

THE HON'BLE SRI JUSTICE M.S.K. JAI SWAL

WRIT PETITION No.3069 of 2009

ORDER:

This writ petition is filed questioning the proceedings of the 1st respondent, by and under which, the revision filed by the petitioner against the order of the 2nd respondent, dated 30.11.2007 was rejected. The 3rd respondent, vide proceedings dated 07.12.2005, cancelled the fair price shop dealership of the petitioner for the fair price shop of Khajipalem village of P.V.Palem Mandal. The petitioner though approached before the appellate authority and revisional authority, she could not succeed and hence the writ petition.

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies.

3. The petitioner was a fair price shop dealer of Khajipalem village. On the basis of a news item, published in "Andhra Jyothi" telugu daily, dated 06.05.2005, stating that the rice which was being transported illegally was intercepted, the 4th respondent/Mandal Revenue Officer inspected the fair price shop of the petitioner and found variation in the stock existed in the shop and the entries made in the register, viz., 13.29 quintals of rice with reference to coupons and 185 litres of kerosene oil.

4. Charge was framed against the petitioner alleging that the petitioner is guilty of diverting the stocks to the black market. She was also prosecuted in a criminal court where she was acquitted. To the charges framed, the petitioner offered her explanation stating that due to village politics, a false news item was published in the news paper and in her absence, the shop was inspected and noted variation in the stocks.

The petitioner has contended that she has distributed the rice and kerosene oil to the cardholders, but could not make entries in the register due to ill health, and the person who was assisting her also did not make entries properly, due to which, the variations were noticed. The petitioner further sought for an open enquiry to ascertain as to whether she has committed any error.

5. The 3rd respondent/Revenue Divisional Officer considered the explanation of the petitioner and passed an order on 07.12.2005. A perusal of the said order shows that after extracting the explanation of the petitioner, the 3rd respondent has observed as under:

“Perused the connected records, charges framed against the dealer and explanation offered by the dealer. The explanation of the dealer to the variation occurred in P.D.S rice and kerosene is not satisfactory and not acceptable. The variation of stocks is very large.”

6. Consequently, the 3rd respondent has cancelled the fair price shop dealership of the petitioner. Aggrieved thereby, an appeal was preferred before the 2nd respondent/Joint Collector, which was also dismissed, and the revision preferred before the 1st respondent/District Collector was also rejected.

7. The learned counsel for the petitioner submits that none of the three authorities have passed any speaking order and did not consider the explanation offered by the petitioner and without conducting any enquiry, has visited the petitioner with the major punishment of cancellation of her fair price shop dealership, and hence the impugned order cannot be sustained.

8. The learned counsel for the petitioner has relied upon the decisions of this Court in *M.Sadasiva Sekhar v District Collector*¹, *C.Durga Srinivas Rao v The State of Andhra Pradesh*² and *B.Manjula v District Collector*³ which have direct bearing to the facts of the case.

9. The power of the 3rd respondent/Revenue Divisional Officer to impose penalties on fair price shop dealers is contained in sub-clause (5) of Clause 5 of the A.P.State Public Distribution System (Control) Order 2008, which reads as under:

"The appointing authority may, at any time whether at the request of the authorised fair price shop dealer/nominated retailer/hawker or authorised establishment on suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorisation issued or deemed to be issued to him under this clause".

10. In *B.Manjula v District Collector* (3 supra), the learned single Judge has taken into consideration the above provision and in paragraphs-9 and 10 and observed as under:

"9. This Court is conscious of the fact that the law discussed above was laid down by the Courts in the context of disciplinary proceedings against Government servants and it may not be possible to adhere to the same rigors of procedure in an enquiry against a fair price shop dealer. However, this Court is of the considered opinion that since an order of cancellation of fair price shop visits the dealer with adverse consequences, the appointing authority must adhere to the fundamental ingredients of an enquiry. The enquiry need not be too elaborate as in the case of a disciplinary proceeding against a Government servant, but it shall follow the basic requirement of an 'enquiry' which in my view must be as described infra.

¹ 2003 (2) ALD 843

² 2015 (6) ALD 359

³ 2015 (3) ALD 617

10. An 'enquiry' pre-supposes an opportunity of personal hearing to the dealer to explain his/her case based on the records such as sales and stock registers. If need be, such 'enquiry' must also include recording the sworn statement of the dealer and witnesses, if any, from his/her side. In cases where either card holders or other persons sent any complaint, they must also be examined in the presence of the dealer or his/her lawyer and the dealer shall be given an opportunity of cross-examining such persons. The licencing/disciplinary authority shall also supply to the dealer all the reports on which he is likely to place reliance to the detriment of the dealer. Unless the dealer has no explanation at all to offer, the licensing/disciplinary authority is bound to hold a detailed enquiry.”

11. In the instant case also, the appointing authority did not adhere to the fundamental requirements of conducting any enquiry and without even discussing the explanation offered by the petitioner, has merely stated that the explanation is not satisfactory and acceptable. This reasoning of the 3rd respondent do not stand scrutiny, in view of the observations of this court made in *B.Manjula v District Collector* (3 supra), as extracted above.

12. In addition to the above, the order of the 3rd respondent is challenged on the ground that the same is not a speaking order. This aspect was also dealt with by the learned single Judge in *B.Manjula v District Collector* (3 supra) at paragraph No.15, which reads as under:

“15. Unfortunately, a perusal of the impugned order shows that respondent No. 3 has not even attempted to hold an enquiry and he has allowed himself to be swayed away by the report of the Tahsildar, Gonegandla without trying to test the veracity of the explanation offered by the petitioner. Unless the petitioner is given an opportunity of substantiating her explanation, it would be a grave travesty of justice to reject her explanation without holding an enquiry. As respondent No. 3 has not followed this procedure, the impugned order cannot be sustained and the same is accordingly set-aside. The orders of respondent Nos. 2

and 1, which confirmed the order of respondent No. 3 are also set-aside. The fair price shop authorisation of the petitioner stands restored and she shall be permitted to function as the fair price shop dealer. This order, however, will not prevent respondent No. 3 from holding a detailed enquiry in the light of the observations made hereinbefore and pass a fresh order.”

13. In the instant case also, the primary authority has neither given any reasons for rejecting the contentions of the petitioner nor afforded any opportunity of being heard to the petitioner to substantiate her explanation. As stated above, both the appellate authority and revisional authority have merely followed the observations of the 3rd respondent and rejected the appeal and the revision.

14. In view of the above, following the decision in *B.Manjula v District Collector* (3 supra), I feel that it is a fit case where the impugned order cannot be sustained and the same is liable to be set aside.

15. Accordingly, the Writ Petition is allowed. The order impugned is set aside. The matter is remanded back to the 3rd respondent to conduct enquiry afresh, by giving an opportunity of being heard to the petitioner and pass appropriate orders, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 07.11.2017
Dsr