**(1976) 03 AP CK 0003**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 7453 of 1973 and Criminal Revision Cases No''s. 627, 691 of 1974 and 185 to 188 of 1975 (Criminal Revision Petns. No''s. 558, 616 of 1974 and 185 to 188 of 1974 respectively)

B. Seetharamayya Guptha APPELLANT

Vs

The District Revenue Officer, Chittoor RESPONDENT

**Date of Decision :** 26-03-1976

**Acts Referred:**

Andhra Pradesh District Collectors Powers (Delegation) Act, 1961 — Section 2, 3
Constitution of India, 1950 — Article 254, 254(1), 254(2)
Essential Commodities Act, 1955 — Section 2(a), 3(2), 5, 6A, 6B
General Clauses Act, 1897 — Section 3

**Citation :** AIR 1977 AP 103

**Hon'ble Judges :** Sambasiva Rao, J;Jayachandra Reddy, J

**Bench :** Division Bench

**Advocate :** P. Babul Reddy in W.P. No. 7453 of 1973 and Cri. R.C. Nos. 627 of 1974 and 185 to 188 of 1975 and E. Ayyapu Reddy in Cri. R.C. No. 691 of 1974, for the Appellant;

**Final Decision :** Dismissed

# Judgement

Sambasiva Rao, J.—The common thread that runs through these seven matters, writ petition as well as Criminal Revision cases, is the question relating to the validity of the delegation of powers u/s 6-A of the Essential Commodities Act to the District Revenue Officers. On an earlier occasion, a Division Bench of this Court upheld the validity of such delegation by its judgment dated 12-7-1971 in Cri. R.C. No. 319 of 1970 (Andh Pra). When the writ petition and the Cri. R.C. No. 627/74, which arise out of the same transaction, came up before Raghuvir, J. it was argued before him that the abovesaid decision requires reconsideration. Our learned brother felt that it was proper that the two matters might be heard by a Division Bench. It is for that reason that they have come up before us. Since the principal question in the other revision cases also is the same, they have been tagged on to the above two matters.

2. At this juncture it is not necessary to notice the facts of each case. We shall do that anon when we come to consider the merits. Section 6-A of the Essential Commodities Act, 1955 (Central Act 10 of 1955) provides that where any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto, it may be produced, without any unreasonable delay, before the Collector of the District or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector if satisfied that there has been a contravention of the order may order confiscation of the essential commodity so seized. It is now sufficient to notice that by and under G.O. Ms. 77 Revenue dated 22-1-1968 as amended upto 12th July 1973, the Government of Andhra Pradesh authorised the District Revenue Officers or the Personal Assistants to the District Collectors to exercise the statutory functions which the Collectors of the District are enabled to do. Item 106 of the Annexure to the Notification in the said G.O. is "the Essential Commodities Act, 1955" thus providing for delegation of the powers of the Collectors of the District under the Essential Commodities Act to the District Revenue Officers, This was done patently in exercise of the powers u/s 3 of the Andhra Pradesh District Collectors Powers (Delegation) Act, 1961. This Act received the assent of the President On 16th of September, 1961 and was published in the Gazette of Andhra Pradesh on 22nd of September 1961. The question debated is whether this delegation of the powers of the District Collector to the District Revenue Officers is valid or not.

3. Sri Babulu Reddy and Sri Ayyapu Reddy appearing for the petitioners put forward their challenge to the correctness of the delegation in the following manner. The Essential Commodities Act is an Act made by the Indian Parliament. It empowers the Central Government to make orders providing for regulating or prohibiting the production, supply, distribution and trade and commerce in essential commodities. Sub-section (2) of Section 3, which vests this power in the Central Government, particularises the matters in regard to which such orders could be issued. Section 2(a) defines the meaning of "essential commodity". It includes some matters which are in List 1 of the Seventh Schedule to the Constitution in regard to which only the Union Parliament can make legislation. As an instance thereof, petroleum and petroleum products occurring in clause (viii) in Section 2(a) is mentioned. Section 6-A authorises the Collector of the District to confiscate any essential commodity if he is satisfied that there has been a contravention of the order. So, it is the Union Parliament which vested this power in the Collector of the District and it is the same body that could amend Section 6-A delegating this power in the Collector of the District to any other officer. The Essential Commodities Act does not confer power even on the Central Government to delegate this power of the Collector to any other Officer, Consequently, provision for delegation could be made only by an amendment to Section 6-A. The State Legislature or the State Government has no manner of power to delegate this authority to the District Revenue Officer. G.O. Ms. No. 77 purporting to delegate this power to the District Revenue

