*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ **WRIT PETITON No. 10129 OF 2012**

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Boggarapu Subramanyam

....Appellant

Vs.

$ The State rep. by the Prl.Secretary and others

.... Respondents

!Counsel for the Petitioner: SRI M.KRISHNA RAO

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

<Gist :

>Head Note:

? Cases referred:

1. 2015(3) ALD 447
2. 2015(5) ALD 81

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITON No. 10129 OF 2012

ORDER:

This writ petition is filed questioning the proceedings in FPSAP No.8/2012 G8 dated 28.03.2012 issued by the Joint Collector, second respondent, in dismissing the appeal preferred by the petitioner against the proceedings No.Rc.2175./2010D dated 05.09.2011 issued by the third respondent and directing the Revenue Divisional Officer, third respondent, to file Criminal Case against the petitioner as illegal and arbitrary and consequently cancel the temporary allotment in favour of the fourth respondent by directing the third respondent to re-appoint the petitioner as fair price shop dealer of FP Shop No.67 of Gajularega Village, Vizianagaram Mandal, Vizianagaram District.

2. The brief facts, in nutshell, are as under:

The petitioner is the Fair Price Shop Dealer of Shop No.67 of Gajularega Village, Vizianagaram Mandal, Vizianagaram District. On a complaint given by a person alleging that the petitioner was in possession of 20 bogus ration cards; drawn the essential commodities on those 20 bogus ration Cards; and diverted the same to black Market to illegal gain, the Revenue Divisional Officer, third respondent, issued suspension proceedings vide Rc.2175/2010D dated 05.09.2011. Aggrieved by the orders of the third respondent, petitioner preferred an appeal before the Collector (Civil Supplies), Vizianagaram. Thereby, the Collector (Civil Supplies) holding that the survey conducted by the special team formed for detecting the bogus cards reveal that out of 22 cards, which are in possession of the petitioner, 20 cards were found bogus and the essential commodities were also drawn for the said cards; that all the records and reports clearly show that the third respondent has rightly suspended the authorisation of the petitioner; and instructed the third respondent to take further necessary action against the petitioner as per the provisions laid down in AP State PDS (Control) Order, 2008 (for short, "Order"). Thereby, the third respondent issued a show cause notice to the petitioner calling his explanation, for which petitioner has submitted his explanation. On perusal of the explanation submitted by the petitioner and as per Rule 17 of the Order, the third respondent holding that the reports and records clearly show that the petitioner has drawn the Essential Commodities on the 20 bogus ration cards, which were shown in the statement, and diverted the same to black market for illegal gain and that violated the Rule 17(a) & © of the AP State PDS (Control) Order, 2008 and Condition (f) of condition 2 of Annexure I of Order, cancelled the authorization of the petitioner.

Aggrieved by the order of the third respondent, petitioner has filed an appeal before the Joint Collector. The Joint Collector by proceedings in FPSAP No.8/2012 G8 dated 28.03.2012 after perusal of the records dismissed the appeal with a direction to the Revenue Divisional Officer, Vizianagaram to take appropriate steps for collecting the amount from the appellant under Rule 17(c) of the Order. It was further held that the irregularities committed by the Dealer is very serious and grave in nature and that the petitioner has cheated the Government and diverted the essential commodities to black market for illegal gain. It was further directed that the Tahsildar, Vizianagaram, shall file criminal case against the petitioner. The Assistant Supply Officer is directed to assist the Tahsildar in filing the criminal case against the petitioner.

3. I have heard learned counsel for the petitioner and learned Government Pleader for Civil Supplies.

4. Learned counsel appearing for the petitioner by placing reliance on the judgments of this Court reported in ***Bandham Varalaxmi v. State of Telangana***[1] and ***K.Balquees Banu v. State of Andhra Pradesh***[2] contends that issuance of the cards is within the exclusive knowledge and prerogative of the respondent authorities and the dealer has nothing to do with the same. Merely because as a dealer, petitioner has delivered schedule commodities to the cardholders, no presumption can be drawn against the petitioner that he was responsible for the issuance of the said cards and he further contends that it is not the case of the Department that the schedule commodities were not delivered to the card holders. The allegation in the finding recorded by the third respondent that the schedule commodities in relation to these 20 alleged bogus cards were delivered inasmuch as

[1] 2015(3) ALD 447
[2] 2015(5) ALD 81

the commodities were delivered to the cardholders through bio metric system.

5. On the other hand, learned Government Pleader submits that the conclusions drawn by the second respondent is based on the local enquiry in which it came to light that the alleged cardholders were not residents of the respective streets and in the addresses mentioned in the cards. As the schedule commodities are being drawn on those cards from time to time, there cannot be any other conclusion other than that the commodities are being drawn in the name of the persons, who are non-existent, and the dealer being a local person ought to be aware of the aspect that there are no such persons in the locality and ought to have brought to the notice of the authorities. Learned government pleader supports the impugned orders passed by respondent Nos.2 and 3.

6. This court while admitting the writ petition had directed that only temporary arrangements must be made but not on a regular basis, as a result of which the petitioner is continuing as a fair price shop dealer. A perusal of the entire record reveals that the only allegation against the petitioner is in relation to the 20 cards, which are termed as bogus cards. This Court in the judgments referred to by the learned counsel for the petitioner, more particularly the judgment reported in ***K.Balquees Banu's*** case**,** after analyizing the method and manner in which cards are issued to the beneficiaries had categorically

held a dealer has no role to place in issuance of the cards. The role of a fair price shop dealer is limited to delivering the schedule commodities to the cardholders and so far as the dealer is concerned he has nothing to do with the genuinety or otherwise of the cards or the card holders. Merely because a dealer supplies the schedule commodities to the card holders, it cannot be said that a dealer has to verify whether a particular person is genuine or not and whether he is not entitled to issue a particular card to avail the benefits under the Public Distribution System. As a matter of fact cardholders are entitled for issuance of the schedule commodities as long as the respective cards stand in their names. The only ground on which a dealer can refuse delivering the schedule commodities to a particular card holder would be that while in the process of issuance of the schedule commodities when the thumb impression taken on the biometric system does not tally with the one recorded in the system. Then alone the dealer can refuse issuance of the schedule commodities. In the case on hand, there is no such finding. As a matter of fact, the second respondent has drawn a presumption that the cards are retained by the dealer merely on account of the fact that the petitioner did not produce the cardholders' for enquiry. It may be born in mind that it is the authority who have alleged that with respect to the 20 cards there were no persons existing. If that is the case, it is for the authorities to explain how such 20 cards came to be issued in the first place. In the given case at best if the authorities find that the 20 cards seeking bogus cards were issued, it may be a case of cancellation of such cards and intimation to the dealer so that to that extent commodities could not issued. The authorities having not done so, the responsibility with respect to the bogus cards cannot be thrust upon the dealer.

7. In these circumstances, the orders of the third respondent as confirmed by the second respondent in cancelling the authorization of the petitioner on the ground of bogus cards being not sustainable, the same is liable to be set aside.

The Writ Petition is accordingly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

September 23, 2016

Note:-
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