

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.14541 OF 2017

ORDER:

This Writ Petition is filed, under Article 226 of the Constitution of India, challenging the order of cancellation of fair price shop authorization of the petitioner in respect of Shop No.32 of O.Kothapalli Village, Railway Kodur Mandal, Y.S.R. District, issued by the Revenue Divisional Officer, Rajampet, vide proceedings reference No.D/25/2017, dated 25.03.2017.

2. Heard Sri V.R.Reddy Kovvuri, learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. The Revenue Divisional Officer, Rajampet, issued a show-cause notice, vide Ref.D/25/2017, dated 17.01.2017, pursuant to the report of the Tahsildar, Railway Kodur, on 05.01.2017, framing the following charge:

“Charge 1:- The Vigilance and Enforcement Officer have reported that on verification of physically stocks available in the F.P Shop with reference to the ePOS machine there is huge variation of 153.5 kgs of Rice, 67.47 kgs of Sugar, 131.20 litres of Kerosene found less in the F.P Shop. It is clearly established that the F.P. Shop Dealer has violated the APSPDS (Control) Order 2008.”

4. In response to the said show-cause notice, the petitioner herein submitted an explanation on 28.01.2017, denying the said charge item-wise. The Revenue Divisional Officer, Rajampet-3rd respondent herein passed an order vide proceedings Ref.No.D/25/2017, dated 25.03.2017, ordering cancellation of the fair price shop authorization of the petitioner herein.

5. According to the learned counsel for the petitioner, the impugned order of cancellation is illegal, arbitrary and opposed to the very spirit and object of the provisions of the Control Order, 2008.

6. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgment of this Court in the case of **B.Manjula v. District Collector, Civil Supplies, Kurnool and others**¹.

7. On the contrary, it is submitted by the learned Government Pleader that there is no illegality nor there is any procedural infirmity in the impugned action of the respondents and in the absence of the same, the impugned order is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted that the Revenue Divisional Officer passed the impugned order only after giving opportunity to the petitioner, as such no interference of this Court is warranted. In support of his submissions and contentions, the learned Government Pleader placed reliance on the Division Bench Judgment of this Court in Writ Appeal No.312 of 2015.

8. In the case of **B.Manjula's case (supra)**, this Court at paragraphs 9 to 12 and 15 held 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

¹ 2015 (3) ALD 617

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.

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. The experience of this Court reveals that the appointing authorities of fair price shop dealers are dispensing with the requirement of making personal enquiry by summoning the dealers. They are merely relying upon the reports sent by their subordinates i.e., Deputy Tahsildars and Tahsildars, behind the back of the dealers and resting their decisions solely upon those reports. This procedure is anathema to the concept of enquiry which otherwise means affording the dealer an opportunity of a fair hearing.

12. As regards the second mandatory requirement under sub-clause (5) of Clause 5, namely; reasons to be recorded in writing, reasons constitute the heart and soul of a decision. In *Madhya Pradesh Industries Ltd. Vs. Union of India and others* [AIR 1966 SC 671], the Supreme Court, while dealing with an order passed by the Central Government under Rule 55 of the A.P. Mineral Concession Rules 1960, emphasized on the need for giving reasons in

support of the order. The Supreme Court inter alia held that the condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the Tribunals within bounds.

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.

In the above said judgment, this Court, having elaborately considered earlier judgments of the Honourable Apex Court as regards the opportunity of being heard, allowed the Writ Petition.

9. In the present case on hand also, the Revenue Divisional, Officer passed the order under challenge, though taken into consideration the reports of the authorities, did not deal with the contents of the explanation offered by the petitioner herein or adhered the principles laid down in **B.Manjula's** case.

10. The Judgment cited by the learned Government Pleader in the case of **State of A.P. v. M.G.Basha** [W.A.No.312 of 2015], in the considered opinion of this Court, would not render any assistance to the learned Government Pleader herein. In the instant case, the Revenue Divisional Officer passed the final order of cancellation, but not suspension pending enquiry.

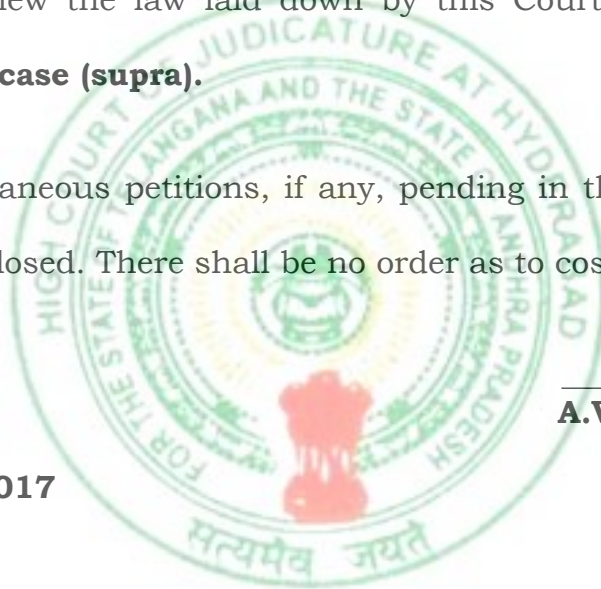
11. Therefore, the Writ Petition is allowed setting aside the order, dated 25.03.2017, and the matter is remanded to the 3rd respondent for fresh consideration, in accordance with law, keeping in view the law laid down by this Court in the case of **B.Manjula's case (supra)**.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

APRIL 25, 2017

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A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V. SESA SAI



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Date: 25.04.2017

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