HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.2422 of 2011

Date:30.9.2015

Between:

Seera Narayana Rao,

S/o Late S.Guruvulu

..... Petitioner

And:

The Joint Collector, Srikakulam District

and two others.

.....Respondents

Counsel for the Petitioner: Mr. Mavidi Rama Rao

Counsel for the Respondents: AGP for Civil Supplies (AP)

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to set aside proceedings in Rc.No.101/2011/H, dated 29.01.2011, of respondent No.2, whereby he has suspended the petitioner's fair price shop authorisation on the following allegations:

> "(1) The F.P. Shop Dealer selling the E.Cs at higher rates than the rates prescribed by the Government, i.e., Sugar ½ kg @ Rs.7/-, 2 litres of K.Oil @ Rs.27/-, ½ kg Redgram dal @ Rs.29/- and P.Oil @ Rs.35/- and Rs.36/-.
>
> (2) The signatures are interpolated in the Sales

> Register for 10/2010.
>
> (3) The dealer released 156 kgs of Sugar twice (two spells) for the months of September and October, 2010 but distributing ½ kgs Sugar only instead of 1kg."

This Court by order, dated 08.02.2011, while admitting the Writ Petition passed the following interim order:

> "The learned Assistant Government Pleader for Civil Supplies takes notice for the respondents and seeks time for filing counter-affidavit.
>
> Post on 28.02.2011.
>
> *Prima facie*, the allegations, on which, the authorisation of the petitioner's fair price shop is suspended, appear to be devious in nature and obviously intended to keep the petitioner away from running the fair price shop, as the impugned order passed is second in line, following a similar order of suspension, dated 12.5.2010. Therefore, I am convinced that the petitioner has made out the elements of *prima facie* case, balance of convenience and irreparable injury for granting interim order.
>
> Therefore, the impugned order is suspended pending further orders."

In ***K. Nirmala v. Revenue Divisional Officer, Ananthapur*,** this Court held as under:

> "This Court has time and again held that an order of suspension of fair price shop authorization being punitive in nature cannot be resorted to on trivial and flimsy grounds and that unless the appointing authority or the disciplinary authority has the reason to believe that the fair price shop dealer has been indulging in serious irregularities and that his further continuance pending enquiry as a dealer will cause serious prejudice to the public interest, suspension cannot be resorted to. It is regrettable that this principle is being ignored by the competent authorities in many a case. The case on hand is a perfect illustration of how

respondent No.2 has failed to make a rational approach by suspending the petitioner's authorization on the ground of small variations. Respondent No.1 has also completely failed to consider this aspect and rejected the petitioner's application for stay without even assigning any reasons therefor."

In ***Thyrumala Setty Phanindra v. District Collector (CS), Guntur District***, this Court, while reiterating the ratio in **K. Nirmala** (1 supra) further held as under:

> "Any order of suspension, even if the same is passed pending enquiry, results in serious adverse consequences to the fair price shop dealer. While exercising this power, the appointing authority needs to use a proper sense of proportion. The power of suspension cannot be exercised as a matter of course. The main purpose of keeping dealership under suspension pending enquiry is to prevent the dealer from tampering with the record. Therefore, only when serious allegations of commissions and omissions in distribution of the essential commodities in the fair price shop are made and a *prima facie* case is established against the dealer, the power of suspension of authorisation has to be exercised. There may be certain allegations which may not warrant immediate suspension. The case on hand falls in this category where no suspension is warranted, as it is a matter of verification with reference to evidence whether the petitioner has permitted a *benami* to run the fair price shop or not. Considering the fact that the petitioner's fair price shop is run without any variations between the stock register and the ground stock and without there being any complaints, from any card holders, of improper distribution of commodities and in the absence of any allegation that the petitioner or the person who is allegedly running the fair price shop is indulging in acts, such as diversion of the essential commodities into black market, the hasty action of respondent No.2 in suspending the petitioner's authorization cannot be sustained."

No counter-affidavit is filed though more than four years had elapsed.

Considering the nature of the allegations, which are wholly vague and unsubstantiated and the fact that earlier, the petitioner was subjected to suspension of his authorisation on 12.5.2010, this Court perceives the impugned order as wholly arbitrary and whimsical and that the nature of the allegations does not warrant suspension of his authorisation.

For the above-mentioned reasons, the impugned order is set aside and the Writ Petition is, accordingly, allowed.

As a sequel to disposal of the Writ Petition, WPMP.No.3004 of 2011 shall stand disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

30th September 2015

DR