 

Officers is wholly unconstitutional, illegal and unenforceable. This delegation is purported to have been done under the provisions of the State law viz., the Andhra Pradesh District Collectors Powers (Delegation) Act, 1961 (hereinafter called "the Delegation Act"). The State law cannot amend Parliament''s legislation. In any case, since in the list of essential commodities there are items which fall exclusively within List I, neither the State Legislature nor the State Government can usurp the power of authorising the District Revenue Officers to deal with these items contrary to the Parliament''s decision as embodied in S. 6-A. It was also urged on the basis of Article 254(1) that the Central Law shall prevail if there is inconsistency between it and the State Law. It is true that u/s 5 of the Essential Commodities Act, the Central Government may direct that the power to make orders or issue notifications u/s 3 be exercisable also by a State Government or any officer or authority subordinate to it. But that delegation is limited only to the power of making orders or issuing notifications u/s 3. It does not extend to delegation of powers u/s 6-A to some officer other than the Collector of the District. It was, therefore, argued that the confiscation orders passed in these cases by the District Revenue Officers are invalid as they have been passed by officers who had no jurisdiction to do so.

4. On the other hand, Sri Katikanneni Jagannadha Rao, learned Government Pleader and Dr. B. Bheema Rain, learned Public Prosecutor supported the validity of the delegation saying that the Essential Commodities Act was made by the Union Parliament under Entry 33 of the Concurrent List i.e. List III of the Seventh Schedule. In regard to matters in the Concurrent List, not only the Union Parliament but also the State Legislature can make laws. However, when a State Legislature makes a law on such a subject, it will have to be reserved for the assent of the President. Once such assent is given, it is as much valid law as the Union law on such subjects. Then, the law so made by the legislature of a State will prevail in that State against any earlier law made by the Parliament on the same matter, even if there is any repugnancy between the two, as laid down in clause (2) of Article 254 of the Constitution. The Delegation Act defines "law" in Section 2 as meaning ''any enactment. Ordinance, Regulation, rule, bye-law, order or other instrument relating to a matter enumerated in List II or List III in the Seventh Schedule to the Constitution and having the force of law in any part of the State of Andhra Pradesh. Section 3 of the Act enables the State Government by a notification to authorise any Joint Collector or any other Officer of the Revenue Department not below the rank of a Deputy Collector to exercise all or any of the powers vested by or under any law in the District Collector and, in like manner to withdraw such authorisation. It was in exercise of this power of delegation the State Government issued G.O. Ms. 77 empowering the District Revenue Officers to deal with matters under the Essential Commodities Act, which include Section 6-A thereof. Since the Essential Commodities Act is a legislation made by the Central Parliament in respect of a matter in List III the State Legislature also can deal with the same subject. That is precisely what is stated in Section 2 of the Delegation Act. So, the delegation to the District

 

Revenue Officers of the powers u/s 6-A of the Essential Commodities Act is quite within the realm of the State legislature and consequently the State Government. In any case, it was further contended, a District Revenue Officer is a Collector of the District for the reason that he is the Head of the Revenue administration of the District and so he is himself the Collector of the District within the meaning of Section 6-A. In either view, the confiscation orders passed by the District Revenue Officers have been made with jurisdiction.

