

(1995) 08 AP CK 0011

Andhra Pradesh High Court

Case No: Writ Petition No. 17320 of 1995

The Director of Agriculture

APPELLANT

Vs

The Commissioner of Civil
Supplies (Appeal) and Ex-Officio
Secretary to Government, Food
and Civil Supplies Department
and Others

RESPONDENT

Date of Decision: Aug. 28, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Essential Commodities Act, 1955 - Section 6A

Citation: (1996) 1 ALD(Cri) 493 : (1996) 1 ALT 510

Hon'ble Judges: T.N.C. Rangarajan, J

Bench: Single Bench

Advocate: Advocate General, for the Appellant; Government Pleader and P. Gangaiah Naidu, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.N.C. Rangarajan, J.

This writ petition is directed against the order of the first respondent holding that the appeal filed before him was not maintainable.

2. The Inspector of Police, VCCS, Nizamabad, filed a complaint against the third respondent alleging contravention of the provisions of the Fertilizer Control Order, 1995. The Collector & District Magistrate, Nizamabad, held an enquiry u/s 6A of the Essential Commodities Act, and passed an order on 13-6-1995 holding that the samples drawn were found to be in accordance with the specification and the variation found in the stocks were marginal considering the permissible limits.

Taking into account the fact that all the bags were not weighed, he decided that the confiscation of the stock equivalent to Rs. 30,000/- would be sufficient for the irregularities committed by the respondent. The Director of Agriculture, Andhra Pradesh, filed an appeal against this order on 26-7-1995 through his Counsel Mr. K. Ratna Prabhakar taking the ground that the third respondent had not established that he had current licence to deal in fertilizers, considering the random check the shortage will be very much and the confiscation of the stock amounting to Rs. 30,000/- only was highly disproportionate to the irregularities committed in respect of the total stock valued at approximately Rs. 31 lakhs. That appeal was not entertained as reflected by the following short order:

"With reference to his appeal petition cited, the Director of Agriculture, Hyderabad is informed that the appeal is not maintainable as the right of appeal u/s 6C of the E.C. Act, 1955 is conferred only on persons aggrieved by an order of confiscation. Hence the appeal is rejected."

3. The Director of Agriculture, Andhra Pradesh, therefore, filed this writ petition and contended that the impugned order that was passed ex parte was ab initio void and the action of the first respondent in rejecting the appeal without giving an opportunity or hearing and without show-cause notice, was highly arbitrary and violated the principles of natural justice. It is also contended that the first respondent ought to have clubbed the appeal with the appeal filed by the third respondent which was pending before him. The writ petition was admitted on 3-8-1995 as the construction of Section 6C of the Essential Commodities Act was challenged. The learned Counsel for the respondent took notice and submitted that there is a decision of this Court in *Public Prosecutor v. B. Prakash Rao* 1975 ALT 135 : 1975 (2) APLJ 229 to the effect that the appeal by the State is not maintainable u/s 6C of the Act. The writ petition was, therefore, set down for hearing both the sides and I have heard the arguments of the learned Advocate General and the learned Counsel for the petitioner.

4. In order to appreciate the arguments of both sides, I may set out the provisions of Section 6C, which is as follows:

6-C (1) Any person aggrieved by an order of confiscation u/s 6A may, within one month from the date of communication to him of such order, appeal to the State Government concerned and the State Government 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).....

Earlier, this section provided for an appeal to any judicial authority appointed by the State Government against which a revision lay to the High Court. In *Prakasa Rao's* case (1 supra) there was a similar enquiry u/s 6A in respect of the allegation that the dealers had transported rice under the licence granted for transportation of broken

