

HON'BLE SRI JUSTICE S.V.BHATT
WRIT PETITION No.7625 OF 2011

ORDER:

The petitioner prays for Mandamus declaring the Proceedings No.Rc.No.429/2008-G dated 24.10.2009 of 3rd respondent, Proceedings A.C.D.Dis.No.3/2010/S7 dated 03.03.2010 of 2nd respondent and Proceedings dated 02.02.2011 of 1st respondent, as illegal, arbitrary and unconstitutional.

The admitted chronology of events necessary for disposal are as follows:

The petitioner was Fair Price Shop Dealer of Palamaru Village, Pedanandipadu Mandal, Guntur District and appointed about 14 years ago as on the date of filing of the writ petition. The 3rd respondent issued show cause notice dated 10.08.2008 calling upon the petitioner to show cause why the subject fair price shop dealership of petitioner shall not be cancelled for charges referred in the show cause notice. On 26.08.2009, the petitioner gave her explanation to the charges levelled against her.

Thereafter, the petitioner did not receive any information from 3rd respondent. On the direction of 3rd respondent, Tahasildar, Padanandipadu submitted a report dated 24.10.2009. On 24.10.2009, the 3rd respondent passed the following order:

“Since the dealer while submitting explanation for the charges framed against her in the show cause notice, has denied all the charges, the Tahsildar, Padanandipadu has been directed to conduct ‘Denovo’ enquiry personally in

Palaparru Village and also at Chilakaluripet Town and submit report. In the reference cited 7th read above, the Tahsildar, has reported that he enquired into the matter in detail along with their staff at Palaparru village and recorded statement from the villagers and kin of family members of the dealer and also enquired the Doctor at his Hospital and further enquired the VRO, Chilakaluripet Town about the residence of dealer and his enquiry reveals that the dealer working as Staff Nurse at Muddana Ramesh Hospital, Chilakaluripet since 4 years and residing at Door No.14-71, Medara bazaar, Chilakaluripet Town since 5 years with her family. It is also reported that the dealer Smt. N. V. Premaleela has never handed over coupons to the office due to her regular duties at Jaya Nursing home, her husband is maintaining the records, is in the habit of filing D.Ds, getting E.Cs and also handing over the coupons in the office. She never attended the office for handing over coupons in the office since her appointment as F.P.Shop dealer of Palaparru. Hence, the explanation filed by the dealer is false and not at all correct.

In view of the above, the F.P.Shop dealership of Smt.N.V.Premaleela of Palaparru Village of Pedanandipadu Mandal is hereby cancelled in the interest of Public Distribution System, since all the charges levelled against her are held proved."

Hence the writ petition.

Mr.I.Koti Reddy counsel for petitioner challenges the cancellation on the ground of arbitrary exercise of power by 3rd respondent. He contends that the show cause notice is dated 10.08.2008. On 26.08.2009, comprehensive explanation was submitted by the petitioner. Under the Control Order, the 3rd respondent is entitled to enquire into

amend, delete or cancel the authorisation of fair price shop dealer. He fairly states that the petitioner is not challenging the jurisdiction of the 3rd respondent to pass appropriate orders if the charges are ultimately found to be correct. But his grievance is that on the supposition that a few mistakes had happened, show cause notice was issued. The explanation of petitioner puts to rest further enquiry. At that stage, there was no material to proceed further against the petitioner. The so-called basis viz. the report of the Tahsildar was not known to petitioner. The petitioner has submitted explanation, and if the 3rd respondent is satisfied with the explanation given by the petitioner, he ought to have dropped further proceedings pursuant to show cause notice dated 10.08.2008. But in the case on hand, contrary to fair and reasonable procedure which the 3rd respondent is expected to follow, the 3rd respondent firstly called for further report from Tahsildar, Padanandipadu, received report on 24.10.2009 and on the very same day, the order of cancellation was passed. He lays much emphasis on each one of the concluding sentences in the order of cancellation and contends that the conclusion is exclusively based upon the report of Tahsildar dated 24.10.2009 and the cancellation is liable to be set aside. Further the copy of report was not given to petitioner and material collected behind the back of petitioner cannot and could not be used for any purpose and hence, cancellation is completely vitiated. He further draws the attention of the Court to the order of joint Collector, who goes a step further, ensures the presence of Tahasildar, hears him and confirms the cancellation.

Therefore, according to him, the very exercise of jurisdiction by 3rd respondent suffers from patent illegality or arbitrariness and liable to be set aside.

The Assistant Government Pleader submits that the 3rd respondent is required to conduct enquiry after issuing the show cause notice. According to him, in the case on hand, the show cause notice was issued, explanation was received and the report is only an incidental matter which can be taken note of by the 3rd respondent as part of his jurisdiction in the purported enquiry he can conduct. Therefore, no exception can be taken.

I have perused the orders impugned in the writ petition and taken note of the contentions of learned counsel for the petitioner and the respondents. *Prima facie*, this Court is of the view that the 3rd respondent having regard to the inspection report dated 15.03.2008, issued show cause notice to petitioner. The petitioner within time has placed her explanation before the 3rd respondent. It is open to 3rd respondent to conduct enquiry on the material received up to show cause notice and the explanation submitted by the petitioner and pass appropriate orders. But in the case on hand, after entertaining a doubt whether the basis of show cause notice is correct or not, it appears from the material on record that a further report was called for from Tahsildar and on the day cancellation order was passed, report dated 24.10.2009 was received. Now the cancellation ordered without communicating the report or furnishing copy to the petitioner. May be that the report substantiates what is stated in the show cause notice,

however, it is made known to petitioner to ensure adherence to principles of natural justice. Added to this, the petitioner admittedly has fair price shop dealership for over 1 ½ decades. Termination in this fashion is illegal and suffers from arbitrariness. As the cancellation is interdicted on technical grounds, the impugned proceedings are set aside and matter is remanded to 3rd respondent for consideration afresh. 3rd respondent is directed to furnish copy of Tahsildar report to the petitioner and pass orders within two months from the date of receipt of a copy of this order. The parties are directed to maintain status quo vis-à-vis the subject shop for a period of three months from today.

The writ petition is allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:09.06.2016

Stp