

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

WRIT PETITION NO.43716 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 D.Dis.No.D1CS/1835/2016 dated 19.9.2016 basing on the proceedings initiated against the petitioner under Section 6A of the Essential Commodities Act, 1955 (for short, the EC Act), 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.31, Ananthapuramu Urban. While so on 10.8.2016 the Regional Vigilance and Enforcement Officials raided the shop of the petitioner and found variation in stocks i.e., rice, sugar, wheat and kerosene oil. Basing on the report submitted by the third respondent, the second respondent issued a show-cause notice dated 19.8.2016 for which the petitioner submitted explanation on 19.9.2016. The second respondent suspended the authorization of the petitioner, vide proceedings in D.Dis.No.D1CS/77/2016 dated 19.9.2016, basing on 6A proceedings. The second respondent framed charge and issued notice to the petitioner calling for his explanation. After completion of the enquiry, the second respondent passed the impugned order dated 19.9.2016 finding that variation in the stock is more than permissible limit one and cancelled the authorization of the petitioner. Aggrieved by the said order, the present writ petition is filed.

3. The second respondent filed written statement inter alia contending that he cancelled the authorization of the petitioner after conducting disciplinary enquiry by following the procedure as contemplated under Andhra Pradesh State Public Distribution System Control Order, 2008 (for short, the Control Order, 2008). The impugned order is not solely based on the proceedings initiated against the petitioner under Section 6A of the EC Act. Hence the writ petition is not maintainable.

4. The learned counsel for the petitioner strenuously submitted that the second respondent cancelled the authorization of the petitioner solely basing on 6A proceedings, which is contrary to the Government Memo in CCS Memo.No.21/100/2015-AD1.PP.CCS, dated 28.09.2015; hence, the impugned order is not sustainable either on facts or in law.

5. The learned Government pleader for civil supplies submitted that the second respondent has conducted disciplinary proceedings against the petitioner, after affording reasonable opportunity to the petitioner; therefore, the writ petition is not maintainable. The second respondent has not cancelled the authorization of the petitioner solely basing on 6A proceedings as contended by the petitioner. He further submitted that the petitioner, without availing the statutory remedy, straight-away approached this court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India; therefore the writ petition is liable to be dismissed.

6. To substantiate the contention, learned counsel for the petitioner has drawn the attention of this Court to the following decisions:

(i) In *P.Hanumantha Rao v Chief Rationing Officer*¹, this Court held at paragraph No.4 as follows:

4. ... The mere fact that the Vigilance Cell officials registered a case against the petitioner and arrested him, was perhaps found sufficient to direct immediate suspension of the licence and there is no other indication in the impugned order. It is axiomatic that an authority to whom statutory power is vested has to apply his mind independently and to reach a conclusion-prima facie or otherwise whether any order is to be passed in exercise of that power. The prima facie satisfaction must be that of the 2nd respondent but not that of the Vigilance Officials. It may be that while exercising the power of suspension pending further enquiry, the adverse material which has come to light in the course of investigation by the Vigilance Officials can be taken into account. But there should not be mechanical exercise of power based merely on a report that a vigilance case has been filed against the petitioner. Secondly interim suspension of the authorisation cannot be made on the ground of mere pendency of 6-A enquiry. There is no such provision in the Control Order. In the very nature of things, interim suspension is meant only to facilitate further enquiry under the provisions of the Control Order and it would only be a prelude to take final action under Clause 3(4) by way of suspension for a specific period or cancellation of the authorisation. The 2nd respondent obviously fell into error in assuming that so long as proceedings under Section 6-A were

¹ 1993 (3) ALT 442

pending against the petitioner, the suspension of the dealer's licence should be an automatic consequence. In the present case, though nearly two months have elapsed since the date of passing the suspension order, no steps have been taken so far to initiate the enquiry as a step-in-aid to pass final orders under Clause 3(4). Obviously the 2nd respondent does not want to do anything more than suspending the licence until and unless the case under Section 6-A is disposed of. Such an action cannot be countenanced in law. Suspension of the authorisation cannot go on for an indefinite length of time linking it up with the outcome of the proceedings under Section 6-A. *No doubt the material which formed the basis for initiating action under Section 6-A of the Essential Commodities Act by the Vigilance Cell can also form the basis for initiation of the proceedings under Clause 3(4) of the Control Order.* But, without contemplating to take any such proceedings, it is not open to the 2nd respondent to pass a blanket order allowing the suspension to remain in force until Section 6A proceedings are finalised.

