

V. Venugopal and anr. Vs. the Joint Collector and ors.

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Court : Andhra Pradesh

Decided On : Apr-29-2010

Judge : V.V.S. Rao, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3(3), 3(3B), 3(3C), 6A, 6A(3), 6B, 6C and 7; ; Essential Commodities (Special Provisions) Act, 1981; ; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397, 401 and 482; ; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 435 and 439; ; Madhya Pradesh Land Revenue Code, 1959 - Section 165(6); ; [Constitution of India](#) - Articles 32, 226 and 227; ; APSCD (L and D) Order, 1982; ; Andhra Pradesh Exhibition of Price Lists of Goods Order, 1966

Appeal No. : Writ Petition No. 17932 of 2009

Appellant : V. Venugopal and anr.

Respondent : The Joint Collector and ors.

Advocate for Def. : G.P. for Civil Supplies

Advocate for Pet/Ap. : V. Venkata Ramana, Adv.

Judgement :

ORDER

V.V.S. Rao, J.

1. The second petitioner is the proprietor of wholesale dealer under Food Grain Licence bearing FGL No. 1/PKL/2000. Her nephew is the first petitioner in charge of the shop. On 22.01.2001 at 3.50 p.m., third respondent surprised the shop. Under a Panchanama he seized 392 bags (50 kg each) of raw rice and nine bags (50 kg each) of boiled rice. Based on his report, first respondent framed the following four charges:

(1) Petitioners were not in practice of issuing bills to the customers and thereby contravened condition 10 of the Licence issued under APSCD (L&D;) Order, 1982 and Clause 7(1) of the AP Exhibition of Price Lists of Goods Order, 1966;

(2) Petitioners have not submitted Form 'C' returns to the Licensing Authority and thereby contravened condition 4 of the licence issued under APSCD (L&D;) Order, 1982;

(3) Petitioners have not exhibited price lists board and thereby contravened condition 8 of the licence and Clause 3 of the AP Exhibition of Price Lists of Goods Order, 1966; and

(4) There was a huge variation i.e. 11 bags (51/2 Qtls) of rice, when compared the ground balance with book balance. The respondents did not maintain the accounts properly and thereby contravened condition 3 of the licence, and issued notice under Section 6-B of the [Essential Commodities Act, 1955](#) (the Act). The second petitioner submitted written statement denying various charges. She alleged that the shop was inspected by the Vigilance authorities in her absence, that her nephew, who is not acquainted with the accounts, did not incorporate in the accounts about the sale of 500 quintals on 22.01.2001, that the same is permissible variation as per Government norms, that the stock board was available, that she was issuing bills regularly and submitting 'C' returns to the Licensing Authority and that all accounts were maintained upto 21.01.2001.

2. The first respondent considering the matter passed orders on 25.11.2002 directing confiscation of 20% of seized stock. Feeling aggrieved by confiscation order, the petitioners preferred appeal being Criminal Appeal No. 305 of 2003 under Section 6-C of the Act before the Court of District and Sessions Judge,

Chittoor, the second respondent herein. By impugned order, dated 10.09.2007, the learned Sessions Judge dismissed the appeal. Aggrieved by the same, present writ petition is filed.

3. It is mainly contended that the decision of appellate Court is contrary to law and that confiscation of 20% of the seized stock is excessive as the charges are trivial in nature. The counter affidavit is filed denying various allegations. The maintainability of a writ petition against the order passed by the inferior criminal Court, namely, District and Sessions Court is also questioned in the counter.

4. The senior counsel for petitioners submits that Sessions Court being inferior criminal Court and a judicial authority, any order passed by the same is subject to revision under Sections 397 read with 401 of Code of Criminal Procedure, 1973 (Cr PC). He then would urge that the availability of revision remedy does not bar the jurisdiction of this Court under Article 226 of [Constitution of India](#), especially when a writ of Certiorari can always be issued against the inferior Court or Tribunal. Per contra, the Government Pleader for Civil Supplies places strong reliance on the decision of Full Bench of this Court in Public Prosecutor v. Legisetty Ramayya : 1975 Cri.L.J. 144(1) (AP) and submits that a writ petition is not maintainable as there is an effective alternative remedy.

