

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2694 OF 2013

- | | | | |
|----|--|---|-----------------|
| 1. | Kalpvraksh Impex Pvt. Ltd. |] | |
| 2. | Abhishek Jayant Bhura |] | |
| | Authorized Representative |] | |
| | Mr. Manoj Namdev Patil |] | |
| | Export Executive |] | |
| | Nos. 1 and 2 having their registered office at |] | |
| | Having its registered Office at |] | |
| | 307, Balaram Building, |] | |
| | Bandra-Kurla Complex, |] | |
| | Mumbai 400 051 |] | |
| 3. | Jayant D. Bhura |] | |
| | At present residing at |] | |
| | Flat No.54, Sea Pearl, Building No.21, |] | |
| | Bandra Reclamation, Bandra (W) |] | |
| | Mumbai 50 |] | ... Petitioners |

V/s.

- | | | | |
|----|--|---|-----------------|
| 1. | The State Of Maharashtra |] | |
| | (Through Turbhe Police Station, Navi Mumbai |] | |
| | In Cr. No. 3022/2013 |] | |
| 2. | Office Of The Controller Of |] | |
| | Rationing And Director Of Civil |] | |
| | Supplies, |] | |
| | Add: Royal Insurance Building |] | |
| | 5 th Floor, 14 Jamshedji Tata Road, |] | |
| | Churchgate, Mumbai – 400 020 |] | ... Respondents |

PRIYANKA
MADHAVRAO
KALE

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signed by
PRIYANKA
MADHAVRAO
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Mr. Dileep Satale i/by Mr. Harshad Bhadbhade for the Petitioners.

Mr. Shrikant V. Gavand, APP for the Respondent-State.

Mr. Vilas Sose, Asst. Rationing Officer, Thane – 40.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 14th July, 2026.

PRONOUNCED ON : 20th August, 2026.

Judgment (Per : Kamal Khata, J):-

1) By this Writ Petition, the Petitioners challenge the seizure of commodities such as Safflower seeds (Kardee), Sesame seeds (Kala Thil) and Rice from their godown on 8th March, 2013, without any reason and seek quashing and setting aside the FIR bearing Crime No.II/22/2013 registered on 9th March, 2013 by the Turbhe Police Station.

2) Mr. Satale, appearing on behalf of the Petitioners, submits that the Petitioners are engaged in the export business of various types of seeds and grains. They hold a valid certificate for imports and exports issued by the Ministry of Commerce, Government of India and possess valid licences for the said business. They have been exporting commodities in consonance with Central Government's Export Promotion Policies.

3) According to the Petitioner's case, the commodities were purchased from open market and stored in the godown to facilitate exports as per market demands within fixed periods. The Petitioners do not engage in day-to-day trading of commodities in the local market. Exporting commodities in compliance with the Central Government's Export Promotion Policies, does not require a licence under the Maharashtra

Scheduled Commodities Wholesalers Licensing Order, 1998. Reliance is placed on Para 2.42.1 of the said policy which is extracted hereunder:

“No seizure of stock shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on the basis of *prima facie* evidence. However, such seizure should be lifted within 7 days.”

4) Mr. Satale submits that in the year 2010, the Petitioners filed an application for a licence under the Maharashtra Scheduled Commodities Wholesalers Licensing Order, 1998 merely as a precautionary measure. Despite complying with all the requisitions for grant of licence, no communication has been received neither rejecting the application nor requesting further information or documents, nor granting the licence till the present date.

5) Mr. Satale further submits that, a perusal of the F.I.R. reveals no allegation that the Petitioners have contravened any directions issued by the Central Government under Section 3 of the Essential Commodities Act, 1955 (EC Act). Consequently, in the absence of any order under section 3, they cannot be prosecuted under Section 7 or Section 10 of EC Act. The F.I.R. contains no allegation that the Petitioners stored the commodities with the intention to hoard and raise prices in the market or sell them within the State of Maharashtra.

6) Mr. Satale submitted that, the Petitioners acted without any

malafide or dishonest intention in storing the commodities, and therefore, any Confiscation Order passed under Section 6-A of EC Act would not demonstrate any *mens rea*. He therefore submitted that, the Petition be allowed.

7) Mr. Gavand, A.P.P. for the State, relied upon the Affidavit of Bhaskar F. Tayade, Assistant Controller of Rationing, Office of Controller of Rationing and Director of Civil Supply, Mumbai. He submitted that, on 17th May, 2013, the Respondent No.2 passed a final Order of Confiscation under Section 6-A of the EC Act. The Petitioners had filed a criminal Appeal bearing No.318 of 2013 in the Sessions Court, Mumbai under Section 6-C of the EC Act, which was pending as on 4th March 2014. He submitted that, the interim Order dated 22nd August, 2013, directing the Petitioners to submit a bank guarantee in the sum of Rs.1,51,78,600/- equivalent to the price of goods in favour of the Registrar(s) Sessions Court, Mumbai, was neither obeyed by the Petitioners nor was any objection raised thereto.

