

Mahesh Kumar Chauhan @ Banti vs Union Of India And Ors on 2 May, 1990

Equivalent citations: 1990 AIR 1455, 1990 SCR (2) 979, AIR 1990 SUPREME COURT 1455, 1990 (3) SCC 148, (1991) MADLW(CRI) 18, (1990) 2 RECCRIR 639, (1991) 1 CHANDCRIC 125, 1990 UJ(SC) 2 391, (1990) MAD LJ(CRI) 631, (1990) 2 MAHLR 429, 1991 CHANDLR(CIV&CRI) 41, (1991) 70 COMCAS 782, 1990 CRILR(SC&MP) 428, (1990) 41 DLT 234, (1990) SC CR R 465, (1990) 2 CRIMES 472, (1990) 2 JT 592 (SC), 1990 SCC (CRI) 434

Author: S.R. Pandian

Bench: S.R. Pandian

PETITIONER:

MAHESH KUMAR CHAUHAN @ BANTI

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 02/05/1990

BENCH:

PANDIAN, S.R. (J)

BENCH:

PANDIAN, S.R. (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1990 AIR 1455 1990 SCR (2) 979

1990 SCC (3) 148 JT 1990 (2) 592

1990 SCALE (1)863

CITATOR INFO :

R 1992 SC 139 (6)

ACT:

Preventive Detention: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: Section 3(1)--Detention Order--Representation of detenu--Expeditious disposal of--Necessity for--Explanation of delay by appropriate authority--Need for--Undue and unexplained delay--Whether violative of Article 22(5) of the Constitution.

HEADNOTE:

The appellant filed a writ petition before the High Court challenging the detention order passed against him under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, alleging that his representation was dealt with in a cavalier manner, resulting in undue delay in its disposal.

Refuting the allegation, it was contended on behalf of the respondents that the representation, received on 23.8.89, was forwarded to the sponsoring authority for comments on 25.8.89 and the comments were received only on 11.9.89, and orders rejecting the representation were issued on 19.9.89, after obtaining the orders of the appropriate authorities. The High Court rejected the petition as devoid of any merit.

In the appeal before this Court, on behalf of the appellant it was contended that the offices of the detaining authority and the sponsoring authority were within the same city and there was absolutely no explanation for the delay on the part of the sponsoring authority in sending the comments till 11.9.89, though the representation dated 18.8.89 was sent for comments to the said authority even on 25.8.89, thus vitiating the order of detention, and that in view of the inordinate and unexplained delay in considering and disposing of the representation, the continued detention of the appellant was impermissible and unconstitutional, as being violative of the mandatory provisions of Article 22(5) of the Constitution of India.

Allowing the appeal, this Court,
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HELD: 1.1 A representation of a detenu whose liberty is in peril and deprived should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is occurred in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court. [985A-B]

Rama Dhondur Borade v. V.K. Saraf, Commissioner of Police
JUDGMENT:

Bengal, [1969] II Supreme Court Weekly Reports 529; Jayanarayana Sukul v. State of West Bengal, [1979] 1 SCC 219; Shaik Hanif & Ors. v. State of W. B., [1974] 1 SCC 637; Raisuddin v. State of U.P., [1983] 4 SCC 537 and Frances Coralie Muffin v. W.C. Khambra and Ors., [1980] 2 SCC 275, relied on. 1.2 In spite of the weighty pronouncements, of this Court making the legal position clear, it is still disquieting to note that on many occasions the appropriate authorities cause considerable delay in considering and disposing of representations and also exhibit culpable indifference in explaining such delay. In case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable---indeed appropriate---for the concerned authority or authorities at

whose hands the delay has occurred to individually explain such delay. [985C-D] 1.3 The Court, in the absence of any explanation, cannot wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of very serious nature, as in the present case. [985D-El Prabhu Dayal Deorah v. The District Magistrate, Kamrup & Ors., [1974] 1 SCC 103, relied on.

In the instant case, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25.8.89 and the comments from the sponsoring authority were received by the Department on 11.9.89, there is absolutely no explanation as to why such a delay had occurred. This undue and unexplained delay is in violation of the constitutional obligation enshrined in Article 22(5) of the Constitution of India rendering the order invalid. [986B-C] Rama Dhondur Borade v. V.K. Saraf, Commissioner of Police & Ors., [1989] 3 SCC 173, relied on.

& CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 302 of 1990.

From the Judgment and Order dated 29.1.1990 of the Delhi High Court in Crl. Writ Petition No. 657 of 1989. Harjinder Singh and R.N. Joshi for the Appellant. N.S. Hegde, Additional Solicitor General and Udai Lalit for the Respondents.

The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. Leave granted.

This appeal is directed by the detenu, Mahesh Kumar Chauhan Banti questioning the correctness of the judgment made in Criminal Writ Petition No. 657/89 by the High Court of Delhi dismissing the petition as devoid of any merit. The above Writ Petition out of which this present appeal has arisen was filed by the appellant, Mahesh Kumar Chauhan against the order of detention dated 13.7.1989 clamped upon him by the first respondent, Union of India in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') with a view to preventing the detenu from engaging in transporting and concealing smuggled goods and dealing in smuggled goods otherwise than by engaging in keeping smuggled goods. The entire facts of the case are well set out in the grounds of detention and, therefore, we think that it is not necessary to reiterate the same.

Mr. Harjinder Singh, learned counsel appearing on behalf of the appellant raised a variety of contentions, one of which being that there is an inordinate and unexplained delay in considering and disposing of the representation of the detenu dated 18.8.89 and as such the continued detention of the appellant is impermissible and unconstitutional as being violative of the mandatory provisions of Article 22(5) of the Constitution of India.

In the counter affidavit filed on behalf of the respondent before the High Court, the declarant namely, Joint Secretary, Department of Revenue, Ministry of Finance while refuting the allegation of the appellant that his representation has been dealt with in 'cavalier manner' has stated that the petitioner has made his representation on 21.8.1989 and not on 18.8.1989 as alleged by the appellant and that it was received in the office of his Department on 23.8.89 and the same was

forwarded to the concerned sponsoring authority on 25.8.1989. The Sponsoring Authority sent his comments only on 11.9.1989. Thereafter, the representation along with the comments was processed and put up before the Ministry of State for Revenue, who considered and rejected the same on 15.9.1989 subject to the approval of the Finance Minister. On 18.9.89 the file was received back from the Finance Minister's office and the memorandum was issued on 19.9.89 rejecting the representation. Mr. Harjinder Singh submitted that the offices of the detaining authority and the sponsoring authority are within the metropolis of Delhi and that there is absolutely no explanation for the delay occasioned on the part of the sponsoring authority in sending his comments till 11.9.1989 though the representation was sent for comments to the said authority even on 25.8.1989 and that this considerable delay at the hands of the sponsoring authority stands unexplained vitiating the order of detention.

In support of the above contention, he placed much reliance on the decision of this Court in *Rama Dhondur Borade v. V.K. Saraf, Commissioner of Police & Ors.*, [1989] 3 SCC 173 to which one of us (Ratnavel Pandian, J.) was a party. In the above cited decision, this Court after referring to the dictum laid down in *Smt. Shalini Soni v. Union of India*, [1980] 4 SCC 544 and some other decisions of this Court dealing with the similar questions of delayed disposal of representation, has laid down the following proposition of law:

"The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty--the highly cherished right--which is enshrined in Article 21 of the Constitution."

However, in the same decision, it has been pointed out "What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid in that regard."

We hasten to say in this connection that in spite of the fact this Court in a series of decisions has repeatedly and consistently laid down the rule in precise and clear terms that all the procedural safeguards prescribed in under Article 22(5) of the Constitution of India should be scrupulously and strictly observed one of which as ingrained in our system of judicial interpretation, being that the detenu shall be afforded an earliest opportunity of making a representation against the validity of the order of detention clamped upon him and that representation should be considered and disposed of as expeditiously as possible-- How far this Court has seriously viewed the culpable supine indifference, callousness and recalcitrant attitude on the part of the appropriate authorities who while dealing with the representations at various stages and disposing of the same cause

considerable delay is prismatically reflected with enhanced intensity through a plethora of pronouncements of this apex Court. We may appositely refer to a few. Shelat, J. in *Khairul Haque v. State of West Bengal*, Writ Petition No. 246 of 1969 decided on 10.9.69 reported in 1969 II Supreme Court Weekly Reports 529 after referring two earlier decisions in *Sk Abdul Karim and Others v. State of West Bengal*, [1960] 1 SCC 433 and *Durga Show and Ors. v. State of West Bengal*; [1970] 3 SCC 696 has observed thus:

"The fact that Art. 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation must, when made, be considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning".

