**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**WRIT PETITION Nos.30126 and 30128 of 2014; 2388, 2094 and 4204 of 2015**

**COMMON ORDER:**

"***Excellence is a continuous process and not an accident"***
***- A.P.J. Abdul Kalam.***

2. These Writ Petitions are being disposed of by this common order in view of the common point of law involved in all these Writ Petitions. The learned counsel for the petitioners as well as the learned Government Pleader were heard.

3. W.P.Nos.30126 and 30128 of 2014, 2094 of 2015 and 2388 of 2015 were filed challenging the proceedings of the Revenue Divisional Officer, Guntur dated 30.09.2014 cancelling the authorization of the petitioners as fair price shop dealers. W.P.No.4204 of 2015 was filed by another fair price shop dealer challenging the order passed by the Revenue Divisional Officer, Anantapur cancelling his authorization on 24.01.2015. Thus, the common issue that fell for consideration in all these cases is with regard to the procedure followed by the Revenue Divisional Officers while cancelling the authorizations of the petitioners.

4. The petitioners are not challenging the jurisdiction of the Revenue Divisional Officers in all these cases. But, the learned counsel for the petitioners concentrated the manner in which the cases were dealt with by the concerned officers. The issue with regard to the procedure did not arise for the first time in these cases, but was already decided in a number of decisions. Inspite of the same, the concerned Revenue Divisional Officers are passing the orders oblivious of the binding decisions of this Court. Since this Court is regularly flooded with orders passed by such officers in a casual manner, this court thought it fit to reconsider the issue for proper guidance of the authorities in order to

minimize future litigation.

5. These cases arise out of the provisions of the Essential Commodities Act, 1955 (for short, the Act) and the Control Orders issued thereunder. Section 2-A of the Act states that for the purposes of the said Act "essential commodity" means a commodity specified in the Schedule. The control, production, supply, distribution etc. of essential commodities is provided in Section 3 thereof. The said Section empowers the Central Government to regulate such activity by an Order. With regard to licenses, permits or otherwise the production or manufacture of any essential commodity, controlling the price thereof, storage, transport, distribution, distribution, disposal, acquisition, use or consumption of any essential commodity, prohibiting the sale, holding in stock, selling of essential commodity by the Central or a State Government, it was stated that a provision can be made in the Order to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and the circumstances also can be specified in the Order. In the said section, there are other provisions also and we are not concerned with the same for the time being for the purpose of these cases.

6. The State Government passed an Order called the Andhra Pradesh State Public Distribution System (Control) Order, 2008 (for short, Control Order), published in G.O.Ms.No.1, dated 19.05.2008, enabling the appointing authorities to issue authorizations to fair price shop dealers owned by the State Government or any State Government undertaking or any public institution or persons including women or Development of Women and Children in Rural Areas Group (DWCRA) or registered women Volontary Consumer Organizations or thrift groups like Podupu Lakshmi or Co-operative societies which are run exclusively by women either wholly or partly, subject to such preferences and reservations as

may be prescribed by Government from time to time. The said Order provides for supply of scheduled commodities by an authorized fair price shop/nominated retailer/authorized establishments, supply of cards and powers to make regulations. It also provides for licencing, responsibilities/duties of fair shop dealers and inspection/monitoring of the shops. Amendments were made to the said Order in G.O.Ms.No.4, dated 19.02.2011, G.O.Ms.No.11, dated 25.01.2012, G.O.Ms.No. 12, dated 06.03.2012, G.O.Ms.No.31, dated 06.07.2012, G.O.Ms.No.34, dated 23.08.2012, G.O.Ms.No.38, dated 17.09.2012, G.O.Ms.No.39, dated 22.09.2012 and G.O.Ms.No.16, dated 17.06.2013. G.O.Ms.No.4, dated 28.02.2014, was issued making a provision for appointment of fair price shop dealers on compassionate grounds.

7. Clause 5 of the Control Order deals with issuance of authorization, its continuance and cancellation. Sub-clause (15) thereof provides for *suo-motu* review. Clause 20 provides for an appeal. Clause 21 deals with the power of revision. The licencing and responsibilities/duties of fair price shop dealers are provided in clause 22. Clause 23 deals with monitoring/inspections. Clause 24 deals with marginal variations and minor irregularities at fair price shops. Annexure-I to the Control Order, 2008 deals with the conditions to be observed by the fair price shop dealers. Annexure-III provides for a proforma for inspection of fair price shops/kerosene retail outlets. It makes provision for reporting the functioning of fair price shops in Form A, reporting the functioning of fair price shops at district level in Form B, and Form C deals with reporting the functioning of fair price shops at State level. Thus, sufficient regulatory mechanism is provided in the Control Order. However, several cases are coming to this Court on the ground that the appointing authority/disciplinary authority is suspending the authorization at the instance of local politicians and ultimately they are cancelling the authorization without following due procedure. In majority of the cases, the common plea is that the appeal and the revision are illusory and in the

