

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.37371 of 2015

ORDER :

Heard the counsel for petitioner, and the learned Government Pleader for Civil Supplies (Andhra Pradesh) for respondents.

2. In this Writ Petition, the petitioner assails the order dt.26.05.2015 passed by 3rd respondent cancelling the authorization of petitioner.
3. The petitioner contends that no enquiry was conducted by 3rd respondent and he simply relied upon a report of the Tahsildar and passed the order of cancellation.
4. A reading of the impugned order shows that this allegation is correct.
5. Sub-clause (5) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008 states :

"The appointing authority may, at any time whether at the request of the authorised fair price shop dealer/nominated retailer/hawker or authorised establishment on suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorisation issued or deemed to be issued to him under this clause". (Emphasis added)

6. A learned single Judge of this Court in **B. Manjula vs. District Collector, Civil Supplies and Ors**, interpreted this clause to mean that the disciplinary authority must follow two mandatory conditions before imposing any penalty as envisaged therein, viz., (i) that the binding authority shall make an enquiry as

deemed necessary, and (ii) that it shall record reasons in writing.

7. In para nos.10 and 11 of the said judgment, this Court held as follows:

“10. 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. If need be, such 'enquiry' must also include recording the sworn statement of the dealer and witnesses, if any, from his/her side. In cases where either card holders or other persons sent any complaint, they must also be examined in the presence of the dealer or his/her lawyer and the dealer shall be given an opportunity of cross-examining such persons. The licencing/disciplinary authority shall also supply to the dealer all the reports on which he is likely to place reliance to the detriment of the dealer. Unless the dealer has no explanation at all to offer, the licensing/disciplinary authority is bound to hold a detailed enquiry.

11. The experience of this Court reveals that the appointing authorities of fair price shop dealers are dispensing with the requirement of making personal enquiry by summoning the dealers. They are merely relying upon the reports sent by their subordinates i.e., Deputy Tahsildars and Tahsildars, behind the back of the dealers and resting their decisions solely upon those reports. This procedure is anathema to the concept of 'enquiry' which otherwise means affording the dealer an opportunity of a fair hearing.”

8. Having regard to the above decision of this Court, the impugned order which has been passed without any enquiry simply on the basis of a report of the Tahsildar cannot be sustained, since it is violation of the mandatory conditions imposed in the above Control Order referred to above. Therefore, the impugned order is set aside and the 3rd respondent is directed to pay costs of Rs.3,000/- to petitioner personally within a period of three (03) weeks from the date of receipt of a copy of this order.
9. Liberty is granted to 3rd respondent to conduct proper enquiry in accordance with law, and pass a fresh order. The Writ Petition is disposed of with the above directions.

10. As a sequel, miscellaneous petitions pending, if any, in this Writ
Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.11.2015

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