(emphasis supplied) A Constitution Bench of this Court in *Jayanarayan Sukul v. State of West Bengal*, [1979] 1 SCC 219 has highly deprecated the conduct of appropriate authorities in unduly and unreasonably delaying the consideration and disposal of a representation and stated as follows:

"The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities."

(emphasis supplied) 'Sarkaria, J. in *Shaik nanif & Ors. v. State of W. B.*, [1974] 1 SCC 637 has expressed as follows:

"It is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference on the part of the authorities entrusted with their application. In *Raisuddin v. State of U.P.*, [1983] 4 SCC 537, it is pointed out, " if on such examination, it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/State Government in dealing with the representation, the Court will undoubtedly treat it as a factor vitiating the continued detention of the detenu "

Chinnappa Reddy, J. in *Frances Coralie Muffin v. W.C. Khambra and Others*, [1980] 2 SCC 275 has expressed his view saying:

" No allowance can be made for lathgargic indifference. No allowance can be made for needless procrastination."

We do not like to swell this judgment by recapitulating all the pronouncements of this Court on this point.

Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above. is that a representation of a detenu whose liberty is in peril and deprived should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is oc- curred in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfac- tion of the Court.

Inspite of the weighty pronouncements, of this Court making the legal position clear, it is still disquiting to note that on many occasions the appropriate authorities cause considerable delay in considering and disposing of representations and also exhibit culpable indifference in explaining such delay. We feel that in case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable--indeed appropri- ate--for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay.

The next question is should or can the Court in the absence of any explanation wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of very serious nature as in the present case? Our answer would be 'Not at all'.

In this connection, it will be relevant to make refer- ence to the view expressed by Mathew, J. speaking for the majority in Prabhu Dayal Deorah v. The District Magistrate, Kamrup and Others, [1974] 1 SCC 103 which is as follows:

"We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from antiso- cial activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in ac- cordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And ob- servance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law."

Reverting to the facts of the present case as submitted by the learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25.8.1989 and the comments from the sponsoring authority was received by the Department on 11.9.1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition laid down in Rama Dhondurao Borade's case (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitu- tional obligation enshrined in Article 22(5) of the Consti- tution of India rendering the impugned order invalid. For the foregoing reasons, we set aside the order of the High Court, allow the appeal and direct the detenu to be set at liberty forthwith, unless his detention is required for some other cause.

N.P.V.
lowed.

Appeal al-

SHAMBHU DAYAL AGARWALA
V.
STATE OF WEST BENGAL AND ANR.
MAY 3, 1990
[S. RANGANATHAN AND A.M. AHMADI, JJ.]

Essential Commodities Act, 1955: Sections 3, 6A to 6C, 6E and 7(1) (b)--Seizure of essential commodity under section 6A--Breach of order under section 3--Prosecution proceedings pending--Bar on courts to make an order with regard to the possession, delivery, disposal, release or distribution of such commodity except the Collector--Whether the Collector empowered to release the seized goods to owner or to the person from whom the commodity is seized? On September, 20, 1987 the officers of the Enforcement Branch raided the factory premises of the Appellant engaged in the manufacture of Mustard Oil. 562 bags of mustard seeds and 262 tins of oil were seized for alleged violation of the conditions of licence as well as orders issued under section 3 of the Act. An F.I.R. was lodged with the police and as required under section 6A, the report of the seizure of the goods was also made to the Collector followed by filing of a Chargesheet before the Special Judge. The petitioner moved the High Court by a writ Petition for quashing the proceedings. The learned single Judge of the High Court disposed of the Writ Petition reserving liberty to the Petitioner to move the concerned Collector for release of the seized goods. The Petitioner accordingly moved an application under section 6E before the concerned Additional Collector for release of the seized goods. The Collector dropped the confiscation proceedings and ordered the release of the seized goods to the Petitioner. Against this order the State Government preferred a Revision to the High Court. The High Court allowed the Revision and set aside the order of release of the seized goods passed by the Collector holding that under the provisions of section 6A read with section 6E of the Act, the Collector had no power to release the seized goods. Aggrieved by this order the Petitioner has come up in appeal by special leave to this Court.