process, the fair price shop dealers are made to move from pillar to post and ultimately to this Court challenging the final orders, which process is taking not less than five years. The process indicated in the Control Order provides for an enquiry and a final order by the appointing authority, appeal and a revision. Final orders on revision are subject to judicial review by this Court. Many dealers are approaching this Court without availing the remedy of appeal and revision and are seeking indulgence of this Court to review the order passed by the appointing authority on the ground that the appointing authority has not followed the principles of natural justice or had not conducted the enquiry properly. In those circumstances, this Court is obligated to review the order passed by the appointing authority notwithstanding a provision for appeal and revision. In some cases, the dealers are straightaway approaching this Court challenging the orders of suspension. When the power to suspend the authorization existed in the appointing authority, it is contended by the dealers that the said authority is suspending the dealership on untenable grounds or on extraneous considerations in majority of the cases.

8. In many cases, the major irregularities as well as minor irregularities are clubbed together and suspension is resorted to initially without giving valid reasons. The show cause notices are not issued immediately. Sometimes the order of suspension does not indicate the period of suspension and even if it indicates as “suspension pending enquiry”, enquiry is not taken up with promptitude. There is lot of confusion with regard to the exercise of power of suspension as whether such suspension should be resorted to after issuing a show cause notice and receiving the explanation or power of suspension can be invoked straightaway pending enquiry.

9. As per G.O.Ms.No.7, Consumer Affairs, Food and Civil Supplies (CSI) Department, dated 25.03.2013, the essential commodities shall be

distributed to the cardholders at fair price shops from 1st to 15th of the month, whereas the moment of the goods from Mandal Level Stock (MLS) points/storage godown to fair price shops shall be from 21st to 30th.

10. Sub-clause (2) of clause 23 obligates the officers to watch lifting the scheduled commodities between the first and fifth of every month. The officers are given responsibility to see that the fair price shops are opened on time and they distribute the essential commodities as per the scheduled time. The Deputy Tahsildars (Civil Supplies)/Tahsildars are under an obligation to inspect 10 fair price shops within their jurisdiction and they have to issue a prescribed check memo. The check memo is never supplied to the fair price shop dealers.

11. Clause 24 prevents launching of prosecution even in case of marginal variations and minor irregularities and it reads as follows:

> " **24. Marginal variations and minor irregularities at fair price shops:-**
>
> *No prosecution shall be launched in certain types of mistakes / lapses / omission / irregularities indicated below (which are illustrative and not exhaustive) against the FP. Shop Dealers, Nominated Retailers / Hawkers. However, administrative action can be initiated under Essential Commodities Act, 1955. In case these mistakes / lapses / omissions / 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.*
>
> *(i) minor variation in respect of single commodity upto 1.5% may be allowed taking into consideration of transactions of one month.*
> *(ii) mistake in mathematical totalling, 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 shop*

*dealer.*

*(vi) if the licence given to the dealer for running the fair price shop is not kept duly perceivable.*

*(vii) failure to submit periodical returns and non-maintenance of stock boards."*

12. This Court had an occasion to observe that orders of suspension are passed even in respect of the above minor irregularities in a routine manner. The other relevant conditions to be observed by a fair price shop dealer/nominated retailer/hawker are as follows:

**" 2. Further conditions to be observed by the authorised Fair Price Shop nominated retailer/hawker.**

*(1) Every authorised fair price shop dealer/nominated retailer/hawker shall only conduct the business and he/she shall:*

*(a) be held responsible for all the acts of commission or omission in running the shop with assistance of any family member: If the F.P. Shop/Nominated Retailer/Hawker is found to be running by a person other than the authorised, such F.P.Shop/NR/Hawker shall be treated as benami and the authorisation of such F.P. Shop/NR/Hawker shall be cancelled by the competent authority.*

*(b) …*

*(c) …*

*(d) …*

*(e) not hold any office in public life, with or without remuneration.*

*(f) The Fair Price Shop Dealers shall neither purchase Public Distribution System rice from the beneficiaries, nor draw Public Distribution System rice against non-existing/ineligible persons, nor posses rice coupons illegally. They shall not indulge in selling the Public Distribution System rice to local traders or rice millers.*

*(2) …*

*(3) Every authorised fair price shop/nominated retailer/hawker intending to stop the business of supplying scheduled commodities shall give thirty days previous notice to the appointing authority to enable him to make alternative arrangements for supplying scheduled commodities to cardholders allotted to the shop.*

*(4) …*

*(5) The authorization issued under the order shall be liable for suspension or cancellation as the case may be, if the Fair Price Shop dealer/nominated retailer/hawker is involved in any criminal case or when any case under*

*Essential Commodities Act, 1955 or any other similar law is pending against him/her."*

