

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

WRIT PETITION No.29555 of 2015

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India by petitioner challenging the order in Rc.No.2124/2014/CS dt.28-08-2015 of 3rd respondent cancelling the authorization of petitioner as Fair Price Shop dealer of Madhupam Village in G.Sigadam Mandal, Srikakulam District.

2. The petitioner had been a Fair Price Shop dealer of the shop since 1989. On 05-06-2015, there was an inspection of the shop of petitioner by a team consisting of Inspector of Vigilance and Enforcement Department, Srikakulam along with Revenue Inspector, G.Sigadam and some other officials. The said inspection team allegedly found variation in the stock with stock register.
3. According to the petitioner, his signature was obtained by coercion and stocks in his shop were seized on the ground that there were some marginal variations therein to the tune of 1.22 quintals of PDS rice and 0.04 quintals of sugar. The petitioner denies that there were any such variations. A case under Section 6-A of the Essential Commodities Act was also registered for confiscation of the seized stocks in favour of the State.
4. 3rd respondent issued a show cause notice dt.12-06-2015 mentioning about the variation of stock to the tune of 1.22 quintals of PDS rice and 0.04 quintals of PDS sugar and stating

that *prima facie* the petitioner was doing clandestine business in contravention of the Essential Commodities Act, 1955. The petitioner was asked to show cause within 7 days. The said notice was served on petitioner on

22-06-2015 and he submitted his explanation denying the charges on 29-06-2015. Thereafter the impugned order was passed on 28-08-2015 cancelling the petitioner's authorization as Fair Price Shop dealer.

5. The petitioner contends that no personal hearing was given to petitioner and personal hearing appears to have been given to the Mandal Revenue Inspector, G.Sigadam and to the Vigilance and Enforcement Officials. The petitioner also alleged that no enquiry as contemplated under the A.P. Public Distribution Control Order, 2008 was made. The petitioner also pointed out that in impugned order, the variation in stock is shown as 2.12 quintals of PDS rice contrary to the show cause notice, which mentioned the stock variation as 1.22 quintals. The petitioner also contended that the earlier punishments imposed on petitioner were also taken into account while cancelling the authorization of petitioner and this is not permissible. The explanation of the petitioner is also, according to petitioner, not considered.
6. These contentions are reiterated by the learned counsel for petitioner Sri Mavidi Rama Rao.
7. The learned Government Pleader for Civil Supplies appearing for respondents did not dispute the fact that there is variation between the stock variation indicated in the show cause notice and that mentioned in the impugned order.

8. The explanation submitted by petitioner is referred to in the impugned order, but there does not appear to be any consideration of the same in the impugned order. While the learned Government Pleader asserts that petitioner was heard before passing the impugned order, the impugned order does not reflect the same and only suggests that the explanation of petitioner was taken note of.
9. Having regard to the fact that no personal hearing appears to have been given to petitioner before cancelling authorization of his Fair Price Shop and since the impugned order seems to be based on the findings which are at variance with the show cause notice, I am of the opinion that the impugned order deserves to be set aside.
10. The Writ Petition is allowed and the impugned order is set aside. However, this will not preclude the respondents from initiating proceedings with a proper show cause notice containing specific charges against petitioner and to pass a fresh order in accordance with law after complying with the principles of natural justice. No costs.
11. As a sequel, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-11-2015

Vsv