5. In their decision dated 12th July, 1971 Kondaiah and A.D.V. Reddy, JJ. held in Crl. R.C. 319 of 1970 (Andh Pra) that the powers vested in the Collector u/s 6-A can be exercised by the District Revenue Officers. In the first place, the learned Judge held that a District Revenue Officer is a Collector within the meaning of Section 6-A. They relied on clause (11) of Section 3 of the General Clauses Act 1897 and clause 6 of Section 3 of the Andhra Pradesh General Clauses Act 1967 which say that the word "Collector" means the Chief Revenue Officer of a District". Since the District Revenue Officer is certainly the Chief Revenue Officer of the District he is the Collector of the District. Further, the learned Judge also held that by virtue of Section 3 of the Delegation Act the State Government has power to authorise any officer not below the rank of a Deputy Collector to exercise all or any of the powers vested by any law in the District Collector. Since such vesting has been done under Item 106 in the notification to G.O. Ms. 77 a District Revenue Officer can exercise the powers.

6. It was pointed out by learned counsel for the petitioners that if District Revenue Officers could be deemed to be Collectors of the District, then there was no need or occasion for any delegation. The District Collector is the Head of the Revenue administration of the District and not the District Revenue Officer. Further, the Division Bench did not consider the question of the provisions of the Delegation Act and the actual delegation made by the State Government from the perspective which has been projected now. Therefore it was urged that the decision requires reconsideration.

7. While delegating the powers of the District Collectors to District Revenue Officers, the Government of Andhra Pradesh stated in the preamble to the Notification I in G.O. Ms. No. 77 that it was done in exercise of the powers conferred u/s 3 of the Delegation Act. Section 3 enables the Government to authorise, by notification, any Joint Collector or any other officer of the Revenue Department not below the rank of a Deputy Collector, to exercise all or any of the powers vested by or under any law in the District Collector and, in like manner, to withdraw such authorisation. The provisos to the section take care in saying that such an authorisation shall not prevent the District Collector himself from exercising his powers in such cases as he deems fit. Where he does so, the authorised officer shall not exercise those powers in respect of the same cases. This delegation is obviously made to enable the District Collector to effectively attend to his manifold duties of the administration and give him relief. It is at the same time essential to notice that Section 3 provides for delegation of powers

 

vested by or under "any law". To understand what is meant by "law", we will have to go back to Section 2. That section defines the word "law" as meaning "any enactment, Ordinance, Regulation, rule, bye-law, order or other instrument relating to a matter enumerated in List II or List III in the Seventh Schedule to the Constitution and having the force of law in any part of the State of Andhra Pradesh." It is thus clear that for the purpose of the Delegation Act the word "law" has this specific meaning given to it by Section 2. Going by this definition, it is a law relating to any matter in List II or List III in the Seventh Schedule and which has the force of law in any part of the State of Andhra Pradesh. The Essential Commodities Act in general and Sec. 6-A of the said Act in particular, are in force in the State of Andhra Pradesh. Therefore, if the Essential Commodities Act is a matter in List II or List III, then it is a law within the meaning of Section 2 of the Delegation Act and so much so, the delegation of power postulated by Section 3 could be made. The reason why the Delegation Act deals with only laws relating to matters in List II or List III is obvious. It is because the State Legislature itself can make laws in regard to those matters. The Union Parliament can also make laws in regard to matters in List III. But then if both a legislative enactment and a Central Law cover the same field, Art, 254 of the Constitution resolves the problem of inconsistency if one exists between the two. In so far as the present question is concerned, cl. (2) of the Article is relevant According to it, a law made by the State Legislature with respect to any matter in the Concurrent List prevails in that State against an earlier law or existing law made by the Parliament on the same subject, even if there is repugnancy between the two in respect of certain provisions. The higher sanctity to the State law would be available only when it has been reserved for the consideration of the President and has received his assent. As we have shown already, the Delegation Act received the assent of the President. The result, therefore, is that even if there is any inconsistency between a law made by the Parliament and a law made by the Legislature of the Andhra Pradesh in regard to a subject in the Concurrent List, the Andhra Pradesh law prevails in this State.