13. This Court had an occasion to come across a circular memo issued by the Commissionerate of Agriculture, Andhra Pradesh, Hyderabad in SR Cell (2) 501/2007 dated 08.08.2007 under Seeds Act, 1966 and Seeds Rules, 1968, Essential Commodities Act, 1955 and Seeds (Control) Order, 1983, reiterating earlier instructions which is worthy of emulation in case of fair price shop dealers also. The said circular memo classifies the irregularities in two categories viz., (a) rectifiable contraventions and (b) non-rectifiable contraventions. Different types of actions were accordingly proposed in respect of rectifiable contraventions and non-rectifiable contraventions. The said circular also contains suitable instructions to the Inspecting Officers for taking necessary action in case of contraventions. Such type of a circular memo would be a valuable guiding torch in respect of fair price shops also and avoids unnecessary litigation and inconvenience to public. Keeping in view the said course of action in the said circular, this Court, in the absence of proper guidelines, thinks it fit to cull out relevant guiding principles drawn from various cases decided by this court in order to avoid future litigation.

14. A learned single Judge of this Court in **M.Sadasiva Sekhar v. District Collector, Kurnool**[1] while considering clause 3(4) of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, held as follows:

> " 24. The above sub-clause confers power on the appointing authority to suspend or cancel the authorization subject to conducting enquiry and recording reasons. The phrase "**after making such enquiry as may be deemed necessary**" makes it plain that discretion is vested in the appointing authority as to the nature, method and manner of conducting enquiry as is deemed necessary. There can be no hard and fast rule that in every case of suspension or cancellation, the appointing authority should afford an opportunity of being heard to the fair price shop dealer {See

**M.P.Jndustries Ltd. v. Union of India** (AIR 1966 SC 671)}. No doubt, the word "enquiry" into the allegations against a dealer has a broad connotation and takes in its fold an opportunity of filing explanation to the parties and/or affording a right of hearing. Because the legislature used the words "such enquiry as may be deemed necessary", we have to give a restricted meaning to the phrase and leave it to the appointing authority whether or not the fair price shop dealer should be heard. It is not possible to accept the submission of the learned Counsel for the petitioner and supply the words so as to make Sub-clause (4) of Clause 3 read providing opportunity of being heard'. This conclusion also derives support from the various principles laid down by the Supreme Court in the cases discussed hereinabove and the same may be stated thus:

1. 'Personal hearing' is not considered as an incident of rule of audi alteram partem. A person is entitled to an opportunity of making a representation even if delegated legislation is silent on the same. The same is not, however, true with regard to affording a personal hearing to an aggrieved party. The law treats an opportunity to make a representation also as a personal hearing. {**See M.P. Industries Ltd. v. Union of India** (supra) and **Indru Ramchand Bharvani v. Union of India** (1988) 4 SCC 1}.

2. When delegated legislation excludes 'personal hearing' it is not permissible for the Court to read into the rule 'an opportunity of being heard by the authority';

3. When the rule itself says that an authority is vested with the power to conduct "such enquiry as deemed fit", the discretion is left to the authority as to what is the nature of enquiry. If the authority, as a part of such enquiry, intends to give an opportunity of being heard, it must be treated as a manifestation of exercise of discretion in the facts of a particular case and not as a general rule;

4. Clause 3(4) of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 does not require the appointing authority to afford an opportunity of being heard to the fair price shop dealer. However, if proposed action is both for cancellation/suspension as well as forfeiture of the deposit under Clause 3(2) of the Control Order, it is a case where the appointing authority compulsorily is required to afford an opportunity of making a representation as well as an opportunity of being heard;

5. In all cases where an enquiry is conducted under Clause 3(4) of the Control Order and where an opportunity of personal hearing is not given, the burden is on the dealer to plead and prove the prejudice caused to him by not giving a personal hearing. Illegality of the order cannot be readily presumed wherever no personal hearing was given {See **State Bank of Patiala v. S.K.Sharma** (AIR 1996 SC 1669), **M.C.Mehta v. Union of India** (AIR 1999 SC 2583) and **Aligarh Muslim University v. Mansoor Ali Khan**(AIR 2000 SC 2783)};

6 (a) In a case where a show cause notice is issued requiring submission of explanation and also affording

personal hearing, if desired, and the authority fails to afford such opportunity, the impugned order has to be scrutinized by applying the test of prejudice; and

(b) In a case where a show cause notice is issued requiring submission of explanation and also affording personal hearing, if desired, and the aggrieved party fails to exercise such option for personal hearing, it should be deemed that he has waived such right of being heard {See **State Bank of Patiala v. S.K.Sharma** (supra)}"

15. A Division Bench of this Court in **Ambati Srinivasulu v. District Collector, Nellore**[2], emphasised the importance of observation of principles of natural justice even with regard to the fair price shop dealers and held as follows:

"... Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the Legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject-matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

16. Another Division Bench of this Court in **M.Kalyani v. District Collector, Prakasam District**[3], emphasizing the need for supplying a copy of the report, held in para 11 thereof as follows:

