

(2002) 10 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1179 of 1996

Samudrala Venkateswar Rao, Managing Partner, Maruthi
Traders

APPELLANT

Vs

Govt. of India, Ministry of Agrl. Dept. of Food and Others

RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order,
1982 — Rule 4(4)
Essential Commodities Act, 1955 — Section 10C, 3, 3(2), 6A, 6B

Citation : (2003) 3 ALT 677

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

**Advocate : A. Rajasekhara Reddy, for the Appellant; C.V. Ramulu, S.C. for
Respondent No. 1 and G.P. for Civil Supplies for Respondent Nos. 2 to 6, for the
Respondent**

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This writ petition is filed by the Petitioner questioning the order of the 3rd respondent confirming the order of confiscation of the seized essential commodities.

2. The petitioner is the managing partner of the firm M/s. Hanuman Cotton Jinning, Dal and Groundnut Oil Mill (Maruthi Traders), Yerrupalem village and Mandal, Khammam District. It is stated that apart from the petitioner even the other partners were also having valid licenses to do business in edible oils, pulses etc., issued under the provisions of the Andhra Pradesh Scheduled Commodities (licensing and Distribution) Order, 1982 (hereinafter referred to "the Control Order, 1982").

The material on record shows that the Inspector of Police, Vigilance Cell, Civil Supplies Department, Khammam, on receipt of credible information that (the proprietor, as referred in panchanama, of) M/s. Hanuman Cotton Jinning, Dal and

Groundnut Oil Mill, (Maruthi Traders), Yerrupalem village is indulging in clandestine business of edible oils, inspected the premises along with other staff of the Civil Supplies Department on 15-4-1995. At the time of inspection, the petitioner himself was present at the business premises and on verification of the ground stock and the books of account maintained by the petitioner, the inspecting authorities noted certain variations that the petitioner was holding excess stock of 1308.15 quintals of groundnut pod and oil seeds. In so far as the oils are concerned, the inspecting authorities did not show as per the chart prepared in the panchanama any excess. In fact, in the panchanama, it was noted that the groundnut oil stock available was within the allowed stock but insofar as the oil seeds are concerned, as noted earlier, 1308.15 quintals was the excess, and the said holding of excess stock contravenes Clause-11 (iii) of the Control Order, 1982. The inspecting authorities also noticed that the petitioner, who is a producer, was also having license for wholesale as well as retail business in edible oils, pulses, and as he was not maintaining separate registers for production, wholesale and retail, the same contravenes the Conditions 3 (i) (iii) and (iv) of the license conditions of the Control Order, 1982 as well as Sections 7 and 8 of the Essential Commodities Act, 1955 (hereinafter referred to "the EC Act"). Therefore, the inspecting authorities seized the entire stock, worth Rs. 30,26,960/- and the petitioner was also arrested for the alleged contravention. Thereafter a case was registered u/s 6-A of the E.C. Act and a notice was issued u/s 6-B calling upon the petitioner to give explanation why the seized stock should not be confiscated.

The petitioner filed his explanation disputing the allegations. According to the petitioner, he was entitled to hold the stock of 1000 quintals of edible oil seed as a wholesaler and 100 quintals as a retailer, apart from 366.85 quintals as producer. Though according to the authorities, the seized stock of groundnut pad and oil seeds was to the extent of 2,225 quintals, the petitioner disputed that insofar as the sunflower seed is concerned, it could not be treated as edible oil seeds. With reference to the groundnut pad, it could not be treated on par with the groundnut seed but only 75% of it should be counted, while totaling the groundnut seed stock and if so there is no excess as the said stock would come below 1000 quintals. Therefore, there is no contravention of any of the Clauses of the Control Order, 1982 or any conditions of the license. The petitioner also contested the claim of the authorities that the non-maintenance of separate registers would amounts to contravention of the clauses of the Control Order, 1982. According to the petitioner there is no requirement of maintaining separate registers, as it was not specifically provided either under the clauses of the Control Order, 1982 or under the conditions of license. Therefore, there is no contravention and hence sought for dropping of Section 6-A proceedings.

The Joint Collector, however, after considering the contentions, did not agree with the contentions of the petitioner and therefore, ordered confiscation of the entire seized stock, including 199 quintals of green gram, on the ground that such quantity of green was kept in unauthorized godown, which also contravenes the

Control Order, 1982. Aggrieved by that, the petitioner carried the matter in appeal to the Commissioner of Civil Supplies, the appellate authority, and reiterated the contentions that are advanced before the Joint Collector. The appellate authority, though did not agree with the contentions of the petitioner, but, however, modified the order of confiscation to the extent of 602.42 quintals of edible oil seed and 199 quintals of green gram. Aggrieved by that, the petitioner has come up with the present writ petition.

