

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.3331 OF 2017

ORDER:-

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“to issue a writ or order/s or Direction/s more particularly one in the nature of Mandamus declaring the action of the respondents not permitting the petitioner to run F.P.Shop No.27 in Lakshmipuram Village, Rajam Mandal, Srikakulam District, direct the respondents to re-entrust the F.P.Shop No.27 to the petitioner, after taking the same from the temporary dealer as the same is illegal, contrary to law, arbitrary, violation of principles of natural justice.”

2. The brief averments in the writ petition are that the petitioner came to be appointed as a fair price shop dealer on regular basis *vide* proceedings, dated 29.01.2010, of respondent No.2 for a period of five years, which is also renewable. The petitioner, from the date of her appointment, was diligently discharging her duties. While things stood thus, in the year 2016, on account of her ill-health, she approached respondent No.3 seeking leave for the period from 21.04.2016 to 20.08.2016. *Vide* proceedings, dated 21.04.2016, of respondent No.3, the request of the petitioner was rejected, as there is no provision for granting leave under the Government Rules. Later, respondent No.2 issued proceedings, dated 26.04.2016, appointing Sri Jai Bhavani Matha Self Help Group, Lakshmipuram as In-charge fair price shop dealer for shop No.27 to which the petitioner was the dealer. Thereafter, the petitioner, on account of the rejection of the leave and having

come to know about the proceedings, dated 26.04.2016, approached the authorities several times to restore the fair price shop in her favour, but the respondents have not restored the same thereby, depriving the livelihood of the petitioner. Hence, she filed the present writ petition.

3. No counter-affidavit is filed by the respondents in the writ petition. However, learned Government Pleader for Civil Supplies (A.P.) has placed on record the written instructions, dated 01.03.2017, received from respondent No.2 – Revenue Divisional Officer, Palakonda. In the said written instructions, it is admitted that the petitioner applied for leave and the same was rejected. It was denied that the petitioner was functioning without any blemish and it was asserted that on one occasion, a show cause notice was issued to the petitioner by the Revenue Divisional Officer on 31.10.2015. Further, it is admitted that to avoid inconvenience to the cardholders of Lakshmipuram Village, temporary entrustment was made in favour of Sri Jai Bhavani Matha Self Help Group of Lakshmipuram to distribute the scheduled commodities. The allegation of there being any political pressure was denied.

4. Learned counsel for the petitioner specifically contended that the authorization of the petitioner's fair price shop was neither cancelled nor suspended and even assuming that the petitioner was not entitled for grant of leave, appointment of a temporary dealer deprives the livelihood of the petitioner, which is illegal and arbitrary. In those circumstances, learned counsel for the petitioner prays for a writ of *mandamus*.

5. The question raised in this writ petition is that merely on account of the fact that the petitioner had approached respondent No.3 for grant of leave on medical grounds and there being no provision, such permission was not granted, whether the same entitles the respondent authorities to presume unavailability of the petitioner for carrying out the functions entrusted to her under the fair price shop authorization and on such assumption, whether respondents were entitled to appoint another during the subsistence of the authorization in favour of the petitioner?

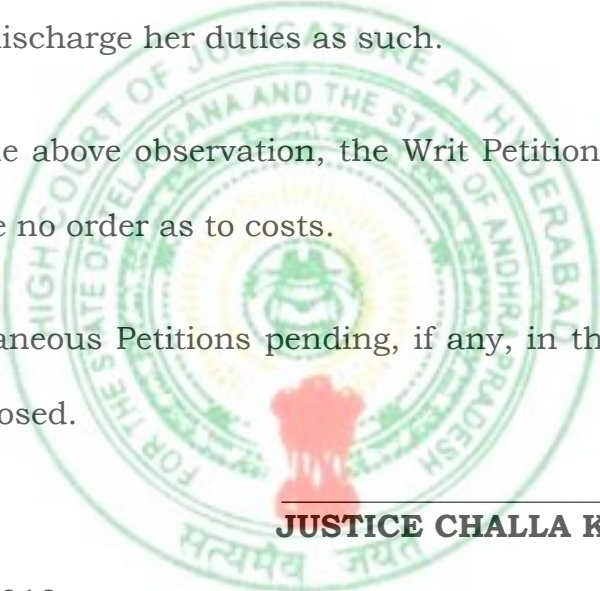
6. At the outset, it may be stated that no Rule/Regulation/Clause of the Control Order is brought to the notice of this Court authorizing/empowering the authorities to cancel/suspend the existing dealership when leave application is rejected. Thus, the impugned action is wholly unauthorized and illegal.

7. Except a vague allegation that the petitioner was irresponsible and unavailable, there is no specific material placed before this Court to justify such action. Further, it may also be noted that while the petitioner's application for leave is dated 21.04.2016, the same was rejected by respondent No.3 on the same day and the said aspect was intimated to the petitioner also. The intimation was sent to respondent No.2 – Revenue Divisional Officer about the petitioner seeking leave and rejection of the same on 23.04.2016. If that be so, there was no occasion for respondent No.2 to appoint Sri Jai Bhavani Matha Self Help Group, Lakshmipuram as a temporary dealer on 26.04.2016. The gap between the petitioner's application and appointment of a

temporary dealer is hardly five days in which event, the basis for respondent No.2 to presume that the petitioner was not available and not willing to carry out the functions entrusted to her is not discernible. In those circumstances, the action of respondent No.2 in appointing Sri Jai Bhavani Matha Self Help Group, Lakshmipuram on In-charge basis on account of the fact that the petitioner's application for leave was rejected, is illegal, arbitrary and unsustainable. In those circumstances, the petitioner is entitled to carry out the functions as a fair price shop dealer of Shop No.27 of Lakshmipuram Village, Rajam Mandal, Srikakulam District and discharge her duties as such.

8. With the above observation, the Writ Petition is disposed of. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.



JUSTICE CHALLA KODANDA RAM

Date: 16.04.2018
AMD

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