HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition Nos.10490 and 12324 of 2012

COMMON ORDER:

The petitioners were placed under suspension by proceedings dated 22.10.2010 wherein it is recorded that a perusal of the report of the Deputy Tahsildar (Civil Supplies) confirmed that the petitioners, dealers of fair price shop Nos.14 and 23 of Vizianagaram Town, had released essential commodities i.e. public distribution system rice and sugar on some bogus cards, and had diverted the same to the black-market, for illegal gain. While the suspension order no doubt refers to the diversion of PDS rice and sugar to the black-market on the basis of bogus cards, the show-cause notice issued to the petitioners on 20.03.2011, along with several other fair price shop dealers, refers only to the petitioner being in possession of bogus cards, and makes no reference to the diversion of essential commodities to the black market.

A Learned Single Judge of this Court, in his order in W.P.No.10129 of 2012 dated 23.09.2016, held:-

"….. This Court, while admitting the writ petition, had directed that only temporary arrangements must be made but not on a regular basis, as a result of which the petitioner is continuing as a fair price shop dealer. A perusal of the entire record reveals that the only allegation against the petitioner is in relation to the 20 cards, which are termed as bogus cards. **This Court in the judgments referred to by the learned counsel for the petitioner, more particularly the judgment reported in K.Balquees Banu v. State of Andhra Pradesh[1], after analyzing the method and manner in which cards are issued to the beneficiaries, had categorically held a dealer has no role to play in issuance of the cards. The role of a fair price shop dealer is limited to delivering the schedule commodities to the cardholders and so far as the dealer is concerned he has nothing to do with the genuinety or otherwise of the cards or the card holders. Merely because a dealer supplies the schedule commodities to the card holders, it cannot be said that a dealer has to verify whether a particular person is genuine or not and whether he is not entitled to issue a particular card to avail the benefits under the Public Distribution System. As a matter of fact cardholders are entitled for issuance of the schedule**

[1] 2015 (5) ALD 81

commodities as long as the respective cards stand in their names. The only ground on which a dealer can refuse delivering the schedule commodities to a particular card holder would be that while in the process of issuance of the schedule commodities when the thumb impression taken on the biometric system does not tally with the one recorded in the system. Then alone the dealer can refuse issuance of the schedule commodities. In the case on hand, there is no such finding. **As a matter of fact, the second respondent has drawn a presumption that the cards are retained by the dealer merely on account of the fact that the petitioner did not produce the cardholders' for enquiry. It may be borne in mind that it is the authority who have alleged that with respect to the 20 cards there were no persons existing. If that is the case, it is for the authorities to explain how such 20 cards came to be issued in the first place. In the given case at best if the authorities find that the 20 cards seeking bogus cards were issued, it may be a case of cancellation of such cards and intimation to the dealer so that to that extent commodities could not be issued.** The authorities having not done so, the responsibility with respect to the bogus cards cannot be thrust upon the dealer….." (emphasis supplied)

While Sri V.Mallik, Learned Counsel appearing on behalf of the petitioners, would submit that, in view of the aforesaid judgment, the impugned order is liable to be quashed, Learned Government Pleader for Civil Supplies would submit that action was taken against the petitioners not only for being found in possession of bogus cards, but also for diversion of stocks to the black-market.

While the order of suspension no doubt refers to the diversion of stocks to the black-market, the subsequent show-cause notice, which formed the basis for initiating action, against the fair price shop dealers, for cancellation of their fair price shop authorization, is only on the ground that they were in possession of bogus cards. The said show-cause notice dated 20.03.2011 makes no reference to the diversion of stocks to the black-market. As the entire basis for action, being taken against the petitioners, is the show-cause notice, and the show-cause notice makes no reference to diversion of stock to the black-market, which allegation formed part of the earlier suspension order, I see no reason to take a view different from that of the Learned Single Judge in his order in W.P.No.10129 of 2012 dated 23.09.2016.

Following the said order, and in terms thereof, the impugned orders are set aside. Both the Writ Petitions are, accordingly, allowed. However, in the circumstances, no costs. The Miscellaneous Petitions pending, if any, shall also stand closed.

RAMESH RANGANATHAN, ACJ.

Date:06th July, 2018.
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