

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

W.P.No.34470 of 2015

ORDER:

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

2. This Writ Petition is filed challenging the order dt.13-02-2015 in Rc.No.E.49/13 passed by 2nd respondent directing bifurcation of the cards attached to the petitioner's fair-price-shop No.15 of Kancharapalem, h/o.Utukur village, Vidavalur Mandal, SPS Nellore District.

3. The petitioner is the dealer of fair-price-shop No.15 of Kancharapalem, h/o.Utukur village. The 2nd respondent on 11-02-2013 issued proceedings No.Rc.E.53/2013 proposing bifurcation of the cards and creation of a new Fair-price-shop at Kancharapalem. This was questioned by the petitioner before the Director of Civil Supplies, Andhra Pradesh, Hyderabad.

4. By proceedings dt.25-02-2014 in DCS Progs. No.N1/4302/2013, the said order of the District Collector dt.11-02-2013 was set aside and in the said order it is specifically recorded that number of cards available with the petitioner's fair-price-shop were 587. The Director of

Civil Supplies, Andhra Pradesh, Hyderabad, observed as under:

“The contention of the counsel for the appellant is that after bifurcation of the appellant’s fair price shop, the total number of BPL cards attached to the appellant’s FP Shop are only 251 BPL cards and 336 BPL cards are proposed to attach to newly created FP shop, as against the minimum of 400 to 450 BPL cards, as stipulated in G.O.Ms.No.35 dt.17-09-2007. As such running of FP shop with such meager cards is not economically viable and bifurcation of his FP shop is against the guidelines issued by Government.

According to para 6 (v) of G.O.Ms.No.35, C.A., F & C.S Dept. dt.17-09-2007 in rural areas, each Gram Panchayat (v) should have at least one FP Shop with a minimum of 400 to 450 BPL cards and 50 APL cards. In case, there are more number of cards in excess of the minimum number of cards i.e. 400 BPL and 50 APL in a village there can be two FP shops, provided the total number of BPL cards in that village is not less than 600 and the number of BPL and APL cards should be attached to the two FP shops equally.

In this case, the existing FP shop No.15 of Kancharapalem village, Utukur village, Vidavalur Mandal, is having only 251 cards and it was proposed to attach 336 BPL cards to the newly created FP shop. Therefore, the orders of the Collector, SPSR Nellore are not in accordance with G.O.Ms.No.35, Consumer Affairs, Food & Civil Supplies Dept., dt.17-09-2007. Therefore, I am constrained to set aside the orders dt.11-02-2013 in proceedings No.E.53/2013.”

5. However, notwithstanding the above order, which has attained finality, the 3rd respondent again submitted proposals on 08-01-2015 for bifurcation of the cards attached to the petitioner’s shop and for creation of new shop at main village of Kancharapalem.

6. The 2nd respondent then passed the impugned order on 13-02-2015 stating that there ought to be bifurcation of the cards of the petitioner's shop and new fair-price-shop could be created in the main village of Kancharapalem. In this order, it is stated by 2nd respondent that 641 cards were attached to the petitioner's fair-price-shop.

7. There is no reference in the impugned order to the order dt.25-02-2014 of the Director of Civil Supplies, Andhra Pradesh, Hyderabad, which official is superior in rank to 2nd respondent. There is also no finding recorded therein as to how the 587 cards, which were there in February 2014, when the Director of Civil Supplies, Andhra Pradesh, Hyderabad passed the order on 25-02-2014 became 641 cards. The petitioner was also not put on notice by 2nd respondent.

8. It is not open to 2nd respondent to pass an order contrary to the order dt.25-02-2014 passed by the Director of Civil Supplies, Andhra Pradesh, Hyderabad in respect of bifurcation of the same shop without even referring to the said order and giving findings contrary to the said order. Discipline in administration require that orders of officers holding superior rank are followed by the officers of lesser rank.

9. Therefore, the impugned order is set aside

and the consequential Notification dt.01-10-2015 issued by 3rd respondent calling for applications for appointment of fair-price-shop dealers on permanent basis for newly created shops of Kancharapalem main village is also set aside.

10. Accordingly the Writ Petition is allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-02-2016

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