**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

W.P.No.27809 of 2008

**ORDER:**

The issue in the present Writ Petition arises under the A.P. State Public Distribution Control Order, 2001.

2. This Writ Petition assails the order of cancellation of fair price shop authorisation of the petitioner passed by the Revenue Divisional Officer. Penukonda, Anantapur District, 3rd respondent vide proceedings D.Dis.No.1210/2006C dated 23.4.2007 as confirmed by the Joint Collector, Anantapur, 2nd respondent in Appeal vide order D.Dis.No.K4/PKD/360/2007 dated 19.4.2008 as further confirmed in revision by the District Collector, Anantapur, 1st respondent vide order D.Dis.No.K4/PKD/1026/2008 dated 6.9.2008.

3. Heard Sri O.Manohar Reddy, learned counsel for the petitioner and the learned Government Pleader for Civil Supplies for the respondents apart from perusing the material available before the Court.

4. On the basis of a report submitted by the Tahsildar, Talupula on 22.8.2006, the Revenue Divisional Officer issued a show cause notice vide Rc.No.C/1210/2006 dated 2.9.2006, framing five charges against the petitioner.

5. In response to the said show cause notice and the charges contained therein, the petitioner herein submitted an explanation dated 11.9.2006, denying the said charges. The 3rd respondent Revenue Divisional Officer passed an order vide proceedings dated 23.4.2007, cancelling the fair price shop authorisation of the petitioner. As against the said order, petitioner filed appeal before the Joint Collector-2nd respondent who dismissed the said appeal on 19.4.2008 and the

petitioner also filed revision before the District Collector-1st respondent and the same also ended in dismissal on 6.9.2008.

6. Calling in question the validity and the legal sustainability of the orders passed by the respondents 1 to 3 herein, the present Writ Petition came to be filed. This Court issued rule nisi on 22.12.2008 and granted interim order in W.P.M.P.No.36441 of 2008, directing the respondents not to make any permanent arrangement in respect of the dealership of the subject fair price shop. Responding to the rule nisi, a counter affidavit has been filed by the 1st respondent-District Collector, denying the averments and the allegations in the writ affidavit and in the direction of justifying the impugned action.

7. Reiterating the contents of the affidavit filed in support of the writ petition, the learned counsel for the petitioner maintains that the orders under challenge passed by the respondents are highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India and in breach of the very spirit and object of the provisions of the Essential Commodities Act and the A.P. State Public Distribution Control Order, 2001. It is further contended that the impugned orders are unwarranted in view of the facts and circumstances of the case and the conclusions arrived at by the respondent authorities are without any foundation and basis. It is also the contention of the learned counsel that without being supported by any evidence the respondents resorted to impugned action.

8. On the contrary, it is vehemently contended by the learned Government Pleader for Civil Supplies appearing for the respondents that the orders of cancellation of authorisation passed by the Revenue Divisional Officer as confirmed by the Joint Collector and District Collector are in conformity with the provisions of the Essential Commodities Act and A.P. State Public Distribution Control Order, 2001. The learned Government Pleader further maintains that there is no

illegality nor any infirmity in the orders under challenge as such the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court. It is also the contention of the learned Government Pleader that since the orders under challenge are based on valid and convincing reasons supported by cogent evidence, the said orders are not amenable for any interference of this Court under Article 226 of the Constitution of India. Since all the charges against the petitioner are grave and are held proved, the Revenue Divisional Officer is perfectly justified in cancelling the authorisation.

9 . In the above back ground, the issues that emanate for consideration of this Court are;

(1) Whether the order of cancellation of the authorisation of the petitioner passed by the RDO as confirmed by the Joint Collector on appeal and District Collector on revision is in accordance with law ?

(2) Whether the authorities considered the material available from proper perspective?

10. The information available before this Court manifestly reveals that the Revenue Divisional Officer framed the following five charges against the petitioner:

> "Charge-I : That the F.P. Shop dealer of Gollapalli thanda village has been continuous defaulter in placing the demand drafts before the fixed time every month. He was last penalized by the Revenue Divisional Officer, Penukonda a fine of Rs.500/- inspite of it he is troubling the Mandal Revenue Officer, Talupula and Mandal level stockist at the time of lifting the essential commodities to follow the route, indirectly holding himself responsible for causing delay to the card holders in getting the rice.
>
> Charge-II: That the F.P. Shop dealer has not distributed subsidized K.Oil for the month of March 2006 to July 2006 i.e. for 5 months continuously which clearly shows that he has diverted the K.Oil in the open market at higher rates for his personal gains. Thus, he contravened the clause 17(b) of the A.P.S.P.D.S. Order 2001.

