

**WRIT PETITION No.14386 OF 2016**

**ORDER:**

Suspension pending enquiry order dated 09.04.2016 passed by the 2<sup>nd</sup> respondent in exercise of the powers conferred under Clause 28(2) of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (in short "APPP (L&RS) Order") is challenged before this court on the ground that the said order is non-speaking order and being in violation of principles of natural justice.

The facts in brief are that petitioner is a registered wholesale dealer and authorised to distribute Petroleum products under the APPP (L&RS) Order and AP PDS (Control) Order, 2008. A report was made by the Assistant Supply Officer, Gadwal Division on 08.04.2016 that a petroleum tanker bearing No.AP 16 TU 0234 was intercepted on 04.04.2016 at 11 p.m. at R.C.Puram unit, Patancheru, Outer Ring Road, Medak District with 4,000 ltrs., of PDS kerosene oil. The kerosene was taken delivery at HPCL, Ghatkesar and was meant to be distributed in Gadwal and surrounding areas. The oil tanker was seized and was kept under the custody of Station House Officer, Patancheru Police Station and a case under Section 7(a) of Essential Commodities Act, 1955 and under Section 420 IPC was booked. After receiving information, Vigilance and Enforcement Officers inspected the premises of the petitioner at Gadwal in the presence of one V. Pandu Kumar, representative of the petitioner, verification of stock registers and sales registers was carried out with the ground balance. The authorities found a variation of 12,184 ltrs., deficit from the quantity recorded in the registers. The record also reveals delivery having been effected to 15 Fair Price Shop dealers of Maldakal Mandal and 11 Fair Price Shop Dealers of Ghattu Mandal. On enquiry 26 dealers denied having received any PDS kerosene oil for the month of April, 2016. With the above

allegations and framing seven charges petitioner was issued with a show cause notice dated 09.04.2016. Setting out the allegations in brief simultaneously suspension pending enquiry orders were made by the 2<sup>nd</sup> respondent, which are impugned in the present writ petition. Instead of filing objections petitioner approached this Court alleging violation of Clause 28(2) of APPP (L&RS) Order and violation of principles of natural justice.

It is the contention of the writ petitioner that petitioner had received 12,000 ltrs., of kerosene on 04.04.2016 and distributed 11, 202 ltrs., in Maldakal Mandal and 9,199 ltrs., in Ghattu Mandal; though the allegation is made in show cause notice that the petitioner had not delivered the PDS kerosene to 26 dealers no details with respect to the dealers to whom the delivery has not been made are set out in the show cause notice; the diversion of kerosene is also denied and there was no complaint received by the 2<sup>nd</sup> respondent about the non-supply of kerosene from any of the dealers. Further, Clause 28(2) of APPP (L&RS) Order requires reasons to be recorded even for suspension pending enquiry. As a matter of fact, in the writ affidavit petitioner mentioned the names of the dealers and quantity of PDS kerosene which has been delivered to them. Petitioner also denies that the Tanker bearing No.AP 16 TU 0234 as not connected to the petitioner. There being no reasons recorded in the order, the said order is unsustainable and is liable to be set aside as the same is passed in violation of the APPDS Control Order, 2008 apart from being in violation of the principles of natural justice.

Sri V.H.V.R.R.Swamy, learned counsel for the petitioner while reiterating the contents of the writ petition laid great emphasis on the aspect of there being no reasons in the impugned order. Learned counsel for the petitioner also placed reliance on the judgment of this court in **Narasimha Oil Supplies, IOC, Nidadavolu, West Godavari District Vs. Joint Collector, West**

On the other hand learned Government Pleader for respondents opposed the writ petition and further submits that the show cause notice has already been issued and the writ petitioner has ample opportunity to place on record the relevant material before the authorities. The truth or otherwise of the petitioner's assertion that the PDS kerosene oil has in fact been delivered to the dealers is a matter for enquiry and petitioner has ample opportunity to submit his explanation and put forward the necessary material to support his contentions before the authorities. Learned Government Pleader further submits that the suspension pending enquiry order is a detailed order setting out the circumstances under which suspension pending enquiry has been made and the same cannot be said to be an order without reasons.

