

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.12920, 13077 and 13215 of 2015

COMMON ORDER:

All these Writ Petitions are being disposed of by this common order in view of the point of law involved in these cases.

Heard the learned Counsel for the petitioners and the learned Government Pleader for the respondents.

The petitioners are fair price shop dealers of Veldhurthy Mandal in Kurnool District. The authorisation of the petitioners was suspended by the second respondent and challenging the same, the petitioners filed appeals before the Joint Collector and when no orders were passed by the Joint Collector, they filed Writ Petition Nos.27385, 28611 and 26674 of 2014 respectively. Thereafter, a show cause notice was issued to the petitioners on 01.04.2015, and the petitioners submitted their explanation. After receiving the explanation, the second respondent passed an order on 18.04.2015 (in the case of petitioners in W.P.Nos.12920 and 13215 of 2015) and 20.04.2015 (in the case of petitioner in W.P.No.13077 of 2015) cancelling the authorisation of the petitioners, challenging which the present Writ Petitions are filed.

It is submitted by the learned Counsel for the petitioners that, pursuant to the show cause notice dated 01.04.2015, the petitioners submitted their explanation and without conducting any enquiry, the impugned orders were passed. He placed reliance on the decisions of the Division Bench of this Court in **Ambati Srinivasulu v. District Collector, Nellore**^[1] and **M.Kalyani v. District Collector, Prakasam District, Ongole**^[2].

Learned Government Pleader submitted that there is a provision for appeal against the impugned orders and without availing the said

remedy, the petitioners cannot challenge the orders of cancellation of authorisation directly in this Court.

I have perused the charges levelled against the petitioners. The charges levelled against the petitioner in W.P.No.12920 of 2015, read as follows:

“Charge-I: That the F.P.Shop dealer did not maintain the timings of F.P.Shop as stipulated (8:00 AM to 12:00 PM and 4:00 to 8:00 PM).

Charge-II: That the F.P.Shop dealer was distributing 1 (one) Kg Rice with less weight for 67 cardholders.

Charge-III: That the F.P.Shop dealer was distributing 1 (one) Kg Rice with short quantity against their entitlement quota for 67 cardholders i.e., 19 kgs instead of 20, 15 kgs instead of 16, 11 kgs instead of 12 kgs.

Charge-IV: That the F.P.Shop dealer was distributing the Sugar and K.Oil once in two or three months, not regular.

Charge-V: That the F.P.Shop dealer did not exhibit the stock cum price list board in the premises of F.P.Shop.

Charge-VI: That the F.P.Shop dealer has not maintained the records properly in prescribed proformas.

Charge-VII: That the F.P.Shop dealer was not properly distributing the E.Cs and he is indulging in clandestine business by diverting the E.Cs in to black market as those were distributed less/short quantities to the cardholders remaining was black marketed. When the cardholders were enquired by the Mandal Revenue Inspector on 7-8-2014 at Village level it was clearly stated by the cardholders.”

The charges are more or less same in all the above cases. The petitioners filed their explanation denying the said charges. However, the impugned orders of cancellation were passed. The impugned order in W.P.No.12920 of 2015, reads as follows:

“A perusal of the charges and explanation it is learnt that the dealer is not properly explained and not convincing the charges. It is unpardonable that the dealer was distributing PDS Rice every month to all the cardholders of the F.P.Shop less 1 (one) kg against their entitlement. It is grievous charge in the nature. Secondly the Kerosene and Sugar did not distribute in

regular, those were distributing once in a two months or three months. It is one of high irregular. Third is accounts were not maintained properly.

Moreover, the Tahsildar, Veldurthy in the ref 8th cited has submitted report again against the F.P.Shop dealer Sri T.Seshi Reddy (though the earlier case is pending finalization as per High Court direction before the Revenue Divisional Officer, Kurnool) stating that the cardholders of Guntupalli village had raised allegation petition that the dealer was not distributing the Essential Commodities properly. The matter was enquired at village level and ascertained that the F.P.Shop dealer is committing same allegations (earlier allegations). No change in his attitude in distribution of Essential Commodities.

It is clear that the F.P.Shop dealer has violated sub clause (iii), (iv), (v), (vi), (vii), (viii) and 7(1) of clause 22 of APPDS (Control) Order 2008 and contravened the conditions mentioned in the F.P.Shop authorisation.

The earlier case is pending finalization before the Revenue Divisional Officer, Kurnool the F.P.Shop dealer repeatedly committed earlier irregularities as it is. The cardholders put in an allegation petition that was enquired at village level and ascertained that the allegation were true. No change in the attitude of F.P.Shop dealer in distribution of Essential Commodities to the cardholders.

Keeping in view on the directions of the Joint Collector, Kurnool an appeal petition and directions of Hon'ble High Court in Writ No.27385 of 2014, Dt:16-9-2014 it is concluded that the F.P.Shop authorisation of Sri T.Seshi Reddy F.P.Shop dealer, Shop No.25 Guntupalli Village, Veldurthy Mandal is hereby cancelled under sub clause (5) of 5 (control) order, 2008."

A perusal of the impugned orders shows that no enquiry was conducted in respect of charges, but the report of the Tahsildar, Veldhurthy Mandal, was taken into consideration without furnishing a copy of the same to the petitioners.

A Division Bench of this Court in **Ambati Srinivasulu's** case (supra) opined that rules of natural justice are multi-faceted and multi-dimensional and the power of judicial review can be exercised only when the order of the quasi judicial authority contains reasons. A perusal of the impugned orders discloses that no proper reasons were assigned while cancelling the authorisation of the petitioners.

In **M.Kalyani's** case (supra) it was held as follows:

“In our opinion, the order passed by respondent No.3 cancelling the authorization of the appellant suffers from patent violation of the rules of natural justice and the learned Single Judge gravely erred by refusing to annul the same. It is not in dispute that the report of the Mandal Revenue Officer, which formed the basis of the charges, was not supplied to the appellant. In **K.Radha Krishna Naidu v. Director of Civil Supplies, Hyderabad and others**, 1996 (1) ALD 473 = 1996 (1) LS 456 (AP), it was held that the primary report on the basis of which the charges were framed by the Licensing Authority against the dealer, being not furnished to the dealer, vitiates the proceedings due to violation of the principles of natural justice and absence of sufficient opportunity to the dealer to defend his case effectively. It was further held that the reasonable opportunity should be real and effective and simply because the petitioner submitted his explanation, it does not fulfill the requirement of reasonable opportunity, more so, when the show cause notice would clearly indicate that the only basis is the report. In that case the petitioner therein had been given opportunity of personal hearing but even then the Court held that the opportunity was not real inasmuch as the basic document had not been supplied to the dealer. In **S.Malla Reddy v. M. Vijayalakshmi and others**, 2005 (3) ALT 100 = 2005 (5) ALD (NOC) 174, this Court held that the authorization of fair price shop could not have been cancelled on the basis of vague notice.”

In view of the above authoritative pronouncements of this Court, in the absence of proper reasons and non-supply of copy of the report of the Tahsildar, the impugned orders passed by the second respondent are vitiated and are, accordingly, set aside. However, this will not preclude the second respondent from conducting an enquiry in respect of the allegations against the petitioners and passing appropriate orders in accordance with law.

The Writ Petitions are, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

17.07.2015

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[\[1\]](#) 2006 (1) ALT 273 (DB)

[\[2\]](#) 2006 (5) ALD 796 (DB)