5. The point that falls for consideration is whether writ petition is maintainable against the order passed by District and Sessions Court in exercise of its special appellate Jurisdiction conferred under Section 6-C of the Act. Section 6-C of the Act as it stands reads as under.

6-C. Appeal: (1) Any person aggrieved by an order of confiscation under Section 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under Section 6-A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in

respect of which an order of confiscation has been made under Section 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such person shall, except as provided by Sub-section (3) of Section 6-A, be paid the price therefor as if the essential commodity had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined,-

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of Sub-section (3-B) of Section 3;

(ii) in the case of sugar, in accordance with the provisions of Sub-section (3- C) of Section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of Sub-section (3) of Section 3.

6. Historically Section 6-C was amended by Essential Commodities (Special Provisions) Act, 1981 with effect from 01.09.1982 conferring the appellate power on State Government instead of judicial authority. The said Act became unenforceable after 15 years from 01.09.1982. This resulted in reviving Section 6-C as it originally stood, and the appellate powers vested only on the judicial authority appointed by State Government. There is no dispute that the State Government designated the District and Sessions Judge as judicial authority to hear the appeals under Section 6-C of the Act. There is also no dispute that during the period of fifteen years, when Essential Commodities (Special Provisions) Act was in force, the State Government exercised appellate powers and aggrieved persons used to file appeal before the High Court against the appellate orders.

7. In *Legisetty Ramayya (supra)*, two questions were referred to Full Bench. These were - whether a District and Sessions Judge who is the judicial authority under Section 6-C of the Act is a *persona designata* or whether District and Sessions Judge is an inferior criminal Court; and if it is held to be inferior criminal Court, whether a revision is maintainable under Section 435 or 439 of Code of Criminal Procedure, 1898 (1898 Code, for brevity) (Sections 397 and 401 of Cr PC) against

the order of appellate authority under Section 6-C of the Act in spite of the fact that such proceedings are not held under 1898 Code? The Full Bench answered the two questions as under.

8. The District and Sessions Judge acting under Section 6-C of the Essential Commodities Act as the Judicial Authority acts as a Court and not as persona designata. The confiscation proceedings being in the nature of criminal proceedings the District and Sessions Judge acts as an inferior criminal Court in relation to the High Court within the meaning of Section 435, Criminal Procedure Code. A revision is maintainable under Section 435 or Section 439, Criminal Procedure Code against the order of the appellate authority under Section 6-C of the Essential Commodities Act even though the confiscation proceedings cannot be said to be those that are held under the Criminal Procedure Code.

9. In *Thakur Das v. State of M.P.* : AIR 1978 SC 1 : (1978) SCC (Cri) 21 a Division Bench of Supreme Court considered the question whether the judicial authority constituted by the State Government under Section 6-C of the Act to hear the appeals against confiscation orders is inferior criminal Court subordinate to High Court amenable to revisional jurisdiction? The *State of Mysore v. Pandurang P. Naik* (1971) 1 Mys LJ 401; *State of Gujarat v. C.M. Shah* : 1974 Cri LJ 716 (Guj) and *State of Madhya Pradesh v. Basant Kumar* 1972 Jab LJ (SN) 80 took the view that the District and Sessions Court is not an inferior criminal Court within the meaning of Section 435 of 1898 Code. The decision of Full Bench of this Court in *Legisetty Ramayya* (supra) was also cited before their Lordships who agreed with the Andhra Pradesh view observing as under.

10. As against this, this very question was examined by a Full Bench of the Andhra Pradesh High Court in *Public Prosecutor v. L. Ramayya* (supra). Two questions were referred to the Full Bench. The first was: Whether the District and Sessions Judge who is appointed judicial authority for hearing appeals under Section 6-C is a persona designata or an inferior criminal court, and the second was: whether even if it is an inferior criminal court, a revision application against the order of the appellate authority would lie to the High Court? The Full Bench answered the first question in the affirmative. While summing up its conclusions,

the court held that when a judicial authority like an officer who presides over a Court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a court in which case it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a Court would necessarily follow. We are in broad agreement with this conclusion.