rice only and the District Revenue Officer ordered release of the goods to the extent of percentage of broken rice found in the wagons and confiscated the balance. Against that order both the dealer and the State preferred appeals to the Sessions Judge u/s 6C of the Essential Commodities Act. The learned Sessions Judge allowed the appeal of the dealers and remanded the matter for further enquiry. With regard to the appeals filed by the State, the learned Sessions Judge rejected it as being not maintainable by holding that there is no right of appeal to the State as provided u/s 6C. When the State filed revisions, they were disposed of unnecessarily by Obul Reddy J., by judgment dated 30-8-1974 in Crl.R.Cs. 347 to 392 of 1973 since by then the District Revenue Officer has passed an order confiscating the entire stock. The dealers once again appealed to the Sessions Judge who held that the District Revenue Officer could not confiscate the stocks which were not confiscated earlier since that portion of the order had become final and as the State had no right of appeal. The State therefore again filed revisions which were disposed of in the case cited above. The learned Single Judge noted that the right of appeal is actually for a person aggrieved by an order of confiscation and not merely against an order passed u/s 6A and therefore, the order appealed against should be an order confiscating the commodity and not an order releasing the commodity. It has been also held that the expression "any person" in that section cannot include the Government since the term not defined in the Essential Commodities Act must have the definition in the Central General Clauses Act which does not include the Government. It was also observed that the appeal had to be preferred within one month from the date of communication to the person concerned of the order of confiscation, which also indicated that only the person served with the confiscation order can appeal and Govt. could not appeal because there was no provision to communicate the order of confiscation to the Government. It may be noted that this case went upto the Supreme Court and in the decision reported in [State of Andhra Pradesh Vs. Bathu Prakasa Rao and Others](#), the question of maintainability was left open. The State of Andhra Pradesh as well as the dealers had appealed against the order of the High Court which was common to both the revision filed by the State as well as the revision filed by the dealers as can be seen in para 7 of the judgment of the High Court. The Supreme Court interfered with the findings of fact relating to confiscation on the ground that there was miscarriage of justice, but with regard to the maintainability of the appeal by the State, observed in para 18 that it was not necessary to go into that question as it was not argued by the other side. There are also decisions of the other Courts such as Krishna Kumar Sanghi v. State of Bihar and Ors. (1990(1) Crimes 682) ; and State v. Ram Autar (1984 (1) Crimes 142) taking the same view as our High Court.

5. The learned Advocate General was at pains to persuade me that the decision in Prakasa Rao's case (1 supra) requires re-consideration and the matter should be referred to a Bench. He submitted that any person aggrieved can file appeal and where public interest is involved, Government should also be considered to be a

person aggrieved. He relied on the decisions in [Seethalakshmi Ammal Vs. The State of Tamil Nadu and another, ;](#) and [M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar \(Land Acquisition\), Neyvely and others, .](#) In both the cases the matter related to the Land Acquisition Act and it was held in the first case that one who is deprived of his legal rights should be allowed to appeal inasmuch as a legal wrong requires a judicially enforceable right; a person aggrieved shall therefore be equated with the person interested and accepted as having the locus standi to question the acquisition when he had some interest in the land which was acquired and was entitled to compensation there for. In the second case, the beneficiary of the acquisition was held to be a person interested and therefore entitled to appeal inasmuch as he would ultimately bear the burden of paying the compensation for the acquisition of the land. The learned Advocate General contended that in a case where there was some allegation of malpractice in the trade and the public interest was involved, it can be protected only by the State and therefore, the State should be regarded as a person interested and, consequently, a person aggrieved who can file an appeal u/s 6A of the Essential Commodities Act. Secondly, it was argued that the State Government acts only through the several authorities. It was submitted that for instance under Clause 8 of the Fertilizer Control Order, the State Government itself may apply for registration as a dealer and therefore, it could not be said that the same State cannot be an appellate authority u/s 6C since the appellate power was also to be exercised only by a designated authority. It was submitted that even though the Vigilance Cell made the initial complaint, the Director of Agriculture, as a person designated to supervise the work of the Vigilance Cell could also maintain an appeal as a person interested and consequently, as a person aggrieved. Reliance was placed on the decisions of the Supreme Court in [Hindustan Petroleum Corpn. Ltd. Vs. Yashwant Gajanan Joshi and others, ;](#) and [S.P. Gupta Vs. President of India and Others, .](#)

6. On the other hand, the learned Counsel for the third respondent submitted that the issue is not whether the Government is a person aggrieved, but whether the section contemplated an appeal against an order of release or only against an order of confiscation, as held by this Court in Prakasa Rao's case (1 supra). It was submitted that an appeal was not contemplated even by the complainant and the expression to be considered was "a person aggrieved by an order of confiscation". It was also submitted that the section provided for appellate authority confirming, modifying or annulling, but not for enhancing the penalty.

