

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

WRIT PETITION NO.39789 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the action of the second respondent in cancelling the authorization of the petitioner to run Fair Price Shop vide proceedings in RC.No.287/2016-E, dated 19.09.2016, as illegal, arbitrary and in violation of principles of natural justice.

2. The facts, which are relevant for disposal of this writ petition, are succinctly, as follows:

The petitioner was appointed as a Fair Price Shop (FPS) dealer in respect of FPS No.30, Macherla Town, Guntur District. While so, on 08.05.2016, the D.S.P., Vigilance and Enforcement department, Guntur along with the third respondent inspected the shop of the petitioner, and found variation in stock i.e., PDS rice, sugar and kerosene oil, and registered a case under Section 6A of the Essential Commodities Act (the EC Act). Basing on the report submitted by the third respondent, the second respondent issued show-cause notice dated 12.05.2016 directing the petitioner to submit her explanation as to the variation in stock. Despite giving ample time, the petitioner did not submit explanation. The second respondent, vide order dated 25.05.2016, temporarily suspended the authorization of the petitioner. The second respondent framed the charges for violation of Clause 17 (b) & (c) of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, and issued show-cause notice dated 18.07.2016 directing the petitioner to submit her explanation. The petitioner submitted the explanation on 28.07.2016. Aggrieved by the suspension order dated 25.05.2016, the petitioner filed writ petition

No.18466 of 2016. This Court, while disposing of the said writ petition, directed the second respondent to consider the explanation already submitted by the petitioner and pass final orders after affording opportunity of hearing. Basing on the material available on record and personal hearing of the petitioner on 28.7.2016, the second respondent passed the impugned order finding that the petitioner violated Clause 17 (b) & (c) of the Control Order and cancelled the authorization of the petitioner. Assailing the impugned order, the present writ petition is filed.

3. Learned counsel for the petitioner submitted that the second respondent passed impugned order in violation of principles of natural justice. He further submitted that the order passed by the second respondent is not sustainable either on facts or in law. Per contra, the learned Government Pleader for Civil Supplies submitted that the second respondent has given opportunity, at every stage of the enquiry, to the petitioner. He further submitted that the petitioner violated Clause 17 (b) & (c) of the Control Order. He further submitted that the writ petition is not maintainable in view of Clause 20(2) of the Control Order.

4. A perusal of the record reveals that on 08.05.2016 the third respondent inspected the shop of the petitioner and found the following variation in stock: (1) PDS rice – 9.29 Qtls shortage, (2) Sugar – 0.26 Qtls shortage and (3) Kerosene Oil – 102 Ltrs shortage. The second respondent temporarily suspended the authorization of the petitioner vide proceedings in RC.No.287/2016-E dated 25.05.2016 and issued show-cause notice to the petitioner calling for her explanation for variation in stock. In pursuance of the order dated 25.5.2016, in writ petition No.18466 of 2016, the second respondent issued another notice dated 18.07.2016 directing the petitioner to appear before him on 28.07.2016 at

11.00 AM. The petitioner submitted her explanation on 28.07.2016 taking a specific stand that shortage in the stock was due to receipt of less stock from MLS point. The petitioner has not raised any objection for receipt of less stock at point of time much less at the time of receiving the same. The possibility of taking this type of pleas, in order to overcome the laches on the part of the petitioner, cannot be ruled out completely. The second respondent basing on the material available on record, and after hearing the petitioner, arrived at a conclusion that there is a variation in the stock. The factum of variation in the stock is not being disputed by the petitioner. The finding of the second respondent that there is variation in the stock, at the time of inspection by the Vigilance and Enforcement officials, is supported by the panchnama.

5. As per Sub-clause (1) of Clause 24 of the Control Order, no prosecution or disciplinary proceedings shall be initiated against FPS dealer if the variation in respect of a single commodity is up to 1.5%. However in this case, the variation in PDS rice is 16.37%, sugar is 15.56% and Kerosene oil is 28.65%. In view of the variation, which is much more than the permissible limits, cancellation of authorization of the petitioner is justified. The findings recorded by the second respondent are based on evidence much less legally admissible evidence. The second respondent has assigned reasons much less cogent and valid reasons to his findings. The impugned order does not warrant interference, either on facts or in law.

6. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioner that the second respondent has conducted the enquiry in gross

violation of principles of natural justice. I am fully endorsing the findings recorded by the second respondent.

6. In paragraph No.11 of the writ affidavit the petitioner has taken a specific plea that, "*That there is no other effective alternate remedy except to approach this Hon'ble Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India*". This clearly indicates that the petitioner approached this Court as if he is not having efficacious alternative remedy to ventilate her legitimate and legal grievances. Sub-Clause (2) of Clause 20 of the Control Order provides for an appeal to the Joint Collector against the order passed by the Revenue Divisional Officer under Clause 5(5). As per the provisions of the Control Order, 2008, an alternative efficacious remedy is available to the petitioner to challenge the impugned order. By circumventing the procedure contemplated under the Control Order, the petitioner approached this Court by filing the writ petition without exhausting the remedy as provided under Sub-Clause (2) of Clause 20 of the Control Order, 2008. Viewed from this angle also, the writ petition is not maintainable. The writ petition lacks merits and *bona fides*.

7. In the result, the writ petition is dismissed. Miscellaneous petitions if any pending in this writ petition shall stand closed.

T.Sunil Chowdary, J

23.4.2018
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