11. In view of the Full Bench view which received approval by the Supreme Court in *Thakur Das* (supra), the law is well settled that the District and Sessions Court is not persona designate, that it is an inferior criminal Court and that Sessions Court is amenable to revisional jurisdiction under Section 397 and/or 401 of the Cr PC. The question still remains whether a writ petition for Certiorari is maintainable.

12. The old writ of Certiorari was issued from the High Court to an inferior Court or Tribunal. The purpose was to see whether such inferior tribunal exceeded its jurisdiction. If the decision of inferior Tribunal is found to be in excess of conferred jurisdiction, it is quashed. The underlying policy as per H.W.R.Wade in his 'Administrative Law' (ninth edn.) is, 'that all inferior Courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds...for the sake of orderly administration of justice'.

13. In *Praboth Verma v. State of U.P.* : AIR 1985 SC 167 a Division Bench of the Supreme Court referring to De Smith's 'Judicial Review of Administrative Action' and 'A New Abridgement of the Law' by Matthew Bacon, made the following observations. Certiorari was essentially a royal demand for information; the King, wishing to be certified of some matter, orders that the necessary information be provided for him. We find in De Smith's 'Judicial Review of Administrative Action', 4th edition, page 587, some interesting instances where writs of certiorari were so issued. Thus, these writs were addressed to the escheator or the sheriff to make inquisitions; the earliest being for the year 1260. Similarly, when Parliament granted Edward II one foot-soldier for every township, the writ addressed to the sheriffs to send in returns of their townships to the Exchequer was a writ of certiorari. Very soon after its first appearance this writ was used to remove to the

King's Court at Westminster the proceedings of inferior courts of record ; for instance, in 1271 the proceedings in an assize of darrein presentment were transferred to Westminster because of their dilatoriness. This power was also assumed by the Court of Chancery and in the Tudor and early Stuart periods a writ of certiorari was frequently issued to bring the proceedings of inferior courts of common law before the Chancellor. Later, however, the Chancery confined its supervisory functions to inferior courts of equity. In 'A New Abridgment of the Law', Seventh Edition, Volume II at pages 9 and 10, Matthew Bacon has described a writ of certiorari in these words:

A Certiorari is an original writ issuing out of Chancery, or the King's Bench, directed in the King's name, to the judges or officers of interior courts, commanding them to return the records of a cause pending before them, to the end the party may have the more sure and speedy justice before him or such other justices as he shall assign to determine the cause.

14. In *Dwarak Nath v. Income Tax Officer* : AIR 1966 SC 81 a Constitution Bench of Supreme Court held that the Courts in India can issue writs in the nature of prerogative writs as understood in England, but those writs can also be widened and issue directions, orders, by also moulding the relief to meet peculiar and complicated requirements of the Nation.

15. Therefore, there cannot be any doubt that the certiorari jurisdiction conferred under Article 226 and the judicial superintendence under Article 227 of [Constitution of India](#) would certainly enable the High Court to entertain writ petition under Article 226 and revision petition under Article 227 of [Constitution of India](#) if a Judgment of the inferior Court is not supported by evidence at all see *Baldeo Singh v. State of Bihar* : AIR 1957 SC 612 or the inferior Court acted without jurisdiction see *Gopal Das Sindhi v. State of Assam* AIR 1961 SC 986. It is also the law that the provisions of statute law confer appellate/revisional jurisdiction on the High Court do not in any manner circumscribe the Constitutional jurisdiction under Article 226 and 227 of [Constitution of India](#). Any provision including 'no certiorari clause' in a statute does not bar the power of judicial review under Articles 226 and 227 of [Constitution of India](#) because it is part of the inviolable

basic structure of the Constitution. There are quite a few precedents supporting this view to which a reference is made hereafter. In *P.V. Somaraju v. Munsif Magistrate, Bhimavaram* : AIR 1968 AP 22 Gopal Rao Ekbote, J (as he then was) considered the question whether a Writ of Certiorari can go to a District Munsif exercising jurisdiction as a designated Court under Special Enactment. The learned Judge held that a writ of Certiorari to the inferior Court is not barred and that if there is manifest defect of jurisdiction or of manifest fraud in the policy pertaining the order, exercise of Certiorari jurisdiction by the High Court is not barred. The relevant observations are as follows.

