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*** THE HON'BLE SRI JUSTICE R.KANTHA RAO**

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+ WRIT PETITION No.2413 of 2015
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%Date: 23.02.2015

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#Nakka Krishna Rao.

...Petitioner.

and

The State of Andhra Pradesh represented by its
Principal Secretary, Civil Supplies Department,
Hyderabad and others.

...Respondents.

! Counsel for petitioner : Sri K.B.Ramanna Dora

^ Counsel for Respondents 1 to 6 : GP for Civil Supplies (AP)

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? Cases referred

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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WRIT PETITION No.2413 of 2015

ORDER:

Heard Sri K.B.Ramanna Dora, learned counsel for the
petitioner, and learned Government Pleader for Civil Supplies (A.P.).

The petitioner was appointed as an Authorised Dealer to Fair Price Shop No.21 of Kallepalli Village, Srikakulam Mandal & District, to supply essential commodities vide authorization, dated 11.03.1989, which is valid till 31.03.2015.

It is submitted by the petitioner that the respondents are not supplying the essential commodities to his Fair Price Shop, on the ground that he allegedly submitted resignation letter, on 25.11.2014. According to him, he is not aware of the reasons for stopping the supply of essential commodities and he has been making repeated requests to the Revenue Authorities to allot the essential commodities, but the authorities have not been supplying the same and they have also not been providing any information on the ground on which the supplies were stopped. Ultimately, the petitioner sought information under the Right to Information Act, 2005 (for short "the RI Act"), vide letter, dated 25.11.2014, pursuant to which, respondent No.6 informed that the petitioner worked as a Fair Price Shop Dealer for Shop No.21 till August, 2014; that there was no allegation against him at any point of time and that he resigned for the dealership of Fair Price from the month of August, 2014, and therefore, supplies have been stopped and that the authorities have granted permission to supply the commodities to one Smt.Mukalla Chandrakala, w/o Venkata Ramana of Kallepalli Village.

It is submitted by the petitioner that he was shocked on receiving the said information furnished by the respondent authorities, and thereafter, he submitted a letter informing that he never submitted any resignation voluntarily, as alleged in the letter. According to the petitioner, the Revenue Inspector in his own handwriting created and fabricated the said resignation letter probably with an intention not to renew his authorisation, which is going to expire on 31.03.2015.

It is the version of the petitioner that fabricating the resignation letter and not supplying the commodities without cancelling his authorisation and suspending his dealership by allotting the same to another person on the ground that he submitted resignation, is illegal, arbitrary and highly objectionable. He further submits that all the stock registers and supply registers are with him and cancellation of his authorisation and not allowing him as Fair Price Shop Dealer on the ground that he had allegedly submitted resignation to Shop No.21, is deliberate, intentional, motivated and in colourable exercise of power.

The petitioner, therefore, filed the present writ petition to declare the action of the respondents in not allowing him to discharge the duties as Fair Price Dealer for Shop No.21 of Kallepalli Village, Srikakulam Mandal and District and supplying the essential commodities to some other individual, as illegal, arbitrary and unconstitutional and direct the respondents to continue him as Fair Price Shop Dealer.

A counter-affidavit has been filed by the respondents contending *inter alia* as follows:

The petitioner on 28.08.2014 tendered his resignation, to the Fair Price Shop Dealership, to the Tahsildar, Srikakulam. Thereafter, the Tahsildar, Srikakulam, made an enquiry into the matter. During enquiry, the petitioner has given statement on 28.08.2014, stating that he is resident of Kallepalli Village and due to his personal problems, he could not distribute the essential commodities to the cardholders and he will distribute the stock up to the month of August, 2014 and quit the distribution of the essential commodities from September, 2014. Therefore, he is tendering resignation on his own will and pleasure, but not on the pressure of

anybody.

It is contended that basing on the said statement given by the petitioner pursuant to the resignation submitted by him earlier, the Tahsildar submitted a report to the Revenue Divisional officer, Srikakulam, on 13.12.2014, and on the above report, the resignation of the petitioner was accepted by the Revenue Divisional Officer, who is the competent authority vide proceedings, dated 24.12.2014. Subsequent to the acceptance of the resignation, the cardholders of Fair Price Shop No.21 have been allotted temporarily to Sri Margadarsi Self Help Group, Kallepalli-I with effect from January, 2015 to avoid inconvenience to the cardholders and the said Group is continuing as on today. It is further contended that since the resignation of the petitioner for the Dealership of Fair Price Shop has been accepted by the competent authority, there is no provision under the Essential Commodities Act or the Rules made thereunder for distribution of essential commodities to the cardholders. On these grounds, the respondents pray for dismissal of the writ petition.

The crucial question requires to be considered having regard to the facts and circumstances of the case and in the light of the material placed on record by both the parties is, as to, whether the petitioner has, in fact, voluntarily submitted resignation to the Dealership of Fair Price Shop No.21, Kallepalli- I, Srikakulam Mandal and District.

