HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 38448 of 2018

Date : 25.10.2018

Between:

Smt M Chinnu Bai W/o Rajaiah Aged 46 years Occ Fair price shop dealer shop No 26 of Mentrajpalli Metrajpalli village Dichpally Mandal Nizamabad District

Petitioner

And

The State of Telangana
represented by its Principal Secretary to the Consumer Affairs Food and Civil Supplies Secretariat Buildings Hyderabad & others

Respondents

The Court made the following:

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ORAL ORDER:

Heard learned counsel for petitioner and learned Government Pleader for Civil Supplied (TG) and with their consent the writ petition is taken up for disposal at the stage of admission.

2. By order of the second respondent-Revenue Divisional Officer dated 10.10.2018 impugned herein, the fair price shop dealership of the petitioner bearing No.26 of Mentrajpalli village of Dichpally mandal, Nizamabad district was cancelled.

3. Learned counsel for petitioner submits that no reasonable opportunity was given to the petitioner and petitioner was not afforded personal hearing which is necessary before taking any adverse decision.

4. A bare reading of the impugned order would show that after submission of explanation, no personal hearing was afforded to the petitioner and order does not assign reasons in support of the decision and why explanation offered by petitioner is not considered. In C.DURGA SRINIVAS RAO AND OTHERS Vs THE STATE OF A.P AND ORS[1], learned single Judge of this Court on consideration of various provisions including Control Order, delineated the conclusions as under:

> "26. From a conjoined reading of the provisions of the Control Order, more particularly clause 5 and 24 read with the decisions of this Court, the following conclusions can be drawn.
>
> (i) The appointing authority can suspend the authorisation under clause 5(5) of the Control Order, if grave charges exist and the case warrants suspension, but should not be exercised in a routine manner without applying mind;
>
> (ii) The power of suspension under clause 5(5) of the Control Order includes the power to suspend the authorisation pending enquiry and no show cause notice is necessary before exercising such power;

[1] MANU/AP/0472/2015= 2015(6)ALD359

> (iii) The order of suspension should be followed by a show cause notice immediately by specifying the charges in clear terms and giving sufficient time to the dealer to submit his/her explanation;
>
> (iv) The charges so levelled may contain two parts viz., one, containing serious charges, which may attract the cancellation of authorisation and another containing marginal variations and minor irregularities at fair price shops as indicated in clause 24 of the Control Order.
>
> (v) While issuing the show cause notice, the appointing authority shall enclose a copy of the report of any subordinate officer or a copy of the complaints received, which prompted him to take action;
>
> (vi) After receiving the explanation from the dealer, in case of denial by him, the appointing authority shall hold an enquiry and prove the charges levelled against the dealer. Such enquiry should be fair by placing the material before the dealer but cannot be elevated to the level of a regular court trial. The burden lies on the appointing authority to prove charges. The responsibility to hold enquiry shall not be delegated;
>
> (vii) The enquiry shall be completed as soon as possible but not later than ninety days from the date of suspension. After completion of enquiry, the appointing authority shall record reasons in respect of each charge and pass appropriate orders in accordance with the Control Order.
>
> (viii) The order so passed should be communicated to the dealer immediately and shall not be implemented till the expiry of 30 days, the period for preferring appeal.
>
> (ix) It has to be noted that in all cases of proven charges, it is not necessary for the appointing authority to cancel the authorisation and in appropriate cases, he/she can pass suitable orders imposing penalty or let off with a warning."

5. As the personal hearing was not afforded to petitioner and impugned order does not contain reasons in support of the decision, the same is unsustainable and accordingly set aside and matter is remitted to second respondent-Revenue Divisional Officer for consideration of the explanation of the petitioner and affording personal hearing to petitioner by fixing a date in advance and passing appropriate orders as warranted

by law expeditiously, preferably within a period of eight weeks from the date of receipt of copy of this order.

6. Accordingly, the writ petition is allowed. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:25-10-2018
TVK

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