In India, the position after the Constitution is entirely different. Under the [Constitution of India](#), certiorari and other writs are remedies conferred by the Constitution itself. The power of the High Court to issue writs under Article 226 cannot be affected by any legislative provision and in spite of anything contained in any legislative enactment. The High Courts can issue such writs, directions or orders under Article 226 as they deem fit. The very object of the inclusion of a specific provision like Article 226 in the Constitution itself with regard to the power of the High Court is to secure that these powers shall not be in any way affected by any law made by the Parliament or the Legislature of a State. Any legislative enactment or other law which abrogates or restricts the right to apply for the issue of a writ of certiorari or any other writ would be ultra vires. It is true that prior to the Constitution the writs were available only under the common law. It was then possible to restrict or abridge or even take away the right to ask for a certiorari. But the situation has undergone a radical change because of Article 226 of the Constitution. Whatever therefore may be the position prior to the Constitution in India, it is now clear that certiorari is a constitutional remedy which cannot even by express language of a statute whether of the Centre or of the State, can be taken away. It is therefore difficult to agree that because of the hierarchy of the civil courts and availability of remedies like an appeal or revision under certain enactments it should be presumed that the power of the High Court under Article 226 to issue the writ is barred or destroyed.... In any case, whether or not the power to issue a writ under Article 226 is or can be taken away, it is clear that in spite of such provisions the High Court is not absolutely deprived of the power to issue a writ. It can do so on the ground of either a manifest defect of jurisdiction or

of manifest fraud in the party obtaining the order. It can also be issued wherever there is an error apparent on the face of the record. It is not necessary to refer to the decided case in this respect. It seems to be clear that in the presence of Article 226 of the Constitution, the Parliament or the State Legislature cannot take away or abridge the power to issue a writ under Article 226. I have already stated that the mere existence of hierarchy of civil courts or provision of remedies of appeal or revision do not abridge or take away the constitutional remedy of a writ. There is no express enactment at all which abridges the power under Article 226. (emphasis supplied)

16. In *State of Madhya Pradesh v. Babu Lal* : (1977) 2 SCC 435 : AIR 1977 SC 1718 the respondent who was not a scheduled tribe filed a suit in the Court of Civil Judge, Class II, Jhabua Tahsildar, for declaration that his name be recorded in the revenue record as Bhumiswami in respect of certain lands. Baddiya who was the defendant did not contest.

17. A compromise deed was filed before the Civil Court whereunder Baddiya agreed the transfer of his rights in favour of Babu Lal. State of Madhya Pradesh raised objection that the proceedings before the civil Court are in contravention of Section 165(6) of the Madhya Pradesh Land Revenue Code, 1959, which prohibited transfer of Bhumiswami register belonging to tribal to a non-tribal. But a compromise decree was passed. The State filed a writ petition before High Court for Certiorari to quash the Judgment of the civil Court. The same is dismissed by the High Court observing that the suit for declaration should be filed. A Division Bench of Supreme Court set aside the Judgment of High Court and quashed the Judgment of civil Court observing as under.

18. One of the principles on which certiorari is issued is where the court acts illegally and there is error on the face of record. If the court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.... The judgment of the High Court is set aside. A writ of certiorari is issued to quash the judgment and decree dated August 8, 1973 passed by the respondent Civil Judge, Class II, Tehsil Jhabua, District Jhabua in Civil Suit No. 70-J of 1973.

19. In *Pepsi Foods Limited v. Special Judicial Magistrate* : (1998) 5 SCC 749 : : AIR 1998 SC 128 Supreme Court while holding that the jurisdiction of the High Court under Articles 226 and 227 is not barred even if there is an effective remedy under Cr PC observed as under. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226.... If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

20. In *Rupa Ashok Hurra v. Ashok Hurra* : (2002) 4 SCC 388 a Constitution Bench considered the question whether a writ petition under Article 32 of the Constitution questioning the validity of a Judgment of the Supreme Court is maintainable? The said question was referred to a Larger Bench by three Judge Bench. While holding that a writ petition is not proper to question the Judgment of the Court, their Lordships held that to prevent abuse of its process and to cure gross miscarriage of justice, the Court may consider a curative petition, the scope of the power to issue writs was explained as under.