Dismissing the appeal. this Court.

HELD: The Scheme of sections 6A, 6B and 6C makes it clear that after the essential commodity is seized and the same is inspected by the concerned Collector, the latter has to decide after complying with the procedure set out in section 6B, whether or not to confiscate the essential commodity. Since the procedure delineated in section 6B is time consuming, the Collector has been given special power to sell the essential commodity as stated in sub-section (2) of section 6A 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 6A, the price of Commodity has to be paid as provided by sub-section (3) of section 6A. [998C-E] Sub-section (2) of section 6C uses the prefix 'return' followed by the words 'the essential commodity seized' and not the word 'release'. It seems 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. [998F-H] & CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 310 of 1990.

From the Judgment and Order dated 11.5. 1988 of the Calcutta High Court in Crl. Rvn. No. 402 of 1988. P.P. Rao, R.K. Gupta and P.C. Kapur for the Appellant. Kapil Sibbal, Additional Solicitor General, G. Venkatesh Rao, D.K. Sinha, J.R. Das, H.K. Puri and A. Paul for the Respondents.

The Judgment of the Court was delivered by AHMADI, J. Special leave granted.

The short question which arises for our determination is whether the Collector to whom a report of seizure of any essential commodity is made under section 6A of the Essential Commodities Act, 1955 (hereinafter called 'the Act'), is empowered by virtue of section 6E of the Act to release the goods seized in pursuance of an order made under section 3 in relation thereto during the pendency of the proceedings before the Special Court? The facts, in brief, are as Under:

The petitioner being engaged in the manufacture of mustard oil at his factory at 1, Canal Road, Police Station Behala, Calcutta-53, was required to maintain a stock of mustard seed at his factory premises. A contingent of officers of the District Enforcement Branch led by the Investigating Officer Gopal Mosat, the complainant, raided the factory premises of the petitioner on the morning of Sunday, September 20, 1987, in the absence of the petitioner. The said raid continued till the early hours of September 21, 1987. During the said raid 562 bags of Mustard Seeds and 267 tins of Mustard Oil, weighing about 39.92 quintals, were seized for purported infraction of the conditions of the licence as well as the orders issued under section 3 of the Act. The Investigating Officer filed a written complaint in that behalf at the Behala Police Station which came to be treated as the First Information Report. The report of the seizure of the essential commodity was made to the concerned Collector as required by section 6A of the Act for initiating confiscation proceedings. On September 27th 1987, a charge-sheet was filed before the learned Special Judge. It may be mentioned that before the submission of the charge-sheet a Writ Petition was filed in the High Court wherein certain interim orders were made with which we are not concerned. Suffice it to say that the said Writ Petition was disposed of by a learned Single Judge of the High Court on February 2, 1988, reserving liberty to the petitioner to apply for release of the seized goods to the Collector before whom the confiscation proceedings were pending. Thereupon, the petitioner preferred an application on February 9, 1988 under section 6E of the Act before the Additional Collector for release of the seized commodities. On March 11, 1988 the said officer dropped the confiscation proceedings, albeit without prejudice to the prosecution pending before the Special Judge, and directed the release of the seized commodities. Feeling aggrieved by the said order of release, the State Government invoked the revisional jurisdiction of the High Court. The said Criminal Revision No. 402 of 1988 was allowed by the High Court on May 11, 1988.

