

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION NO.29719 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking to issue writ of mandamus declaring the proceedings in Rc.No.950/2016-CS, dated 18-08-2016 issued by the 2nd respondent as illegal and arbitrary.

2. Heard Mr. V.Sudhakar Reddy, learned counsel for the petitioner and the learned Government Pleader for Civil Supplies (Andhra Pradesh).

3. It is the case of the petitioner that she was appointed as Fair Price Shop dealer of shop No.767 of Deergasi-II village, Polaki Mandal, Srikakulam District in the year 2008. It is the further case of the petitioner that she has been distributing the essential commodities to the card holders without any complaint of whatsoever. While so, the Vigilance and Enforcement Officer visited the shop of the petitioner on 06.05.2016 and allegedly found variation in the stock. The 3rd respondent submitted a report to the 2nd respondent on 06.05.2016 alleging that the petitioner contravened the provisions of the Andhra Pradesh State Public Distribution System (Control) Order, 2008. On 21.05.2016, the 2nd respondent issued a show cause notice calling for the explanation of the petitioner. On 13.06.2016, the petitioner submitted her explanation. Being not satisfied with the explanation submitted by the petitioner, the 2nd respondent passed final orders on 18.08.2016 suspending the authorization of the petitioner indefinitely.

4. The predominant contention of the learned counsel for the petitioner is that the order passed by the 2nd respondent is nothing but cancellation of the authorization of

the petitioner, which would fall within the ambit of Sub-clause (5) of clause 5 of the Control Order.

5. A perusal of the record, *prima facie* reveals that the order passed by the 2nd respondent falls within the ambit of Sub-clause (5) of Clause 5 of the Control Order, as the said order passed by the 2nd respondent is one way as a measure of punishment.

6. Learned counsel for the petitioner submitted that the issue involved in this writ petition is squarely covered by the orders of a Division Bench of this Court in Writ Appeal No.746 of 2016 dated 23.8.2016.

7. In order to appreciate the rival contentions, it is not out of place to extract the relevant portion in the order in writ appeal, which reads thus:

“The only question which we are required to examine is whether an order of suspension, for an indefinite period, could have been passed as a measure of punishment as that would amount to cancellation which is also one of the punishments prescribed in Clause 5 (5) of the Control Order, but which the 3rd respondent has chosen not to pass.

While we are satisfied that the 3rd respondent ought to have fixed the period of suspension, it would be wholly inappropriate for us in proceedings under Article 226 of the Constitution of India, to do so. In such circumstances, we consider it appropriate to set aside the order of the 3rd respondent and direct him to fix the period during which the order of suspension shall remain in force. The 3rd respondent shall pass an order, in accordance with the directions aforementioned, within two weeks from the date of receipt of a copy of this order.”

8. As rightly pointed out by the learned counsel for the petitioner the facts of the case on hand are almost similar to the facts of the case cited *supra*.

9. Having regard to the facts and circumstances of the case and also the orders of the Division Bench referred *supra*, the order passed by 2nd respondent in Rc.No.950/2016-CS, dated 18-08-2016 is hereby set aside. The 2nd respondent shall pass fresh orders, in accordance with the

above directions, within a period of two weeks from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 07-09-2016

Hsd