3. The learned counsel for the petitioner, at the outset, contended that the petitioner is a producer as well as wholesaler and retail dealer both in edible oils as well as seeds and pulses. According to the petitioner, as a wholesaler he was entitled to hold 1000 quintals and as a retailer another 100 quintals of oil seeds. Further, according to the learned counsel the sunflower oil seeds could not be treated as edible oil seeds and therefore, the sunflower oil seeds, which were included by the inspecting authority as well as the Joint Collector, have to be excluded, which contention was accepted by the appellate authority. After exclusion of the sunflower seeds, the petitioner was having only 908 quintals of oil seeds, as found by the appellate authority. Therefore, there is no excess quantity. According to the learned counsel, though the authorities referred to G.O.Ms.No. 411, dated 5-11-1993 under which the quantities to be held as stock by wholesaler and retailer was reduced from 1000 quintals to 500 quintals in respect of the wholesaler and from 100 quintals to 50 quintals by the retailer, but, the said G.O., was not notified in the Gazette and therefore, the order of the authorities below is not just and proper and is liable to be quashed on that ground.

4. The learned counsel strongly contended that even assuming that the stocks to be held by the wholesaler and retailer was rendered by the said G.O., referred earlier, still the petitioner is entitled to hold stock of oil seeds to the extent of 500 quintals as wholesaler and 50 quintals as retailer, apart from 1/8th of the yearly stock on an average for a period of three years, under which the authorities found that the petitioner was entitled to hold 366.85 quintals. If these three items are taken into account, there is absolutely no excess quantity held by the petitioner and even there is any excess it is only marginal and the same does not call for any order of confiscation. The learned counsel also contended that the inspecting authorities as well as the other authorities under the Act did not give a finding that the petitioner was engaged in any clandestine business. The stocks that were available at the business premises were entered in the registers. According to the authorities only the stock held by the petitioner is in excess of the limits prescribed and on that basis the authorities booked the case; even it is considered as an offence it is only on technical grounds and could not be ordered for confiscation of the entire stocks. In fact, the learned counsel contended that the inspecting authority found that the petitioner was entitled to hold the total stock of oil seeds of 960.85 quintals and by including the sunflower oil seeds as part of the edible oil, it is found that there was an excess of 1308.15 quintals. When the matter came up before the Joint Collector, the Joint Collector

worked out the excess quantity at 1858.15 quintals holding that the petitioner was entitled to only to the extent of 365.85 quintals as a producer alone and on that basis ordered confiscation of the entire stock of groundnut oil seed as well as sunflower oil seed apart from the groundnut oil and sunflower oil, though the finding was that the petitioner was not holding any excess oil. Even with reference to the green-gram, the learned counsel contended that the register shows that the petitioner was having 400 quintals of green-gram of which ground balance was about 200 quintals at the business place; another 199 quintals were kept at the Central Warehouse Corporation godown at Vijayawada. In spite of this fact was noted in the register, the authority ordered confiscation of the stock of 199 quintals of green gram. The learned counsel, therefore, contended that though there is no clandestine business, such as black-marketing, hoarding, or adulteration, but on a technical ground of the petitioner holding excess stock, the authorities ordered confiscation of the alleged excess stock.

5. The learned counsel relied upon a decision of the Supreme Court in the case of *Nathulal Vs. State of Madhya Pradesh*, and the decision of the Bombay High Court in the case of *Madhav v. State of Maharashtra*, 1977 Cr.L.J. 1800, in support of his contention that the action of the authorities under the Act in confiscating the stocks of the petitioner is penal in nature and in order to impose such penal action, there must be a finding as to the mens rea and unless such a finding is recorded by the authorities, the order of confiscation cannot be sustained. The learned counsel also contended that though the provisions of Section 6-A do not refer to any such words, but still as per the above decisions it should be implied that before ordering confiscation of the stocks, there must be a finding as to the mens rea. The learned counsel also contended that even under the provisions of Section 7, which contemplates prosecution of the dealer for contravening the provisions of the EC Act, though there is no specific word implying mens rea, but, it should be read into the provisions and such a finding has to be arrived at before imposing any penalty. As no such finding was arrived at in the present proceedings against the petitioner, the order of confiscation is illegal and not sustainable. Similarly, the learned counsel also relied upon a decisions of the Apex Court in the case of *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, and in *Bijaya Kumar Agarwala Vs. State of Orissa*, as to the interpretation of penal provisions and according to the learned counsel if two interpretations are permissible, the interpretation which absolves from the penal liability is to be given. The learned counsel also relied upon the decisions of our High Court in the case of *Dharani Trading Company v. State of A.P.* 1974 (2) An.W.R. 319, *N. Panduranga Rao v. State of* 1976 (1) An.W.R. 41 *Kundanmal Ramlal, Hyd. v. The Ex. Officio Secretary* 1989 (2) L.S. 12 and *District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders Association and Others*, .

