



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE TWENTIETH DAY OF MAY  
TWO THOUSAND AND TWENTY

**PRSENT**

**THE HONOURABLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**WRIT PETITION NO: 7874 OF 2020**

**Between:**

1. K MADHUSUDHANA NAIDU S/o. Late Pullaiah, Age 45 years,  
Occ- F.P. Price Shop Dealer,  
F.P.Shop.No.1207027,  
Kristipadu Village,  
Peddavadugur Town,  
Ananthapuramu District.

**...PETITIONER(S)**

**AND:**

1. THE STATE OF ANDHRA PRADESH Rep. by its Secretary,  
Consumer Affairs,  
Food and Civil Supplies (CS.I) Department,  
Secretariat Buildings,  
Velagapudi, Amaravathi,  
Guntur District, Andhra Pradesh.
2. The Joint Collector(CS), Ananthapuramu,  
Ananthapuramu District,  
Andhra Pradesh.
3. The Tahsildar, Peddavadugur Mandal, Ananthapuramu District,  
Andhra Pradesh.

**...RESPONDENTS**

**Counsel for the Petitioner(s): K SRINIVAS**

**Counsel for the Respondents: GP FOR CIVIL SUPPLIES (AP)**

**The Court made the following: ORDER**

**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI****+ WRIT PETITION No.7874 of 2020**

%20.05.2020

# K. Madhusudhana Naidu

...Petitioner

VERSUS

§ The State of Andhra Pradesh, rep. by its Secretary,  
Consumer Affairs, Food and Civil Supplies (CS.I) Department,  
Secretariat Buildings, Velagapudi, Amaravati  
Guntur District, Andhra Pradesh & 2 others

...Respondents

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> HEAD NOTE:

!Counsel for Petitioner: Sri K. Srinivas

^Counsel for Respondents: Government Pleader for Civil Supplies

? Cases referred

1. 2015 (2) ALT 667
2. 2015 (3) ALD 617
3. 2011 (2) ALD 477
4. AIR 1996 SC 671
5. (2010) 2 SCC 497
6. M.H. Prasad Vs. State of AP (WP No.2942/2020, dated 23.04.2020)



## HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Writ Petition No.7874 of 2020

Between:

K Madhusudhana Naidu

.. Petitioner (s)

And

The State of Andhra Pradesh, rep. by its Secretary  
Consumer Affairs, Food & Civil Supplies (CS.I)  
Department, Secretariat Buildings, Velagapudi, Amaravati & 2 others

.. Respondent (s)

JUDGMENT PRONOUNCED ON : 20.05.2020

## HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of local newspapers :  
may be allowed to see the Judgments?
2. Whether the copies of judgment may be :  
marked to Law Reporters/Journals?
3. Whether their Ladyship/Lordship wish to :  
see the fair copy of the Judgment?

KONGARA VIJAYA LAKSHMI, J

**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI****WRIT PETITION No.7874 of 2020****ORDER:**

Heard the learned counsel for the petitioner and the learned Government Pleader and with their consent, this writ petition is being disposed of at the stage of admission.

This writ petition is filed challenging the cancellation of authorization of the petitioner's fair price shop No.1207027, Kristipadu village of Peddavaduguru Mandal, Ananthapuramu District.

Case of the petitioner is that, he was appointed as permanent Fair Price shop dealer in the year 2013; on 03.12.2019, the staff of the District Civil Supplies Department along with the 3<sup>rd</sup> respondent inspected the fair price shop of the petitioner, conducted *panchanama* and seized certain quantity of essential commodities; according to the said *panchanama*, there is a variation in the quantities of rice, sugar and red gram; the 3<sup>rd</sup> respondent, at the behest of local leaders, initiated proceedings under Section 6-A of the Essential Commodities Act and reported the same to the 2<sup>nd</sup> respondent through letter dated 04.12.2019; basing on the said 6-A report, the 2<sup>nd</sup> respondent cancelled the fair price shop authorization of the petitioner on 06.03.2020; as per Clause 'Q' of the memo issued by the government in CCS Memo No.21/100/2015-AD1.PP-CCS dated 28.09.2015, fair price shop authorization shall not be cancelled by the 2<sup>nd</sup> respondent, basing on 6-A report. Hence, the writ petition.