" 11. In our opinion, the order passed by respondent No. 3 cancelling the authorization of the appellant suffers from patent

violation of the rules of natural justice and the learned Single Judge gravely erred by refusing to annul the same. It is not in dispute that the report of the Mandal Revenue Officer, which formed the basis of the charges, was not supplied to the appellant. In **K. Radha Krishna Naidu v. Director of Civil Supplies, Hyderabad and Ors**. {1996 (1) ALD 473 : 1996 (1) LS 456 (AP)}, it was held that the primary report on the basis of which the charges were framed by the Licensing Authority against the dealer, being not furnished to the dealer, vitiates the proceedings due to violation of the principles of natural justice and absence of sufficient opportunity to the dealer to defend his case effectively. It was further held that the reasonable opportunity should be real and effective and simply because the petitioner submitted his explanation, it does not fulfill the requirement of reasonable opportunity, more so, when the show-cause notice would clearly indicate that the only basis is the report. In that case the petitioner therein had been given opportunity of personal hearing but even then the Court held that the opportunity was not real inasmuch as the basic document had not been supplied to the dealer. In **S.Malla Reddy v. M.Vijayalakshmi and others**, {2005 (3) ALT 100 = 2005 (5) ALD (NOC) 174, this Court held that the authorization of fair price shop could not have been cancelled on the basis of vague notice."

17. In **Katamreddi Vasundhara v. Joint Collector, Ananthapur**[4], this Court held that having framed charges against the dealer, it is for the disciplinary authority to prove that the petitioner is guilty of those charges and if the dealer fails to discharge the onus shifted on him/her, it will then be permissible for the disciplinary authority to hold that the charges are proved against the dealer.

18. In **K.Santha Kumar v. Revenue Divisional Officer, Madanapalle**[5], it was held that reasons have to be recorded in writing for any order of suspension or cancellation and the reasons be communicated to the affected dealer. In the said case, this Court, by relying on the Supreme Court decisions, held as follows:

" 7. Even as per the precedents, it is now well settled that every executive action, be it an action based on subjective or objective satisfaction of the authority, must be supported by reasons. It is also well settled that in all cases and in all situations reasons should be communicated to the person at whose instance a

decision is taken. May be some decisions taken by the executives do not require any reasons. Some times, the policy laid down by the political executive would itself be a sufficient reason for executive action. However, it must be noted that when an action is taken under a statute and statute itself specifically requires a decision to be supported by reasons, all such decisions should be supported by reasons. Even in a situation of statutory silence, disclosure and communication of reasons, is minimum requirement of rule of law although there may be extension (sic. exception) to general rule. A reference may be made to the judgment of the Supreme Court in **S.N.Mukherjee v. Union of India** (AIR 1990 SC 1984) and **Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney** {2009 (3) SCJ 360 = (2009) 4 SCC 240}.

19. Another learned single Judge of this Court in **P.Nageswara Rao v. District Collector, Kurnool District**[6] held that suspension is a step-in-aid to ultimate action of punishment and at the stage of interim suspension pending enquiry, neither enquiry need be conducted nor a dealer is entitled for notice. While holding so, he held as follows:

> "10. The apex Court while dealing with the constitutional validity of a provision in Punjab Food Grains Dealers Licensing and Price Control Order, 1978 in **M/s. Sukhwinder Pal Bipan Kumar v. State of Punjab** (AIR 1982 SC 65), observed that the power of suspension is a necessary concomitant of the power to grant a privilege or a licence and the power of suspension is a necessary adjunct of the power to grant a licence. In **V.Manesham v. State of A.P.** (1974 (2) APLJ 366), a learned Division Bench of this Court while examining the power of licensing authority under Sugar Dealers' Licensing Order held the view that the power of licensing authority to suspend the licences temporarily is very essential to prevent the licensees immediately from further indulging in malpractices in distribution of essential commodities whenever they are noticed. In the absence of any such power to the licensing authorities there will not be any scope for them to ensure the smooth running of the distribution of essential commodities to the general public and that if an authority is entitled to do as expressly authorised it is also entitled to do that which is reasonably incidental to or consequential upon it."

20. In **P.Nagaraju v. RDO, Dharmavaram, Anantapur**[7], this Court delineated the procedure to be followed by the appointing authority in paras 11 to 13 as follows:

“ 11. Clause 5(5) of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, clearly mandated the appointing authority to frame a definite charge, call for the explanation of the fair-price shop dealer, and only in the event, the explanation was found to be not satisfactory, then, appoint an enquiry officer for conducting enquiry whereat, a fair and reasonable opportunity should be accorded to the petitioner to lead such evidence and material considered necessary and appropriate by him in his defense of the charge or charges and in case the appointing authority is seeking to place reliance upon any adverse report, existing against the fair-price shop dealer, copy of the same be furnished to the fair-price shop dealer and also examine such witnesses as are necessary to bring home the charge laid against the fair- shop dealer. Without going through any of these motions, the authorization of a fair-price shop dealer could not have been cancelled.