The High Court set aside the impugned order of release of the seized goods holding that under the provisions of section 6A read with section 6E of the Act, the Collector had no power to order release of the seized commodity. The High Court approached the question thus:

"Under Section 6A of the Act the Collector has under certain circumstances been given power to confiscate the goods. By Section 6A the Collector has not been given any power to release the goods. Section 6E is to be read in the perspective of the provision of Section 6A of the Act because of the phrase "pending confiscation" under Section 6A used in Section 6E. If the Collector has not been given any power to release the goods under Section 6A, it can never be assumed that by Section 6E which gives some interim power to the Collector with reference to the proceeding under Section 6A, the Collector has been given any power to release the goods after finding that the goods cannot be confiscated. Under Section 6A the Collector may order confiscation of the essential commodities so seized. He has not been given any power to release the goods."

Mr. P.P. Rao, the learned counsel for the petitioner/appellant contended that on the Collector having dropped the confiscation proceedings it was incumbent on him to pass the consequential order of release under section 6E of the Act. According to him since the jurisdiction of the Court to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity is specifically and expressly barred by section 6E of the Act, the Collector alone has jurisdiction to order release of the seized goods. The words 'pending confiscation' employed in section 6E of the Act go with the word 'seize' and are, therefore, descriptive of the essential commodity and are not intended to limit the powers of the Collector, argued counsel. He, therefore, submitted that section 6E confers wide powers on the Collector to release the goods at any stage of the proceedings and the High Court was not justified in placing a narrow construction on the language of the said provision. On the other hand Mr. Kapil Sibal, the learned Additional Solicitor General while supporting the impugned order of the High Court, argued that the power to release conferred by section 6E on the Collector refers to release in favour of a third party and not the party from whom the essential commodity was seized. According to him if the construction placed on section 6E on behalf of the petitioner is accepted it would defeat the very purpose of the Act. He, therefore, submitted that this was not a fit case to interfere with the order passed by the Division Bench of the High Court.

In order to appreciate the rival view-points we may at the outset examine the scheme of the Act. The Act, as the Preamble reveals, was enacted to provide, in the interest of the general public, for the control of production, supply and distribution of, and trade and commerce in certain commodities. It extends to the whole of India. The dictionary of the Act is contained in section 2. Section 2(ia) defines 'Code' to mean the Code of Criminal Procedure, 1973. Section 2(f) says that words and expressions used but not defined in the Act and defined in the Code shall have the meanings assigned to them in the Code. Section 3 empowers the Central Government to provide for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the same is considered necessary or expedient inter alia for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and

avail- ability at fair prices. Sub-section (2) of section 3 out- lines what an order made under sub-section (1) thereof may provide. Besides regulating by licences, permits or other- wise the manufacture or production of any essential commodi- ty or the storage, transport, distribution, disposal, acqui- sition, use, consumption, etc., thereof, the order may, inter alia, provide for controlling the prices at which the essential commodity may be bought or sold and may also require any person holding in stock any essential commodity to sell the whole or a specified part of the quantity held in stock or produced or received by him or likely to be produced or received by him to the Central Government or a State Government or to an officer or agent of such Govern- ment, etc. Sub-section (3) of section 3 provides for deter- mination of the price to be paid to the person from whom the essential commodity is so purchased. Section 6 lays down that an order passed under section 3 will have effect not- withstanding anything inconsistent therewith contained in any other enactment or instrument. Then comes section 6A which provides for the confiscation of essential commodity. Subsection (1) of this section may be reproduced for ready reference:

"6A--Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto it shall be reported without any unreasonable 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 contra- vention of such order and the Collector, if satisfied that there has been a contravention of the order, may order confiscation of--

(a) the essential commodities so seized;

(b) any package, covering or receptacle in which such essen-

tial commodity is found; and

(c) any animal, vehicle, vessel, or other conveyance used in carrying such essential commodity ;"