Sri K. Srinivas, learned counsel for the petitioner, reiterated the contentions raised in the writ affidavit. In support of his case, he relied on the decisions of this Court in '*C.Durga Srinivas Rao vs. State of A.P.*,



*dated 25.01.2006 (WP No.30126 of 2015)' and 'Pidikiti Sailaja vs. State of A.P.,<sup>1</sup>'.*

Learned Government Pleader for Civil Supplies submits that the petitioner has got an effective alternative remedy of appeal before the District Collector in accordance with Clause 24(b) of the A.P. State Targeted Public Distribution System (Control) Order, 2018, (for short 'APSTPDS (Control) Order'), without exhausting the same, the present writ petition is filed and that alternate arrangements are also made appointing a temporary dealer in the place of the petitioner.

As seen from the impugned order dated 06.03.2020, three charges have been framed against the petitioner herein. Show cause notice was also issued to the petitioner, his explanation was called for and findings are also recorded in the impugned order. Following are the charges, explanation of the petitioner and findings of the 2<sup>nd</sup> respondent.

'Charge-1: That the FP shop dealer was failed to maintain scheduled commodities physically as per the balances shown in the electronic device. There is variation of 19.319 kgs of rice shortage 8.1 kgs of sugar shortage and 0.645 kgs of RG dall shortage was found in the FP shop at the time of inspection, which is violation of clause 12(p)(d) of APSTPDS (Control) order 2018.

Explanation of the dealer: The FP shop dealer has submitted his explanation through his counsel stating that after expiry of leave, he has taken charge as FP shop dealer and the release order was raised in his favour for the month of November, 2019. But the person who acted as temporary dealer during his leave period has not handed over the buffer stocks of 458 kgs of rice and 33 kgs of sugar. During inspection the inspection authorities filed 6-A case against him, without taking consideration of his plea.

Charge-II: That the FP shop dealer was diverted 193.19 kgs of rice to black market and indulged in clandestine business

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<sup>1</sup> 2015(2) ALT 667



for his pecuniary gains which is violation of clause 25(d) of APSTPDS (Control) Order 2018.

Explanation of the dealer: The FP shop dealer has submitted his explanation through his counsel stating that the allegations made in charge are denied as not true. He has further submitted that he has distributed the essential commodities to the card holders properly and charges is interlinked with charge No.1 and not involved in any clandestine business and the inspection authorities only on guess work this charge is made and dealer has not violated the charge.

Findings for the Charges 1 & 2: The explanation filed by the dealer is not convincing. If the explanation submitted by the FP shop dealer is considered and taking into account, that the acted dealer during his leave period has not handed over the buffer stocks of previous month i.e., 458 kgs of rice and 33 kgs and include the figures to the closing stocks, it will become 265 kgs rice excess instead of 193.19 kgs of shortage further the sugar will become 25.9 kgs excess instead of 8.1 kgs of shortage. So the explanation filed by the respondent is false. Hence the charges 1 & 2 are held proved.

Charge-III: That the FP shop dealer was failed to run the FP shop in the specified address as mentioned in the authorization and running the FP shop at D.No.2/134 instead of D.No.2/170 as noted in the authorization which is the violation of condition 17 (c) of the authorization.

Explanation of the dealer: The FP shop dealer has submitted his explanation through his counsel stating that he has been running his FP shop in the specified address as mentioned in the authorization and the inspecting authorities made this charge only on guess work and he has not contravened the clause.

Findings: The explanation filed by the respondent is not convincing. The inspection authorities i.e., the Vigilance and Revenue authorities have clearly mentioned in the panchanama, that the dealer is being running FP shop in Door No.2/134 instead of Door No.2/170. During the inspection, the dealer ne3ver condemned orally or in his written statement about non maintenance of the FP shop at the specified address as noted in the Authorization. Hence the charge 3 held proved.”

As seen from the charges, the first charge states that the dealer failed to maintain scheduled commodities physically as per the balances