They are discretionary writs but the principles for issuing such writs are well defined. In the pre-constitutional era the jurisdiction to issue the prerogative writs was enjoyed only by three chartered High Courts³ in India but with the coming into force of the Constitution, all the High Courts and the Supreme Court are conferred powers to issue those writs under Article 226 and Article 32, respectively, of the Constitution. In regard to the writ jurisdiction, the High Courts in India are placed virtually in the same position as the Courts of King's Bench in England. It is a well-

settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme. It is, however, important to note that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination. (emphasis supplied)

21. The weighty judicial authority leads to irresistible conclusion that even where the special statute read with provisions in Cr PC provide for remedy of a revision against inferior criminal Court acting either as judicial authority or persona designata, a petition for writ of Certiorari is not absolutely barred. If a legislative enactment provides for an appellate remedy and attaches finality, certainly the writ jurisdiction is not barred even if there is a 'no certiorari clause', but special enactment does not attach finality to the appellate order, a revision to the High Court either under the special enactment or under Article 227 of [Constitution of India](#) is maintainable. This itself does not exclude the prerogative jurisdiction under Article 226 of [Constitution of India](#).

22. As it was originally enacted Essential Commodities Act provided for an appeal to judicial authority designated by the State Government. This provision was however eclipsed by reason of the amendment in 1981 for a period of fifteen (15) years. During this period, a revision was barred and necessarily certiorari jurisdiction of the High Court was available against appellate orders passed by the State Government under Section 6-C of the Act. After eclipse is removed, Section 6-C of the Act as it originally existed is revived. In this background, assumption of jurisdiction cannot be doubted under Article 226 of [Constitution of India](#) even though the remedy of revision under Sections 397 and 401 of Cr PC is an effective remedy.

23. This Court may now turn to the merits of the case. Therefore, this Court holds that against an order passed by District and Sessions Judge under Section 6-C of the Act, a writ petition under Article 226 of Constitution is not barred. The third respondent inspected food grains shop of second petitioner. He found that there was a shortage of 11 bags of raw rice. Suspecting contravention, he seized 392 bags of raw rice and 9 bags of boiled rice. The report dated 27.01.2001 was sent

to first respondent. He issued notice under Section 6-B of the Act on 09.12.2001. The four charges communicated to petitioners are that they contravened condition No. 10 of Licence issued under 1982 Control Order and Clause 7(1) of the Andhra Pradesh Exhibition of Price Lists of Goods Order, 1966, that by not exhibiting price lists, there is a contravention of Condition No. 8 of Licence and condition 3 of Exhibition of Price Control Order, that Form- C returns were not submitted in contravention of condition No. 4 of the Licence and there is variation of 11 bags/51/2 quintals of rice when compared to the ground balance with book balance. After receiving the said notice, the second petitioner filed her explanation/written statement. She submitted that accounts were maintained upto 21.01.2001, the first petitioner who is not acquainted with the accounts was looking after the shop and therefore, 51/2 quintals of rice was not entered in the accounts of 22.01.2001, that the variation of 5 quintals is within the permissible limits, there is a stock board available in the premises and that she already submitted C-returns to the licensing authority. The Joint Collector reiterated the contents of the written statement of second petitioner and came to the conclusion that the charges are proved. Presumably for the reason that there is alleged violation of control orders, 20% of the seized food grains was confiscated to the Government. The order of the Joint Collector does not contain any reasons as to how the charges are proved. There is more subjectivity in the order than objective consideration.

24. In view of the rival contentions, it is to be seen whether 20% confiscation is justified. In the counter affidavit filed by the Joint Collector justification for confiscation of 20% of the seized stock is stated as follows.

25. It is a fact the wholesale dealer was not present at the time of inspection and submitted that some other person was doing the business. The Sub-Inspector of Vigilance has noticed there is a variation of 51/2 Qtls of raw rice. As per Control Orders the allowable marginal variation is 1/2 Qtl.

