The Hon'ble Sri Justice C.V.Nagarjuna Reddy

<u>Writ Petition No.21947 of 2009</u>

<u>Dated 07.10.2015</u>

Between:

U.Guru Prasad

... Petitioner

and

The Sub-Collector,

Vijayawada and 2 others

...Respondents

Counsel for the petitioner: None appeared

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

The Court made the following:

<u>Order :</u>

This Writ Petition is filed for a Mandamus to set aside proceeding No.B1/RP/02/2009, dated 29.08.2009, of respondent No.3, confirming Proceeding No.Rc.B1/SRA/21/2008, dated 08.12.2008, of respondent No.2, and Proceeding No.Rc.A7/618/2004, dated 18.04.2008, of respondent No.1.

The petitioner was the fair price shop dealer of Somavaram Village, Nandigama Mandal, Krishna District. Following an inspection of his shop, four charges were framed against him and they read as under:

Sl.No.	**Charges framed**
1.	The dealer has diverted (22) Qtls of PDS Rice into black market by filing DD purchase by Sri M.Kameswara Rao, Rice Broker, contravening Cl.17 (c) of APSSPDS Control Order, 2001
2.	The dealer has shown variation in closing balances at the end of the month as shown below.

Sl. No.	**Month**	**Stock to be shown**	**Stock shown in the Register**	**Variation**
PDS Rice				
1.	1/2004, 2/04, & 3/04	1.76 Qtls	100 Qtls	(-) 0.76
2.	4/04	--	--	(-) 3.32
3.	5/2004	4.44 Qtls	331 Qtls	(-) 1.13
4.	6/2004	313 Qtls	200 Qtls	(-) 1.13
Total			**6.34**	
Sl. No.	**Month**	**Stock to be shown**	**Stock shown in the Register**	**Variation**
Kerosene				
1.	2/2004	2.95 ltr	**225 Ltr**	**(-) 70 Ltr**
2.	3/2004	526 ltr	**476 Ltr**	**(-) 50 Ltr**
3.	4/04 & 5/04	--	**--**	**(-)98Ltrs**
4.	Jun-04	149 ltrs	**100 Ltr**	**(-)49Ltrs**
Total			**287 Ltrs**	

	Thus the dealer has diverted 6.34 quintals of PDS Rice and 267 Ltrs of Kerosene
3.	The dealer is selling essential commodities for 2 days in month and not observing timings.
4.	The dealer was involved in misuse of MDM rice previously and penalty of Rs.1000/- was imposed

After holding an enquiry, respondent No.1 has cancelled the petitioner's fair price shop authorization. This order was confirmed in appeal and revision by respondent Nos.2 and 3 respectively.

Under Charge No.1, the allegation was that the petitioner has diverted 22 quintals of PDS rice to black market. In the order passed by respondent No.1, it was observed that 200 bags of PDS rice was seized by the Vigilance Officer and that out of the said seized rice, 22 bags of PDS rice belong to the fair price shop run by the petitioner. However, no evidence in support of this finding has been referred to and relied upon by respondent No.1 in the said order. Even in the counter-affidavit, respondent No.1 has not relied upon any such evidence. It is not the pleaded case of the respondents that either 200 bags of PDS rice or 22 bags from out of it were seized from the possession of the petitioner. The finding that the petitioner has diverted 22 bags of PDS rice to black market is based on surmises and not on any reliable evidence. If the petitioner has diverted the said quantity of rice to black market, there must be corresponding shortage found in the registers maintained by him. In her counter-affidavit, respondent No.1 has stated that the detailed enquiry conducted against the petitioner revealed that from January, 2004 to June, 2004, he has diverted 6.34 quintals of PDS rice to black market. Thus, the charge framed against the petitioner is not supported by respondent No.1's own case and there is an inherent contradiction between the charge and the averments in the counter-affidavit with regard to the quantity, which was allegedly diverted to black market. Therefore, I am of the opinion that the finding on Charge No.1 that the petitioner has diverted 22 quintals of PDS rice to black market is not based on any evidence what-so-ever and the same cannot be sustained.

The second part of Charge No.1 is that the petitioner has produced the Demand Draft obtained by one M.Kameswara

Rao, a rice broker of Nandigama Village. The petitioner was forthright in his explanation that since he is poor, he has taken financial assistance from the said M.Kameswara Rao. Even assuming that M.Kameswara Rao was a rice broker, in the absence of any evidence to show that the petitioner has sold PDS rice to the said person, his taking financial assistance by itself cannot be said to have constituted misconduct. In order to find the petitioner guilty of this part of charge, the respondents have to allege and establish the supply of PDS rice by the petitioner to the said M.Kameswara Rao.

Charge No.1 appears to have been framed on an assumption that since M.Kameswara Rao has obtained the Demand Draft on behalf of the petitioner and certain quantity of rice was seized from a lorry, the petitioner would have supplied the PDS rice to the said M.Kameswara Rao and thereby, he has diverted the rice to black market. As observed supra, the very charge itself is inferential and not based on any material. Therefore, such a charge and finding thereon cannot be sustained.

As regards Charge No.2, it appears that there was shortfall of 6.34 quintals of PDS rice between the stock register and the ground balance during the months of February, 2004 to June, 2004, and 287 liters of Kirosene from February, 2004 to June, 2004. No explanation appears to have been offered by the petitioner for this charge. This itself shows that the petitioner has not disputed the allegation of shortfall in the rice and the kerosene. Therefore, Charge No.2 stands proved.

As regards Charge No.3, it is alleged that the petitioner is selling essential commodities only for two days in a month and has not been observing timings. The petitioner has not submitted an explanation to this Charge.

Similarly, Charge No.4 relates to the petitioner’s misuse of MDM rice on an earlier occasion, for which, a penalty of Rs.1,000/- was imposed. This charge is relevant only for the purpose of considering the nature of penalty to be imposed on the petitioner.

As a fair price shop dealer is expected to run the shop with honesty and rectitude, lack of integrity on his part will seriously geopardise the interests of the beneficiaries of the Public Distribution System, who are generally below the poverty line. Therefore, there cannot be two opinions about the need to be stringent in enforcing discipline on the dealers. Further, over a period of time, this Court has been noticing several dealers indulging in serious illegalities and irregularities and in many a case, the Department itself is letting off the dealers by imposing penalties. Going by Charge No.4, even the petitioner was let off with a penalty of Rs.1,000/-.

At the hearing, it has come out that during the last six years, the shop is being run by a temporary dealer and the permanent vacancy has not been filled up. Though the petitioner appeared to have indulged in malpractice by not properly accounting for the essential commodities to the extent of 6.34 quintals of rice and 387 liters of Kerosene over a period of five months as most of the dealers have been induldging in, considering the fact that the petitioner is kept out of dealership for six years, and the further fact that the vacancy is not filled up on permanent basis, I am of the opinion that the punishment meted out to the petitioner is sufficient for the lapse committed by him. Therefore, this Court feels it appropriate to restore the petitioner's authorization with a warning to him to be careful in future and leaving liberty with the respondents to initiate stringent action, if, in future, the petitioner repeats his misconduct in running the fair price shop.

For the above-mentioned reasons, the impugned orders are set aside and the respondents are directed to restore the fair price authorisation to the petitioner.

The Writ Petition is, accordingly, allowed.

As a sequel, WPMP.No.28511 of 2009, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 7th October, 2015

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