

District Collector's Sanction Not Necessary For Initiating Prosecution Under Section 7 Of Essential Commodities Act: Kerala High Court

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM
MURALI PURUSHOTHAMAN; J.**

W.P. (C) No. 12246 of 2012; 24 January 2023

SITHARA INDANE GAS versus UNION OF INDIA

Petitioners by Advs. P.B. Krishnan, N. Ajith, Geetha P. Menon, P.B. Subramanyan

Respondents by Advs. R1 - S. Manu, DSG of India, R2 – R5, Jacob E. Simon – GP, R6 - Ramola Nayanpally, P. Benny Thomas, M. Gopikrishnan Nambiar, K. John Mathai

J U D G M E N T

Since Common issues arise for consideration in these writ petitions, they were heard together and are disposed of by this common judgment. The exhibits referred to hereinbelow shall be as obtaining in W.P.(C) No.12246 of 2012.

2. The 1st petitioner in W.P.(C) No.12246 of 2012 is a proprietary concern of petitioner No.2, a distributor of Liquefied Petroleum Gas (for short, 'LPG'). Based on a complaint received by the Director of Civil Supplies from a consumer organization that liquefied petroleum gas supplied under Government subsidy is being diverted for commercial purposes, a special squad under the Taluk Supply Officer, Muvattupuzha conducted surprise inspection at the premises of Sri Rajan Kadathukadavil, the petitioner in W.P. (c) No. 13104 of 2012 at Vypin (who will hereinafter be referred to as 'Sri.Rajan', unless otherwise specifically mentioned). In the inspection, 11 numbers of LPG cylinders supplied for commercial purposes were seized, as Sri.Rajan had failed to produce any bill, invoice, or other documents supporting such storage of LPG cylinders with him. Based on the report of the special squad that the cylinders were supplied to Sri.Rajan by the 1st petitioner, the District Collector, issued Ext.P1 notice to the 1st petitioner alleging that it had violated the provisions of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 (for short, 'the Order, 2000') and Section 3 of the Essential Commodities Act, 1955 (for short, 'the Act'). Similar notice was issued to Sri.Rajan also.

3. The petitioners and Sri.Rajan submitted reply to the notices stating that the cylinders alleged to have been seized for which the violation has been alleged were commercial cylinders not regulated under the Act and there is no violation of Order, 2000 or the Act.

4. The District Collector issued Ext.P4 order stating that the petitioners have committed an offence under Section 3 of the Act by conniving with Sri.Rajan for conducting illegal business of selling LPG, warranting penal action under Section 7 of the Act, and accorded sanction for prosecuting the 2nd petitioner, the licensee and further directed the Indian Oil Corporation Ltd; to initiate action under the Marketing Discipline Guidelines, 1998 for LPG Distributorships. As against, Sri.Rajan, the District Collector found that he is guilty of conducting unauthorized business of selling LPG which is prohibited under Clause 6 of Order 2000, and thereby he has committed offence under Section 3 of the Act warranting penal action under Section 7 of the Act and accorded sanction for his prosecution. The order is extracted hereunder:

“ORDER

Sri. Kadathukadavil Rajan, from whose premises the LPG Cylinders have been seized, is guilty of conducting unauthorized business of selling LPGas, which is prohibited under Clause 6, of the L.P.G. (Regulation of Supply & Distribution) Order 2000, and thereby he has committed offence under Section 3, of the Essential Commodities Act 1955, warranting penal action required under section 7, of the Essential commodities Act 1955. Therefore sanction is hereby accorded for prosecution of Sri. Rajan Kadathukadavil, Kampanipeedika, Ochanthuruth, Vypin.

2. The licensee of M/s, Sithara Indane Gas Agency has committed offence under section 3 of the Essential Commodities Act, 1955 by conniving with Sri.Rajan Kadathukadavil for conducting the above illegal business. Penal action under section 7 of the Essential Commodities Act, 1955 is warranted against the licensee. Therefore sanction is also accorded for prosecution of the licensee of M/s Sithara Indane LPG Distributors, Thoppumpady. The Indian Oil Corporation Ltd; is directed to initiate appropriate action against this dealer for imposing suitable fine provided under the marketing discipline guidelines 1998 for LPG Distributorships”.

(emphasis supplied)

5. A Counter Affidavit is filed on behalf of the District Collector stating that LPG is an essential commodity and is regulated under the Act and that Sri. Rajan is not an authorized dealer of LPG and there is violation of provisions of the Act and the Order, 2000 and the order of the District Collector is valid.

6. Heard Sri.P.B. Krishnan, the learned counsel for the petitioners in W.P.(C) No.12246 of 2012, Sri.A.Rajasimhan, the learned counsel for the petitioner in W.P(C)No.13104 of 2012, Sri. S.Manu, the learned DSGI, Smt.Ramola Nayanpally, the learned Counsel for the Indian Oil Corporation and Sri.Jacob E.Simon, the learned Government Pleader.

7. Section 7 of the Essential Commodities Act, 1955 reads as follows:-

“7. **Penalties.**— [(1) If any person contravenes any order made under section 3,-

(a) he shall be punishable,-

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;]

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government.]

[(2) If any person to whom a direction is given under clause (b) of subsection (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.]

(2 A) If any person convicted of an offence under sub-clause (ii) of clause (a) of subsection (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than six months.]

(emphasis supplied)

Under Section 7 of the Act, the power to impose penalty is upon the Court and not on the District Collector. Section 10A of the Act provides that every offence punishable under the Act shall be cognizable. Section 11 provides that no Court shall take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by a person who is a public servant or any person aggrieved or any recognised consumer association. Thus, the power to impose penalty under the Act is vested with the Court and it is not for the District Collector to decide whether a person has committed offence under the Act warranting penal action under Section 7. No sanction of the District Collector is necessary for initiating prosecution under Section 7 of the Act.

8. Ext.P4 order (Ext.P6 in W.P.(C) No.13104 of 2012) passed by the District Collector is without jurisdiction and the same is set aside. The question as to whether commercial LPG is regulated under the Act and other contentions of the parties are left open.

The writ petitions are allowed as above. There will be no order as to costs.

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