(ii) In *M.Shashikala v The Collector, Civil Supplies*², a Division Bench of this Court held at paragraph No.11, as follows:

11. ... Several Judgments of learned Single Judges of this Court, reference to which has been made supra, have consistently held that the nature of proceedings under Section 6-A of the Essential Commodities Act and proceedings for cancellation or suspension of the authorisation under Clause 3(4) of the Control Orders are different and distinct. The authorities under the Essential Commodities Act and the Control Orders for initiating the proceedings are also different and distinct. The aforesaid judgments (referred to supra) have also recognised and declared that the concerned statutory authorities on whom the power is conferred have to act independently and objectively. In so far as the Appointing Authority under Clause 3(4) of the Control Order is concerned, it has been categorically held that he has to take an independent decision in the matter instead of mechanically following the orders that may be passed under Section 6-A of the Essential Commodities Act or where no orders under Section 6-A have been passed and proceedings are pending. The Appointing Authority under the Control Order cannot pass interim orders of suspension of authorisation on the ground of mere pendency of enquiry under Section 6-A of the Essential Commodities Act. It has also been held that there is no such provision in the Control Orders. We agree to that extent with the judgments of learned single Judge P. Venkatrama Reddi, J. and Syed Shah Mohammed Quadri, J. in the cases referred to supra.

(iii) In *M.Sadasiva Sekhar v. District Collector, Kurnool*³, this Court held at paragraph No.25 that, “*25. In every case where the authorization is cancelled after affording an opportunity of making a representation / filing explanation, even if oral hearing is not held, the dealer has to plead and prove the prejudice caused to him.*”

² 1997 (2) ALT 574

³ 2003 (8) ALT 68

(iv) In *B.Manjula v. District Collector, Civil Supplies*⁴, this Court held at paragraph No.4 that Sub clause (5) of clause 5 of the Control Order, 2008 enjoins on the appointing authority to follow two mandatory conditions before imposing any penalty as envisaged therein. The first, it shall make an 'enquiry' as deemed necessary; and the second, it shall record reasons in writing.

7. The Control Order, 2008 came into force in super-session of the Control Order, 2001, preceding to which the Control Order, 1973 was in force. In decisions 1 to 3 cited supra Clause 3(4) of the Control Order, 1973 has been dealt with and in decision 4 cited supra Clause 5(5) of the Control Order, 2008 has been dealt with. Clause 3(4) of Andhra Pradesh State Public Distribution System (Control) Order, 1973 is reproduced as Clause 5(5) of Andhra Pradesh State Public Distribution System (Control) Order, 2008. Therefore the principle enunciated in all the above cited cases is one and the same. Let me consider the facts of the case on hand in the light of the above legal principles.

8. The petitioner was appointed as a Fair Price Shop (FPS) dealer in respect of Fair Price Shop No.31, Ananthapuramu Urban. On 10.8.2016, at about 9.30 AM, Regional Vigilance and Enforcement Officials raided the shop of the petitioner, noticed certain irregularities and seized the stock under the cover of panchnama. The concerned authority booked a case against the petitioner under Section 6A of the EC Act. Basing on the report of the Vigilance Officials, the third respondent submitted a report to the second respondent, who is Competent Authority to take disciplinary action against the erring dealer. The second respondent initiated disciplinary proceedings, framed charges and called for the explanation of the petitioner. The gist of the charges is that there is variation in stock in the petitioner's shop as follows (1) Rice – 686 Kgs less as against transacted quantity of 4407 Kgs, (2) Sugar – 23.50 Kgs excess as against the transacted quantity of 127 Kgs, (3) Wheat – 208 Kgs excess as against the transacted quantity of 200 Kgs, and (4) Kerosene Oil – 147 Ltrs excess as against the transacted quantity of 376 Ltrs. As per Sub-clause (1) of Clause 24 of the Control Order, 2008, no prosecution or disciplinary proceedings shall be launched against FPS dealer if the variation in

⁴ 2015 (4) ALT 572

respect of a single commodity is up to 1.5%. However in this case, the variation in rice is 15.56%, sugar is 18.5%, Wheat is 104% and Kerosene oil is 39%. In view of the above variation, which is much more than the permissible limits, initiation of disciplinary proceedings against the petitioner by the second respondent is justifiable.

9. The next contention of learned counsel for the petitioner is that the second respondent has not afforded any opportunity to the petitioner to put-forth his stand. A perusal of the record reveals that the petitioner appeared before the second respondent on 03.09.2016 and orally explained the reasons for the variation in the stock. The record further reveals that the petitioner submitted explanation on 24.8.2016, in response to the notice issued by the second respondent. In his written explanation, the petitioner contended that he supplied the commodities to the card holders with the help of the Electronic Point of Sale (EPOS) machine but due to lack of experience in operating the machine resulted in the variation in the stock. During the course of the disciplinary enquiry, on 03.9.2016 the second respondent examined V.Nagaraju, M.Subramanyam and P.Dawaleswara Rao in whose presence the stock was seized from the FPS of the petitioner. The record clearly reveals that the second respondent has afforded reasonable opportunity to the petitioner, at every stage of the disciplinary proceedings, in order to substantiate his case. The second respondent strictly adhered to the principles of natural justice while conducting the enquiry. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that no opportunity was given to the petitioner during the course of disciplinary proceedings.

