collector is not appellate authority as he is exercising original jurisdiction to form opinion for lodging of prosecution.
<b>Significant paragraph No.</b>	<b>8</b>

**(ORDER)**  
**19.07.2021**

Petitioners have called in question order dated 06.04.2021 and consequential FIR dated 18.04.2021. By order dated 06.04.2021, Collector Chhatarpur has ordered District Supply Officer to lodge FIR against petitioners.

2. Counsel for the petitioner raised a ground that as per Food Control Order, Clause 2(c), Collector is appellate

authority. Sub Divisional Officer is shop allotment authority and therefore, Sub Divisional Officer has to take action under Sections 16 and 17 of the Food Control Order. Collector is only the appellate authority therefore, Collector has exceeded its jurisdiction and power in passing impugned order. Such power ought to have been exercised by shop allotment authority.

3. Counsel appearing for the petitioners challenged the impugned order on the ground that there is non-compliance of Clause 16(2) and Clause 13 of Madhya Pradesh Public Distribution System (Control) Order, 2015 (hereinafter referred as the 'Food Control Order, 2015'). Due to non-compliance of said clauses, action cannot be taken against the petitioners under 16(8) of Food Control Order, 2015.

4. To buttress the aforesaid submission, counsel for the petitioner has relied on order dated 31.03.2027 passed in ***W.P. No. 13958/2016 (Suresh Patel vs State of Madhya Pradesh and another)***. In the said order learned Single Judge has held as under :

*"17. As per the discussion made hereinabove and after going through the provisions of the Essential Commodities Act, Control Order, 2009 (repealed) and Control Order, 2015, it is apparent that in case of violation of any Central Order or the State Order, an action may be taken for suspension or revocation of a fair price shop which also includes the forfeiture of the security amount and the recovery of the diversion of the food grains either from the society or salesperson or employee or manager or chairman as the case may be. In case the violation of Clause 13 of the Control Order, 2015 has been shown more than 10% of the food grains supplied, action must be taken under the provisions of E.C. Act. In the order impugned finding showing violation of clause 16(2) has not been recorded, however, even on having competence, the District Magistrate without*

*indicating deviation of more than 10% of the food grains supplied, action under Section 7 of the E.C. Act cannot be directed.*

*18. As this Court has set aside the order impugned passed by the District Magistrate because he do not have any authority to exercise the power under the Control Order, 2009 (repealed) or under Control Order, 2015 to suspend or revoke the license and also on the ground of non application of mind, without considering the justification of the allegation on merit, therefore, direction sought by the petitioner for initiation of departmental enquiry against respondent no.2 is hereby refused."*

5. On basis of aforesaid two fold submissions, counsel for the petitioner prays for quashing of impugned order dated 06.04.2021 as well as consequential FIR dated 18.04.2021.

6. Heard the counsel for the petitioner.

7. Definition clause of Food Control Order reads as under:-

***"2.Definitions. -***

*(1) in this order, unless the context otherwise requires, -*

*(a) \* \* \* \**

*(b) \* \* \* \**

*(c) "Appellate Authority" means the Collector of the concerned district;"*

8. Occurrence of word 'Collector' wherever it occurs in Food Control Order, 2015 does not mean that Collector is appellate authority. Whether Collector is appellate authority or not is to be construed in reference to context. Appellate authority means Collector of the concerned district unless context otherwise requires. Action under Clause 16 for suspension of fair price shop and cancellation of license is to be taken by shop allotment authority, which is Sub Divisional Officer. However, it is specifically provided that when there

is irregularity in operation of fair price shop then Collector has to form an opinion for prosecution against chairman or head of the society / salesperson / employee of institution. Collector in Clause 16(8) of Food Control Order, 2015 does not mean appellate authority as he has to form its independent opinion regarding lodging of prosecution. Collector is not to act as appellate authority but authority exercising original jurisdiction under Clause 16(8) of Food Control Order, 2015. Context spells that Collector is not appellate authority. There is no force in first submission made by counsel for the petitioner.

9. Secondly, counsel for the petitioner has relied on judgment dated 31.03.2017 passed by learned Single Judge in W.P. No. 13958/2016. Learned Single Judge has held that if violation of Clause 16(2) has not been recorded and it has not been shown that there is deviation of more than 10% of food grains supplied, action under Section 7 of Essential Commodities Act cannot be directed.

10. Clause 16(2) of Food Control Order, 2015 reads as under:-

*"(2) In case of violation under clause 13 for quantity more than 10 percent of the monthly allocation or repetition of violation under the same clause, a person shall mandatorily be prosecuted under section 7 of Essential Commodities Act, 1955 (No. 10 of 1955)."*

11. Plain wordings of aforesaid clause say that if there is violation of clause 13 and there is deviation of 10 percent or more of monthly allocation or there is repetition of violation under same clause then person shall mandatorily be prosecuted under Section 7 of Essential Commodities Act, 1955. Clause 16(2) does not lay down that there cannot be

any prosecution if deviation of quantity is less than 10% and Collector cannot form its opinion under Clause 16(8) without compliance of provision under clause 16(2) of Food Control Order, 2015.

12. As I am not in agreement with law laid down in order dated 31.03.2017 in W.P. No.13958/2016, therefore, I refer the matter to Division Bench for deciding the following question: -

**Whether action for prosecution is mandatory if deviation is more than 10% of monthly quota and only discretionary if deviation is less than 10% of monthly quota or there shall not be any prosecution if deviation is less than 10% of monthly quota?**

**(VISHAL DHAGAT)  
JUDGE**