

IN THE HIGH COURT OF JUDICATURE: AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION Nos.27989 and 28009 of 2015

W.P.No.27989 of 2015:

BETWEEN:

S. Basi Reddy,
s/o. S. Nagi Reddy

.. **Petitioner**

AND

The State of Andhra Pradesh,
rep.by its Principal Secretary,
Department of Civil Suppliers,
Secretariat Buildings, Hyderabad,
and 3 others.

.. **Respondents**

DATE OF JUDGMENT PRONOUNCED: 07.09.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

1. Whether reports of Local newspapers
may be allowed to see the judgments? YES/NO
2. Whether the copies of judgments may be
marked to Law Reporters/Journals. YES/NO
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment ? YES/NO

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

Writ Petition Nos.27989 and 28009 of 2015

COMMON ORDER:

These two writ petitions are being disposed of by this common order, as they involve the same point of law.

2. The petitioner in W.P.No.27989 of 2015 was appointed as fair price shop dealer of shop No.9 of Badasanivandlapalli, hamlet of Nooliveedu Village, Galiveedu Mandal, Y.S.R. District. The shop of the petitioner was inspected by the fourth respondent-Tahsildar, Galiveedu Mandal on 13.03.2015 and a report was submitted to the second respondent-Joint Collector, Kadapa, on 17.03.2015 stating that certain variations were found in the stock. Based on the said report, proceedings under Section 6-A of the Essential Commodities Act were initiated and they are pending. While so, the third respondent-Revenue Divisional Officer, Kadapa issued a show cause notice on 05.04.2015 framing three charges against the petitioner and the petitioner submitted his explanation on 13.04.2015.

Not satisfied with the said explanation, the authorization of the petitioner was suspended by the third respondent, through proceedings in Ref.C/1140/2014, dated 20.04.2015. Challenging the same, the petitioner filed W.P.No.14441 of 2015 and the same was disposed of by this Court on 08.06.2015 setting aside the suspension of authorization and giving liberty to the third respondent to conduct an enquiry in accordance with law. After receipt of the said order, the third respondent issued another show cause notice on 29.07.2015 reiterating the earlier charges and the petitioner again submitted his explanation on 05.08.2015. Thereafter, an order of cancellation of authorization of the petitioner was passed by the third respondent, through proceedings in Ref.C/1140/2015, dated 26.08.2015. Challenging the same, the above writ petition is filed.

3. The petitioner in W.P.No.28009 of 2015 was appointed as fair price shop dealer of shop No.39 of Nakkalavandlapalli, hamlet of Nooliveedu Village, Galiveedu Mandal, YSR District. The shop of the petitioner was inspected by the fourth respondent-Tahsildar, Galiveedu Mandal on 13.03.2015. Based on the report submitted by the fourth respondent to the second respondent-Joint Collector, Kadapa, proceedings under Section 6-A of the Essential Commodities Act were initiated with regard to the variation in the stock and they are pending. The third respondent issued a show cause notice on 05.04.2015 framing five charges against the petitioner and the petitioner submitted her explanation. Not satisfied with the said explanation, authorization of the petitioner was suspended by the third respondent, through proceedings in Ref.C/472/2015, dated 20.04.2015. Challenging the same, the petitioner filed W.P.No.14443 of 2015 and this Court disposed of the said writ petition setting aside the suspension orders dated 20.04.2015 and giving liberty to the third respondent to conduct an enquiry in accordance with law. Thereafter, a fresh show cause notice was issued on 29.07.2015 reiterating the earlier charges and the petitioner once again submitted her explanation on 05.08.2015. After considering the same, an order of cancellation of authorization of the petitioner was passed by the third respondent, through proceedings in Ref.C/472/2015, dated 26.08.2015. Challenging the same, the present writ petition is filed.

4. This Court carefully perused the charges levelled against the petitioners and they relate to variation in the essential commodities. On perusal of the explanations submitted by the

petitioners, it revealed that they took a stand that they have been distributing the commodities as per the rules and there was no variation. With regard to the selling of commodities at a price different from the price fixed for the same, it was stated that the essential commodities were being distributed as per the rates fixed by the Government. In W.P.No.27989 of 2015, after considering the explanation, the third respondent passed an order of cancellation by holding as follows:

“His explanation is not all convincing since I have personally inspected his F.P. Shop and conducted discreet enquiry in the village with the cardholders and recorded their statements wherein it was revealed that the F.P. Shop Dealer is not properly distributing E.Cs to them. He has also not maintained proper accounts, which means he is indulged in clandestine business for his pecuniary benefits. Hence all the charges framed against him are proved.

