

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.10031 of 2012

Date:08.10.2015

Between:

Ummadipalu Mallikarjuna Rao,
S/o Malakondaiah

..... **Petitioner**

And

The District Collector, Prakasam
and two others.

.....**Respondents**

Counsel for the Petitioner: Mr. T.Niranjan

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

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to declare order, dated 18.02.2012, in Rc.CS2/2367/2011 of respondent No.1, whereby he has confirmed the order, dated 20.7.2011, in proceedings, vide Rc.CS2/1885/2010 of respondent No.2 and proceedings, vide Rc.F/970/09, dated 15.04.2010, of respondent No.3, as illegal and arbitrary.

The facts, in brief, leading to the filing of this Writ Petition are that the petitioner was the permanent fair price shop dealer of Shop No.22 of Pajerla Village, Gudlur Mandal, Prakasam District. An inspection of his price shop was conducted by the Food Inspector, Kandukur on 24.9.2009 and he has submitted his report on 25.9.2009, based on which, respondent No.3 framed the following

charges:

“Charge No.1: As per the Food Inspector’s Report, dated 25.9.2009, you being the authorised dealer of Fair Price Shop No.22 is not supplying the essential commodities to the card holders properly, thereby you have violated the Andhra Pradesh State Public Distribution System (Control) Order, 2008 and therefore, you are directed to show cause why your authorisation shall not be cancelled?

Charge No.2: As per the Food Inspector’s Report, dated 25.9.2009, on verification of the registers in the presence of mediators, it is found that as per the stock register, out of 44 quintals of PDS rice lifted by you, you have distributed 40.50 quintals to the card holders and the remaining balance PDS rice is 5.04 quintals, but, on weighment, only 3.44 quintals of rice is found and that out of 2 quintals of dal lifted by you, you have distributed 0.93½ quintals to the card holders and the remaining balance is 1.06 ½ quintals, but on weighment, only one quintal of dal is found and that you are diverting the same to black market for your selfish ends and you have accepted the same in your statement, thereby you have violated the Andhra Pradesh State Public Distribution System (Control) Order, 2008 and therefore, you are directed to show cause why your authorisation shall not be cancelled?

Charge No.3: As per the Food Inspector’s report, dated 25.9.2009, when you were diverting 7.50 quintals of PDS rice in an auto bearing registration No.AP 27 933, one Pati Venkateswarlu and Pendli Somaiah caught the same red handed and handed over to the Station House Officer, Gundluru Police Station and on enquiry, it was revealed that the same belongs to your fair price shop,

thereby you have violated the Andhra Pradesh State Public Distribution System (Control) Order, 2008 and therefore, you are directed to show cause why your authorisation shall not be cancelled?

Charge No.4: As per the Food Inspector's Report, Kandukuru, dated 25.9.2009, on inspection of the records in the presence of the mediators, it is found that there are double entries without distributing 1.60 quintals of PDS rice and 0.061 ½ quintals of dal to the card holders and caused lot of inconvenience to them and that you have also accepted the same in your statement recorded in the presence of mediators, thereby you have violated the Andhra Pradesh State Public Distribution System (Control) Order, 2008 and therefore, you are directed to show cause why your authorisation shall not be cancelled?"

The petitioner has submitted his detailed explanation, dated 18.01.2010, denying all the charges. However, respondent No.3 by his order, dated 15.4.2010, found the petitioner guilty of all the charges and cancelled his authorization by imposing a fine of Rs.5,835/-. The petitioner having failed in his appeal and revision before respondent Nos.2 and 1, respectively, filed this Writ Petition.

From a reading of the charges reproduced above, it is evident that charge Nos.1 and 4 overlap with each other. They pertain to double entries in respect of certain card holders. The substantial charges are charge Nos.2 and 3. Under charge No.2, the accusation against the petitioner is that on verification of the stock registers with physical balance, a variation of 1.60 quintals of PDS rice and 1.06 ½ kgs of red gram was detected. Under charge No.3, it was alleged that as per the Food Inspector's report, dated 25.9.2009, the petitioner was found

diverting 7 ½ quintals of PDS rice through auto bearing registration No.AP 27 933 and that having caught the said stock red handed, the same was handed over at Police Station. The petitioner has strongly denied the said charge and maintained that he has nothing to do with the seized stock.

As regards charge No.2, the petitioner has pleaded that if proper verification and weighment were made, no variation would have been found; that for every quintal, there is a shortage of about 1 ½ kgs while receiving stock itself; and that if this shortfall is considered, there would not be any variation. He has also denied making of double entries.

In my opinion, every variation does not warrant the extreme penalty of cancellation of authorization. The explanation offered by the petitioner that the stocks were being received with short weighments could not be ruled out considering the wastage of rice in the go-downs due to rat menace and other reasons, which are not within the control of the dealers. In recognition of this fact, the Andhra Pradesh State Public Distribution System (Control) Order, 2008 itself provides for 1.5% as permissible variation. If the same is applied, variation to the extent of about 70 kgs of rice is permissible in the instant case. Similarly, even in respect of the red gram, some margin is required to be given. If the quantities towards permissible variations are excluded from the quantities which were found in shortage, the variations would be too meagre to call for the extreme penalty of cancellation of authorization.

Coming to charge No.3, there is nothing on record to show that 7 ½ quintals of PDS rice seized from an auto on 25.9.2009 pertain to the petitioner's fair price shop. No evidence has been placed on record nor discussed in

order to show that the said stock belongs to the petitioner. Thus, on mere suspicion, based on the purported statement of the driver of the auto from which the rice was seized, the petitioner cannot be held guilty of diversion of PDS rice into black market.

That the petitioner's authorization has been under cancellation for more than five years, for the alleged variations attributed against him, itself is sufficient penalty for his alleged misconduct.

Considering the facts and circumstances of the case in their entirety and the submission of the learned Government Pleader that the vacancy in respect of the above-mentioned fair price shop has not yet been filled up on permanent basis, I am of the opinion that the petitioner is entitled to restoration of his authorization.

Accordingly, the impugned order of respondent No.1, confirming the orders of respondent Nos.2 and 3, is set aside and the Writ Petition is allowed.

As a sequel to disposal of the Writ Petition, WPMP.No.12718 of 2012 is disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*08th October 2015
DR*