7. After considering the decisions cited by the learned Advocate General, I am convinced that the provisions of Section 6C do not give room for any construction other than that made by this Court in Prakasa Rao's case (1 supra). Right of appeal is statutory and must be strictly interpreted in accordance with the wording of the section. As already held by this Court, the significant expression is "a person aggrieved by an order of confiscation" which indicates that the appeal is provided against the confiscation and not against a refusal to confiscate. Where the order

confiscates part of the goods and releases the balance, the section does not contemplate an appeal against the release of the balance of the goods but only an appeal against that part of the order confiscating the goods by the person aggrieved by such confiscation. Moreover, even if the appeal is entertained, the appellate authority has not been given the power to enhance the confiscation which underlines the scope of the appeal which is contemplated by the section. It may be in a particular case an order releasing the goods without confiscation may be considered to be perverse or mala fide, but a remedy by way of an appeal is not provided against such an instance. Earlier, the appellate authority was any judicial authority appointed by the State Government whereas the section, as it stands now, refers to State Government as the appellate authority. Even when the appellate authority was different from the State Government, it has been held that the appeal was not maintainable. More so, when the appellate authority is the State itself, it is inconceivable that the State can appeal to itself. No doubt, the State Government functions through its officials designated for carrying out several functions, but with regard to litigation by way of an appeal, it is not possible to countenance the argument of the learned Advocate General that any authority carrying out certain functions of the Government can be considered as the State for the purpose of preferring an appeal against the order of another authority carrying out certain other functions of the State. If this version is accepted, it would lead to a chaotic condition where every authority will imagine himself to be aggrieved by an order of another authority and initiate appellate proceedings. In fact, this kind of behaviour has been frowned upon by the Supreme Court in 1992 (61) ELT 3 (SC) . It is not as if in really perverse cases the State is without remedy since in such extreme cases the State can always invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution.

8. The learned Advocate General submitted that the impugned order must in any case be struck down as arbitrary and against the principles of natural justice inasmuch as no notice of hearing or opportunity of hearing was given to the Director of Agriculture who preferred the appeal. The learned Counsel for the third respondent pointed out that the appeal was presented by an advocate and the normal practise was for the authorities to immediately hear the advocate who presents the appeal and return the papers if it was found that it was being presented to the wrong forum. The learned Counsel for the third respondent submitted that in the case of lack of jurisdiction the question of giving opportunity may not arise. I am unable to accept this very wide proposition because even if it is a question of the authority considering the forum to be wrong, principles of natural justice may require that the appellant should be given an opportunity to convince him that the forum is right before rejecting the appeal as not maintainable. However, in the present case it would be an exercise in futility to remit the matter to the first respondent, once over, only for the purpose of giving opportunity to the petitioner inasmuch as the decision not to entertain the appeal is supported by a

decision of this Court, and the first respondent cannot be expected to take any different view and entertain the appeal.

9. The learned Advocate General also submitted that considering the public interest in the matter, the present writ petition can be converted into one against the order made u/s 6A by the Collector. I am unable to accede to this request because the writ petition was directed only against the order rejecting the appeal and not against the order made u/s 6A by the Collector. I am told that the third respondent filed a writ petition for a direction to the Collector to implement his order for release of the goods and against the order of the learned single Judge who gave certain directions in the matter, writ appeal No. 902/95 was filed and the Bench has given certain directions in the matter safeguarding the interests of the State. In view of this situation, it appears that this petition has practically become infructuous. It is, accordingly, dismissed. In the circumstances, there shall be no order as to costs.