shown in the electronic device and that there is shortage of rice, sugar and dhal, which is a violation of clause 12(p)(3) of APSTPDS (Control) Order 2018. The explanation of the dealer for the same is that, he has applied for leave and after expiry of leave, he has taken charge as FP shop dealer, and that the release order was issued in his favour for the month of November, 2019, but the temporary dealer who was appointed during his leave period, did not hand over the buffer stocks of 458 kgs of rice and 33 kgs of sugar and that during inspection, his plea was not taken into consideration. The second charge is that, the petitioner diverted 193.19 kgs of rice to black market and indulged in clandestine business which is a violation of clause 25(d) of APSTPDS (Control) Order 2018. His explanation to the second charge is that he did not indulge in any clandestine business and the inspecting authority proceeded merely on the guess work. The findings for the first two charges are that the explanation filed by the petitioner is not convincing and that if the previous dealer had not handed over the buffer stock of the previous month, there should be excess rice of 265 kgs instead of 193.19 kgs shortage and that the sugar would be 25.9 kgs excess instead of 8.1 kgs of shortage and disbelieving the explanation, it was held that both the charges are held to be proved. With regard to the third charge, that the dealer has failed to run the FP shop in the specified address mentioned in the authorization, his explanation is that he is running the shop in the very same address, which is mentioned in the authorization and the finding to the said charge is that the explanation is not convincing and that the Vigilance and Revenue Authorities have clearly mentioned in the *panchanama* that the dealer is running FP shop elsewhere and that during the inspection, the dealer did not deny the same and held that the third charge is also proved.



When a specific plea has been taken by the dealer that the temporary dealer, who was holding the stock during the said period, has not handed over the buffer stock, the said temporary dealer ought to have been examined, but it was not done. Insofar as the second charge is concerned, the finding is that he diverted 192 kgs to the black market and indulged in clandestine business. When this charge has been denied, there is no discussion and finding at all with regard to charge II, except saying that explanation is false. Even though the impugned order shows that both the charges are held proved, there is no specific finding so far as diversion of the rice into black market. With regard to third charge that he was running shop elsewhere, the finding is that the explanation is not convincing and that the Vigilance and Revenue authorities have mentioned in the *panchanama* that the dealer is running FP shop elsewhere. The *panchanama* is the only basis to come to a conclusion that the dealer is running the shop elsewhere without there being any other supporting evidence for the same.

Clause 8(4) of A.P. STPDS (Control) Order 2018, deals with suspension and cancellation of the authorization. According to the said clause, the appointing authority may, at any time in public interest or *suo motu* or on receipt of complaint, after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, suspend or cancel the authorization issued or deemed to be issued to him/her under this clause. The words used in this clause are 'after making such enquiry' and for 'reasons to be recorded in writing'. The said clause enjoins on the appointing authority to follow two mandatory conditions before imposing any penalty as envisaged therein. Firstly, it shall make an 'enquiry' as deemed necessary and secondly, it shall record 'reasons





in writing'. As per the Oxford Dictionary Thesaurus, meaning of the word 'enquiry' includes probe, examine, explore, delve into.

In '*B. Manjula vs. District Collector, Civil Supplies & others*<sup>2</sup>', this Court held as follows:

“An 'enquiry' pre-supposes an opportunity of personal hearing to the dealer to explain his/her case based on the records such as sales and stock registers. If need be, such 'enquiry' must also include recording the sworn statement of the dealer and witnesses, if any, from his/her side. In cases where either card holders or other persons sent any complaint, they must also be examined in the presence of the dealer or his/her lawyer and the dealer shall be given an opportunity of cross-examining such persons. The licencing/disciplinary authority shall also supply to the dealer all the reports on which he is likely to place reliance to the detriment of the dealer. Unless the dealer has no explanation at all to offer, the licensing/disciplinary authority is bound to hold a detailed enquiry.”

“...The experience of this Court reveals that the appointing authorities of fair price shop dealers are dispensing with the requirement of making personal enquiry by summoning the dealers. They are merely relying upon the reports sent by their subordinates i.e., Deputy Tahsildars and Tahsildars, behind the back of the dealers and resting their decisions solely upon those reports. This procedure is anathema to the concept of 'enquiry' which otherwise means affording the dealer an opportunity of a fair hearing”.

In '*Kondamudi Banerjee vs. Revenue Divisional Officer, Ongole*<sup>3</sup>', this Court held as follows:

“Indubitably the order cancelling the privilege of distribution of essential commodities through a licence visits the holder of the licence with adverse consequences. Before subjecting the licensee to such an adverse order, it is obligatory on the part of the competent authority to apply his mind to the charges framed against and the explanation offered by the licensee. Failure to follow this fair procedure renders the very

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<sup>2</sup> 2015(3) ALD 617

<sup>3</sup> 2011 (2) ALD 477



purpose of framing the charges and calling for explanation otiose. The principles of natural justice, it is trite are embedded in the administrative law field. Whenever an action, which is likely to cause adverse civil consequences is sought to be taken, the person, who is likely to be affected by such action, is entitled to reasonable opportunity of defending himself.”

