

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.31413 of 2011

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10.06.2015

Between:

Smt.G.Godavari

...Petitioner

And

The State of Andhra Pradesh, represented by its Principal Secretary,
Food and Agriculture Department, Hyderabad

and others

...Respondents

Counsel for the petitioner: Mr.Jithender Rao Veeramalla

Counsel for the respondents: Government Pleader
for Civil Supplies (TG)

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The Court made the following:

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ORDER:

This writ petition is filed for a *certiorari* to quash proceedings No.B3/3449/2011, dated 09.11.2011, of respondent No.3, whereby he has cancelled the petitioner's fair price shop authorization.

The facts leading to the filing of the writ petition are briefly stated as under:

The petitioner is the fair price shop dealer of shop No.87 of Nizamabad (Urban). Based on the inspection held by the Assistant Supply Officer, Nizamabad on 26.04.2011, the Deputy Tahsildar (Enforcement), Nizamabad has sent a report to respondent No.2, who in turn, has registered a case under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') and respondent No.3, by order, dated 06.05.2011, suspended the petitioner's authorization in view of registration of case under Section 6-A of the Act. Feeling aggrieved by the said order, the petitioner filed W.P.No.19404 of 2011. However, the interim relief claimed in the said writ

petition was not granted. By order, dated 13.08.2011, respondent No.2 has finalized the proceedings under Section 6-A of the Act by confiscating 100% value of the seized stock. Thereafter, the petitioner has made a representation on 22.08.2011 to respondent No.3 for passing of a final order. As no final order was passed, the petitioner filed W.P.No.27340 of 2011. The said writ petition was disposed of by this Court, by order, dated 29.09.2012, with the direction to respondent No.3 to consider the petitioner's representation for revoking the order of suspension. Thereafter, respondent No.3 has passed the impugned order. In the impugned order, while narrating the above-noted facts, respondent No.3 has stated that as respondent No.2 has ordered confiscation of 100% value of the seized stock, the request of the petitioner for revocation of suspension of her authorization cannot be accepted and he has gone a further step ahead and cancelled the authorization.

In its counter-affidavit, respondent No.3 has conceded that no written notice was issued to the petitioner proposing cancellation except asking her orally to appear on 09.11.2011.

The facts narrated above would reveal that no charge memo was issued to the petitioner for cancellation of her authorization. Only an order suspending her authorization was passed on 06.05.2011. The only basis for suspending the petitioner's authorization was the alleged variations leading to registration of a case under Section 6-A of the Act. While the action of suspension taken by respondent No.3 was only interim in nature and not taken as a measure of substantive penalty, penalty of cancellation being substantive in nature ought to have been preceded by a show cause notice containing specific charges and a detailed enquiry giving the petitioner an opportunity of representing her case. Indeed, Clause 5(5) of the Andhra Pradesh State Public Distribution System (Control) Order, 2008 envisages an enquiry and recording of reasons in writing in the order that may be passed for suspension or cancellation of authorization. Therefore, failure of respondent No.3 to hold an enquiry after issuing charge memo contravenes the specific provision of the aforementioned control order. Even *de hors* the control order, as cancellation of authorization results in serious adverse civil consequences to the petitioner, principles of natural justice also mandate such procedure being followed.

As respondent No.3 has failed to follow the aforesaid procedure, impugned order, dated 09.11.2011, cannot be sustained and the same is accordingly quashed. However, respondent No.3 is left with the liberty to initiate appropriate action against the petitioner if she has committed serious misconduct in distribution of essential commodities.

Subject to the liberty given to respondent No.3 as above, the Writ Petition is allowed.

As a sequel to allowing the writ petition, interim order, dated 29.11.2011, in W.P.M.P.No.38982 of 2011 is vacated and W.P.M.P.No.38982 of 2011 and W.V.M.P.No.139 of 2012 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

10th June, 2015

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