

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.1124 of 2008

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in W.P. No. 12055 of 2007 dated 18.6.2007. The appellant herein is the petitioner in the writ petition. He filed the writ petition questioning the action of the Revenue Divisional Officer in not restoring his fair price shop dealership consequent on his acquittal in C.C. No. 353 of 2004.

By proceedings dated 15.10.2005, the Revenue Divisional Officer, Anantapur cancelled the fair price shop authorisation of the appellant-writ petitioner on the ground that the petitioner had handed over 83 quintals of rice to the Village Secretary on 8.2.2003; with regards the remaining 110 quintals of food for work rice, the petitioner had claimed to have handed over coupons equivalent to 110 quintals of rice; if this contention was right, then all the 1925.04 quintals of rice was not supplied at a time; the supply may have been made on several occasions; even with regards his claim that he had handed over coupons of 110 quintals of rice, the petitioner did not produce the acquittance register as proof of his having distributed 110 quintals of rice to the coupon holders; this defence of his was only to escape from responsibility; and as the petitioner had stored 193 quintals of rice, and as there was a variation of rice of 110 quintals of the food for work programme, his fair price shop authorisation necessitated cancellation.

On Crime No. 88 of 2002 being registered under Section 409 IPC, a charge sheet was filed in C.C. No. 363 of 2004 which ended in his acquittal by order dated 28.2.2006. Thereafter, the appellant-writ petitioner made several representations to the respondents, including the representation dated 11.5.2007, seeking restoration of his authorisation; and, on the ground that they did not restore his authorisation, he invoked the jurisdiction of this Court relying primarily on Clause 5(4) of the Public Distribution Control Order, 2001 (for short 'the 2001 Control Order') and its proviso.

The learned Single Judge has, in the order under appeal, observed that the authorisation of the petitioner was not cancelled on the ground of his conviction by a Court of law; an enquiry was conducted independently into the alleged misappropriation of 193 quintals of food for work rice, in contravention of Clause 17 and Clause 22 (vii) of 2001 Control Order; after giving him an opportunity to explain the said allegations and, on the basis of the findings recorded, the authorization was cancelled; the said order squarely falls under the first part of Clause 5(4) of the 2001 Control Order; the proviso, which is only applicable to the second part of Clause 5(4), has no application; and the mere fact that the petitioner was acquitted in the criminal case does not entitle the petitioner to seek a mandamus compelling the respondents to restore his fair price shop authorisation.

The fact that 193 quintals of rice, meant to be supplied to the poorest of the poor under the food for work programme, was not supplied to them by the appellant-writ petitioner is not in dispute. As has been rightly held by the learned Single Judge, the petitioner's fair price shop authorization was not cancelled because

of his conviction in a criminal case, but on an independent enquiry being caused, and the charges levelled against him being established.

Clause 5(7) of the A.P. State Public Distribution System (Control) Order, 2008, which is in *para materia* with Clause 5(4) of the 2001 Control Order stipulates that, where a fair price shop dealer is convicted by a Court of law in respect of contravention of any order under Section 3 of the Essential Commodities Act, 1955, his authorisation is required to be cancelled. Under the proviso thereto, on the conviction being set aside in appeal, the authority may restore the cancelled authorization by issuing re-authorization to such a person.

Clause 5(4) of the 2001 Control Order confers power on the appointing authority to cancel the authorization on the conviction of a fair price shop dealer in a criminal case. The proviso requires the appointing authority, on such conviction being over-turned in appeal, to consider restoring the cancelled authorization. Clause 5(4) and its proviso apply only where the authorization of a fair price shop dealer is cancelled on his conviction in a criminal case. In the present case, the appellant-writ petitioner's fair price shop authorization was not cancelled because of his involvement in a criminal case, but on an independent enquiry being caused into the irregularities committed by him for non-supply of 193 quintals of P.D.S rice meant for those whose services were engaged under the food for work programme. The petitioner has not been convicted by a Court of law and, consequently, Clause 5(4) of the 2001 Control Order has no application. We find no error in the order of the learned Single Judge, much less a patent illegality, necessitating

interference in an intra-Court appeal under Clause 15 of the Letters Patent.

The writ appeal fails and is, accordingly dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

7th February, 2017

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