Reasons constitute the heart and soul of a decision and hence, the order should contain the reasons for the decision taken.

In ‘*Madhya Pradesh Industries Ltd., vs. Union of India and others*<sup>4</sup>, the Hon’ble Supreme Court *inter-alia* held that “the condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. It gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the Tribunals within bounds.”

In ‘*G. Vallikumari vs. Andhra Education Society and others*<sup>5</sup>, the Supreme Court, at para-19, held as follows:

“...The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.”

Reason is the clarity to an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity and recording of reasons is a principle of natural justice. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why action has been taken against him.

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<sup>4</sup> AIR 1966 SC 671

<sup>5</sup> (2010) 2 SCC 497



In *C.Durga Srinivas Rao's* (supra) case, this Court while dealing with cancellation of authorization of fair price shop dealer held that 'as per clause 24(vi) of the Control Order, 2018, after receiving the explanation from the dealer, in case of denial by him, the appointing authority shall hold an enquiry and prove the charges leveled against the dealer. Such enquiry should be fair by placing the material before the dealer but cannot be elevated to the level of a regular court trial. The burden lies on the appointing authority to prove charges'.

In *Pidikiti Sailaja's* (supra) case, which is also a case of cancellation of fair price shop dealer, this Court held as follows:

"In the light of these allegations, an obligation was cast on respondent No. 4 to make a detailed enquiry with reference to entries in the Sales and Stock Registers and by giving the petitioner an opportunity of personal hearing.

A reading of the order passed by respondent No. 4 does not suggest that he has undertaken any such exercise. Since the Revision Petition is pending before respondent No. 2, this Court refrains from rendering conclusive opinion on the legality or otherwise of the order, dated 16.09.2014, passed by respondent No. 4. However, this Court finds a strong case in favour of the petitioner for grant of interim order to enable her to continue as the fair price shop dealer till disposal of the Revision Petition by respondent No. 2."

This Court in '*M.H. Prasad vs. State of Andhra Pradesh & others*' (WP No.2942 of 2020 dated 23.04.2020), held as follows:

"...Since no opportunity was afforded to the petitioner herein to adduce evidence and no personal hearing or hearing through counsel was done after receiving the explanation and no cogent reasons were mentioned for not taking into consideration the explanation, the impugned order is liable to be set aside.

Accordingly the writ petition is allowed and the impugned order in Rc.No.K3/2557/2019 dated 27.01.2020 passed by the 2<sup>nd</sup> respondent is set aside and the matter is remitted back to the 2<sup>nd</sup> respondent to afford an opportunity to the petitioner to adduce evidence, if he proposes to adduce any



evidence and also afford an opportunity of hearing to the petitioner either personally or through counsel and pass a reasoned order on merits expeditiously but not later than three (03) months from the date of receipt of a copy of this order. Till such exercise is completed, the petitioner shall be permitted to conduct the Fair Price Shop No.1225025 Rudrampet village, Ananthapuramu Mandal, Ananthapuramu District.”

Even though, learned counsel for the petitioner contended that the impugned order has been passed basing on 6-A report, as seen from the impugned order, it is not based on 6-A report, but the impugned order has been passed basing on the other charges also. Hence, the said contention of the learned counsel for the petitioner is liable to be rejected.

Learned Government Pleader appearing for the respondents even though submits that the petitioner has got alternate remedy of appeal under Section 24(b) of the AP STPDS (Control) Order, 2018 to the District Collector, as no enquiry, as contemplated under the Control Order was conducted after receiving the explanation and as no cogent reasons were mentioned for rejecting the explanation submitted by the petitioner, by following the decisions referred to above, the writ petition is allowed and the impugned order dated 06.03.2020 passed by the 2<sup>nd</sup> respondent is set aside and the matter is remitted back to the 2<sup>nd</sup> respondent to conduct such enquiry as may be deemed necessary and also afford an opportunity of hearing to the petitioner, either personally or through counsel, and pass a reasoned order on merits as expeditiously as possible but not later than three (03) months from the date of receipt of a copy of this order. Till such exercise is completed, the petitioner shall be permitted to conduct the Fair Price Shop No.1207027, Kristipadu Village, Peddavaduguru Mandal, Ananthapuramu District. There shall be no order



as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

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**KONGARA VIJAYA LAKSHMI, J**

Date: 20.05.2020  
Note: LR copy to be marked.  
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**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**WRIT PETITION No.7874 of 2020**

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**Date: 20.05.2020**

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