

IN THE HIGH COURT OF JUDICATURE: AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.25953 of 2015

BETWEEN:

Smt. N. Kanthamma,
W/o. Rama Rao.

.. Petitioner

AND

The State of Andhra Pradesh,
rep.by its Principal Secretary,
Food and Civil Supplies Department,
Secretariat Buildings, Hyderabad,
and 3 others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 18.08.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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| 1. Whether reports of Local newspapers
may be allowed to see the judgments? | YES/NO |
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| 2. Whether the copies of judgments may be
marked to Law Reporters/Journals. | YES/NO |
| | |
| 3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment ? | YES/NO |

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.25953 of 2015

ORDER:

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

2. The petitioner was appointed as fair price shop dealer of shop No.38 of M. Ganguwada village in Mandasa Mandal of Srikakulam District. On 06.05.2015 the shop of the petitioner was inspected by the Inspector of Vigilance and Enforcement Department along with the Mandal Revenue Inspector and at that time, the petitioner was not available in the shop and her husband was present. They seized the available stock, on the ground that there are variations in the commodities. On the basis of the report submitted by the said Inspector, a show cause notice was issued to the petitioner on 03.06.2015 and the petitioner submitted her explanation on 13.06.2015. After receipt of the explanation, on 26.06.2015 the third respondent-Revenue Divisional Officer, Tekkali, addressed a letter to the fourth respondent-Tahsildar, Mandasa Mandal to submit factual report. The fourth respondent, after enquiry, submitted a report to the third respondent on 10.07.2015 and after consideration of the same, the third respondent passed an order of suspension pending finalization of proceedings under Section 6-A of Essential Commodities Act. Challenging the same, the present writ petition is filed.

3. The petitioner was issued a show cause notice containing two charges on 03.06.2015 and they read as under:

“Charge-I: That being a responsible F.P. Shop dealer she is diverting the Essential Commodities to open market and thus doing clandestine business. On physical verification of stocks w.r.t. stock register and ground balance, it is found 0.02½ qtl excess of PDS sugar and shortage of 42.65 qtl PDS rice.

Charge-II: That being a responsible F.P. Shop dealer she is not maintaining the records properly.”

After submission of the explanation by the petitioner, the matter was sent to the fourth respondent for enquiry by the proceedings of third respondent dated 26.06.2015. The fourth respondent conducted an enquiry and in respect of the first charge, he stated in the report that

the vigilance officials, who were confined to M. Ganguwada village, inspected the stock and reported that the stock stated to be at variance is found at Bidmi cyclone shelter. He further stated that the quantity of 42.65 quintals of PDS rice was handed over by the Revenue Inspector and Village Revenue Officer concerned and distributed the PDS rice to the card holders. Thus, he reported that there is no variation found in respect of PDS rice. Finally, he opined that the lapse is found on the part of the dealer in not obtaining permission from the higher authorities to put separate sales point to sell the essential commodities at Bidimi cyclone shelter and this lapse gave a scope to the Vigilance officials to point out the variation.

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4. In respect of the second charge, it was stated that she brought forward the opening balance and also obtained the signatures/thumb impressions of the card holders on the date of visit of Vigilance staff and they took into consideration for the stocks distributed so accounted and nothing was commented about the maintenance of records in their report. Ultimately, he submitted a report that the dealer may be allowed to release the essential commodities as usual after imposition of desirable amount as a measure of punishment and with a warning to be more careful in future and not to recur such incidents in future.

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5. In stead of taking such a factual report into consideration, the third respondent took the observations made by the fourth respondent in respect of the first charge and held as follows:

"The Tahsildar, Mandasa finally concluded that the lapse on the part of F.P. Shop dealer is found in obtaining necessary permission from the Higher Authorities to put separate sales point to sell the Essential Commodities at Bidimi Cyclone Shelter. Thus, the dealer has given scope to the Vigilance officials to point out variation in the PDS rice stock and thereby made out 6 (A) case.

On the strength of the above, I agree with the opinion of the Tahsildar, Mandasa, the contents in the explanation to say that the F.P. Shop dealer distributing the Essential

Commodities at Bidimi, other than the authorized place, without obtaining the permission from higher authorities is not correct.

Thus it is clearly established that the above individual contravened the provisions under Clause 5 (16) of A.P. PDS (Control) Orders 2008 and conditions of authorization issued there under, read with Essential Commodities Act 1955.”

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Finally, the third respondent suspended the authorization of the petitioner pending finalization of 6-A case.

6. This court perused the report of the fourth respondent and compared the same with the order impugned in the present writ petition and it is clear that the third respondent took out one paragraph and extracted the same in the impugned order and suspended the authorization when the fourth respondent recommended for giving a warning to the dealer. The third respondent has not acted fairly after receiving the report from the fourth respondent. Therefore, the exercise of power by the third respondent under Clause 5 (5) of Andhra Pradesh State Public Distribution System (Control) Order 2008 read with the Essential Commodities Act, 1955 by suspending the authorization of the petitioner is not proper and bona fide. In the circumstances, this Court is satisfied that the proceedings taken against the petitioner by the third respondent are not proper and not based on the facts and, accordingly, quashes the said proceedings issued against the petitioner pursuant to the show cause notice dated 03.06.2015 issued by the third respondent.

7. Accordingly, the writ petition is allowed setting aside the impugned order dated 30.07.2015 of the third respondent. However, this order will not affect the pending proceedings before the second respondent under Section 6-A of the Essential Commodities Act. There shall be no order as to costs. Miscellaneous Petitions, if any pending in this writ petition, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 18.08.2015

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Note: Issue CC in one week.
(B/o.) Isn