

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

W.P.No.35382 of 2015

ORDER:

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

2. In the present case, the fair-price-shop dealership of the petitioner has been suspended pending enquiry invoking class 5 (1) (B) (iii) of the AP State PDS (Control) Order 2008 vide proceedings Roc.No.1838/2014 (CS) dt.04-08-2014 of 2nd respondent. Simultaneously a show cause notice dt.27-08-2014 had also been served on the petitioner to show cause why disciplinary action should not be initiated for cancellation of his fair price shop authorization besides recovery of value of the PDS Rice which is alleged to have been diverted into the black market under the Control Order. The petitioner submitted his explanation thereto. But till date, the enquiry initiated against the petitioner by 2nd respondent has not been concluded.

3. A Division Bench of this Court in **Joint Collector, Kurnool and others Vs. A.Neelima**^[1], considered the provisions of the AP Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, and observed that an order of suspension

cannot be used as a pretext for indefinite postponement of operation of the fair-price-shop dealership, making it in effect cancellation of the dealership. It held that order of suspension, like every executive and administrative act, has to be founded upon fair play and lack of arbitrariness, and that the continuation of order of suspension indefinitely, is wholly arbitrary and cannot be countenanced. It however cautioned that what is reasonable period of suspension would vary from case to case depending upon various factors and that normally a period of 90 days would suffice to conclude the enquiry. The Division Bench referred to **M/s.Sukwinder Pal Bipan Kumar s. State of Punjab**^[2] where the Supreme Court had considered a Control Order which contains a clause providing for a period of suspension to a maximum 90 days and explained that the period of 90 days is a reasonable period to conclude the enquiry and continuance of the enquiry beyond the 90 days would be unreasonable.

4. This decision of the Division Bench has been followed by two learned Single Judges of this Court in **D.Sambasiva Rao Vs. Joint Collector, Guntur and others** and **Bhupathiraju Satyanarayana Raju and others Vs. Sanku China Pulla Rao and others**^[3].

5. Learned Government Pleader for Civil

Supplies appearing for respondents however contended that the Control Order does not specify the maximum period of suspension and therefore the above decisions cannot be applied. She further contended that even the Division Bench had made an observation that the reasonableness of the period of suspension would vary from case to case depending upon various factors and therefore it cannot be said that in every case, if enquiry is not concluded within 90 days, the competent authority should release the stocks to the dealer against whom the enquiry is pending. She further pleaded that in the cases referred to above, the Tahsildar/M.R.O. had suspension power but now the R.D.O. is the competent authority to pass such order.

6. On the first aspect, I am of the opinion that the Division Bench primarily dealt with the question as to what period can be considered a reasonable period to conclude an enquiry against a fair-price-shop dealer who has been placed under suspension. Therefore absence of any maximum period prescribed in the Control Order would not be a relevant factor since an order of suspension cannot be allowed to continue indefinitely which would indicate lack of fair play and amount to arbitrariness. In a given case, it is certainly open to the respondents to justify delay in concluding the enquiring on grounds such as the dealer not cooperating with the enquiry, or some other administrative reasons etc. But the

respondents cannot be allowed to simply suspend the dealership of a fair-price-shop dealer pending enquiry, issue a show cause notice and for no apparent reason continue the suspension without concluding the enquiry in a reasonable time. If this is allowed, it would keep the dealership of the fair-price-shop dealer indefinitely in limbo and would practically amount to canceling his dealership. Therefore, in the absence of any circumstances explained by the respondents as to why the enquiry into the allegations against a fair-price-shop dealer, who is under suspension, could not be concluded within a period of 90 days indicated by the Division bench, it cannot be said that a conclusion of arbitrariness cannot be drawn against the respondents. Also who is conferred the power to suspend i.e. M.R.O. or R.D.O., has no relevance to considering the reasonableness of period of suspension.

7. In the present case, the only charge against the petitioner is that he had diverted 6.76 quintals P.D. rice into black market for selling it higher rates on the basis of which, his dealership authorization had been suspended on 04-08-2014. Although a show cause notice had been issued to the petitioner on 27-08-2014 and he had submitted his explanation thereto, no reason is forthcoming from the respondents as to why the enquiry against the petitioner could not be concluded within a reasonable period, and why in spite of the fact that a year and two months have been elapsed, there is no sign of

the enquiry going anywhere.

8. The mere fact that there is no period fixed in the A.P. State PDS (Control) Order, 2008 for keeping the dealership of a fair-price-shop dealer under suspension, does not mean that such suspension can be continued indefinitely. As held by the Division Bench in **A.Neelima** (1 supra) the continuation of order of suspension indefinitely is wholly arbitrary and cannot be countenanced and an order of suspension, like every executive and administrative act, has to be founded upon fair play and lack of arbitrariness.

9. In this view of the matter, the Writ Petition is allowed and the order of 2nd respondent in Roc.No.1838/2014 (CS) dt.27-08-2014 suspending the fair-price-shop authorization of the petitioner is declared as illegal and arbitrary and the respondents are directed to treat it as subsisting and supply essential commodities to the petitioner while taking steps to conclude the enquiry against him within a period of eight weeks from the date of receipt of a copy of this order. No costs.

10. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-11-2015

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[\[1\]](#) 1996 (1) APLJ 285 (HC)

[\[2\]](#) AIR 1982 (S.C.) 1985

[\[3\]](#) 2015 (4) ALT 543