8. Then the question arises whether the Essential Commodities Act is a law relating to a matter in the Concurrent List. The preamble to that Act gives a clue to the answer. It states that the Act has been made to provide, in the interest of general public for the control of the production, supply and distribution of, and trade and commerce in certain commodities. Sub-s. (2) of S. 1 declares that the Act extends to the whole of India. Section 2(a) defines what is meant by the expression "essential commodity." After enumerating ten such items the definition adds in clause (xi) "any other class of commodity which the Central Government may By notified order, declare to be an essential commodity for the purpose of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution."

The preamble and the meaning of the expression "essential commodity" read together would show that it is intended to regulate essential commodities with respect to which Parliament has power to make laws by virtue of Entry 33 in the concurrent List. The said Entry 33 is in the following terms:

Trade and commerce in, and the production, supply and distribution of-

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs including edible oil seeds and oils;

(c) cattle fodder, including oil cakes and other concentrates;

(d) raw cotton, whether ginned or unginned and cotton seed.

(e) raw jute.

We may incidentally mention that Entry 34 in the same list is "Price control". It is thus manifest that the Essential Commodities Act has been enacted by the Parliament invoking its power under Entry 33 of the Concurrent List.

9. Concurrent List, as is well known, is a list which contains matters in respect of which both the Central Parliament and the State Legislature can make laws. Recognising that the state Legislatures and consequently the State Government have vital merest in these controls, the Essential Commodities Act provides in Section 5 for delegation of the power to make orders, Or issue notifications under S. 3 to a State Government or such officer or authority subordinate to a State Government. The reason for this lies not only in the fact that the law itself has been made by the Central Parliament under Entry 33 of the Concurrent List, but also in the circumstance that most of the essential commodities like cattle fodder, foodstuffs including edible oil seeds and oils, raw cotton, raw jute are items which are within the jurisdiction of the State Legislatures. Further, Section 3 which is the source of power for the Central Government to issue orders in regard to control, production, supply, distribution etc, of essential commodities, refers in sub-section (2) to matters like bringing under cultivation waste or arable land, control of prices at which essential commodities may be bought or sold and for control of prices etc. They are State matters. The sum, pith and substance of the Act will have to be understood in order to find out its nature. That need arises because it incidentally deals with certain matters which are within the exclusive jurisdiction of the Parliament like petroleum and petroleum products and for securing essential commodities for the Defence of India or the efficient conduct of the military operations. It should be remembered that even in these matters it is not the Defence of India or the efficient conduct of the military operations which are as such, dealt with in the Act. What S. 3 empowers the Central Government is to pass an order for securing any essential commodity for those purposes. Even in regard to matters like petroleum and petroleum products, in respect of which a State Legislature cannot make a law by itself, the Central Government must necessarily look to the machinery of the State

 

Government to implement and enforce its orders made in respect thereof. Obviously for that reason the Essential Commodities Act thought it necessary and purposefully in our opinion, to confer powers on the Collector of the District or the Presidency town to make orders of confiscation of any essential commodity seized, It cannot be argued for a minute that if there is any violation of an order made by the Central Government in exercise of its power u/s 3 in regard to petroleum products, kerosene oil etc. the Collector of the District has no power to order confiscation of any essential commodity which has been seized u/s 6-A. Collector of a District is an officer of the State Government and not of the Central Government. The very fact that the official of a State Government is endowed with the power u/s 6-A makes it abundantly clear that the Essential Commodities Act has left it to the State Government''s officers to effectively implement the provisions of the Act and the orders which are made thereunder. Section 6-B lays down the procedure before confiscation of the essential commodity that should be followed by the Collector. It is also significant that u/s 6-C an appeal is provided against the order of confiscation made u/s 6-A "to any judicial authority appointed by the State Government concerned." There cannot, therefore, be any doubt that the Act envisages a combined action and operation by the Central and State Governments in not only making orders u/s 3 but also in their implementation. This enables us to understand the pith and substance of the Act in addition to the preamble and sub-clause (xi) of Section 2(a) which necessarily leads to the conclusion that the Essential Commodities Act is made invoking the powers under Entry 33 of the Concurrent list.

