

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.V.M.P.No.830 of 2015 in W.P.M.P.No.41526 of 2014 in
W.P.No.33203 of 2014

&

W.P.No.33203 of 2014

ORDER:

Heard the learned counsel for the writ petitioner and the learned Government Pleader for Civil Supplies appearing for the respondents.

2. This Writ Petition is filed by the petitioner questioning the order dt.28-10-2014 of 2nd respondent confirming the order dt.02-07-2014 of 3rd respondent.

3. The petitioner is a fair-price-shop dealer. A show cause notice dt.20-06-2014 was issued to the petitioner framing two charges:

“Charge No.1:- As per the inspection of the report dt.18-06-2014 of Enforcement Dy. Tahsildar (Incharge Kandukur) Podili, you have violated APPDC orders 2008 and Rules of the authorization as you are running the F.P. shop through your benami Inturi Madhavarao S/o.Venkateswarlu instead of doing the same by yourself.

Charge No.2:- As per the inspection report dt.18-06-2014 of Enforcement Dy. Tahsildar, you did not disclose the closing stock and the price list board in the F.P. shop. So that you have violated the orders of APPDS and Rules of authorization.”

The petitioner submitted an explanation for the first charge stating that she is running the shop herself but with the assistance of Inturi Madhava Rao, who is the son of her paternal aunt, for the purpose of unloading the rice bags and for weighing them, and that he is not her benami.

4. As regards the second charge, the petitioner contended that

she did disclose the price list on the board in relation to the Government stocks only and that in respect of stocks supplied under Amma Hastham scheme, to the extent she had such stock on the day she received them.

5. Construing the explanation of the petitioner as an admission by her that she was running the shop benami, 3rd respondent passed order dt.02-07-2014 without conducting any enquiry and ignoring the fact that the petitioner had denied the charge that Madhava Rao was her benami and without examining any independent person to establish that the said Mahdava Rao was running shop as her benami.
6. On the second charge also, without considering any evidence, the explanation of the petitioner was rejected by 3rd respondent.
7. The petitioner challenged the same by way of appeal before 2nd respondent. The appellate authority also confirmed the same by order dt.28-10-2014. The appellate authority held that although the petitioner is a woman fair-price-shop dealer and is entitled to take assistance of her family members who are included in her ration card, she took the assistance of Madhava Rao whose name is not included in her ration card and this amounts to running the shop 'benami'.
8. Challenging the same, this Writ Petition is filed.
9. Learned counsel for the petitioner contended that without conducting any enquiry, the petitioner's authorization as a fair-price-shop dealer cannot be cancelled. He relied upon **Smt. B.Manjula Vs. District Collector, Civil Supplies, Kurnool and**

others.

10. In that case, this Court held that an enquiry is to be conducted into the irregularities alleged to have been made against the fair-price-shop dealer under the provisions of the AP State Public Distribution System (Control) Order 2008; that such an enquiry pre-supposes an opportunity of personal hearing to the dealer to explain his/her case based on the records such as sales and stock registers; and that, if need be, such 'enquiry' must also include recording the sworn statement of the dealer and witnesses, if any, from his/her side.
11. Petitioner contends that no personal hearing was provided to the petitioner and that although this point was raised before 2nd respondent, he did not give any weight to it. He also contended that in the above decision, this Court has held specifically that unless the dealer has no explanation at all to offer, the licencing/disciplinary authority is bound to hold a detailed enquiry.
12. Learned counsel for the petitioner also contended that even though there is no charge framed against the petitioner to the effect that she cannot take assistance of persons who are not mentioned in her ration card, the respondent Nos.2 and 3 have passed the order of cancellation on the said ground.
13. Learned Government Pleader for respondents contends that the charge of running the fair-price-shop through benami is proved because the petitioner has stated that she is taking assistance of a person whose name is not mentioned in her ration card. She further contended that G.O.Ms.No.4 Consumer

Affairs and Civil Supplies-1 Department dt.19-05-2000 to 19-02-2011 contains a provision that the dealer should personally run the shop and not run it through benami or through an agent, and that although the women fair-price-shop dealers are allowed to take assistance through her family members, the names of said family members names are to be included in the dealer's supply card. She states that since the petitioner has admitted to have taken assistance of family member whose name is not mentioned in dealer's supply card, it amounts to running the shop benami.

14. I am unable to agree with the said submission. The allegation that the petitioner was running the shop through benami was specifically denied. Just because petitioner was taking the assistance of a family member whose name was not mentioned in the dealer's supply card for the purpose of weighment and for the purpose of unloading rice bags, no conclusion can be drawn that the shop is being run benami through that person. No evidence has been adduced in the enquiry before 2nd respondent that the said Madhava Rao was in fact running the shop benami on behalf of the petitioner and not merely assisting the petitioner.

15. Also there is no charge framed against the petitioner that she was taking assistance of a family member whose names were not mentioned in the dealer supply card. Even if the said allegation is true, that cannot be a ground to cancel the fair-price-shop dealer's licence to the petitioner, particularly, when the said assistance is being taken for the purpose of unloading of rice bags or for weighing purposes.

16. Learned Government Pleader has not disputed that personal hearing was not provided to the petitioner either by 3rd respondent or by 2nd respondent. No valid enquiry has been held into the charges against the petitioner as per law laid down in **B.Manjula** (1 supra). In fact, the finding of charge No.2 has been given by 3rd respondent without there being any evidence on record that the petitioner had not displayed the price list board in the shop of the petitioner.
17. For these reasons, W.V.M.P.No.830 of 2015 in W.P.M.P.No.41526 of 2014 in W.P.No.33203 of 2014 is dismissed and the Writ Petition is allowed and the proceedings of the respondent Nos.2 and 3 are quashed. No costs.
18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-11-2015

kvr