26. It is submitted that the Joint Collector himself ordered for release of seized stocks on execution of personal bond, and as there is violation of [Essential Commodities Act, 1955](#), 6A case was taken on file vide No. 6A/10/PKL/2001 and

four charges were framed for the lapses committed by the dealer. After hearing the case and perusal of the records 20% confiscation of seized stocks was ordered. The same was confirmed by the District Sessions Judge, Chittoor.

27. It is submitted that as the variation is excess of the marginal variation allowed by the Government Instructions, the Sub-Inspector of Vigilance Cell has filed the 6A case, and 20% confiscation of seized stocks was ordered.

28. Petitioners rely on Government Memo No. 26776/CS.II/91-1, dated 07.05.1991, which reads as under.

Govt.Memo. No. 26776/CS.II/91-1,

dated 07.05.1991

Sub: Civil Supplies - [Essential Commodities Act, 1955](#) - Guidelines to be observed by implementing agencies - Regarding.

Ref: 1) Govt.Memo. No. 20998/CS.II/88-1, dated 5-4-1988.

2) Govt.Memo. No. 2810/CS.II/90-1, dated 12-1-1990.

3) Letter No. 26/15/90-ECR & E, dated 16-7-1991 of the Government of India, Ministry of Food & Civil Supplies (Department of Civil Supplies), New Delhi addressed to the Commissioner of Civil Supplies, Hyderabad.

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In supersession of the instructions issued in the references 1st and 2nd cited, the following guidelines are hereby issued:

1) In respect of the following types of mistakes/lapses/omissions (which are only illustrative and by no means exhaustive in nature) it may not ordinarily be necessary to launch prosecutions. However, administrative action under E.C.Act can be taken. In case these lapses/irregularities are found to be repetitive and there are reasons to believe that they are deliberate, appropriate action including launching of prosecution, may be considered at the discretion of the competent

authority.

For Fair Price Shops:

- (i) Minor variation in respect of single commodity upto 1.5% taking into consideration transactions of one month.
- (ii) Mistake in mathematical totaling, clerical and accounting errors in the maintenance of prescribed registers.
- (iii) If the shop is not opened during the prescribed hours of business or closed at the time fixed for closing due to unavoidable circumstances.
- (iv) If the stock register does not show the place from which the stock was brought or was sent, but the information is available from any other register or document.
- (v) If the stock register could not be maintained for any particular day due to sickness, pressure of work or unavoidable circumstances on the part of the Fair Price Shopkeeper.
- (vi) If non-availability of a commodity is not specifically indicated in the stock register when such a commodity is not available in the stock.
- (vii) If the licence given to the owner for running the Fair Price Shop is not kept duly perceivable.
- (viii) In the course of the normal transaction, if the licensee forgets to mention either the licence number or the date on the bill or memo.
- (ix) For violation of Control Orders, if any, by way of failure to submit periodical returns, non-maintenance of stock boards.

(b) For Private Licensees:

- i) Mistake in mathematical totaling.
- ii) If stock register does not show the place from which the stock was brought or sent, but the information is available from any other register or document.

iii) If the stock register could not be maintained for any particular day due to sickness, pressure of work or unavoidable circumstances.

iv) When the variation between the book and the ground stock is insignificant.

v) In the course of the normal transaction, if the licensee forgets to mention either the licence number or date on the bill or memo.

Retailers and Wholesalers:

a) Retail shops with an annual turnover of less than Rs. 2 lakhs shall not be inspected by the Officers of the Vigilance Cell of Civil Supplies Department, Officers of the Vigilance Cell of Enforcement Department and Officers of the Revenue and Civil Supplies and Police Department. However, for the purpose of source checking in connection with some other crime or in cases of specific complaints against the retailers for hoarding, blackmarketing etc., of essential commodities, such retail shops can be inspected and during such inspections variations, if any, shall be allowed upto half per cent (1/2%) on the stock available at the time of inspection.