6. The learned Government Pleader, on the other hand, supported the order of the appellate authority. The learned counsel contended that the inspecting authorities of the Vigilance Cell, Civil Supplies Department inspected the business

premises of the petitioner on 15-4-1995 and on inspection found that the petitioner had contravened the provisions of the Control Order, 1982 as well as the conditions of the License. Therefore the stock was seized by the inspecting authorities. The learned counsel contended that the entitlement of the stock as contended by the Petitioner is not correct, as the Government issued G.O.Ms. No. 411, dated 5-11-1993, as per which the stocks, which could not be retained by the wholesaler, retailer was reduced from the earlier quantities prescribed. The learned Government Pleader also denied the contention of the petitioner that the said notification was not published in the gazette. In fact, at the time of hearing the learned Government Pleader placed a copy of the gazette notification before this Court. Therefore, it is contended that the eligibility of stocks to be held by the dealers are in terms of G.O.Ms. No. 411, dated 5-11-1993. The learned counsel also contended that the authorities on the available material found that the petitioner was carrying on the business only as a producer and not as a wholesaler or retailer. Further, as the petitioner was not maintaining separate registers as contemplated under the Control Order, 1982, the petitioner is not entitled to have any additional stocks either as a wholesaler or a retailer. The learned Government Pleader also contended that the inspecting officers found that there were contraventions of the Control Order, 1982 as well as the conditions of the license and the said observation was confirmed by the original authority, the Joint Collector, after a thorough enquiry and after giving sufficient opportunity to the petitioner and the said finding was even confirmed by the appellate authority and therefore, in the light of the said findings arrived at by the authorities, the order of confiscation passed by the Joint Collector and confirmed by the appellate authority is just and valid and does not call for any interference. The learned Government Pleader also contended that the Control Order, 1982 were enacted in order to see that the essential commodities would not be hoarded and in order to make them available to the public. As the action of the petitioner had resulted in defeating such purpose, the order of confiscation passed by the authorities is just and proper and does not call for any interference.

The learned Government Pleader also contended that with reference to the judgments cited and relied upon by the petitioner, they were rendered under the peculiar facts of those cases and therefore, they are not applicable to the facts of the present case.

7. Heard both sides and considered the material on record.

8. It is not in dispute that the petitioner was having a valid license in the name of Sri Hanuman Cotton Jinning, Dal and Groundnut Oil Mill, (Maruthi Traders), represented by the managing partner Samudrala Venkateswar Rao for conducting the business in all food grains, edible oils, oil seeds with an installed milling capacity of 590 metric tonnes. The said license is to carry on the business both in retail and wholesaler as well as a producer. The said license is valid up to 31-3-1998. As per the panchanama, the inspecting authorities stated that they have got credible information that the petitioner was indulging in clandestine

business in edible oils. Therefore, the business premises of the petitioner was inspected on 15-4-1995 at 1.00 p.m. when the Managing Partner himself was present. The Inspecting authorities verified the books for ascertaining the opening balance and also verified the ground balance and recorded the following variations:-

-----										Commodity
Opening	Sales	Book	Ground	Variations	stock	from	12/4	Balance	Balance	
-----										Groundnut Pod
1018.54	-	1018.54	921.00	97.54	less	G.N. Seed	271.45	-	271.45	264.00
										7.4
										less
G.N. Oil	25.15	-	25.15	25.67	0.5	excess	G.N. Cake	42.83	-	42.83
										30.80
										12.03
less S.F. Seed	1021.60	-	1021.60	1040.00	18.40	excess	S.F. Oil	29.70	-	29.70
										30.80
										1.10
excess S.F. Cake	73.35	-	73.35	51.10	22.25	less	Moong (green gram)			
										400.00
										-
										400.00
										200.00
										200.00

Thereafter, the inspecting authorities gave a finding that as per the above variations between stock register and the ground stock are within the permissible limits. But, however, the inspecting authorities worked out the excess stock held by the petitioner as under:

Commodity	Stock limit as a producer (1/8th/ used for prod/	Stock limit as wholesaler Col. 2,	Stock limit as retailer Col. 3,	limits ground 1/24th available	Stock limit as Total stock production in 1987-88	Total Excess allowed stock				

1. Oil Seeds	201.881	366.85	500	50	916.85	2225	1308.15	G.N Pod	164.971	
G.N. Seed	2.	Oils	20.67	250	8	278.67	56.47	-	(S.F. and G.N.)	

