

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

W.A.No.829 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.BHATT)*

4th respondent in W.P.No.8122 of 2015 is the appellant. The 1st respondent in the appeal challenged proceedings ROC.B/11358/2014 dated 26.12.2014. The proceedings read thus:

"Smt.P.Dhakshayini, Fair Price Shop Dealer, Shop No.24, Toruru village, Puttur Mandal has submitted her resignation to the post of Fair Price Shop Dealer on her personal reasons to the Tahsildar, Puttur through reference 1st cited. The Tahsildar, Puttur sent a report through reference 2nd cited for acceptance along with the resignation of the said dealer.

Later Smt.P. Dhakshayini approached the Honourable High Court by way of filing of W.P.No. of 2014 through her affidavit stated that on the pressure made by the Tahsildar, Puttur submitted her resignation to the post of Fair Price Shop Dealership and sought relief to reappoint her as Fair price Shop Dealer.

Therefore, it is treated that you have submitted your resignation under uneven situation and your resignation is hereby rejected. Since today you are permitted to run the Fair Price Shop continuously.

Therefore, the Tahsildar is hereby directed to supply the commodities to the Fair Price Shop Dealer Smt.P. Dhakshayini from January,2015."

The learned Single Judge through the order impugned in the appeal set aside the proceedings dated 26.12.2014 and the relevant portion of the order reads thus:

"Learned counsel appearing for the petitioner submits that as per Clause 5 (5) of the Andhra Pradesh State Public Distribution System (Control)Order, 2008, the 2nd respondent has no power to restore the authorization once cancelled. He further submits that Clause 20 provides an appeal to the Joint Collector against the order of the Revenue Divisional Officer.

Therefore, this Court is of the view that it is open for the 4th respondent to file an appeal before the Joint Collector. The order passed by the Revenue Divisional Officer is without any authority and cannot be sustained.

Consequently, the order dated 26.12.2014 passed by the 2nd respondent is set aside and the Writ Petition is allowed at the stage of admission. There shall be no order as to costs."

Hence, the appeal.

Learned counsel appearing for the appellant challenges the order of the learned Single Judge on various grounds. The principal ground of challenge is that through the proceedings dated 26.12.2014 some benefit is granted to the appellant and through the order impugned in the appeal the same is withdrawn and writ petition was allowed without notice to appellant. The learned counsel submits that on this short ground the order impugned in the appeal is required to be set aside and the writ petition is directed to be posted for admission and fresh hearing before the learned Single Judge. The learned Government Pleader and also the learned counsel for the 1st respondent/writ petitioner fairly state that the order impugned in the appeal was passed at admission stage and no notice to the appellant was ordered or any opportunity was given.

Having regard to the submissions of learned counsel appearing for the parties, we are satisfied the writ appeal is disposed of in the following terms:

- i. The order dated 26.03.2015 in writ petition No.8122 of 2015 is set aside as the order was passed without notice to appellant and the writ petition is restored to file for admission/disposal.
- ii. The appellant is given two weeks time from today to file counter affidavit and also memo of appearance in W.P. No.8122 of 2015 to avoid delay in hearing the case.

The Writ Appeal is allowed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date:01.09.2015
Stp