Every retail dealer shall file a declaration to the licensing authority about the annual turnover within one month after every accounting year is over and obtain an acknowledgement from the Licensing Authority along with the official seal on the duplicate copy, and this shall be produced to the officials whenever they inspect his premises.

b) For violation of Control Orders such as failure to submit periodical returns, non-maintenance of stock boards, and exhibition of price lists, prosecution shall not be launched but appropriate departmental action shall be taken.

c) Producers and Wholesale dealers in foodgrains, other than rice millers, shall be allowed a variation in stocks upto 5 (five) quintals or upto 10% (ten per cent) of the stocks, whichever is less, at the time of inspection.

In respect of rice millers the order already issued in Boards (CS) Ref.P5.3388/75, dated 16-9-1975 and Board's (CS) L.Dis.P5/4472/75, dated 1-12- 1975 will apply.

d) Wholesale dealer in edible oils shall be allowed a variation in stocks upto 5 (five) tins of 15 Kg., each or 5% (five per cent) of the stocks whichever is less, at the time of inspection.

d(1) Producers in edible oils shall be allowed a variation in edible oil stocks upto 4% of the stocks at the time of inspection.

e) Producers and Wholesale dealers in edible oil seeds shall be allowed a variation in stocks upto 5% (five per cent) of the stocks, at the time of inspection.

f) Retail Shops with an annual turnover of Rs. 2 lakhs and above dealing in foodgrains, edible oilseeds and edible oils shall be allowed a variation upto 1/2% (half per cent) of the stocks at the time of inspection.

The Collector/Chief Rationing Officer and the Special Inspection General of Police, Vigilance Cell (CS) Department, Hyderabad are requested to bring the above revised instructions to the notice of the enforcement officials at field level for compliance.

G.KUMARASWAMY REDDY,

EX.Officio Principal Secretary to Government

29. The stock position as per the register was 392 kg on the date of inspection but on physical verification it was found that there was shortage of 5 1/2 quintals (11 bags of 50kg each). Therefore, the excess variation is trivial as variation of 5 quintals is permissible. There is no dispute that the second petitioner who is the licensee was submitting C-returns regularly and it is never the case of respondents that she was a chronic defaulter. Even in her explanation she pleaded that C-returns were submitted and the first petitioner was not aware of the accounts could not assist the inspecting team properly. Non-maintenance of price lists and the alleged contravention of Andhra Pradesh Exhibition of Price Lists Control Order are trivial contraventions.

30. It is well settled that in case of trivial contraventions of the provisions of Essential Commodities Act or Control Orders made thereunder, confiscation of

substantial quantity of food grains or controlled commodity is unjustified. It may be mentioned that in *Pulipati Purushotham v. State of A.P.* 1976 APHN 47 confiscation of entire stock for not entering 24 quintals of paddy in the stock register was held unjustified. A Division Bench in *N. Panduranga Rao v. State of A.P.* 1975 (2) APLJ 277 held that confiscation of 451.25 quintals of paddy, 796 quintals of jowar and 199.92 quintals of broken rice alleging that the paddy was not included in the licence issued to petitioner and that the stocks found stored in unlicensed premises is illegal. Similarly, in *Dharani Trading Company v. State of A.P.* 1974 (2) APLJ 166 it was held that in technical contraventions, confiscation cannot be ordered.

31. In *N. Nagendra Rao v. State of A.P.* : AIR 1994 SC 2663 Supreme Court indicated that a trader guilty of technical violations cannot be equated the trader indulging in black marketing and selling adulterated goods which attracts severe punishment. The relevant observations are as follows.

32. But what needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under Section 7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'.

33. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated on a par with technical violations such as failure to put up the price-list etc. or even discrepancies in stock.

34. The charges framed against second petitioner who is a dealer like non-exhibition of pricelist, delayed filing of Form-C returns and held issue of bills/receipts, in the light of the decided cases are not serious enough. But other

contravention however trivial must be meted as deterrent action permissible under law. After giving due consideration, this Court is of considered opinion that an order for confiscation of 5% of seized stock would meet the ends of justice especially having regard to the fact that second petitioner has been wholesale food grain dealer since long and during the period of about a decade after seizure of the stock there have been no complaints against her.

35. The writ petition, for the above reasons, is accordingly partly allowed without any order as to costs.

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