10. We may here take notice of an argument of the learned counsel for the petitioners that when the Essential Commodities Act deals with not only matters which are in List II (state List) but also in List I (Union List), it would lead to usurpation of the Parliament''s power by the State Legislature, if the matter is permitted to tinker or interfere with the law made by the Union Parliament in respect of items which are exclusively within its own ambit. Our attention has been invited by the learned counsel to Entries 1, 2, 7, 52 and 53 of List I and 23, 24, 26 and 27 of List II, There is no gainsaying the fact that some of the items included in the list of essential commodities and the matters stated in Section 3(2) are in the Union List. When the Parliament thought it necessary to make a common law in regard to all these commodities and matters, and has not preferred to make separate laws, it is manifest that it intended to make the enactment essentially One coming under Entry 33 of the concurrent List Otherwise, it could have made two separate laws one concerning the matters which occur in List I and the other in List III. Particularly when such a common enactment is made applicable to the entire country, and the State Governments and their officers also are empowered to make orders u/s 3, the intention of the Parliament is manifest that the enactment is in the realm of concurrent jurisdiction. That is why they empowered the Collectors of the District and the judicial authority prescribed by the State Governments to deal with confiscation and incidental matters. We have, therefore, no hesitation in coming to the

 

conclusion that it is under Entry 33 of the Concurrent List that the Essential Commodities Act has been made.

11. Sri Babulu Reddy invited our attention to the objects and reasons of the Delegation Act. It is mentioned there that the Act was made with a view to enable the District Collectors to devote adequate time to developmental activities, and it was found necessary to relieve them of the routine duties cast on them under the various State enactments. So, it was argued that the entire amplitude of the Delegation Act is limited only to the purposes of State enactments and should not be expanded to cover Central Laws also. It is well settled by now that the actual provisions of an enactment and the language employed therein should be examined in order to find out the ambit of the Act and that objects and reasons cannot be used to interpret their provisions. Vide M.K. Ranganathan and Another Vs. Government of Madras and Others, and The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . Sections 2 and 3 of the Delegation Act are clear and specific in delineating the ambit of the power of delegation and it is manifest, as we have pointed out above, that the legislation made by the Central Parliament in regard to items mentioned in List III are also covered by the power of delegation. It should also be noted that though it is a Central Law, the Essential Commodities Act has been in exercise of the powers under the Concurrent List, in respect of which the State Legislature also is enabled to make laws. Therefore, this argument has no substance.

12. The Supreme Court of India had already expressed the same view in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, This is what has been said at page 703:

Act 10 of 1955 (Essential Commodities Act) included within the definition of essential Commodity foodstuffs which we have seen above would include sugar as well as sugar cane. This Act was enacted by Parliament in exercise of the concurrent legislative power under Entry 33 of List 3 as amended by the Constitution Third Amendment Act 1954.

This proposition was laid down by the Supreme Court in the case since the legislative competence of the U.P. State Legislature to enact the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 was challenged. The challenge to the Act and the orders made thereunder was on the ground that they were ultra vires the powers of the State Legislature as the subject matter of the Act was within the exclusive field of the Parliament and also as being repugnant to Act 65 of 1951 and Act 10 of 1955 passed by the Parliament. Act 65 of 1951 enacted by the Parliament, "Industries (Development and Regulation) Act 1951", was to provide for development and regulation of certain industries. One of the industries which it dealt with was the industry engaged in manufacture or production of sugar. That was why the State law regulating the supply and purchase of sugarcane was challenged as being repugnant to the Central Law (Act 65 of 1951.) This challenge was repelled by the Supreme Court saying at page 703:

Parliament was well within its powers in legislating in regard to sugarcane and the Central Government was also well within its powers in issuing the Sugarcane Control Order, 1955 in the manner it did because all this was in exercise of the concurrent power of legislation under Entry 33 of List 3. That, however, did not affect the legislative competence of the U.P. State Legislature to enact the law in regard to sugarcane and the only question which remained to be considered was whether there was any repugnancy between the provisions of the Central legislation and the U.P. State legislation in this behalf.