12. Principles of natural justice require no person to be condemned without providing a fair and reasonable opportunity to such a person to defend himself adequately and properly. As a part of this concept, one is required to apply ones mind to the defense setup. Non-application of mind is also the worst visible form of abuse or misuse of power. Adherence to principles of natural justice not only tempers the ultimate order with justice but also, adds transparency and gloss to the final order. Natural justice is the name of those principles which constitute the minimum requirement of justice and without adherence to which, justice would be a travesty. Justice ought to be administered in a way which leaves the least doubt to the prying nature of man and which convinces him that justice is being done because it has appeared to him to have been done. Natural justice is, in substance, the procedural side of justice. It is an obligation of the tribunal sitting to decide a case rather than a right of the party to be represented. An orderly procedure is the morale of laws. Natural justice enters into the essence of legal justice because the laws are promulgated to apply to definite persons or things and the orderly manner in which they are to apply, is a pre-requisite of their utility.

13. Similarly, reasons are required to be assigned why the explanation is not found satisfactory. The statement "explanation offered by the dealer is not satisfactory", is a conclusion by itself. As to why the said explanation was not found satisfactory is to be the essential end result of the process of reasoning. The presence of reasons on record discloses the lines on which the mind has been applied by the adjudicating authority. The requirement to assign reasons has been spelt out long years ago in the following words of Justice Koka Subba Rao (as the learned Chief Justice, then was) in **Madhya Pradesh Industries Ltd. Vs. Union of India** (AIR 1966 SC 671).

"9. ..... If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant consideration, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. ....."

21. In **D.Varalakshmi v. Joint Collector, Civil Supplies, Kurnool**[8], in the backdrop of vague charges, this Court held as follows:

"5. Most importantly, the order passed by the Revenue Divisional Officer discloses a mechanical attitude exhibited by him. It is the Revenue Divisional Officer, as the appointing/disciplinary authority, who laid the charges. It is for him to, first of all, produce such material, which can adequately and reasonably bring home the charges against the fair price shop dealer. The attempt of the Revenue Divisional Officer, as is discernible from record, appears to be that he alleges the charges and it is for the fair price shop dealer to disprove the same. It is elementary that the initial burden of establishing the charges would lie on the appointing/disciplinary authority. By producing such evidence either in the form of records or registers or by examining the witnesses who are relevant and concerned with the charge, the initial burden gets discharged and thereafter, it shifts on to the fair price shop dealer to disprove the allegation convincingly. The approach of the Revenue Divisional Officer, as is visible from the impugned order, is therefore, contrary to the established principles of law.

6. Every public functionary when entrusted with the task of determining the rights of parties, will be discharging quasi-judicial functions. A quasi-judicial authority is required to assign reasons and those reasons must be germane to the material on record. The reasons available on record alone will disclose as to the lines on which the quasi-judicial authority has applied his mind to the issue. No attempt can later on be made to supply the reasons that weighed in his mind. They should be available in the order passed. In spite of a clear direction contained in Clause 5(5) of the 2008 Order, the Revenue Divisional Officer has failed to conduct an enquiry in the matter. In his opinion, it appears, conducting of an enquiry means calling for the explanation and recording a mere statement that the explanation is found not satisfactory. It is all the more regrettable, as to why the explanation was found not satisfactory, has not been set out."

22. In **M.Saritha v. Government of Andhra Pradesh**[9], this Court

emphasizing the need for realistic approach with the facts of the case and held as follows:

> " 4. Availability of power for cancellation of an authorization is one aspect of the matter, while exercise of such power is an entirely different matter. Exercise of power calls for a preexisting reasonable basis and a fair approach to the subject. The decision-making authority must have a realistic approach to the facts and circumstances prevailing in each case. A medical emergency or an emergency of an equally important nature might crop up suddenly warranting absence of the fair price shop dealer at the shop. If such a dealer were to keep one of his family members or a person of trust in-charge of the fair price shop so that no inconvenience is caused to the cardholders, such a conduct does not completely fall foul of the conditions subject to which the dealership has been granted. While the terms and conditions of the grant undoubtedly require the dealer himself to operate the fair price shop and do not allow or authorize a 3rd party or an agent of the dealer to run the shop, in case of emergencies and exceptions, an alternative arrangement made by the dealer cannot be considered as an act of carrying on the operation of the dealership through a 3rd party. In those set of circumstances and in the absence of any other irregularity, I feel that the ends of justice would be better served if the respondents undertake a minimum of three visits to the premises where the writ petitioner is carrying on the fair price shop within the next six months or there about. If the writ petitioner himself is found carrying on the shop, it would be safe then to infer that the writ petitioner has not authorized any other 3rd party to carry on to operate the fair price shop. On the contrary, if during any of the three visits, any person other than the dealer is found operating the shop without prior intimation of his absence and the alternative arrangement made by him, it would be reasonable to suspect that the dealer has allowed the agent or a 3rd party to operate the said shop."

