

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.41783 OF 2015

ORDER:

The writ petition is filed challenging the order dated 05.12.2015, passed by the 2nd respondent-R.D.O, cancelling the petitioner's authorisation of fair price shop No.38 of Dharmavaram Village of Dhone Mandal, Kurnool District.

One of the principal grounds on which the petitioner challenges the impugned order is that without there being any allegation in the show-cause notice, on an entirely with a new ground, his authorisation has been cancelled.

A perusal of the impugned order itself reveals that initially with five charges the petitioner was issued a show-cause notice, which reads as follows:

"The Tahsildar, Dhone has submitted his fresh enquiry report in the reference 10th read above in which it is revealed that, the F.P. Shop dealer has following quantities PDS Rice which was allotted to him as detailed below.

Sl.No.	Nature of Cases	No of cards	Quantity in Qtls	Remarks
1	Died Cases	7 Cards	0.64	
2	Non Resident	9 Cards	1.80	
3	Bogus Cards	23 Cards	4.60	
	Total	39 Cards	7.04	

In his explanation the F.P.Shop Dealer himself admitted that, the sales stock registers of essential commodities for the month of May, June, July of 2014 were not submitted to the inspecting authority as they are not available with him and the above essential commodities misused until cancellation until cancellation of these cards. It clearly shows that, he has diverted the essential commodities allotted for the above cards and diverted into black market for the months of May, June, July of 2014 for his personal gain. The Tahsildar, Dhone has also stated that, the F.P.Shop Dealer has submitted bogus sales register for the red gram dall of 596 kgs which was allotted to him for the month of 9/2015 without distributing to the cardholders and the entire stock was diverted in to the black market, as it is proved during enquiry as the cardholders of the F.P.Shop have stated that, they were not supplied the red gram dall in the month of 9/2015.

Finally the Tahsildar, Dhone has reported that, basing on the above material facts the F.P.Shop dealer is liable to be terminated on the following points.

1. Appointment of F.P.Shop dealer was made only on temporary basis but not on permanent basis.
2. The F.P.Shop dealer himself admitted that, the 39 card holders were not utilized the essential commodities.
3. The F.P.Shop dealer was not maintained stock and sales registers for the

essential commodities supplied to the F.P.Shop.

4. The F.P.Shop dealer failed to submit the F.P.Shop records such as stock and sales registers, valid authorization to the inspecting authority during the inspection.
5. Producing bogus sales registers of Red Gram Dall of 596 Kgs allotted to the F.P.Shop for the month 9/2015.”

However, in the order passed by the 2nd respondent-R.D.O basing on the report of Tahsildar dated 21.11.2015 received on 02.12.2015, a finding of misuse of P.D.S rice was recorded. Inasmuch as the Tahsildar's report and recommendations were not part of the show-cause notice and however, petitioner did not have the benefit of having the Tahsildar's report, the same could not have been relied on for the purpose of cancellation of the authorisation of the petitioner. In that view of the matter, the impugned order is liable to be set aside in terms of the law laid down by this Court in **B. Manjula v. District Collector, Civil Supplies, Kurnool and others**^[1].

Accordingly, the writ petition is allowed setting aside the order dated 05.12.2015, passed by the 2nd respondent-R.D.O by giving liberty to the 2nd respondent-R.D.O to pass the orders afresh after supplying the copy of the report of the Tashildar dated 21.11.2015 to the petitioner and putting him on notice of the exact charge to which he is required to answer. Thereafter, if any explanation is submitted by the petitioner, the same shall be considered along with the explanation already submitted and after giving him the opportunity of hearing, final orders shall be passed, within a period of four weeks from today. Further, in view of the revival of the authorisation of the petitioner, the petitioner is entitled to distribute the essential commodities in terms of the license granted to him. No order as to costs.

Miscellaneous petitions if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

Dated:18.02.2016
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