8) Mr. Gavand further submitted that, the Central Government issued the Removal of (Licensing Requirements, Stock Limits and Movement Restrictions) on Specified Foodstuffs (Amendment) Order, 2014 on 9th January, 2014 which reads as under:

“Explanation 2 : If the wholesaler or retailer or dealer having Importer-Exporter Code Number issued by the Directorate General of Foreign Trade is able to demonstrate

that the whole or part of his or her stocks in respect of edible oil, edible oilseeds and rice are meant for exports, then, the stocks meant for exports shall be excluded for the purpose of calculation of stock limits.”

9) He submitted that, this Order came into force on publication in the official Gazette from 10th January, 2014 and therefore, prior to this Order, the exporters were required to obtain licence for storage of the Scheduled commodity from the Licensing Authority. He relied upon the Central Government Orders dated 7th April, 2008, 2nd April, 2009, 25th September, 2009 and 29th September, 2010. He accordingly, contended that the Petitioners had committed an offence under Section 3 of the EC Act, and since no storage licence was produced, the action of the Respondent No.2 was justified, and the Petition deserves to be dismissed.

10) We have heard learned Advocates for the Petitioner as well as the learned A.P.P. for the Respondent State and have examined the entire record.

11) We find merit in Mr. Satale's submissions on behalf of the Petitioners. The Petitioners are exporters for seeds and grains holding valid licences a fact the Respondents have neither disproved nor contested. The Respondents have failed to demonstrate that, having purchased the commodities from the open markets and collecting them in the godowns, the Petitioners did not export those same commodities within a specified period. A perusal of the F.I.R. shows that, the Respondents have not alleged

that the Petitioners stored the commodities with the intention to hoard and raise prices in the market or sell them within the State of Maharashtra. There is also no allegation that the Petitioners' storage of the commodities in the godown caused increase in commodity prices in the markets.

12) We find it concerning that the Respondents have not explained why licence was not issued or their application rejected, despite the Petitioners having applied in 2010 under the Maharashtra Scheduled Commodities Wholesalers Licensing Order, 1998. It is not the Respondent's case that licences were issued to exporters and that the Petitioners, with knowledge thereof, failed to obtain one and continued storing commodities in gross violation of the law.

13) A bare reading of the final Order dated 17th May 2013, passed by Respondent No. 2 under Section 6-A of EC Act, reveals that, apart from mentioning that the Petitioners violated Section 3, no supporting Order has been referenced or annexed to it. A bare reading of Section 6-A of the EC Act makes it clear that, without an Order passed under Section 3 of the EC Act, neither can an Order under Section 6-A be passed nor can any penalty under Section 7 be levied. Thus, the action of the Respondents was entirely arbitrary, illegal and unwarranted.

14) The Respondents have failed to point out any provision of law entitling the Authorities to take action against the Petitioners on the ground of suspicion alone. Such unsubstantiated action by the Respondents is to be

deprecated, as it constitutes nothing more than sheer harassment.

15) Moreover, the Respondents have suppressed an Order passed by this Court on 20th April, 2010, wherein a stay was granted on all future proceedings in such matters. The Order is set out below for ready reference:

“1. From the perusal of the Order issued by the Government of India dated 15th February 2002 it can be seen that the requirement for obtaining licence for wheat, paddy/rice, coarse grains, sugar, edible oilseeds and edible oils has been done away with. Through vide Order dated 7th April, 2008 the Order dated 15th February 2002 has been suspended for a period of one year, **in paragraph 3 of the said Order it has been specified that the Order dated 7th April 2008 would not be applicable if the said commodities are to be exported outside the State or for import of the said commodities.** Undisputedly, the commodities in question were for export to other countries. **It also appears from the Order dated 12th January 2010 passed by the Controller of Rationing and Director of Civil Supplies, Maharashtra that the Government itself is not sure whether the licence is required or not.**

2. Admittedly, the commodities in question are meant for export to the other countries. In that view of the matter, issue Rule in all the matter.

3. **By way of interim relief there shall be a stay to further proceedings in all the matters.”**

(Emphasis supplied)

16) The Order is self-explanatory. There is absolutely no mention about the said Order in the reply filed by the Respondents. Notably, despite this stay Order, the Respondents proceeded to confiscate the goods on 8th March, 2013. The Respondent's failure to acknowledge or plead to this Order leads to the inescapable conclusion that they disregarded the Order and thereby committed its breach.

17) In these circumstances, we conclude that neither the Petitioners nor their association were informed about requirement to obtain a licence for storing the commodities intended for export. Assuming, that the State of Maharashtra had decided that exporters must hold licence, there is no explanation for why the Petitioners' application, filed as early as 2010, was neither granted nor rejected. In our view, it was the Respondents' duty either to call upon the Petitioners to comply with requisitions, if any, for the consideration of their application for licence or grant the licence based on their application. The Respondents have therefore acted illegally and arbitrary in passing an Order under Section 6-A and proceeding to confiscate commodities from the Petitioner's godowns on 8th March, 2013.

18) We accordingly allow the Petition in terms of prayer clause (b).

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)