

IN THE HIGH COURT OF JUDICATURE; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No. 24775 of 2015

BETWEEN

N.Thilak Kumar Goud

...Petitioner

And

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Food, Civil Supplies and Consumer Affairs Department,
Secretariat, Hyderabad and ors.

...Respondents.

DATE OF JUDGMENT PRONOUNCED: 07.08.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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| 1. Whether reports of Local newspapers may be allowed to see the judgments? | YES |
| 2. Whether the copies of judgments may be marked to Law Reporters/Journals. | NO |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? | NO. |

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No. 24775 of 2015

ORDER:

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

The petitioner was appointed as Fair Price Shop Dealer for Shop No. 117 of Ch.Yerragudi village, krishnagiri Mandal, Kurnool District. The authorization of the petitioner was suspended by order dated 20.03.2015 and questioning the same, the petitioner filed Writ Petition No. 8734 of 2015. The said Writ Petition was disposed of by this Court by order dated 15.04.2015 directing the second respondent- Revenue Divisional Officer to complete the enquiry and pass final order within a period of eight weeks from the date of receipt of a copy of the said order. Pursuant to the said order, the second respondent passed the order dated 5.7.2015 cancelling the authorization of the petitioner. Challenging the same, the present Writ Petition is filed.

It is submitted by the learned Counsel for the petitioner that pursuant to the order of this Court dated 15.4.2015 passed in Writ petition No. 8734 of 2015, the second Respondent without serving a copy of the alleged report stated to have been submitted by the third respondent-Tahsildar, dt 19.3.2015 and without conducting any enquiry cancelled the authorization of the petitioner. In support of his contentions, he placed reliance on the decisions of the Division Bench of this Court in ***Ambati Srinivasulu Vs. District Collector, Nellore*** { 2006(1) ALT 273

(DB)} and ***M.Kalyani Vs. District Collector, Prakasam District, Ongole*** {2006 (5) ALD 796 (DB)}.

Whereas the learned Government Pleader submits that there is alternative remedy of appeal against the impugned order and without availing the same, the petitioner cannot challenge the order of cancellation of his authorization directly before this Court.

This Court carefully perused the sole charge levelled against the petitioner. The said charge relates to variation in the stock and it is stated therein that the said variation is beyond the permissible limits. The petitioner filed his detailed explanation denying the said charge. However, the second respondent cancelled the authorization of the petitioner through the impugned order by holding as follows:

“ On perusal of charge and explanation submitted was not convinced and not proper. That the charge was held proved and the variation of the stocks 2.07 Qtls. Of PDS rice, 0.79 Kgs of sugar, 0.31 Kgs of wheat Atta and 135 liters of Kerosene Oil to black market. He contravene the Clause 17(b) of AP State Public Distribution System (Control) Order, 2008 and breached the conditions mentioned in Fair Price Shop authorization.

In view of the above the authorization of Sri T.Thilak Kumar Goud, Fair Price Shop Dealer of Shop No. 117 of Ch.Yerragudi village of Krishnagiri Mandal is hereby cancelled.”

A perusal of the impugned order shows that no enquiry was conducted in respect of the charge levelled against the petitioner, but the report of the Tahsildar, Krishnagiri Mandal,

dated 19.3.2015 was taken into consideration. However, a copy of the same was not furnished to the petitioner.

At this juncture, it is necessary to refer the decision of a Division Bench of this court in **M.Kalyani Vs. District Collector, Prakasam district, Ongole** {2006(5) ALD 796 (DB)}, wherein 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.”

Further, a Division Bench of this Court in **Ambati**

Srinivasulu Vs. District Collector {2006(1) ALT 273 (DB)}

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. Pertinent to see, the impugned order discloses no proper reasons while cancelling the authorization of the petitioner.

Thus it is clear that when the order of cancellation is passed based on a report, that report should be furnished to the dealer. It appears that the order of cancellation has been passed based on the report of the Tahsildar, however, no such copy was furnished to the petitioner. 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. The second respondent has abdicated his power. In these circumstances, this Court is inclined to set aside the order dated 5.7.2015 passed by the second respondent cancelling the authorization of the petitioner.

The Writ Petition is accordingly allowed. However, this order will not preclude the second respondent from conducting an enquiry in respect of the charge levelled against the petitioner and pass appropriate orders thereon in accordance with law.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 7th August, 2015.
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