The inspecting authority further noted the contraventions of Clauses 3 (i), (iii) and (iv) and 11 (iii) of the Control Order, 1982 and Condition No. 4 of the Licensing Conditions under the Control Order, 1982, as well as Sections 7 and 8 of the EC Act.

Therefore, the stock was seized and the managing partner was also arrested. Thereafter, the Joint Collector initiated proceedings u/s 6-A of the EC Act. According to the Joint Collector, the dealer had committed violation of Clauses 3 (i), 4 (ii) and 11 (iii) of the Control Order, 1982 and the Licensing Conditions 3 (i) to (iv) and 4 there under and Clause 4 of the Pulses, Edible Oil Seeds and Edible Oils Storage Control Order, 1977 (hereinafter referred to "the Storage Control Order, 1977"). After receiving the explanation from the petitioner, the variation in the ground stock as mentioned by the inspecting authorities was held to be heavy. The Joint Collector gave a finding that the petitioner is not entitled to hold separate stocks under different category of business such as a Producer, Wholesaler, and Retailer. According to the Joint Collector, the Petitioner did not maintain separate stock register, as required under the control order. Further, as only one register was maintained as a producer, the Joint Collector inferred that

the petitioner was carrying on business only as a producer in oils and not otherwise. With reference to the shortage of green-gram found by the inspecting authorities, the Joint Collector also gave a finding that the petitioner had violated the Clause 4 of the Storage Control Order, 1977 by keeping 200 quintals of green-gram at the Central Warehousing Corporation, Vijayawada, which is not a permissible place to store the stock and therefore, ordered confiscation of the said stock also. The Joint Collector also worked out the entitlement of the stock of edible seeds to which the petitioner is entitled to hold as per the Control Order, 1982 at 366.85 quintals and by giving deduction out of the total stock of 2225 quintals, gave a finding that the excess was 1858.15 quintals. The said excess stock, as found by the inspecting authorities as well as the Joint Collector, includes sunflower oil seeds. With reference to the edible oils, the Joint Collector also did not give any finding that the petitioner was holding any excess quantity beyond the permissible limit. On such findings, the Joint Collector ordered confiscation of entire quantity of groundnut pod, ground nut seed, sunflower seed, ground nut oil, green gram, except the sunflower cake and groundnut cake, which was ordered to be released.

9. When the matter came up before the Commissioner-appellate authority, the appellate authority worked the entire stock, which the petitioner could hold on any day at 500 quintals as a wholesaler; 50 quintals as a retailer and 306.28 quintals as a producer. But on the finding that the petitioner was maintaining records only as a manufacturer, his eligibility of storage was restricted only to 306.28 quintals, as against the actual stock worked out at 908.07 quintals and thus found the excess stock of groundnut seed at 602.42 quintals. With reference to the green gram, the Commissioner observed that it was stored at unauthorized premises i.e., other than the place of business. Therefore, directed the quantity of 602.42 quintals of groundnut seed and 199 quintals of green gram to be confiscated to the Government, while at the same time ordered release of the balance quantity of groundnut seed, total quantity of sunflower seed and groundnut oil and sunflower oil to the petitioner.

10. The contention of the petitioner is that with reference to the wholesaler and retailer, there is no specific provision either in the Control Order, 1982 or in the conditions of license requiring the petitioner to maintain separate registers. In the absence of any specific provision, the authorities are not justified in holding that the petitioner is entitled to keep the stocks only as a producer and not in other two capacities i.e., as a wholesaler and retailer.

11. A perusal of the second proviso to Clause 11(iii) of the Control Order, 1982 clearly shows that where a dealer is carrying on business as a producer or commission agent, he shall be entitled to retain the stock limits specified in this sub-clause for each such business, if such business and accounts thereof kept separate and distinct from one another. From this, it is clear that the petitioner, who is a producer and in order to have additional stocks as a wholesaler as well as a retailer, he has to maintain such businesses and accounts separately and

distinctly. Therefore, the contention of the petitioner that he was not obliged to keep separate accounts with reference to the different categories of business is devoid of merit.

12. The learned counsel for the petitioner contended that even in the absence of a specific provision either in Section 7 or 6-A of the Act, mens rea has to be inferred and unless a finding to that effect is recorded by the authorities, the order of confiscation could not be passed. The learned counsel also contended that as per the decision of the Bombay High Court in the case of Madhav v. State of Maharashtra (2 supra), both the provisions of Sections 7 and 6-A stood on the same foot though different consequences are contemplated under both the provisions - one is penalty to the person, and another is penalty in respect of the goods seized. In support of his contention, the petitioner relied upon a decision of the Supreme Court in the case of Nathulal v. State of M.P. (1 supra) as well as the decision of the Bombay High Court in the case of Madhav v. State of Maharashtra (2 supra).

