

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.16940 of 2009

Dated 23.09.2015

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Between:

Y.Kataiah

... Petitioner

and

-

The District Collector,

Krishna at Machilipatnam and 3 others.

...Respondents

**Counsel for the petitioner: Mr.MMM.Srinivasa Rao
for Mr.Kowturu Vinaya Kumar**

Counsel for the respondents: AGP for Civil Supplies (AP)

The Court made the following:

Order:

This Writ Petition is filed for a Mandamus to set aside proceeding No.B1/RP/04/2009, dated 16-07-2009, of respondent No.1, confirming Orders, dated 20-01-2009 and 17-09-2007, passed by respondent Nos.2 and 3, in

Proceeding Nos.B1/SRA/33/2007, and Rc.A7.205/2007
respectively.

The petitioner is the fair price shop dealer of Ponnavaaram Village, Veerulapadu Mandal, Krishna District. Respondent No.3 has issued show cause notice, dated 22-05-2007, alleging that there was shortage of essential commodities such as AAY Rice, MDM Rice, ISL, SGRY Rice and Sugar and called upon the petitioner to show cause why action shall not be taken against him. The petitioner submitted his explanation on 31-05-2007. By his order, dated 17-09-2007, respondent No.3, without rendering proper findings on the allegations of shortage of stocks, has opined that as the petitioner's application for renewal of his authorization was not received within one month of expiry of its validity, it is not desirable to continue him as the fair price shop dealer. He has, accordingly, cancelled the petitioner's authorization. In the appeal filed by the petitioner, respondent No.2, without rendering a specific finding on the ground on which respondent No.3 has cancelled the petitioner's authorization viz., that he failed to apply for renewal within the validity period, however, embarked upon the merits of the allegations and dismissed the appeal. Respondent No.1 has confirmed the said orders of respondent Nos.2 and 3 in the revision.

Being the primary authority, a duty is cast on respondent No.3 not only to hold a detailed enquiry, but also to render specific findings with regard to the allegations contained in the show cause notice. Interestingly, respondent No.3 has not raised any whisper regarding the alleged non-renewal of the petitioner's authorization in the show cause notice issued by him to the petitioner. On the contrary, the show cause notice has alleged shortage of essential commodities. Respondent

No.3, instead of rendering specific findings on the allegations of shortage contained in the show cause notice, cancelled the petitioner's authorization on the ground that he has not got his authorization renewed. Therefore, the very ground, on which the petitioner's authorisation has been cancelled, which is not alleged in the show cause notice, cannot be sustained. The appellate and the revisional authorities, instead of remanding the case to respondent No.3 for fresh consideration of the case on the allegations contained in the show cause notice, have embarked upon the alleged shortage and dismissed the appeal and the revision. In my opinion, as the primary authority has failed to deal with the case in proper perspective, the appellate and the revisional authorities ought not to have dealt with the case on merits.

In the above facts and circumstances of the case, the orders of respondent Nos.1 to 3 are set aside. Respondent No.3 is, however, left with liberty to hold a fresh enquiry and pass appropriate order after giving the petitioner an opportunity of being heard on the allegations contained in the show cause notice, dated 22-05-2007. If respondent No.3 has reason to believe that the petitioner has not applied for renewal within the prescribed time, he can initiate a fresh proceeding by framing a specific charge, hold an enquiry and pass an appropriate order in that regard. The petitioner's fair price shop is directed to be restored to him forthwith and he is directed to be continued as such so long as his application for renewal is pending and till a fresh order in accordance with law is passed.

The Writ Petition is, accordingly, allowed to the extent indicated above.

As a sequel, WVMP.No.3367 of 2015 in/& WPMP.No.22237 of

2009 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 23rd September, 2015

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