



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 6865 OF 2023 (GM-RES)

BETWEEN:

ISTHIYAK AHMED
S/O MOHAMMED KHALID,
AGED ABOUT 55 YEARS,
NO.10/A, NOHA STREET,
SHIVAJINAGAR, HKP ROAD,
BENGALURU – 560 051.

...PETITIONER

(BY SRI.SYED UMMER., ADVOCATE)

AND:

1. ELECTION COMMISSION OF INDIA
NIRVACHANA SADAN ASHOKA ROAD,
NEW DELHI -- 110 001,
REPRESENTED BY SECRETARY.
2. THE CHIEF ELECTORAL OFFICER
NIRVACHANA NILAYA,
SHESHADRI ROAD,
BENGALURU – 560 009.
3. THE RETURNING OFFICER
B.B.M.P. OFFICE,
QUEENS ROAD JUNCTION,
SHIVAJINAGAR 162 CONSTITUENCY,
BENGALURU – 560 051.





4. THE DEPUTY COMMISSIONER OF POLICE
BANGALORE EAST,
H.K.P ROAD,
BENGALURU – 560 001.

5. THE INSPECTOR OF POLICE
SHIVAJINAGAR POLICE STATION,
H.K.P ROAD, SHIVAJINAGAR,
BENGALURU – 560 051.

...RESPONDENTS

(BY SRI.S.R.DODAWAD., CGC FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTING THE RESPONDENTS IMMEDIATELY TO RELEASE THE 530 RICE BAGS(WEIGHING 25 KGS IN EACH BAG) WHICH IS KEPT SEIZE IN THE PREMISES NO.10/A, SITUATED AT NOHA STREET, SHIVAJINAGAR, BANGALORE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner in this petition seeks a direction by issuance of a writ in the nature of *mandamus* directing the respondents to release 530 bags of rice seized from his premises at No.10/A situated at Noha Street, Shivajinagar, Bengaluru.

2. Heard Sri Syed Ummer, learned counsel appearing for the petitioner and Sri S.R. Dodawad, learned Central Government Counsel appearing for respondent No.1.



3. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner claims to be a prominent social worker involved in charitable activities like distribution of food and clothes to the needy in the area where he resides i.e., Shivajinagar. Respondents 3 and 5 visit the premises No.10/A Noha Street, Ward No.92, Shivajinagar, Bengaluru on 19.03.2023, at about 11.20 a.m. and therein, found 530 bags of rice weighing 25 Kgs. each. A notice was issued to the petitioner and the petitioner submits his justification by way of reply on 20th March, 2023. Despite submission of reply, the rice bags are not returned to the petitioner and, therefore, the petitioner is before this Court seeking the aforesaid *mandamus*.

4. The learned counsel appearing for the petitioner submits that the petitioner has been distributing rice and clothes on all festivals of the year like Ugadi, Ramzan, Dussehra, Christmas etc. to all the needy and takes this Court to the photographs appended to the petition. It is his claim that respondents 3 and 5 could not have seized the rice as they



had no jurisdiction to do so and seeks release of the entire materials seized.

5. On the other hand, the learned Central Government Counsel appearing for respondent No.1/Election Commission would however, seek to justify the action on the ground that the petitioner had boarded the rice for distributing the same for the purpose of gaining votes in the election. He would admit that the election was yet to be announced and the respondents had no authority to search and seize the material in question before commencement of elections even.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute and they lie in a narrow compass. The search was conducted by respondent No.3 along with respondent No.5. Who is respondent No.3 is the question. Respondent No.3 is the one who is appointed as Returning Officer for conduct of ensuing elections to the Karnataka Legislative Assembly. When the seizure was made, the elections were not yet notified. The 3rd



respondent along with 5th respondent/Inspector of Police of Shivajinagar Police Station conduct a search in the aforesaid premises on 19-03-2023 and 530 rice bags weighing 25 Kgs each were seized. The petitioner submits his reply on the next day producing all the necessary bills for purchase of rice bags from APMC yard and also brought it to the notice of the respondents that he was doing this practice for the last 15 long years during all festivals of all religion, as it was only distribution of rice and clothes to the poor in the locality. All other documents which are necessary and sought for were furnished to the 3rd respondent. Despite that, the 3rd respondent did not return the bags nor removed the locks put to the premises. It is then, the petitioner has knocked at the doors of this Court. It is not in dispute that elections to the Karnataka Legislative Assembly were declared on 29-03-2023 but the search takes place on 19-03-2023 by a Returning Officer, alleging that the material was being held for distribution among the public for favouring his candidature in the ensuing election.