In the case of Nathulal v. State of M.P. (1 supra), the Apex Court had an occasion to consider the scope of Section 7 of the EC Act and held that where mens rea is an essential ingredient so as to impose the penalty contemplated under the said provision. In that case the accused, a dealer in food grains, had made an application for license under the Madhya Pradesh Food grains Dealers Licensing Order, 1958 and had also deposited the requisite license fee. There was however, no intimation to him that his application was rejected. He purchased food-grains from time to time and submitted returns to the Licensing authority showing the grains purchased by him. The Inspector checked the godowns of the accused and found that the accused had stored foodgrains without holding any license, in excess of the quantity permitted by Section 3 of the Order. The accused was prosecuted u/s 7 of the EC Act, but was acquitted on the ground that he had no guilty mind. In appeal, however, the High Court convicted him. On further appeal, the Apex Court allowed the appeal holding that:-

"The law on the subject is fairly well settled. It has come under judicial scrutiny of this Court on many occasions. It does not call for a detailed discussion. It is enough to restate the principles. Mens rea is an essential ingredient of a criminal offence. Doubtless, a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of

the Act and the provisions thereof.

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Having regard to the object of the Act, namely, to control in general public interest, among others, trade in certain commodities, it cannot be said that the object of the Act would be defeated if mens rea is read as an ingredient of the offence. The provisions of the Act do not lead to any such exclusion. In deed, it could not have been the intention of the Legislature to impose heavy penalties like imprisonment for a period up to 8 years and to impose heavy fines on an innocent person who carries on business in an honest belief that he is doing the business in terms of the law. Having regard to the scope of the Act it would be legitimate to hold that a person commits an offence u/s 7 of the Act if he intentionally contravenes any order made u/s 3 of the Act. So construed the object of the Act will be best served and innocent persons will also be protected from harassment."

13. In the case of *Madhav v. State of Maharashtra* (2 supra) a Division Bench of the Bombay High Court had an occasion to consider the scope of Section 6-A of the EC Act, where it was held that mens rea is a necessary element to be proved before passing an order of confiscation. In that case, the petitioner is a proprietor of an eating-house, which he was running for the last about ten years. The petitioner seems to be doing a fairly prosperous business. He has about 400 boarders taking food every day and the requirement of wheat for the purpose of chapattis is alleged to be about 18 to 20 bags per month. Under the Maharashtra Control Order, 1971, it was incumbent for every person in the State whether he is a private individual, businessman or a trader, to file a return in relation to wheat, as soon as that individual came in possession of more than ten quintals of wheat. The return was to be filed within 24 hours of the possession of more than ten quintals. Additional returns were to be filed on the 1st of the next month in relation to the possession of the stock of wheat in the previous month, if it exceeded by ten quintals. Such an order was in force in relation to wheat from March 1973 to November 1974. During the time when this order was in force, the petitioner does not file the returns when he purchased 72 bags of wheat on 10th June 1974. The said wheat was stored in the godown of Central Warehouse Corporation at Sangli and also insured the same with the LIC. Even subsequently also no such return was filed. Some time in August 1974, the Manager of the petitioner's business, approached the authorities of the Warehousing Corporation to release a part of the wheat. He was told that the wheat could not be released until a specific sanction has been obtained from the District Supply Officer. Having come to know for the first time that the wheat has been already subjected to some Orders of the District Supply Officer, the petitioner applied for releasing his stock. He got no reply till September 21, 1974. Hence, he filed another application on that day to the DSO for the release of the stock. On the same day, he was called by that officer and his statement was recorded and

thereafter a show cause notice was issued u/s 6-A of the Act by the Collector on September 27, 1974. This was obviously for the breach of Clause 3 of the Order. However, the said notice was addressed to the Manager and not to the petitioner, who was the proprietor of the boarding house.

The Manager filed a reply in which he pleaded the illness of his son, besides the forgetfulness on his part to file the return. No hearing was held by the Collector u/s 6-B of the Act, but an order confiscating the entire stock was passed. On appeal, the said order was set aside and the matter was remanded for violation of the principles of natural justice. Thereafter only, the petitioner filed a special return under Clause 4 of the Order and requested the Collector to issue instructions in that behalf. He again applied, in the month of April 1975, for releasing the stocks. Thereafter, the Collector issued a second show-cause notice dated 19-5-1975, which was addressed to the petitioner. The petitioner filed his explanation and the statements of the petitioner, his manager, and his daughter-in-law were recorded. Thereafter, the Collector passed the order confiscating the entire stock, which was confirmed in appeal. When the matter came up before the High Court, the High Court while allowing the petition held that the confiscation u/s 6-A of the Act can be brought about only if it is held that the petitioner had a guilty mind in not furnishing the returns. In other words, the circumstances in which the petitioner could be convicted u/s 7 of the Act, if a prosecution were to be filed against him, must also be shown to exist before an order of confiscation could be made. This means that mens rea is an important element and it must be shown to exist before the property of the petitioner could be confiscated.

