

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.25652 of 2011

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner assailing the validity of the proceedings in Rc.No.298/ 2011/ CSDT, dt.18.08.2011, of the 2nd respondent-Tahasildar as illegal, arbitrary and violative of the principles of natural justice and consequently seeking to set aside the same.

2. I have heard the submissions of *Sri Karanam Ravi Shankar Babu*, learned counsel appearing for the petitioner, and of the learned Government Pleader for Civil Supplies (AP) appearing for the respondents.

3. The facts discernable from pleadings, material record & submissions are as follows:

The petitioner is a Fair Price shop dealer of Shop no.16 of Sanapa village of Atmakur Mandal. In the impugned proceedings of the 2nd respondent-Tahasildar, it is *inter alia* stated as follows: 'On credible information that there is illicit transport of blue kerosene oil in an auto bearing registration no. AP 02 X 9881, the Station House Officer, Atmakur Police Station, and his staff conducted surprise visit near Electric Sub-station of the village, on 16.08.2011, at about 6 PM, and seized 300 litres of said oil contained in two iron drums from the said auto and seized the auto along with the blue kerosene oil and handed over the same to the Tahasildar, Atmakur, on 17.08.2011, for further action as the seized stock related to the stock to be distributed under the Public Distribution System. The Civil Supplies Deputy Tahasildar, after due enquiry, submitted a report that the said seized stock was supplied to the F.P shop of the petitioner and that on verification of records of the petitioner/ dealer, it was noticed that she was allotted and supplied 920 litres of oil of the wholesale dealer and that the dealer has obtained the release

order for 928 litres including opening balance of (08) litres of oil and distributed 912 litres to the cardholders of the F.P shop and that the closing balance was 16 litres and that on further verification, it was revealed that the dealer has made false entries in the stock books by taking forged signatures of the cardholders in the distribution register. Thereafter, the Tahasildar framed following two charges against the petitioner:

“Charge No.1: That the F.P Shop dealer has not distributed 300 lts of K.Oil to the cardholders for the month of August, 2011 quota and the stock of 300 lts said to be sold in open market without permission.

Charge No.II: That the dealer has not maintained records promptly and correctly. But made false entries in the stock register and taken forgery signatures of the cardholders in the sale register even though she was not distributed 300 lts K.Oil to the cardholders, she has made entry with a closing balance of 16 lts in stock register.”

Further, by the impugned proceedings, as recommended by the Civil Supplies Deputy Tahasildar, Atmakur, and as per orders vide G.O.Ms.no.47, the 2nd respondent-Tahasildar, Atmakur, suspended the dealership of the petitioner pending disposal of the case and until further orders placed the adjacent F.P shop dealer incharge of the shop of the petitioner for smooth distribution of the essential commodities to the card holders of that village and further intimated to the petitioner that against the said order, an appeal lies to the Revenue Divisional Officer, Ananthapur, within 30 days from the date of receipt of the said order. Aggrieved thereof, the petitioner filed this writ petition.

4. The case of the petitioner and the submissions made on her behalf, in brief, are as under:

She is distributing the essential commodities to the cardholders without any remarks whatsoever. The 2nd respondent-Tahasildar, without any authority of law, illegally, arbitrarily and in violation of principles of natural justice, suspended the dealership of the petitioner by the impugned proceedings. No

cardholder made complaints against the petitioner regarding non-receipt of oil. The seized oil does not pertain to the shop of the petitioner. The 2nd respondent-Tahasildar is having power to suspend the licence/ authorization for (90) days only and further action is required to be taken by the 1st respondent/ RDO. However, the impugned order shows that the authorization was suspended pending disposal of the case, that is, until further orders. The same itself is a punishment as per settled legal position and any such suspension without specifying the period in the proceedings is a clear violation of the terms of G.O.Ms.No.47. The petitioner preferred an appeal to the 1st respondent, on 08.09.2011, but, the 1st respondent did not choose to pass any orders on the application for stay filed along with the appeal and simply had taken the appeal on file and directed the 2nd respondent to send the records. Hence, the writ petition was filed as the 2nd respondent has no jurisdiction to pass the suspension orders contrary to the Control Orders.

5. This Court, on 14.09.2011, while admitting the writ petition, passed the following interim order in WPMP No.31619 of 2011:

“The impugned order, which has been passed by the 2nd respondent-Tahasildar, Atmakur, Atmakur Mandal, Anantapur District, suspending the fair price shop authorization of the petitioner, *prima facie*, does not appear to be in consonance under the second proviso to Clause 5(7) of the A.P.State Public Distribution System (Control) Order, 2008, which empowers suspension of licence only for a period of 90 days and not beyond.

In the circumstances, there shall be interim suspension, as prayed for.”

6. Requesting to vacate the said order, the respondents filed the vacate stay petition supported by the affidavit of the RDO, Ananthapuram. Apart from the content in the impugned proceedings, which is reiterated in the counter, the further case and the submissions of the respondents are as follows:

7. The stay application was rejected while admitting the appeal. This Court suspended the order of the Tahasildar pending disposal of the writ petition. The Tahasildar, by following the amended sub-clause 4 (5) of A.P. State Public Distribution System (Control) Order, 2001, which was amended vide G.O.Ms.No.47, Consumer Affairs, Food & Civil Supplies Department (CS-I), dated 06.10.2007, exercised the powers and suspended the authorization of the petitioner's fair price shop. The second proviso of sub-clause (7) of Clause 5 of A.P. State Public Distribution System (Control) Order, 2008, was omitted, vide G.O.Ms.No.38, Consumer Affairs, Food & Civil Supplies Department (CS-I), dated 17.09.2012. And, as on 17.09.2012, the Disciplinary Authority is the Tahasildar (ASO). Though it was not mentioned in the present impugned proceedings, the suspension is deemed to be for 90 days only. The husband of the petitioner was caught red-handed by the Station House Officer concerned as he had committed grave irregularity by diverting the 100 litres of oil to black market. Hence, stay was not granted. After due enquiry, orders will be passed in the appeal. Hence, the writ petition may be dismissed.

8. In this backdrop, what is to be noted is that against the impugned proceedings of the Tahasildar, an appeal preferred by the petitioner is pending before the Revenue Divisional Officer. By the impugned proceeding, the authorization of F.P shop dealership of the petitioner was suspended pending disposal of the case. The only question for consideration in this writ petition is as to whether the action of Tahasildar in suspending the F.P shop dealership until disposal of the case, that is, beyond 90 days, is not legally valid as per the 2nd proviso referred to supra. The Tahasildar concerned, who was authorised to exercise the power of suspension, shall exercise the said power and suspend the authorization of the erring F.P shop dealer for a period of 90 days only and the further action of continuing the suspension beyond the said period shall be taken by the appointing authority as well as the Disciplinary Authority/ RDO. Since admittedly, the Tahasildar suspended the F.P shop dealership of the

petitioner pending disposal of the case, and as the said suspension is not in accord with the proviso, this Court, by an interim order suspended the impugned proceedings and the petitioner's dealership of FP shop is continuing till date. However, by now, the 90 days period is over and the appeal is pending before the RDO concerned and it is stated in the counter affidavit that after due enquiry, appropriate orders will be passed in the appeal.

9. On the above analysis, the writ petition is disposed of directing the 1st respondent/ Revenue Divisional Officer, Anantapur, to dispose of the pending appeal in strict accordance with the procedure established by law as expeditiously as possible and preferably within four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

21.06.2018
RAR



M. SEETHARAMA MURTI, J