23. Several orders reviewed by this Court indicate that the fair price shops are being inspected by several officers like Food Inspector, Civil Supply Deputy Tahsildar and Vigilance and Enforcement Officials periodically and submitting reports to the concerned Tahsildar. The Tahsildar submits a report to the appointing authority, Revenue Divisional Officer, who issues an order or suspension without verifying the genuineness of the report and ultimately cancels the authorisation also on the basis of such report. Clause 5(5) which empowers the appointing

authority to take action reads as follows:

> " 5 (5) The appointing authority may, at any time whether at the request of the authorized fair price shop dealer/nominated retailer/hawker or authorized establishment on suo-motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorization issued or deemed to be issued to him under this clause."

24. The suspension and cancellation of authorisation mentioned in the said sub-clause does not mean the suspension/cancellation pending enquiry. The suspension refers to a substantive punishment and hence it should be preceded by an enquiry. Suspension pending enquiry is not a substantive measure of punishment, but it can be done pending enquiry, as held by a Full Bench of this Court in **Tappers Coop. Society, Maddur v. Superintendent of Excise**[10]**.** While dealing with the power of suspension pending enquiry, the Full Bench held as follows:

> " 43. However we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona fide and, without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity and the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry. Further the suspension pending the enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided, and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.

25. When the authority is given such power of suspension, that power can be exercised only on the satisfaction of such authority. It cannot be merely on the basis of a report submitted by somebody. Even in respect

of inspections, the relevant clause 23(1) of the Control Order reads as follows:

" **23. Monitoring/Inspections:-**

(1) The prescribed sales register, stock register and ration card register should be verified by the Revenue, inspector/Enquiry inspectors (Civil Supplies) Checking Inspectors every month. Every month inspection of Fair Price Shop/nominated retailer/hawker shall be carried out by the officials as follows:

| | **F.P.S.** | **NR/H** |
|---|---|---|
| Collectors | : 3 | 1 |
| Joint Collectors CRO | : 5 | 5 |
| District Supply officer/ Revenue Divisional Officer/ Sub-Collector | : 8 | |
| Tahsildar/Assistant Supply Officer/ Assistant Grain Purchasing Officer | : 5 | 5 |
| Deputy Tahsildar (Civil Supplies) (Enforcement)/Grain Purchasing Assistant | : 10 | 5 |
| Revenue Inspector/Checking Inspector/Enquiry Inspector | : All shops his/her jurisdiction | All shops in his/her jurisdiction |
| Team of Food Advisory Committee Comprising Mandal and Village Levels, not less than 3 members | : All shops | All shops |

A perusal of the above clause makes it clear that various officers were given the power to inspect the shops.

26. From a conjoined reading of the provisions of the Control Order, more particularly clause 5 and 24 read with the decisions of this Court, the following conclusions can be drawn.

(i) The appointing authority can suspend the authorisation under clause 5(5) of the Control Order, if grave charges exist and the case warrants suspension, but should not be exercised in a routine manner without applying mind;

(ii) The power of suspension under clause 5(5) of the Control Order includes the power to suspend the authorisation pending enquiry and no show cause notice is necessary before exercising such power;

(iii) The order of suspension should be followed by a show cause notice immediately by specifying the charges in clear terms and giving sufficient time to the dealer to submit his/her explanation;

(iv) The charges so levelled may contain two parts viz., one, containing serious charges, which may attract the cancellation of authorisation and another containing marginal variations and minor irregularities at fair price shops as indicated in clause 24 of the Control Order.

(v) While issuing the show cause notice, the appointing authority shall enclose a copy of the report of any subordinate officer or a copy of the complaints received, which prompted him to take action;

(vi) After receiving the explanation from the dealer, in case of denial by him, the appointing authority shall hold an enquiry and prove the charges levelled 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. The responsibility to hold enquiry shall not be delegated;

(vii) The enquiry shall be completed as soon as possible but not later than ninety days from the date of suspension. After completion of enquiry, the appointing authority shall record reasons in respect of each charge and pass appropriate orders in accordance with the Control Order.

(viii) The order so passed should be communicated to the dealer immediately and shall not be implemented till the expiry of 30 days, the period for preferring appeal.

(ix) It has to be noted that in all cases of proven charges, it is not necessary for the appointing authority to cancel the authorisation and in appropriate cases, he/she can pass suitable orders imposing penalty or let off with a warning.

In the light of the above guiding principles, the above Writ Petitions

are examined.

