

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition No.37517 of 2015

ORDER :

The petitioner in this Writ Petition questions an order dt.07.11.2015 passed by the 4th respondent canceling his authorization.

2. Petitioner contends that the impugned order has been passed without conducting any enquiry and that no reasons have been furnished in the said order. He also contends that earlier, the 4th respondent had cancelled his authorization on 28.12.2011 and the same was affirmed on 31.05.2012 by the 3rd respondent but on 25.05.2013, the 2nd respondent had remitted the matter back to the 4th respondent to conduct a fresh enquiry and pass order afresh, but in the impugned order 4th respondent had simply affirmed the order dt.28.12.2011 without independently applying his mind to the facts and circumstances of the case.

3. The learned Government Pleader appearing for respondents does not dispute the fact that no enquiry as contemplated under the provisions of A.P. State Public Distribution System (Control) Order, 2008 (for short 'Control Order') was conducted by the 4th respondent. He also does not dispute the fact that the 4th respondent in the impugned order has merely affirmed his earlier order dt.28.12.2011.

4. In ***B.Manjula v. District Collector, Civil Supplies, Kurnool and others*** this Court had elaborately explained how the enquiries under the provisions of the above Control Order are to be conducted before imposing a penalty under the said Control Order on a dealer and emphasized that:

"10. An 'enquiry' pre-supposes an opportunity of personal hearing to the dealer to explain his/her case based on the records such as sales and stock registers. If need, be such 'enquiry' must also include recording the sworn statement of the dealer and witnesses, if any, from his/her side. In cases where either card holders or other persons sent any complaint, they must also be examined in the presence of the dealer or his/her lawyer and the dealer shall be given an opportunity of cross-examining such persons. The licensing/disciplinary authority shall also supply to the dealer all the reports on which he is likely to place reliance to the detriment of the dealer. Unless the dealer has no explanation at all to offer, the licensing/disciplinary authority is bound to hold a detailed enquiry.

11. The experience of this Court reveals that the appointing authorities of fair price shop dealers are dispensing with the requirement of making personal enquiry by summoning the dealers. They are merely relying upon the reports sent by their subordinates i.e., Deputy Tahsildars and Tahsildars, behind the back of the dealers and resting their decisions solely upon those reports. This procedure is anathema to the concept of 'enquiry' which otherwise means affording the dealer an opportunity of a fair hearing."

It was also held that reasons have to be recorded in the order of cancellation.

5. Therefore, there has to be independent application of mind to the charges against the petitioner and the petitioner's explanation thereto.

6. In this view of the matter, the impugned order dt.07.11.2015 of the 2nd respondent is set aside and the matter is remitted back to the 4th respondent to consider the matter afresh, conduct enquiry as laid down in the above Control Order and pass a fresh reasoned order in compliance with the principles of natural justice within a period of eight (08) weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition is allowed and remanded. There shall be no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

18th November, 2015.

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