This issue has to be examined with reference to the assertions made by both the parties and the material placed on record by both of them. The version of the respondents is that the petitioner submitted his resignation on 28.08.2014 and the Tahsildar conducted an enquiry on the very same day, which does not seem to be convincing. During the course of the enquiry, the statement of the petitioner was recorded on 28.08.2014 itself, whereunder he

supposedly stated that he voluntarily submitted the resignation due to some personal problems. Thus, as per the contention made in the counter, the submission of resignation as well as the conducting of enquiry are on the very same date. In the statement, it is stated that the petitioner undertook to distribute the commodities till the month of August, 2014 and then he wanted to quit the duty of distribution of essential commodities from the month of September, 2014.

The documents filed by the petitioner reveal that he made an application on 25.11.2014, under the RI Act, seeking to furnish certain information before the Tahsildar, Srikakulam Mandal. In the said application, he asked the Tahsildar as to whether there were any allegations against him during his tenure as Fair Price Shop Dealer and also asked as to why the essential commodities have not been supplied to him from September, 2014. The Tahsildar made an endorsement, dated 24.12.2014, furnishing the information required by the petitioner, wherein it is specifically stated that there are no allegations against him and also that the petitioner acted as a dealer till August, 2014 and thereafter, voluntarily resigned for the post of Fair Price Shop Dealer, and therefore, the distribution of essential commodities were entrusted to one Smt.Mukalla Chandrakala, who is the member of Margadarsi Self Help Group, Kallepalli-I. The information furnished to the petitioner on his application under the RI Act is not in consonance with the facts stated in the counter-affidavit filed by the respondents. In the counter-affidavit, the respondents have specifically stated that on the resignation made by the petitioner, the Tahasildar submitted a report to the Revenue Divisional Officer, on 13.12.2014, and the resignation was accepted by the competent authority i.e. the Revenue Divisional Officer, on 24.12.2014. It is specifically mentioned in the counter-affidavit that pursuant to the acceptance of resignation of the petitioner, the cardholders of the Fair Price Shop

have been allotted temporarily to the Self Help Group with effect from January, 2015. The counter does not indicate that allotment of essential commodities was made to Smt.Mukalla Chandrakala even prior to January, 2015.

For the aforesaid reasons, it is obvious that the petitioner was not aware as to why the supply of essential commodities were stopped to his Fair Price Shop, and therefore, he made an application under the RI Act, requiring information. If he really resigned, he ought not to have submitted such application.

Further, Clause 17 of the Form of Authorisation (Form No.II) of the Andhra Pradesh State Public Distribution System (Control) Order, 2008 (for short 'the Control Order'), reads as follows:

“The holders of this authorisation shall work for a minimum period of five years, unless suspended or cancelled by competent authority. Resignations etc. seeking to leave the dealership shall not be accepted within this minimum period of five years.”

From the aforesaid Clause, it is clear that the resignation shall not be accepted within the minimum period of five years of dealership.

Clause 12 (ix) of the Guidelines for Selection and Appointment etc. of Fair price Shop Dealers under Andhra Pradesh State Public Distribution System (Control) Order 2008, reads as follows:

“Every candidate appointed as F.P. Shop dealer shall be required to work a minimum period of 5 (five) years unless the authorisation of the F.P. shop is suspended or cancelled by Competent authority. Resignations etc. seeking to relinquish the dealership shall not be accepted within the minimum period of 5 (five) years. Failure to adhere to this condition, shall result in forfeiture of the trade deposit remitted by the

dealers”.

It seems that Clause 17 of the Form of Authorisation (Form No.II) of the Control Order is based on Clause 12(ix) of the Guidelines thereof. Clause 12(ix) thereof specifically states that submitting resignation by the dealer, shall result in forfeiture of the trade deposit made by him. In the instant case, obviously there are no proceedings showing that the trade deposit remitted by the petitioner has been forfeited on account of relinquishment of dealership by the petitioner.

Though this Court is not supposed to evaluate the evidence, while exercising jurisdiction under Article 22 of the Constitution, can examine the controversial facts basing on the material placed on either side to appreciate the contentions urged by both the parties to arrive at appropriate conclusion. From the aforesaid mentioned facts, it does not obviously appear that the petitioner tendered any resignation. Further, the resignation has to be submitted to the Revenue Divisional Officer, who is the competent authority. In the instant case, it is stated that the petitioner submitted resignation to the Tahasildar. The statement of the petitioner as well as the resignation letter submitted by him are in the handwriting of the Revenue Inspector. The contention of the petitioner is that the resignation was brought into existence so as to not to renew his authorisation for the further period.

For the foregoing reasons, this Court is thoroughly convinced that the petitioner did not, in fact, submit any resignation voluntarily and therefore, he is entitled to continue as Dealer of Fair Price Shop No.21 of Kallepalli Village, Srikakulam Mandal and District, during the subsistence of his authorisation. The suspension of authorisation of the petitioner in the aforesaid circumstances is arbitrary and illegal and the same is set aside and the respondents

are directed to allot the essential commodities to the petitioner's Fair Price Shop as long as his authorisation is in force.

The Writ Petition is accordingly allowed. No order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

R.KANTHA RAO, J

Date: 23.02.2015

Note: L.R. copy to be marked.

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