Perused the records. At the outset there can be no quarrel that Clause 28(2) of the APPP (L&RS) Order requires reasons to be recorded in writing. However, the question to what extent, in what form and what form of reasons are required to be recorded is required to be considered in the case of this nature. In the case on hand the impugned order in detail had set out the *prima facie* facts found that the petitioner had taken delivery of 12,000 ltrs., on 04.04.2016 under invoice No.1600003 through tanker bearing No.AP 16 TU 0234 at HPCL, Ghatkesar and the said tanker is supposed to proceed to Gadwal in Mahabubnagar District but was in fact found in Patancheru, Medak District with 4,000 ltrs., of PDS Kerosene. The allegation of the authorities as per the show cause notice is that about 26 dealers had not received PDS kerosene and the said dealers in the respective places had confirmed the same in writing. In the impugned notice it is also stated that though a closing balance of 12,232 ltrs., of PDS kerosene, as on 06.04.2016, is required to be there as per the registers a ground

balance of only 48 ltrs., of PDS kerosene is available. Huge variation from the book balance to ground balance is required to be accounted for. It is further stated inspite of repeated instructions petitioner did not attend the enquiry before the Assistant Supply Officer and Vigilance officials. Various other details have been set out in the suspension order. The suspension order in the end reads as under:

“In view of the above pending enquiry the license bearing No.31/GDL/81-CS2 issued to M/s Sangala Laxmana Swamy, Gadwal a Wholesale Kerosene Dealer of HPCL is hereby ordered for interim suspension under Clause 28(2) of APPP (L&RS) Order, 1980 with immediate effect.

The Sales Officer, HPCL, Hyderabad is directed not to release PDS Kerosene Oil to M/s Saangala Laxmana Swamy, Gadwal until further orders and also make necessary arrangements in lifting the Kerosene stock allotted to the suspended Dealer from the month of April, 2016 till restoration, by re-allocating it to any other alternative HPCL Kerosene Wholesale Dealer as per Oil Company feasibility.”

The final order made by the 2<sup>nd</sup> respondent need to be understood in the context of the facts and circumstances mentioned in the impugned notice. For the reasons stated in the previous paragraphs it has to be construed in the absence of there being any fixed format and the manner in which the reasons to be recorded, in the facts of the present case it can be safely presumed for the reasons stated in the previous paragraphs in the impugned order the 2<sup>nd</sup> respondent had made the suspension pending enquiry order.

So far as the judgment cited by the learned counsel for the petitioner, the same is distinguishable on facts to the present case. A careful reading of the above judgment discloses that in the said case except stating the impugned order therein as a matter of fact had not recorded any reasons except saying that “in the circumstances reported by the Deputy Superintendent of Police/Inspector of Police..., the impugned orders of suspension is being passed.” It may be also noticed, in the said case even the show cause notice was not issued in terms of Clause 28(1) of

APPP (L&RS) Order. In the present case a separate show cause notice dated 09.04.2016 has already been issued in detail setting out the charges which in fact petitioner had categorically mentioned in the writ affidavit. The details which the petitioner had set out in the writ affidavit, particularly, the names of dealers to whom petitioner states that the PDS kerosene has been delivered which the petitioner is required to place before the authorities for consideration. It is neither the function nor the duty of this Court to enter into a detailed enquiry particularly in a case of this nature. In the entire affidavit nowhere the petitioner had specifically denied or stated the allegation that the petitioner had taken delivery of 12,000 ltrs., of PDS kerosene from HPCL, Ghatkesar on 04.04.2016 under invoice No.1600003. That is also one of the crucial factors. However, these are all the matters which are required to be enquired into by the authorities. It may also be borne in mind that the suspension pending enquiry is different from suspension as a matter of punishment which is also contemplated in Clause 28(1) of APPP (L&RS) Order. It may be noted that Clause 28(1) of APPP (L&RS) Order provides for suspension of a license for a specified period as a substantive punishment or penalty in which event the nature of reasons that are required to be recorded may be different from the reasons that are required to be recorded in suspension pending enquiry.

With the above reasons, I do not see any reason to allow the writ petition. Accordingly, the Writ Petition is dismissed. However, the order being suspension pending enquiry there is an obligation on the part of the respondent authorities to complete the enquiry within a reasonable time. Inasmuch as already a show cause notice has been issued, liberty is given to the petitioner to file explanation and the authorities shall conduct and complete the enquiry within a period of six weeks from the date of submission of the explanation and pass orders on merits.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

**CHALLA KODANDA RAM, J**

Dated:09.05.2016  
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[\[1\]](#) 2003 (1) ALD (CrI.) 430 (AP)