Sub-section (2) of the said section empowers the Collector to sell any essential commodity, if the same is subject to speedy and natural decay or it is otherwise expedient so to do in public interest, at the controlled price, if any, fixed therefore or by public auction if no such price is fixed. If the Central or the State Government has fixed the retail sale price of such commodity under the Act or under any other law, the Collector is empowered to order its sale through fair price shops at the price so fixed. Section 6B posits that no order of confiscation of any essential com- modity or conveyance, etc., shall be made unless the owner or the person from whom it is seized has been served with a notice informing him of the grounds on which it is proposed to confiscate the same and he has been given reasonable time to make a representation in writing against the grounds set out in the notice and has been given a reasonable opportuni- ty of being heard. This section incorporates the principles of natural justice to ensure that the owner of person from whom the essential commodity is seized has the fullest opportunity to satisfy the Collector against

passing a confiscation order under Section 6A. An appeal is provided by section 6C against the order of confiscation passed under section 6A. Section 6D clarifies that an award of confiscation under the Act by the Collector shall not prevent the infliction of any punishment to which the concerned person is liable under the Act. We then come to Section 6E which was inserted in the Act in place of the existing provision by Act No. 42 of 1986 with effect from 9th September, 1986. Since the incident in question relates to a date subsequent to 9th September, 1986, it is unnecessary to notice the earlier provision. Section 6E which confers exclusive jurisdiction on the Collector and in the State Government concerned under section 6C to pass certain orders pending confiscation reads as under:

"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 State Government concerned under Section 6-C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any court, tribunal or other 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".

It is obvious on a plain reading of this provision that the same was brought on the statute book with a view to debarring the courts from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized under an order made under section 3 of the Act. Section 7 prescribed the penalties for the contravention of any order made under section 3 and provides for the forfeiture of the essential commodity to the Government and for the forfeiture of any animal, vehicle or other conveyance used in carrying the said essential commodity, if the court so orders. Section 10A makes every offence under the Act cognizable and non-bailable, notwithstanding anything contained in the Code. Section 11 provides that no Court shall take cognizance of any offence punishable under the Act except on a report made by a public servant as defined by section 21, I.P.C., or any person aggrieved or any recognised consumer association. Section 12A empowers the State Government to constitute by notification as many Special Courts as may be necessary and Section 12AA, which begins with a non-obstante clause--notwithstanding anything contained in the Code--provides that all offences under the Act shall be triable only by the Special Court constituted for the area in which the offence was committed. Section 12AC makes the provisions of the Code (including the provisions as to bail and bonds) applicable to the proceedings before the Special Courts as if it is a Court of Sessions unless the Act provides otherwise.

The above resume of the relevant provisions of the Act makes it clear that once an order is made by the Central Government under section 3 for regulating or prohibiting the production, supply and distribution of any essential commodity it shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument. Any person who contravenes any order made under section 3 becomes liable to penal action under section 7 and the property in respect of

which the order has been contra- vened becomes liable to forfeiture. Notwithstanding anything contained in the Code, the offence punishable under the Act for the contravention of an order under section 3 is cogniz- able and non-bailable and may be tried by the Special Court constituted for the area in which the offence was committed. Thus the breach of an order made under section 3 attracts penal consequences, i.e., imprisonment and fine, and also renders the property seized liable to forfeiture. This is one conse- quence of the breach of an order made under section 3 of the Act. The Act also provides, section 6A, that where any essential commodity has been seized in pursuance of an order made under section 3 in relation thereto, a report of the seizure must be sent to the Collector without unreasonable delay, on receipt whereof the Collector may inspect the seized property .and on being satisfied about the contraven- tion of the order made under section 3 may order the confis- cation of such essential commodity and any package, covering or receptacle wherein such essential commodity is found as well as any animal, vehicle or conveyance used for carrying such essential commodity. If the essential commodity is liable to speedy decay, the Collector is empowered to sell it at the controlled price, if any, or by public auction or through fair price shops if the retail sale price for such commodity is fixed. The price so realised minus the expenses incurred for effecting the sale has to be paid to the owner of the essential commodity or the person from whom it was seized (a) where no order of confiscation is ultimately passed by the Collector, or (b) where the appellate order passed under Section 6C so requires or (c) where in a prose- cution under the Act the person concerned is finally acquit- ted. An order of confiscation made after following the requirements of section 6B does not prevent the infliction of punishment under the other provisions (sections 7 to 10) of the Act. Thus confiscation of the essential commodity etc., is not in lieu of punishment but can be in addition to the penal consequences. It is in this background that we must examine the controversy before us.