Thereafter at page 705 the Court observed:

Article 254(2) deals with repugnancy between the provisions of a law made by the State Legislature and those of an earlier law made by Parliament or an existing law with respect to one of the matters enumerated in the Concurrent List and provides that the law so made by the State Legislature shall, if it has been reserved for the consideration of the President and has received his assent prevail in the State.

This decision of 1956 was approved and the principle therein was reiterated by the Supreme Court in A.K. Jain and Others Vs. Union of India (UOI) and Others, A like question arose in that case also and the Supreme Court, after extracting passages from Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, which we have noted above, observed that it was needless to say anything more on the question.

13. The above consideration shows that the Essential Commodities Act has been enacted under Entry 33 and consequently, the Parliament and the State Legislatures can deal with the subject mentioned in that Entry. Section 6-A of the Essential Commodities Act confers power on the Collector of the District to pass an order of confiscation of seized goods. The State Legislature made the Delegation Act in 1961 empowering the State Government to delegate to any officer not below the rank of a Revenue Divisional Officer the powers of the Collector under any law made in respect of items in Lists II & III. We have already held that the Essential Commodities Act is an Act made under List III. So, it is a law within the meaning of Section 2 of the Delegation Act, Consequently, the State Government has power under the Delegation Act to delegate the powers of the Collector to a District Revenue Officer, who is certainly not lower in rank than a Revenue Divisional Officer. It is true that the State Government, while making this delegation, is acting u/s 3 of the Delegation Act. At the same time, it should also be borne in mind that the State Government has simultaneous or concurrent power to make legislation in regard to matters in List III. Even if there is any repugnancy between the Delegation Act of the State Legislature and Section 6-A of the Essential Commodities Act, then Section 3 of the Delegation Act and the notification made thereunder should prevail over the provisions of Section 6-A of the Essential Commodities Act, because the

 

Delegation Act has been reserved for the consideration of the President and received his assent. However, in these cases, we do not see any repugnancy, because the delegation is only to a highly responsible officer who looks after the revenue administration of the district.

14. Before we part with this aspect of the matter, we may refer to some decisions of this Court. The first of them is A. Suryanarayana In re (1970) 2 Andh WR 303 Sharfuddin Ahmed and A.D.V. Reddy, JJ. were there dealing with a notice issued by the District Collector u/s 6-A to show cause why the goods seized should not be confiscated and the District Revenue Officer proceeded with enquiry and passed orders confiscating the goods. The learned Judges held that the District Revenue Officer could make further enquiry and pass an order confiscating the goods. This decision in no way detracts from what we have held. This proviso to Section 3 of the Delegation Act provides that a delegation does not prevent the District Collector from exercising his powers in such cases as he deems fit though the powers have been delegated to some other authority. It is also made clear that once the District Collector exercises his powers, the other authorised officer shall not exercise his power in respect of the same case. So, what was done in the case in A. Suryanarayana In re (supra) is contrary to the Delegation Act itself. In L. Ramaiah v. State of A.P. ( 1972 ) 1 Andh WR 118. a converse case arose. A District Revenue Officer started issuing a show cause notice u/s 6-B and the District Collector finally passed the order of confiscation. Chinnappa Reddy, J. held that there was no illegality in the order. The District Collector continuing the enquiry and finally passing the order of confiscation in a proceeding which had been initiated by the District Revenue Officer is not repugnant to Section 3 of the Delegation Act. In fact, it is in consonance with the first proviso. That is what was pointed out by Ghinnappa Reddy J, in coming to the view he did and distinguishing Adapa Suryanarayana''s case (supra).