**W.P.Nos.30126 and 30128 of 2014**:

27. In these two cases, show cause notices were issued alleging that the dealers distributed essential commodities to the cardholders who died and were not residing in the village. The dealers submitted their explanation, and after extracting the explanation, a finding was recorded on the basis of the Tahsildar's report. The orders passed in the said cases are as follows:

" **W.P.No.30126 of 2015**:

*The charge framed against the dealer the explanation filed by the dealer and the report of the Tahsildar, Sattenapalli perused. The explanation of the dealer is not convincing and believable. The contents of the explanation are far away from truth. The Tahsildar, Sattenapalli has also recorded statements in respect of the allegations levelled against the petitioner that the dealer is not maintaining the working hours, and distributing the E.Cs at higher rates than the rates prescribed by the Government. It is proved that the dealer is also making entries in the connected registers in respect of the dead and non-resident units without distributing the E.Cs to the cardholders.*

*A perusal of report of the Tahsildar, Sattenapalli is also revealed that the dealer has misused the total quantity of Rice Qtls 34.08 from several months as shown in the above table. Thus the charge framed against the dealer held proved.*

***W.P.No.30128 of 2015***:

*The charge framed against the dealer the explanation filed by the dealer and the report of the Tahsildar, Sattenapalli perused. The explanation of the dealer is not convincing and believable. The contents of the explanation are far away from truth. The Tahsildar, Sattenapalli has also recorded statements in respect of the allegations levelled against the petitioner that the dealer is not maintaining the working hours, and distributing the E.Cs at higher rates than the rates prescribed by the Government and also previous history of the dealer was also not good and a case U/s 6A case of E.C Act 1955 was also booked against him in the year 2013. It is proved that the dealer is also making entries in the connected registers in respect of the dead and non-resident units without distributing the E.Cs to the cardholders.*

*A perusal of report of the Tahsildar, Sattenapalli is also*

*revealed that the dealer has misused the total quantity of Rice Qtls 46.88 from several months as shown in the above table. Thus the charge framed against the dealer held proved."*

**W.P.No.2388 of 2015**:

28. In this case, a show cause notice was issued raising the following charges.

> "Charge-1: That the dealer has not applied for renewal of authorization of her shop within the stipulated time and thus violated Cl.14 (iii) APSPDS (Control) Order 2008.
>
> Charge-2: The F.P. Shop dealer is maintaining her shop without valid authorization since 01.04.2010 and thus violated condition 5 of Authorization issued to her under Cl (5) of APSPDS (Control) Order 2008.
>
> Charge-3: A perusal of challan No.15928 produced by the dealer with a reference to the copy of challan No.15928 obtained from the STO's Office, Sattenapalli that the challan was tempered by correcting the name and numbers of the F.P. Shop dealer as shown below.

29. The petitioner submitted his explanation on 24.11.2014 to the show cause notice dated 15.11.2014. After receiving the explanation, in respect of the first charge, it was recorded that the proposal for renewal of authorisation was not received by the second respondent through the Tahsildar, Sattenapalli. Thus, the contention of the dealer that she applied for renewal of authorisation was disbelieved. In respect of the second charge also, the explanation that she paid the requisite fee and applied for renewal within time was not accepted and the third charge also relates to the same allegation.

30. It appears that a challan bearing No.15928 was produced by the petitioner and a copy of the same was obtained from Sub-Treasury Office, Sattenapalli and it contained the name of another dealer of shop No.47, whereas the petitioner belongs to shop No.49. No personal enquiry was conducted with respect to the said allegation. Without following due procedure, the authorisation of the petitioner was cancelled,

by order dated 24.01.2015.

**W.P.No.2094 of 2015**:

31. In this case, a show cause notice was issued on 08.01.2015 basing on the report submitted by the Tahsildar dated 26.12.2014. The dealer submitted his explanation on 17.01.2015. The charges framed against the petitioner read as follows:

> " Charge No.1: That the F.P. Shop Dealer, has diverted rice stocks into black market duly making fake entries in the records. Thus he violated Cl.17 (a)(b) & (c) of APSPDS (Control) Order, 2008.
>
> Charge No.2: That the dealer has forged the Signatures/Thumb impressions of the genuine cardholders and made fake entries in the records without distributing the E.C.s with a malafide intention to divert the stocks into block market. Thus this type of attitude attracts the Criminal laws."

32. After extracting the explanation, a finding was recorded based on the enquiry of the Tahsildar dated 19.12.2014. No independent enquiry was conducted and the finding was not based on any such enquiry. Ultimately, it was held as follows:

> " *The charges framed against the dealer, the explanation filed by the dealer perused. The explanation of the dealer is not convincing and believable. The contents of the explanation are far away from truth. During the course of enquiry of the Tahsildar, on 19-12-2014, the 26 card holders Shop No.47 of Nandigama (V) have given their statements that they are not received E.C.s for the month of August, 2014, but the F.P.Shop dealer has forged the thumb impression of card holders and diverted the PDS Rice into block market.*
>
> *A perusal of report of the Tahsildar, Sattenapalli is also revealed that the dealer has misused the total quantity of Rice Qtls 3.32 kgs. for the month of December, 2014. Thus the charges framed against the dealer held proved."*