Therefore the said F.P. Shop Dealer has violated the A.P.S.P.D.S. (Control) Order 2008. Hence the F.P. shop authorization of Sri S. Basi Reddy, F.P. Shop Dealer, and Shop No.09 of Bodisanivandlapalli Village of Galiveedu Mandal is hereby cancelled on the violation of the above said control order.”

5. In respect of W.P.No.28009 of 2015, there were five charges levelled against the petitioner including the charge relating to variation in quantities. The other charges relate to the distribution of sugar at a price higher than the prescribed price and the less quantity of PDS rice. In respect of those two charges, the third respondent relied on the report submitted by the Inspecting Officers and came to the conclusion that the petitioner violated the provisions of Control Order. In the explanation submitted to the third respondent, the petitioner simply denied the allegations but did not seek an enquiry in respect of the charges.

6. The learned counsel for the petitioners submitted that the said enquiry is not an enquiry in the eye of law and the impugned orders of cancellation of authorization should be set aside.

7. Though this Court is not satisfied with the manner of passing of the orders of cancellation, since the third respondent himself inspected the fair price shop and conducted discreet enquiry in the village and recorded the statements of card holders, it is a fit case for filing an appeal before the appellate authority who would be in a better position to appreciate the rival contentions with regard to the allegations. It is not a case where no enquiry was conducted and hence, no case is made out for cancellation of authorization.

8. The learned counsel for the petitioners relied on a decision of this Court in a case of ***B. Manjula v. District Collector, Civil Supplies, Kurnool and others***^[1]. In the said case, this Court was considering the scope of sub-clause (5) of Clause-5 of the Andhra Pradesh State Public Distribution System (Control) Order 2008, more particularly, with regard to the nature of enquiry that has to be conducted and it was held as follows:

“Unfortunately, a perusal of the impugned order shows that respondent No.3 has not even attempted to hold an enquiry and he has allowed himself to be swayed away by the report of the Tahsildar, Gonegandla without trying to test the veracity of the explanation offered by the petitioner. Unless the petitioner is given an opportunity of substantiating her explanation, it would be a grave travesty of justice to reject her explanation without holding an enquiry. As respondent No.3 has not followed this procedure, the impugned order cannot be sustained and the same is accordingly set-aside. The orders of respondent Nos.2 and 1, which confirmed the order of respondent No.3 are also set-

aside. The fair price shop authorization of the petitioner stands restored and she shall be permitted to function as the fair price shop dealer. This order, however, will not prevent respondent No.3 from holding a detailed enquiry in the light of the observations made herein before and pass a fresh order.”

9. I am of the opinion that each case differs on facts and no universal rule can be applied while examining a case. In this case, the third respondent himself inspected the shop and conducted discreet enquiry in the village with the cardholders and recorded their statements. But, those observations were not put before the fair price shop dealer and no opportunity was afforded to the petitioners. In the absence of placing the material gathered by him before the dealer, whether any prejudice was caused to him or not can be better enquired by the appellate authority rather than by this Court by suspending the order of cancellation initially and taking up the matter after few years.

10. Further, the remedy of writ petition is a discretionary remedy and the Court should be satisfied on the basis of overall facts and circumstances of the case, if the court wants to interfere with the orders. The appeal is a statutory remedy and in view of the statements recorded by the third respondent, the appellate authority would be in a better position to appreciate whether statements recorded by the third respondent were proper or not.

11. In the circumstances, these writ petitions are dismissed. However, liberty is given to the petitioners to file appeals against the impugned orders within a period of 15 days from the date of receipt of a copy of this order before the appellate authority-second respondent and on such filing of appeals, he shall consider the same in accordance with law uninfluenced by the

observations made by this Court in this order. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in these writ petitions shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 07.09.2015

Isn

[\[1\]](#) 2015 (3) ALD 617