10. The predominant contention of the learned counsel for the petitioner is that the second respondent has not followed the Government Memo dated 28.09.2015, while passing the impugned order. To substantiate the contention he has drawn the attention of this Court to Clause (q) of the Government Memo, which reads as follows:

q) The proceedings under Sec.6A of the EC Act, 1955 are separate as it empowers to decide as to whether the seized commodities require for confiscation or other wise and no order of suspension/cancellation of authorization be issued based on the 6A report.

11. As per Clause (q), the appointing authority has no right whatsoever to suspend or cancel the authorization of the dealer concerned solely basing on 6A report. As per the principle enunciated in the cases cited supra and Clause (q) of the Government Memo, 6A proceedings are altogether different to that of the disciplinary proceedings initiated under the Control Order, 2008. 6A proceedings will be initiated if any dealer violates the provisions under Section 3 of the EC Act. Disciplinary action will be initiated for violation of the provisions under the Control Order, 2008. To that extent, I am fully agreeing with the submission made by the learned counsel for the petitioner that the proceedings under Section 6A of the EC Act and the disciplinary proceedings are different.

12. The contention of the learned counsel for the petitioner is that the second respondent passed the impugned order solely based on 6A proceedings. If the second respondent intends to pass the impugned order basing on 6A proceedings, there is no necessity for him to issue show-cause to the petitioner. As observed earlier, the petitioner submitted his explanation on 24.8.2016 in response to the show cause notice dated 19.8.2016. The second respondent recorded the evidence of Panch witnesses and passed the impugned order. There is no mention in the show-cause notice that the second respondent initiated the proceedings solely basing on 6A report, without reference to the Control Order, 2008. If the finding of the second respondent is solely based on 6A report, without conducting regular disciplinary enquiry as postulated under the Control Order, 2008, there may be some justification in the submission of the learned counsel for the petitioner that the impugned order is solely based on 6A report. A perusal of the record reveals that the second respondent passed the impugned order basing on the material available on record without taking into consideration the factum of initiation of proceedings against the petitioner under section 6A of the EC Act.

13. The learned counsel for the petitioner submitted that the report of the Vigilance Officials shall not be basis to initiate proceedings under Sub-Clause (5) of Clause 5 of the Control Order, 2008. In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to consider certain Clauses of the Government Memo on which the petitioner's counsel placed much reliance. Clauses (a) to (e) of the

Government Memo contemplate the procedure to be followed by the Vigilance Officials while conducting raid on the FPSs. Clause (f) of the Government Memo reads as follows:

(f) A separate report shall be submitted to the authorization issuing authority to initiate disciplinary action against the dealer concerned as the appointing authority can initiate disciplinary action under the provisions of the A.P.S.P.D.S. (Control) Order, 2008 viz., for suspension/cancellation of authorization/forfeiture of security deposit.

14. A perusal of Clause (f) of the Government Memo mandates that the Vigilance Officials have to send a separate report to the Appointing Authority to take further action against the dealer concerned under the provisions of the Control Order, 2008. The Disciplinary Authority has to apply its mind independently in order to ascertain whether disciplinary proceedings can be initiated against the FPS dealer or not. In this case, as observed earlier, the third respondent submitted a separate report to the second respondent, upon which the second respondent has conducted the disciplinary proceedings. In view of the same, Clause (f) of the Government Memo, the submissions made by the learned counsel for the petitioner have no legs to stand.

15. It is needless to say that the legal principles cannot be applied in a vacuum. The Court has to consider whether the principle enunciated in the case cited by the learned counsel for the parties are applicable to the facts of the case on hand or at least persuasive value. As observed earlier, in the instant case, the impugned order was passed after conducting due enquiry as contemplated under the provisions of the Control Order, 2008. In such circumstances, I am of the considered view that the decisions relied upon by the learned counsel for the petitioner have no application to the facts of the case on hand.

16. In paragraph No.8 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 his legitimate and legal grievances. Sub-Clause (2) of Clause 20 of the Control Order, 2008

provides for an appeal before 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. In order to circumvent the procedure as contemplated under the Control Order, 2008 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. It lacks merit and bona fide.

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

.5.2018

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T.Sunil Chowdary, J