**W.P.No.4204 of 2015**:

33. In this case, a show cause notice was issued on 27.09.2014 by framing the following charges against the dealer:

> " Charge No.1: The allotment and Off-take particulars for the month of 09/2014 are as follows:

| Sl. No. | Commodity | OB (Qtls) | Receipts (Qtls) | Total (Qtls) | Sales (Qtls) | Balance (Qtls) | Difference Qtls | RO/Bill No & Date |
|---|---|---|---|---|---|---|---|---|
| 1 | PDS Rice | - | 50.10 | 50.10 | 62.50 | 0.20 | 4.20 Qtls | R.O.No.4048, Dt.22.08.2014 |
| 2 | AAY | - | 16.80 | 16.80 | | | | |
| 3 | Sugar | | 2.00 | 2.00 | 1.86 | Nil | 0.14 Qtls | |
| 4 | R.G.Dal | - | - | - | - | - | - | |
| 5 | Atta | - | - | - | - | - | - | |
| 6 | Salt | - | - | - | - | - | - | |
| 7 | Kerosene 9/12 | | 691 | 691 | 680 | Nil | 11 Lts | Bill No.65, Dt:11-09-2014 |

Thereby he has violated clause 17 (i) of APSPDS Control Order, 2008.

Charge No.2: The FP Shop dealer has maintained the Stock Register but the accounts are not properly maintained. There is no ground balance of any commodity except 20 kgs Rice at the time of inspection. Thereby he has violated clause 22(viii) of APSPDS (Control) Order 2008. He has contacted 26 card holders to cross check the distribution of ECs to the card holders with reference to the sales particulars and to know whether the dealer is selling the ECs to the card holders at the rates fixed by the Government with correct weighment (or) not.

Charge No.3: The FP shop dealer is not maintaining working hours as per prescribed timings. Thereby the FP Shop dealer has violated clause 22 (vi) of APSPDS (Control) Order, 2008.

Charge No.4: The FP Shop dealer is issuing Essential commodities by under weighment. Thereby the FP Shop dealer has violated clause 7 (i) of APSPDS (Control) Order, 2008.

Charge No.5: The FP Shop dealer is issuing ECs for 4 to 5 days in a month and making them to suffer with hardship in getting their stock. He is giving only 1 ½ liters of K.Oil instead of 2 Liters fixed by the Government. Thereby the FP Shop dealer has violated clause 22 (vii) & 22 (iii) of APSPDS (Control) Order, 2008.

Charge No.6: The FP Shop dealer has not exhibited the Stock Cum Price List Board in the premises of FP Shop. Thereby the FP Shop dealer has violated clause 22 (V) of APSPDS (Control) Order, 2008."

34. After extracting the explanation of the petitioner, the report of the Tahsildar was considered and a finding was recorded by holding as follows:

*" In view of the above FP Shop dealer have committed grave irregularities in distribution of ECs to the cardholders and misused*

*the benefit of poor cardholders of in the village. The charges framed against the FP Shop dealer is proved.*

*The explanation filed by the FP Shop dealer through his Advocate Sri R.Harinatha Reddy is not convinced and far away from truth.*

*I felt that deterrent punishment is necessary to keep away the FP shop dealer from the public distribution system to safeguard the interest of the poor cardholders and also for smooth functioning of Public Distribution System.*

*Hence, the F.P. Shop dealership of Sri A.Lalu Swamy, FP Shop dealer, FP Shop No.21 of Chinnahothuru village, Vajrakarur Mandal is hereby cancelled."*

35. The above cases indicate that due procedure was not followed by the officers while cancelling the authorisation for the alleged violations/irregularities committed by the petitioners. In view of the violation of the procedure by the concerned Revenue Divisional Officers, the orders passed in the above Writ Petitions are to be set aside and are accordingly set aside.

36. Thus, all these Writ Petitions are allowed and remanded to the appointing authority for not following the principles of natural justice while conducting the enquiry and passing orders of cancellation of authorisation.

37. In view of the importance and the need for sensitising the appointing authorities, the Commissioner of Civil Supplies, Government of Telangana and Andhra Pradesh are directed to bring the above conclusions in para 26 along with other suitable guidelines for better administration and exercise of the powers by the appointing authorities with regard to regulation of fair price shops in the States of Telangana and Andhra Pradesh.

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**A.RAMALINGESWARA RAO, J**

Date: 07.08.2015
Note: L.R. Copy to be marked. Yes
B/o. TJMR

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[1] 2003 (3) ALT 68
[2] 2006 (1) ALT 273 (D.B.)
[3] 2006 (5) ALD 796 (DB)
[4] 2008 (4) ALT 475
[5] 2010 (3) ALT 195
[6] 2012 (2) ALT 416
[7] 2012 (3) ALD 503
[8] 2012 (4) ALD 444
[9] 2012 (4) ALT 478
[10] 1984 (2) APLJ 1 (FB)