Section 6A empowers confiscation of the seized essential commodity, the package, covering and receptacle in which the essential commodity was found and the animal, vehicle or other conveyance in which such essential commodity was carried. The words 'may order confiscation' convey that the power is discretionary and not obligatory. Sub-section (2) thereof confers a special power to deal with any essential commodity which, in the opinion of the Collector, is subject to speedy and natural decay or it is otherwise expedient in public interest to be disposed of in the manner indicated therein. Section 6A, therefore, merely confers power of confiscation and not the power of release, disposal, distri- bution, etc., except to the limited extent permitted by sub-section (2) thereof. Of course the second proviso to sub-section (1) of Section 6A permits the grant of an option to pay, in lieu of confiscation of any animal, vehicle, vessel or other conveyance, a fine equal to its market price at the date of seizure. Section 6E was first enacted to debar courts from making any order with regard to the pos- session, delivery, disposal or distribution of any essential commo-

dity seized in pursuance of an order made under section 3 in relation thereto. By the substituted section 6E as it presently stands the scope of the provision has been en- larged by extending the bar of jurisdiction of the Court, tribunal or other authority to the release, etc., of pack- ages, coverings or receptacles as well as animals, vehicles, vessels or other conveyances also. It provides that whenever any essential commodity is seized under an order made in exercise of power conferred by section 3 in relation thereto no court, tribunal or other authority shall have jurisdic- tion to make any order with regard to the possession, deliv- ery, disposal, release or distribution of such essential

commodity save and except the Collector pending confiscation under section 6A, or the State Government concerned under section 6C. The question then is whether this power of release which is conferred on the Collector pending confiscation is wide enough to permit the release of the essential commodity to the owner or to the person from whom it was seized, notwithstanding the pendency of prosecution for breach of an order made under section 3 in relation thereto? 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 6A 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 6A 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 confined 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 6E 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 6E, 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 6A 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 6A 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 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 6A 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 6A 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. And now to the structural setting and context in which the word 'release' is used in section 6E. 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 6C, 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 6A, 6B and 6C makes it clear that after the essential commodity is seized and the same is inspected by the concerned Collector, the latter has to decide, after complying with the procedure set out in section 6B, whether or not to confiscate the essential commodity. Since the procedure delineated in section 6B is time consuming, the Collector has been given special power to sell the essential commodity as stated in sub-section (2) of section 6A 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 6A, the price of the commodity has to be paid as provided by sub-section (3) of section 6A. If the Collector has ordered confiscation but the order is reversed in appeal under section 6C and no prosecution is pending, sub-section (2) of section 6C 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 6C uses the words 'return the essential commodity seized' and not the word 'release the essential commodity seized'. It seems 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 6E 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 6A. In that sense section 6E is complementary in nature. We are, therefore, of the opinion that the High Court was right in the ultimate conclusion it reached.

Counsel for the appellant next pointed out that this Court had passed an interim order on December 8, 1988 for sale of the seized commodity and for handing over the sale proceeds to the appellant on the latter furnishing a bank guarantee to the satisfaction of the Special Judge, 24 Paraganas (South), Alipore. Despite this order the seized commodity had not been disposed of. Mr. Rao, therefore, contended that this Court should not assist the respondent State which had defied and thwarted the order of this Court. It is true that the seized commodity has not been disposed of to-date. But it appears from the subsequent order of February 13, 1989 as amended by the order of February 15, 1989, that the only direction given to the Special Judge was to dispose of the pending prosecution within two months. It was further directed that the Special Judge will pass appropriate consequential orders regarding the release of the seized goods. It, therefore, becomes clear that when the subsequent orders were passed on February 13 and 15, 1989, the appellant did not insist on the sale of the seized commodity as per the order of December 8, 1988. The matter came up for

hearing on subsequent occasions also but at no time did the appellant press for the implementation of the said order of December 8, 1988. Even after the Special Judge recorded an acquittal and directed return of the goods, the appellant did not seek implementation of the said order. Nor did the appellant move the High Court for the implementation of the said order in the appeal pending against the order of acquittal. It is, therefore, too late in the day now to contend that as the order of December 8, 1988 has remained unimplemented we should refuse to grant any relief to the respondent State.

For the reasons stated above we see no merit in this appeal and dismiss the same with costs.

R.N .J.
dismissed.

Appeal