

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

**WRIT PETITION Nos.19052, 19053, 19077, 19080, 19082,
19084, 19139, 19002, 19153, 19251 AND 19279 OF 2017**

COMMON ORDER:

Since the subject matter in all these writ petitions are one and the same, all these writ petitions are disposed of by way of this common order.

2. The common grievance of the petitioners in all these writ petitions is to declare the impugned order of the Revenue Divisional Officer, Kurnool - 3rd respondent, in R.C.B.No.1303/2016, dated 24.05.2017, cancelling the authorization of all the petitioners as Fair Price Shop Dealers of Nandikotkur, Kurnool District in flagrant disregard to law, contrary to his own findings, as illegal, arbitrary and is in violation of Articles 14 and 21 of the Constitution of India.

3. Heard learned counsel for the petitioners and also the learned Government Pleader for Civil Supplies at length and perused the prayers respectively in the writ petitions with the supporting affidavits and the impugned orders and the other material on record including in pointing out similarly situated allegations in relation to more than 100 shops of Kurnool District were exonerated but for the 11 petitioners is one of the complaint including from the very averments in the supporting affidavit by showing some of such orders passed

by the self-same Revenue Divisional Officer concerned and also perused the counter affidavit with the enclosures regarding the alleged irregularities in support of what the door to door enquiry conducted by the Tahsildar concerned at the instructions of the Disciplinary Authority/Revenue Divisional Officer and also perused the propositions placed reliance.

4. A perusal of the prayers in the respective writ petitions involved the common question of fact practically but for the difference in the number of persons shifted or number of persons died leave about but for few no particulars as to date of death, whether before drawal or subsequent to that and whether the dealer knows and intentionally allowed the provisions to be drawn knowing about the death.

5. No doubt, as per the expression of the Division Bench of this Court in ***Ambati Srinivasulu Vs. District Collector, Nellore and others***¹, the Disciplinary Authorities' order in question is a quasi-judicial, it must be supported by cogent reasons to the conclusion with reference to the material to the affected party must know on what reasons the very dealership is terminated by putting an end. Needless to say such a termination of the very dealership is practically a civil death of his license to run the business already duly given concerned. As it affects the very eking out the livelihood

¹ 2006 (1) ALT 273

therefrom for the alleged irregularities. Once such is the case, the dealer must know from reading of the order what are the irregularities.

6. No doubt, the principles of natural justice, unless those are specifically embodied, depends upon fact of each case to the extent applied as they are not governed by any statutory provisions, but for to meet the natural justice with opportunity of presenting a case at best. There are set of expression saying once objections are filed, there is no contemplation of a personal hearing even but for to consider. However, in saying, once objections are filed in passing the orders, the objections shall be met, without which, such an order is unsustainable.

7. Apart from it, the expression of the Division Bench of this Court in ***M.Shashikala Vs. The Collector, Civil Supplies, Mahabubnagar District and another***², which is also on the allegation of the irregularities allegedly committed by the fair price shop dealers, the question came therein was the cancellation of the dealership without initiating the disciplinary proceedings, mainly because of Section 6A of the Essential Commodities Act proceedings pending is held unsustainable and in considering the scope of law in this regard and the right to business envisaged in Article 19(1) of the Constitution of India and the limitations therein

² 1997 (2) ALT 574

envisaged in Article 19(2). It is observed that a person who has been subjected to disciplinary action for a wrong doing should not be allowed to function under the interim order of the court. In all such cases as it is not the interest of the said party alone but the public interest which is of utmost importance that also must be weighed by the Court as if a person shown committed the irregularities it is one whose conduct that effects the large body of the consumers entitled to the essential commodities. It is in this contest observed that by referring to Article 19(1)(g) of the Constitution of India that there is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all, whenever such a conflict comes before the court, it is the duty of the court to harmonise the exercise of the competing rights. The court must balance thereby the individual rights of freedom of trade under Article 19(1)(g) as against the public interest, irrespective of the scope of Article 226 of the Constitution of India is of wide amplitude in exercise of the discretion in entertaining and in passing appropriate orders, so that the High Court can reach injustice whenever it is found and to mould the reliefs to meet the peculiar and complicated requirements of the country. This Court in exercise of the writ jurisdiction under Article 226 acts as a court of equity and while exercising such jurisdiction, it so acts to prevent perpetration of a legal fraud and is also obliged to do justice

by promotion of good faith. It can also thereby mould the relief to compel the authorities to perform their duty in accordance with law wherever required.

8. Having regard to the above, the said principles to be kept in mind in disposal of these matters, because the two division bench expressions are in respective of the civil supplies dealership rights, coming to the facts on hand, from the material placed on record, the very 3rd respondent – Revenue Divisional Officer, being the Disciplinary Authority in respective of several dealers from the instructions given to the 4th respondent or similar Tahsildars of the respective areas of the Mandals concerned from the door to door verification, having found some persons out of the consumers of the area of the dealership of the respective dealers either died or shifted and few available examined stated as essentials drawn and for majority even not available in stating there is nothing positive to find fault to cancel the dealership in continuing the same or restoring by setting aside the interim suspension as the case may be. However coming to the 11 persons in question by referring to the proceedings of the Tahsildar even several persons found shifted and not available and could not be examined went wrong in observing the dealers in question could not established the provisions were supplied. It is not even the case of by supply of the door to door verification record to the petitioners dealers in question and seeking their

detailed explanation in relation to it and not even a case of finding of the bogus cards alleged, if not to cancel by the authorities, the dealer in question perpetrated either in creation or in supply pursuant thereto knowingly so also for the dead persons.

9. Having regard to the above and in the absence of such opportunity and such finding, the orders in question *per se* unsustainable and are liable to be set aside, however, by remanding the matters back to the Revenue Divisional Officer with a direction to supply the copies of the door to door verification reports of the Tahsildar to the individual dealers/the petitioners in question, if not they already received the same and by affording opportunity to them, within ten days from the date of receipt of a copy of this common order, to submit their detailed explanations in relation thereto and pass appropriate orders if necessary by giving personal hearing and every order must support for the individual case the reasons to the conclusions *supra*.

10. With the above directions and observations, these writ petitions are disposed of, to complete the said process of enquiry within two months from the date of submission of their explanations. Needless to say, if within the two months the enquiry could not be completed for any reason, which is not attributable to the petitioners solely, their licenses shall

be revived and to be permitted to draw the essential commodities as if alive until the final orders being passed.

11. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

14.07.2017
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