15. Viewed in any light, the delegation of the Powers of the Collectors u/s 6-A to the District Revenue Officers is competent and valid.

16. In this view of the matter, it is not necessary to go into the question whether a District Revenue Officer can be equated with a Collector of the District which is the other argument advanced by the learned Government Pleader and the learned Public Prosecutor. We are not, therefore, expressing any opinion on that aspect.

17. Having held that the District Revenue Officers are competent to pass orders of confiscation u/s 6-A of the Essential Commodities Act, let us deal with the facts of each case.

18. W.P. No. 7453 of 1973 and Crl. R.C. 627/74 arise out of the same transaction and relate to the same order of confiscation passed by the District Revenue Officer. On 23-11-1973 the Inspector of Vigilance Cell went to the village of the petitioner and seized certain goods. W.P. No. 7063 of 1973 was filed by the petitioner on 26-11-1973 and on the next day this Court gave a direction that

 

the seized goods should not be sold. On 26-11-1973 at 5.45 p.m. Sub-Inspector of Police and another person went to the village and served on the representative of the petitioner a copy of the show cause notice why the goods should not be confiscated. In the notice it was informed that the case was posted for hearing by the District Revenue Officer at Tirupati on 27-11-1973 at 11 a.m. It is said that the distance between the village and Tirupati is about 90 miles. Somehow, the petitioner''s representative reached Tirupati, engaged an advocate and went to the District Revenue Officer''s camp to present a petition seeking seven days'' time. However the District Revenue Officer adjourned the matter to the next day i.e. 28-11-1973 but at Chittoor. It may be noted here that the accusation against the petitioner is that he had violated clauses 7-A and 7-B(1) of the Andhra Pradesh Foodgrains Dealers Licensing Order, 1964. The quantity of the commodity that was seized was 342 bags of rice and 73 bags of broken rice. The charge was that the petitioner had been issuing bills in the names of fictitious persons and smuggling rice across the State Border to Mysore State. On 28-11-1973 the petitioner''s representative went to Chittoor, engaged a lawyer who presented a petition before the Officer praying for three days'' time so that he could gather all the information necessary for putting up a proper defence. The Officer, however refused to grant an adjournment and insisted on getting on with the enquiry u/s 6-A. Having been left with no alternative, the advocate cross-examined the police officer even without the aid of any instructions. The enquiry was completed on that day and the order of confiscation was passed on 1-12-1973. It is also mentioned that panchanama was not even served on the petitioner.

19. It is not quite clear from the show cause notice how exactly the contravention of clauses 7-A and 7-B(1) of the Order had occurred. Be that as it may, the events stated above; there is no dispute about the correctness of them; would clearly show that the petitioner had no real or adequate opportunity to make an effective representation. The show cause notice was served on the petitioner''s representative in the late evening of 26-11-1973 posting the matter to 27-11-1973 at 11 a.m. at Tirupati, 90 miles away. Again it was adjourned to 28-11-1973 to be heard at Chittoor. That day the enquiry was over. It is not reasonable to expect any person to make an effective representation within so short a time. The fact of the advocate seeking an adjournment of at least three days is established by the affidavit which the advocate himself has filed. It is thus manifest that the so called enquiry u/s 6-A conducted by the District Revenue Officer is vitiated by total absence of an adequate opportunity to the petitioner to make his representation. Consequently, the confiscation order must be held to be bad. We, therefore, set aside the order of confiscation dated 1-12-1973. It would, however, be open to the District Revenue Officer concerned to conduct the Section 6-A enquiry after giving due and adequate opportunity to the petitioner. Since the charge levelled against the petitioner is contravention of Clauses 7-A and 7-B(1) the enquiry should be limited to the charge,