The Division Bench of the Bombay High Court referred to the decision of the Supreme Court in the case of *Nathulal v. State of M.P.* (1 supra) and following the same it was held that the principle of mens rea has to be inferred unless it is specifically excluded either expressly or by implication. It was held that the appellate authority did not apply its mind to such an issue and ultimately gave a finding that the element of mens rea is missing and the petitioner has not committed any of the offences, contravening the provisions of the Control Orders and therefore, set aside the order of confiscation.

14. The learned counsel for the petitioner also relied upon a decision of this Court in the case of *N. Panduranga Rao v. State of A.P.* (6 supra) wherein a Division Bench of this Court had an occasion to deal with a similar issue, where even the constitutionality of the provisions of the Essential Commodities Act, 1955 was questioned. In the said matter, the Division Bench heard a batch of three criminal revisions in which confiscation orders passed by the original authority were confirmed by the appellate authority, the District Court. In fact, this Court considered the amended provisions of Section 7 by Act 36 of 1967 by which the words "where knowingly or otherwise" were inserted u/s 7 of the EC Act. Even after such amended provisions, the Division Bench held that "the provisions of Section 6-A of the EC Act do not make it obligatory upon the

authorities finding a person guilty of contravention of the Act, Order or conditions of licence to confiscate the entire stock. It vests a wide discretion in the authorities concerned. The authority may order confiscation of the entire stock or may not order confiscation of any stock at all. The order of confiscation is a judicial order, which is subject to an appeal before the appellate authority and revision to this Court. The facts and circumstances, such as are referred to above, are certainly matters which should be taken into account by a Court in determining the penalty to be imposed. If every trivial contravention is visited with the confiscation of the entire stock, then there will be no difference between unintended contraventions and deliberate acts of hoarding, black marketing, and clandestine transactions. In the circumstances of each of these cases, the confiscation of one fifth of the stock seized would, in our opinion, serve the ends of justice."

15. In the case of Dharani Trading Company v. State of A.P. (5 supra) a learned Single Judge of this Court considered the circumstances under which confiscation order of the goods for violation of the Control Orders can be made. In the said case, it was held that if the nature of violation is of a technical or trivial nature and if there is no object to black marketing and hoarding behind such violation, it would be proper exercise of discretion either not to order or order confiscation of only a part. However, in the absence of any such mitigating circumstances, the order of confiscation should follow the finding of contravention of an order made u/s 6 of the Act. In the said case, the Inspector of Police, Vigilance Cell inspected the petitioner's shop on 26-7-1973. He found 70 bags of sugar-15 bags in excess of the stock he should have held according to the stock register. He also found that the dealer had not exhibited the price list at the shop. He, therefore, seized the 70 bags of sugar and 26 bags of Khandasari Sugar and the same was reported to the District Revenue Officer for taking action u/s 6-A of the EC Act. The District Revenue Officer issued notice u/s 6-B of the Act to the petitioner calling upon the explanation. The petitioner submitted his explanation where he stated that he had purchased 15 bags of sugar from Messrs. Diamond Trading Company on 26-7-1973, that his employee present at the time of check did not know the details of the purchase of sugar and that if the said purchase of 15 bags of sugar is taken into account the stock held by the petitioner will tally with that of the entries noted in the stock register. As regards the alleged contravention of the Andhra Pradesh of Price Lists of Goods Order, the explanation was that the price list was exhibited, but, however, due to the movement of the stocks and the customers in that narrow place the figures became faint and could not be seen and that therefore, there was no contravention of the order. The District Revenue Officer, however, did not accept the explanation and ordered confiscation of the entire stock of 70 bags of sugar and 26 bags of Khandasari Sugar. On appeal, the Sessions Court upheld the order of confiscation. When the matter came up in revision, the learned single Judge of this Court, after referring to various provisions of the Act and the orders and also referring to the earlier decisions, allowed the appeal holding as under:-