8. The Returning Officer or the election officials would not get any jurisdiction to search or seize any material before the



announcement of elections. Merely because they are appointed as Officers for conduct of elections, they cannot use the said power before the declaration of elections. After the declaration of elections, the entire domain would be open, but not till then. Seizure is to be exercised by the authority/officers under the Essential Commodities Act, 1955, under normal circumstances. The Returning Officer and the Inspector of Police, who have conducted the search in the case at hand were not vested with such authority and their action is therefore, illegal.

9. The judgment relied on by the learned Central Government Counsel appearing for first respondents in the case of ***K.KHADER SHERIFF v. MUNNUSWAMI - AIR 1955 SC 775***, is distinguishable without much ado as the facts therein were that a candidate in the elections prior to the election being declared had distributed ₹500/- among the public. That amount was not accounted to as election expenses, when the election accounts for election were submitted after the contest was over and therefore, the Apex Court found that ₹500/- each that was distributed was in fact, for the purpose of election and ought to have been accounted. The Apex Court found fault with such action. The facts in the case at hand are no way



identical to what was before the Apex Court. The petitioner therein was a candidate for the elections and, therefore, the Apex Court had to observe with regard to non-accounting of ₹500/- after the conduct of elections. The stage for this judgment to become applicable has not yet arrived in the case at hand. What is to be noticed is, want of jurisdiction of respondent 3 or 5, who has conducted a search usurping powers of Officers under the Essential Commodities Act.

10. As observed hereinabove, the very seizure is without jurisdiction. But, the situation now is, that the elections are declared. Therefore, to say that the petitioner should not use these materials for distribution after release of stock, the petitioner was directed to indemnify the stock by filing an affidavit before this Court. The petitioner has filed a bond of indemnity, which reads as follows:

"Indemnity Bond

I, Isthiyak Ahmed, Aged about 55 years, # 14/1, Noha Street, HKP Road, Shivajinagar, Bangalore-560 005, do hereby solemnly affirm and state on oath as follows:

1. *I am the petitioner in the above case; I know the facts and circumstances of the case. Hence, I am swearing to this affidavit.*



2. *I state that I hereby indemnify with the Government of Karnataka that I will not violate the model code of conduct if the said seized 530 rice bags (weighing 25 Kgs. Per bag) is released in my favour.*
3. *I submit that I will undertake and declare that I will not violate any of the condition imposed against me for release of 530 rice bags (weighing 25 Kg per bag) in favour of me.*

I hereby verify and declare that the averments made above are true and correct to the best of my knowledge, information and belief.”

The petitioner has undertaken that he would not violate the Code of Conduct, if the rice seized is released in his favour and he also declares that he will not violate any of the conditions imposed for release of rice bags. Therefore, the petitioner shall be entitled to release of rice bags in his favour forthwith, subject to the following conditions:

- (a) The petitioner shall not use the seized rice for distribution to anybody in the locality or even elsewhere.
- (b) The petitioner shall intimate the place of storage of rice to the 3rd respondent.



- (c) In the event, the petitioner is found indulging in distribution of rice that is now released in his favour, the election authorities are at liberty to take action against the petitioner in accordance with law.
- (d) Any deviation would be viewed seriously.

11. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) A *mandamus* issues to the respondents to release the seized rice bags to the custody of the petitioner forthwith, with the rider that the petitioner shall abide by the afore-quoted conditions.

**Sd/-
JUDGE**