20. In Crl. R.C. No. 691/74, 354 bags of Jowar were ordered to be confiscated by

 

the District Revenue Officer. Sri Ayyapu Reddy, learned counsel for the petitioners complains that there was practically no evidence that there was any contravention of sub-clause (1) of clause (3) of the Andhra Pradesh Prevention of Hoarding of Foodgrains Order, 1973 and of the contravention of clauses "(2) and (3)". It is said that these stocks were stored in a village near Adoni which is very near the Andhra Pradesh Kamataka border. The petitioners claim to be agriculturists and to have grown these commodities in their own lands. Since Adoni is a good market for foodgrains, they took them and kept them in the house of another person with the intention of selling them for a remunerative price. The District Revenue Officer and the learned District Judge pointed out that even if it is accepted that the claimants are bona fide producers of food-grains seized they should have stocked their foodgrains in their own godowns in the village and should not have taken them to Virapapuram village which is adjacent to Adoni. It is about 50 K. Ms from the place of production and they were kept there for nearly 28 days. All this, Sri Ayyapureddy, says, is wholly untenable and the growers of food-grains are entitled to keep their stocks anywhere they like. He may be right but unfortunately there is the grave difficulty in the way of the petitioners which is the discrepancy between his statement and the statement of the owner of the premises where the foodgrains were stored. We have seen what his case is, but the house owner stated in his statement before the Tahsildar, Adoni that a merchant from Kodumuru village (not the village of the petitioners) hired his house through the mediation of one Komati Veeraiah of Virupapuram one day previously and brought the stocks on that night and stocked them in his house agreeing to pay rent. This statement belies the entire version of the petitioners. Further, the petitioners laid their claims two months after seizure. We are, therefore, satisfied that the District Revenue Officer as well as the learned District Judge are right in not believing the version of the petitioners.

21. The circumstances in Crl. R.C. Nos. 185, 186, 187 and 188 of 75 are precisely identical with those in Crl. R.C. No. 691/74. In these cases also there is a material and vital discrepancy between the claim of the petitioners on the one side and the statement of the owner of the premises recorded by the Tahsildar on the other. We do not, therefore, think that the District Revenue Officer and the learned District Judge erred in directing confiscation.

22. However, the further question as to the actual quantity to be confiscated remains. The District Revenue Officer in all these five criminal revision cases had directed confiscation of the entire stocks and those orders were affirmed by the learned District Judge. Even though Section 6-A authorises confiscation of seized goods, it does not say that the entire seized quantity should be directed to be confiscated It is only an enabling provision and says that the Collector may order confiscation of the essential commodity so seized. So, it is left to the discretion of the District Revenue Officer and the appellate authority to decide whether the entire'' seized stock should be confiscated or only apportion of it. That, however, is a judicial discretion and must be exercised judicially having regard to the circumstances of the case, the gravity of the matter and other relevant and

 

pertinent factors. That is also the view taken by Madhava Reddy and Madhusudan Rao JJ. in N. Panduranga Rao v. State of Andhra Pradesh, (1975) 2 APLJ (HC) 277.

23. Now what are the circumstances in these five revision cases? Do they warrant confiscation of the entire seized commodity? Admittedly the petitioners are producers of foodgrains. It is nowhere alleged that they had purchased the commodity and were dealing in them. In the circumstances of the case, it is reasonable to come to the conclusion that the petitioners were trying to fetch best possible price for the commodities which they had produced on their own lands. Since they stocked the foodgrains very near the border, all this trouble arose. In these circumstances, we are satisfied that these are cases where the entire stocks need not be confiscated. Having regard to the features of the case, we are of the opinion that confiscation of 25 per cent i.e. 1/4 of the seized foodgrains would be adequate punishment for the petitioners. Therefore, while confirming the orders of confiscation in these five criminal revision cases, we reduce the quantum of confiscation to 1/4 of the seized goods. To this extent alone, these five criminal revision cases are allowed and in other respects they are dismissed.

24. In the result, W.P. No. 7453/73 and Crl. R.C. No. 627 of 1974 are allowed and Crl. R.C. Nos. 691 of 1974, 185 to 188 of 1975 are allowed in part. The parties will bear their own costs in the writ petition. Advocate''s fee Rs. 150/-.

 