

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.27974 of 2008

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent herein passed in D.Dis.No.C1/341/06 dated 9.2.20089 confirming the order of the 2nd and 3rd respondents passed in D.Dis.E1/1011/2005 dated 28.2.2006 and Roc.No.A3/515/2005 dated 2.10.2005 respectively as illegal, arbitrary, and in violation of principles of natural justice and consequently direct the respondents 1 to 3 to restore the authorisation of fair price shop dealership of Samalavaripalle village, H/o.Thalapale village, Piler Mandal, Chittoor District in favour of the petitioner.”

2. On the basis of a report submitted by the Tahsildar, Piler Mandal, Chittoor District, fourth respondent herein, the Revenue Divisional Officer, Madanapalle, Chittoor District, issued a show-cause notice vide Roc.No.A3/515/2005 dated 27.01.2005, framing as many as two charges against the petitioner herein. Petitioner submitted explanation dated 09.02.2005 and the Revenue Divisional Officer, Madanapalle/third respondent herein, vide order dated 02.10.2005 cancelled the authorisation of the petitioner and the Joint Collector, Chittoor District/second respondent herein and the District Collector, Chittoor District/first respondent herein vide orders dated 28.02.2006 and 09.02.2008, confirmed the same in appeal and revision, respectively.

3. Calling in question, the validity and the legal sustainability of the above mentioned orders, the present writ petition came to be filed. This Court issued *Rule Nisi* on 19.12.2008 and granted interim direction in WPMP.No.36665/2008 directing the respondents herein not to make any permanent arrangement against the Fair Price Shop in question.

4. Responding to the *Rule Nisi*, counter affidavit has been filed by the respondents, denying the averments and the allegations made in the writ affidavit and in the direction of justifying the questioned action.

5. Heard Sri O.Manohar Reddy, learned counsel for the petitioner and the learned Government Pleader for Civil Supplies for the respondents.

6. Submissions/contentions of the learned counsel for the petitioner:-

- 6.1. The orders impugned in the present writ petition are highly illegal, arbitrary, unreasonable and opposed to the very spirit and object of the provisions of the Essential Commodities Act and the Distribution and Control Order.
- 6.2. Failure to furnish the report of the Mandal Revenue Officer (Tahsildar) is fatal and violative of the principles of natural justice and on the said ground alone the questioned orders are liable to be set aside.
- 6.3. In the absence of any complaint by the card holders, the extreme action of cessation of authorisation ought not to have been resorted to by the respondents.
- 6.4. The respondents did not take into consideration the documents and the explanation offered by the petitioner and did not consider the same from proper perspective and had the same been considered properly, the orders under challenge would not have emanated.
- 6.5. The impugned orders are contrary to G.O.Ms.No.16, Consumer Affairs, Food & Civil Supplies (CS-1) Department, dated 17.06.2013.
- 6.6. The respondent herein resorted to the impugned action on the recommendations of the local M.L.A.
- 6.7. Respondents herein failed to give any opportunity to the petitioner to offer explanation on the report of the Civil Supplies Deputy Tahsildar, Madanapalle nor the same was furnished to the petitioner.
- 6.8. The orders passed by the Sub-Collector were served and received through the Village Secretary of the concerned village, as such, it cannot be construed nor it is open for the respondent authorities to allege that the petitioner herein is not residing in the village where the Fair Price Shop is located.
- 6.9. The husband of the petitioner died on 01.04.2006 and the only source of livelihood for the petitioner and her two minor daughters is the subject Fair Price Shop apart from small extent of land.
- 6.10. The facts and circumstances of the case do not warrant the extreme action of cancellation of authorisation.

To bolster his submissions and contentions, the learned counsel for the petitioner places reliance on the decision of this Court in ***THYRUMALA SETTY PHANINDRA v. DISTRICT COLLECTOR (CS), GUNTUR, GUNTUR DISTRICT***

AND OTHERS.

7. Submissions/contentions of the learned Government Pleader for Civil Supplies:-

7.1. The impugned orders are in accordance with the provisions of the Essential Commodities Act and the Distribution and Control Order.

7.2. There is no illegality nor any infirmity in the orders under challenge, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India.

7.3. The allegations made against the petitioner in the show-cause notice issued by the Revenue Divisional Officer are grave and serious and the same stood proved during the course of enquiry, as such, out of public interest the Revenue Divisional Officer ordered cancellation of authorisation as per law.