Charge-III: That the F.P. Shop dealer has sold AAY rice at Rs.3-50 paise per kg as against Rs.3-00 per kg to the poor card holders. Statements to this effect is enclosed relates to Sri B.Chandra Naik S/o MUne Naik bearing card No.YAP 12302700075 of Gollapalli thanda and Yerukula Gangulappa S/o Ramanna of Apilapalli village. He failed to follow the instructions issued under clause 22 (iv)(v) and (vi) of A.P.S.P.D.S. (Control) Order 2001. Thus he contravened clause 22 and condition 7 of authorisation issued thereunder.

Charge-IV: That the F.P. shop dealer failed to attend the enquiry before the enquiry officer to plead and to prove his innocence in the allegations levelled against him by the card holders. He has purpose fully evaded the enquiry.

Charge-V: That the F.P. shop dealer by taking the shelter of his caste card he has been threatening the M.R.O. to foist a case against him under SC, STs atrocities act that as if he has abused him in the name of caste".

11. With regard to Charge No.I, the petitioner herein in his explanation stated that he remitted the demand drafts for the months of March, 2006 to August 2006 on 12.3.2006, 20.4.2006, 20.5.2006, 26.6.2006, 17.7.2006 (with fine of Rs.500/-) and 8.8.2006 and also stated that the other fair price shop dealers also paid after 15 days, but no action was taken against them. It is also the stand of the petitioner that having imposed fine of Rs.500/- it would not be open for the respondent to frame this charge and this is double jeopardy and the petitioner cannot be penalised twice for the same allegation. A reading of the finding on this charge recorded by the Revenue Divisional Officer in the cancellation orders reveals that the primary authority did not consider the explanation properly and did not touch the aspect of failure to take any action on the similarly placed fair price shop dealers pointed out by the petitioner. It is an admitted reality that the petitioner was imposed penalty of Rs.500/- for the late remittance and having done so, there is no justification on the part of the Revenue Divisional Officer to frame a charge on the basis of the said alleged lapses once again. There is also no reference in the order as to why action was not taken against identically placed fair price

shop dealers and this Court does not find any justification for the same.

12. With regard to Charge No.II, petitioner stated that in the sales registers, entries were made and the same were scrutinised and signed by the authorities and as such non filing of coupons which are with the card holders would be of no significance. It is also the case of the petitioner that he furnished the dates on which the stocks were lifted and the authorities verified and certified and therefore the finding recorded on this charge that the petitioner failed to produce the ration cards is erroneous. This Court finds sufficient force in the said contention of the petitioner. Therefore, in the absence of any material to show that the petitioner diverted kerosene oil to open market for higher rates, the Revenue Divisional Officer ought not to have held this charge as proved. A perusal of this charge and the findings recorded are obviously unconnected with the charge framed. It is yet another infirmity in the impugned order.

13. In response to Charge No.III, the case of the petitioner is that he distributed AAY rice only @ Rs.3.50 ps. per kg, but not as alleged due to political motivation and there is no evidence in support of the said allegation. The conclusion of the respondents that the petitioner failed to produce any evidence is highly unreasonable as the petitioner herein cannot be asked to prove negative.

14. With regard to Charge Nos.IV & V, this Court is of the opinion that the said allegation by any stretch of imagination cannot be the basis for holding enquiry under the Essential Commodities Act and A.P. State Public Distribution Control Order, 2001. In fact, it is the explanation of petitioner herein on charge No.4 that on 16.8.2006, he had gone to MLS point to get the essential commodities to his fair price shop and he had no intention to remain absent in the village for enquiry. The appellate as well as revisional authorities also failed to consider the issues in right and reasonable prospective except endorsing the orders of the Revenue

Divisional Officer in a routine and cavalier manner. It is also the case of the petitioner that he is a physically challenged person and according to the certificate enclosed to the present Writ Petition, the extent disability is 65%. Taking into consideration the totality of the circumstances and after giving anxious and thoughtful consideration to the issue in the present Writ Petition, this Court is of the considered opinion that the orders under challenge in the Writ Petition are not sustainable and tenable in the eye of law.

15. For the aforesaid reasons, the Writ Petition is allowed, setting aside the order passed by the Revenue Divisional Officer, Penukonda, Anantapur District-3rd respondent vide proceedings D.Dis.No.1210/2006C dated 23.4.2007, cancelling the authorisation of the petitioner, as confirmed by the Joint Collector, Anantapur, 2nd respondent in Appeal vide order D.Dis.No.K4/PKD/360/2007 dated 19.4.2008 as further confirmed in revision by the District Collector, Anantapur, 1st respondent vide order D.Dis.No.K4/PKD/1026/2008 dated 6.9.2008. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 26.3.2015
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W.P.No.27809 of 2008

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**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

W.P.No.27809 of 2008

Date: 26.3.2015

Between:

B.Goopala Naik

… Petitioner

and

The District Collector,
Ananthapur, Ananthapur district & others.

… Respondents