"It is as plain as paint from the provisions of the section that it is not obligatory on the part of the Collector to pass an order of confiscation or any and every violation of an order made u/s 3 of the Act. Permissive words are used by the Legislature conferring capacity or power on the Collector to order confiscation. The discretion and power should no doubt be exercised judicially and not arbitrarily or capriciously. Then the question arises in what cases does it become the duty of the authority to exercise that power. Broadly stated one has to look into the nature of the violation, the object with which it is done and the circumstances under which it is done. If the nature of the violation is of technical or trivial nature and if there is no object of black marketing and hoarding behind such violation it would be proper exercise of discretion either not to order or order confiscation of only a part. However, in the absence of any such mitigating circumstances, the order of confiscation should follow the finding of contravention of an order made u/s 3 of the Act. It is a well recognised rule that the atrocity of the penalty should match the atrocity of the crime. Public indignation directly varies with the degree of importance of the rights violated. In punishment the "State, looks not to virtue and vice but to rights and wrongs". In this case, having regard to the nature of the violation and the absence of any object for black-marketing or hoarding in the omission to exhibit the price list, it would be proper to interfere with the improper exercise of discretion in ordering the confiscation of the entire stocks seized. The blame and the agony undergone by the petitioner so far as an upshot of the order of confiscation are a sufficient punishment in a case of this kind. Therefore, I do not propose any order of confiscation of even a part of the stocks seized in the case."

16. The learned counsel also relied upon the decision of the Apex Court in the case of *Bijaya Kumar Agarwala v. State of Orissa* (4 supra) as to the interpretation of the penal provisions. The Apex Court while considering the provisions of the Orissa Rice and Paddy Control Order, 1965 held that where two constructions are reasonably possible, one, which exempts a person from penalty to be preferred. The Apex Court, further held, referring to the earlier judgments render by it, as under:-

"Strict construction is the general rule of penal statutes. Justice Mahajan in *Tolaram Relumal and Another Vs. The State of Bombay*, stated the rule in the following words:

"If two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature."

The same principle was echoed in the judgment of the five-Judge Bench in the case of *Sanjay Dutt Vs. State through C.B.I., Bombay*, , which approved an earlier expression of the rule by us in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya* ((1990 (4) SC 76):

Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

17. In the case of District Collector, Chittoor v. Chittoor District Groundnut Traders" Assn. Chittoor (8 supra) the Apex Court considered the Circular dated 21-6-1985 issued by the State Government placing restriction on the movements of edible oil and oil seeds and imposing compulsory levy and requiring millers and traders to supply oil to the State Government at a fixed price. When the said circular was questioned before this Court, the writ petitions were allowed quashing the said Circular. On appeal by the State, the Apex Court while dismissing the appeals held:-

"The directions contained in the impugned government order are illegal and void as the same have been issued in exercise of and in contravention of the power delegated to the State Government under the notification dated June 9, 1978. The 1982 Order which was framed by the State Government in exercise of the delegated powers does not contain any provision placing any restriction on the transport or movement of the edible oil or oilseeds, nor does it provide for imposition of compulsory levy, nor does it fix any price. If the State Government was facing any problem it could have made amendments in the 1982 Order regulating matters specified in Clauses (d) and (f) of Section 3(2) of the Act after obtaining the prior concurrence of the Central Government. No such course was followed."

18. The learned counsel also relied upon a decision of the learned single Judge of this Court in the case of Kundanmal Ramlal, Hyd. v. The Ex. Officio Secretary (7 supra) in support his contention that with reference to the transactions made on a single day, the dealer is entitled to make entries in the records at the close of the day and on the ground of discrepancy in the stocks on account of omission to make entries in the records, seizure and confiscation cannot be effected. In the said case, the Petitioner is a wholesale-dealer. Proceedings u/s 6-A of the EC Act were initiated for contravention of - (1) without obtaining license doing business in foodgrains (2) holding excess stock. Under Rule 4 (4) of the A.P. Schedule Commodities Dealers (Licensing and Distribution) Order, 1982, wherein an application has been filed for renewal and it is not rejected within a period of one month, the licensee is entitled to continue business till such time as the renewal is granted or rejected. Admittedly, the application was filed on March 18, 1983 and as on the date of the seizure of stocks it was neither rejected nor renewed. As a result, the conduct of business cannot be said to be illegal As regards the omission to enter the sales regarding 78 bags of maida, under the A.P. Food Grain Dealers Licensing Order, 1964, under which he had obtained a licence, the petitioner is entitled to make entry, at the close of the day. Even before the close of the day, inspection was made and it was found that these entries have not been made. The appellate authority also found the discrepancy is only on

account of omission to make entries in the records. The petitioner has got time till the end of the day. The seizure on the ground that there is discrepancy is illegal. As a result, the confiscation order is vitiated by manifest error apparent on the face of record and accordingly this Court quashed the same.