7.4. The petitioner herein is not residing in the subject village and is residing at Madanapalle in contravention of the conditions of authorisation.

7.5. The present vacancy caused due to the subject order of cancellation was notified on 29.11.2008 and interviews were conducted on 19.04.2008.

8. In the above background, now the issue that emerges for consideration of this Court under Article 226 of the Constitution of India is:

“Whether the questioned orders are in accordance with law and whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

9. The Revenue Divisional Officer, Madanapalle/third respondent herein vide show-cause notice in Roc.No.A3/515/2005 dated 27.01.2005 framed the following two charges obviously based on the report of the Mandal Revenue Officer (Tahsildar), Piler/fourth respondent herein issued vide Roc.No.B/31/2005 dated 20.01.2005:

“CHARGE 1: The dealer has left the notified area of the fair price shop about three years back and settled at Madanapalli permanently, thereby violated the conditions of the authorisation.

CHARGE 2: The dealer has unauthorisedly transferred the fair price shop to Sri V.Rami Reddy s/o Bali Reddy of Samalavariaplli village, thereby violated condition 10 of the authorisation.”

10. Responding to the said show-cause notice and the charges contained therein, petitioner herein submitted an elaborate and a detailed explanation dated 09.02.2005, denying the charges and requesting to drop further action.

11. In response to Charge No.1, petitioner herein stated in her explanation that her husband was an L.I.C Agent and was staying at Madanapalle and visit Samalavaripalle now and then, but dealer is permanently residing at Samalavaripalle village and she has not settled at Madanapalle. The explanation further stated that the petitioner's husband was a diabetic patient and due to severe ill-health, he was admitted in Malya Hospital, Bangalore as inpatient and since nobody was to attend him, the petitioner herein attended him for some time.

12. Responding to Charge No.2, petitioner herein submitted in her explanation that there is no transfer of Fair Price Shop in favour of one Rami Reddy, who is no other than the own brother of the husband of the petitioner and the petitioner herein also stated that the said person is a member of their joint family and residing in the same house and he only used to assist the petitioner in the said capacity.

13. The information available before this Court manifestly reveals that in order to substantiate her stand, petitioner herein apart from submitting explanation, denying the charges, also filed Voters List of Samalavaripalle, Ration Card showing the residence of the petitioner as Samalavaripalle, Family Health Card and the title deeds of landed property owned by the petitioner and situated at Samalavaripalle.

14. As rightly pointed by the learned counsel for the petitioner, the respondent authorities did not consider the same nor their evidentiary value nor impact of any one of the said documents nor referred to any of the contents of the explanation offered by the petitioner. On the other hand, the authorities placed heavy reliance on the report of the Mandal Revenue Officer in initiating the impugned action and placed reliance on the report of the Civil Supplies Deputy Tahsildar, Madanapalle said to have been submitted for cancelling the authorization. While referring to the same, it is the contention of the learned counsel for the petitioner that no opportunity was given to the petitioner at the time of holding such enquiries nor the said reports were furnished to the petitioner. This court, finds reasonable and sufficient force in the said contention, in the absence of any denial by the respondents in the counter affidavit. In the considered and definite opinion of this Court, the said action undoubtedly and unhesitatingly amounts to a patent violation of the principles of natural justice and fair play and on this ground, the questioned orders are liable to be invalidated.

15. Yet another submission of the learned counsel for the petitioner is that the facts

and circumstances of the case do not warrant the extreme action of cancellation of the authorization. In this context, it may be appropriate to refer to the judgment of this Court in **THYRUMALA SETTY PHANINDRA** (*supra*). In the said Judgment, this Court, while dealing with an order of suspension of fair price shop authorization, at paragraph 3, held as under:

“3. 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 of 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 authorisation cannot be sustained.”

16. In the case on hand also there are no complaints from the card holders nor there any allegations of variation of stocks, improper distribution of commodities and diversification of stocks to black market. Another significant aspect which needs to be noted is that though it was alleged in the show-cause notice that the petitioner herein transferred the shop in favour of her husband's brother Rami Reddy, the Revenue Divisional Officer did not record any finding on the said allegation evidently recognizing the absence of any material on record. At this juncture, it is relevant to mention that the State Government issued G.O.Ms.No.16, Consumer Affairs, Food & Civil Supplies (CS-1) Department, dated 17.06.2013 inserting guideline No.12 (xiii) of the revised guidelines for selection and appointment of Fair Price Shop Dealers under the A.P. State Public Distribution System (Control) Order, 2008 notified vide G.O.Ms.No.4, CA, F&CS (CS-1) Department, dated 19.02.2011,

which reads as under:

“In the absence of the authorized F.P. Shop Dealer, the family members of the F.P. Shop Dealer i.e., Husband/Wife, son and Unmarried Daughter, may be allowed to authenticate with their UID”.

