

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION NO.34784 of 2011**

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Between:

P. Eswaramma

PETITIONER

AND

1. The District Collector, Guntur, Guntur District, and others.

RESPONDENTS

**ORDER:**

This writ petition is filed for the following relief –

“....to issue a writ or direction more particularly one in the nature of writ of mandamus declaring that the action of the 3rd respondent in issuing Notification in Rc.No.6876/2011-B dated 17.12.2011 for appointment of F.P.Shop Dealership on permanent basis of Ganapavaram village, Nadendla Mandal, Guntur District is

illegal, arbitrary, violation of principles of natural justice and consequently set aside the same and pass...”

The case of the petitioner is that she was appointed as fair price shop dealer of Shop No.16 of Ganapavaram village, Nadendla Mandal, Guntur District, on permanent basis. While so, on 30.11.2001 proceedings were issued cancelling the authorization of the petitioner on the ground that the petitioner had committed certain irregularities. Challenging the said order the petitioner filed an appeal before the Joint Collector seeking suspension of the same. Pending the appeal, the petitioner filed W.P.No.26216 of 2001 before this Court and obtained a direction to continue as fair price shop dealer pending disposal of the writ petition. Pursuant to the interim orders, the petitioner continued as fair price shop dealer. The writ petition was disposed of with a direction to the Joint Collector to pass final orders. Pursuant to the same, the Joint Collector directed the Revenue Divisional Officer to re-conduct enquiry by giving opportunity to the petitioner. Accordingly, the Revenue Divisional Officer conducted enquiry and as the said aspect was confirmed in enquiry, vide order dated 28.05.2005 cancelled the fair price shop dealership licence of the petitioner. The allegation against the petitioner was that 30 Qtls of drought rice allotted for distribution to the beneficiaries has been sold away by the petitioner in the month of August, 2001. Therefore, the Joint Collector dismissed the appeal vide order dated 17.05.2007 confirming the order of the Revenue Divisional Officer, which had become final and the same has not been challenged by the petitioner.

It is the case of the petitioner that she was also prosecuted under the Essential Commodities Act, 1955 along with others in C.C.No.184 of 2008 in the court of Principal Junior Civil Judge, Chilakaluripet, which was dismissed on 8.04.2009 acquitting the petitioner. Thereafter, the petitioner submitted a representation dated 20.05.2009 to reappoint her as fair price shop dealer. As no orders are passed on the said representation, the petitioner filed the present writ petition.

This Court, while issuing Rule Nisi, by order dated 30.12.2011 granted interim direction.

Heard learned counsel for the petitioner and learned Government pleader for Civil Supplies (A.P.) for respondents.

Learned counsel for the petitioner submits that as the C.C. is dismissed acquitting the petitioner, the petitioner is entitled to re-appointment as fair price shop dealer. In support of his submission, learned counsel relied on proviso to Clause-5(7) of the A.P. Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008.

A counter affidavit has been filed by the respondents stating that the authorization of the petitioner was cancelled after due departmental enquiry and the same was confirmed by the appellate authority, against which no further appeal by way of revision was filed by the petitioner. In view of the same, the order of the appellate authority has become final. Further acquittal of the petitioner in criminal case has no effect on the orders passed canceling the authorization of the petitioner and they are different and distinct and the degree of evidence in both such proceedings is also different, and prayed for dismissal of the writ petition.

I have considered the rival submissions advanced by both the counsel.

For the sake of convenience, Clause-5(7), reads as under:

**Clause 5(7) : Cancellation or suspension of a licence: -**

1. No holder of a licence issued under this order or his agent or servant or any person acting on his behalf shall contravene any of the terms or conditions of the licence, and if any such holder or his agent or servant or any person acting on his behalf contravenes any of the said terms or conditions, then without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by an order in writing of the licensing Authority.

Provided that no order shall be made under this clause unless the licensee has been given reasonable opportunity of stating his case and being heard in person against the proposed cancellation or suspension.

Provided further that if any dealer possessing a licence for more than one scheduled commodity contravenes any of the provisions of this Order in respect of one scheduled commodity the licence shall be suspended or cancelled in respect of that commodity only duly following the procedure and in such cases, fresh licence for the remaining period in respect of remaining commodity shall be issued by the Licensing Authority.

2. Notwithstanding any thing contained in sub-clause (1) above where a licensee had been convicted by a court of law in respect of

contravention of any Order made under Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the commodities mentioned in Schedule-1 to this Order, the Licensing Authority shall by order in writing cancel his licence.

Provided that where such conviction is set aside in any appeal or revision, the Licensing Authority may, on application, in Form-'A' by the person, whose licence has been cancelled, re-issue the licence to such person.

Though the argument of the learned counsel for the petitioner, prima facie, appears to be attractive, a bare reading of Clause-5(7) of the Control Order 2008 reveals that in a case where the authorization has been suspended or revoked on account of disqualification of the fair price shop dealer on account of the conviction in a criminal case, the said Clause would apply.

In the present case, the cancellation of fair price shop dealership of the petitioner is done on a finding given by the Revenue Divisional Officer that in the enquiry conducted by the department, it was concluded that there was misuse of drought rice by the petitioner. The said finding of the Revenue Divisional Officer has become final on account of the fact that the appeal filed by the petitioner has been dismissed vide order dated 17.05.2007 passed by the Joint Collector and the same has not been challenged by the petitioner. Further, the acquittal in the criminal proceedings is on account of the fact that the Court has given benefit of doubt in favour of the petitioner as the prosecution could not bring home the guilt of the petitioner by adducing adequate evidence in relation to the allegations made in the charge sheet.

It is well settled that acquittal in criminal case on the ground of benefit of doubt by itself cannot be a reason for absolving or upsetting the evidence recorded in the departmental proceedings. In as much as the petitioner did not choose to challenge the finding recorded by both the primary authority as well as the appellate authority, the said finding has become final. In that view of the matter, the relief sought for by the petitioner in this writ petition cannot be granted in exercise of the discretionary powers of this Court under Article 226 of the Constitution of India.

I see no merit in the writ petition, and the same is accordingly dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

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**CHALLA KODANDA RAM, J.**

9<sup>th</sup> November, 2015

Js.