Though the learned counsel contended that there is no finding as to the mens rea and hence the impugned order is liable to be set aside, in view of the decision of Apex Court, but, those judgments were rendered before Section 10-C was inserted in the Essential Commodities Act, 1955, which implies mens rea when even there is contravention as contemplated u/s 6-A of the E.C. Act. In the light of the said provision, the decision in Nathuala's case (1 supra) has no application. Therefore, the alleged contraventions are to be examined in the light of the other decisions referred to above.

19. If we examine the facts of the present case in the light of the above case law, it is fact that the petitioner did not maintain accurate stock registers as required under Clause 11 (iii) of the Schedule Commodities Order. But, however, even the inspecting authorities, who inspected the premises and verified the stocks at the earliest point of time and prepared the panchanama, have also recorded that the petitioner was entitled to have the stocks to the extent of 916.85 quintals of edible oil seeds. But by including the sunflower oil seeds also as part of the edible oil seeds, the inspecting authorities declared that the petitioner was holding 1308.15 quintals of excess edible oil seeds. In fact, according to the petitioner, the quantities that are permitted to be held by the petitioner as a producer, wholesaler and retailer was to the extent of 1000 quintals as wholesaler, 100 quintals as a retailer, apart from 366.85 quintals, as determined by the authorities, as a producer. No doubt, the stock limits prescribed at that quantities were prior to the issuance of G.O.Ms. No. 411, dated 5-11-1993, but even assuming that the quantities fixed as per the said G.O., which was the basis for determination of the quantity to which the petitioner was entitled to hold by the inspecting authority, even if such quantity is taken, there is no excess, as, according to the appellate authority, the petitioner was holding only 908.7 quintals. However, the Joint Collector, who is the competent authority, who conducted the enquiry u/s 6-A of the EC Act, worked out the excess of the edible oil seeds held by the petitioner at 1858.15 quintals including the sunflower oil seeds, apparently by excluding the quantities, which are shown by the inspecting authority to which the petitioner is entitled to hold as wholesaler and retailer. The appellate authority, further, after excluding the sunflower oil seeds, determined the total quantity of edible oil seeds held by the petitioner at 908.7 quintals. Thereafter, the appellate authority allowed to the extent of 306.28 quintals of oil seed, which was worked out by the appellate authority contrary to the working made by the inspecting authority as well as even by the original authority, who held that the petitioner is entitled stocks as a producer to the extent of 366.85 quintals. When the calculations made by the authorities shows such variations from authority to authority, it would not be proper to hold that the (SIC) had contravened any of the conditions of the

Control Orders with an intention either to sell in black-market or to effect hoarding of the oil seeds. In fact, it is the contention of the learned counsel that there is no shortage of the edible oil seeds, nor was there any price control with reference to the edible oils and oil seeds. Further, the entire stock held by the petitioner was shown in the register maintained by him. In the light of the above facts, the contention of the petitioner is that even assuming that there is contravention of some of the clauses of the Control Order, the contraventions are either technical or trivial nature and therefore, the confiscation of the entire excess stock of the edible oil seeds made by the authorities is illegal and unjust.

Even with reference to the green-gram, the contention of the petitioner is that though the stock was kept at the Central Warehousing Corporation, Vijayawada, it is shown as part of the stock, making necessary entries in the register and therefore, even the alleged contravention of keeping the stock in an unauthorized premises is only a technical violation as the stock was in fact kept in a State-owned godown and not in any other private premises. Even with reference to this item also, the contention of the petitioner is that this commodity is neither in short supply nor any price fixation was made by the State Government. When such commodities are available in plenty, which are freely sold and purchased in the market, there is no justification for ordering confiscation of the said items.

20. After considering the nature of the contraventions and in the light of the decisions, where it was held that confiscation of the entire seized stock is not proper and just for any and every contravention; in the instant case, though the inspecting authorities inspected the premises on the allegation that the petitioner was carrying on clandestine business, there is absolutely no reference to any such clandestine business being carried on by the petitioner. In fact, the learned counsel contended that when there is no such clandestine business being carried on by the petitioner, the entire proceedings are liable to be quashed. In any case, as the petitioner's stocks were seized, as early as on 15-4-1995 and finally they were disposed of and sale proceeds were kept with the respondent authorities and denied the said amount to the petitioner for all the seven years and the petitioner was also made to pursue the litigation for all these seven years. That itself would be sufficient punishment to the petitioner and therefore, it would not be proper to impose any further confiscation of the stocks seized or its value to the Government.

21. Under the above circumstances, the impugned order of confiscation is set aside. But, however, the petitioner is entitled only for refund of the sale proceeds without any interest, under the circumstances of the present case.

22. The writ petition is accordingly allowed. No costs.