17. Another significant aspect which cannot be lost sight of is that the petitioner herein is now a widow and lost her husband on 01.04.2006 and she has two minor daughters as stated in the writ affidavit. This factor also has bearing on the present case.

18. Another crucial and important aspect is that on the directions of this Court, the connected record has been made available by the learned Government Pleader and the said file contains the report of the Mandal Revenue Officer (Tahsildar), Piler submitted to the Revenue Divisional Officer, Madanapalle vide Roc.(B)31/2005 dated 20.01.2005, which is obviously the foundation for the very initiation of the impugned action and the said report reads as under:

“I submit that the Authorization for F.P. Shop No.52 at Samalavaripalli, adjacent to Bayyareddigaripalli h/o Talapula village was issued to one Smt.N.Vijayakumari W/o Ramachandra Reddy on permanent basis. The said F.P. Shop dealer has left the village permanently about three years back and settled at Madanapalli. The F.P shop is being run by one Sri V.Rami Reddy s/o bali Reddy of Samalavaripalli on behalf of the permanent F.P. shop dealer. Therefore, it has become necessary to cancel the said authorization.

In this connection, it is submitted that one Sri Y.Ravindranadh Reddy S/o Bayya Reddy of Bayyareddigaripalle h/o Talapula village, who is physically challenged (90%) has represented for appointment of F.P. shop dealer in place of the non-resident F.P. Shop dealer. The Hon'ble M.L.A., Piler was pleased to observe that the said F.P. shop should be allotted to the applicant as he is physically handicapped.

I, therefore request that the authorization of Smt.N.Vijayakumari, F.P. shop dealer of Samalavaripalli may be cancelled and one Sri Y.Ravindranadha Reddy of Bayyareddigaripalli, a credible person, may be appointed as F.P. shop dealer of Samalavaripalli on temporary basis.

The representation in original of Sri Y.Ravindranadha Reddy along with the Xerox copies of Xth Class Transfer Certificate and Medical Certificate received through the Hon'ble M.L.A. is herewith enclosed for favour of kind perusal.”

19. The record does not contain the report of the Civil Supplies Deputy Tahsildar, Madanapalle as referred in the order of cancellation and this Court is unable to

understand as to how the same was referred to in the cancellation order. The above mentioned report of the Mandal Revenue Officer, Piler dated 20.01.2005, without any scintilla of hesitation and traces of doubt, fortifies and strengthens the stand of the petitioner that the respondent initiated impugned action as a consequence of political pressure. In view of the facts and circumstances of the case, after giving the anxious and thoughtful consideration to various issues in the present writ petition, this Court is of the opinion that the impugned action on the part of the respondents is highly arbitrary, unreasonable, iniquitous and preposterous and cannot stand for judicial scrutiny.

20. For the aforesaid reasons, the writ petition is allowed, setting aside the order of cancellation of authorization issued by the Sub-Collector, Madanapalle vide Roc.No.A3/515/2005 dated 02.10.2005 as confirmed by the Joint Collector vide proceedings in D.Dis.E1/1011/05 dated 28.02.2006 in appeal and as further confirmed by the District Collector under revision vide orders D.Dis.No.C1/341/06 dated 09.02.2008 and consequently the respondents herein are directed to restore the subject Fair Price Shop authorization in favour of the petitioner herein, within two months from the date of receipt of the copy of the order. Pending Miscellaneous Petitions, if any, shall stand disposed of. No order as to costs.

A.V.SESHA SAI, J

Date: .04.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:

Smt.N.Vijaya Kumari,
W/o. Late V.Ramachandra Reddy,
Aged about 35 years, Occ: Fair Price Shop Dealer
Under Suspension, Samalavaripalle Village,
H/o. Thallapala village, Piler Mandal,
Chittoor District.

... Petitioner

and

The District Collector,
Chittoor, Chittoor District and three others.

... Respondents

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