

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.14006 of 2009

ORDER:

This writ petition is filed with the following prayer:

“ ... to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in passing the impugned orders by the 3rd respondent vide Proceedings No.C2/4310/2001 dt. 19.2.2002 cancelling the authorization of the petitioners FP Shop in question, the same was confirmed by the Appellate Authority i.e. 2nd respondent in M.C.No.90 of 2001 dt 17.4.2002 and the same was confirmed by the 1st respondent in Revision Proceedings No.D/164-2003 dt 23.4.2009 is illegal and void and opposed to Articles 14, 19 and 21 of Constitution of India and consequently to direct the respondents to grant the authorization to the petitioners herein in shop No.II (13024) Kurnavalli Village, Tallada Mandal, Khammam District, and pass ... ”

Brief facts relevant for the purpose of disposal of the writ petition are as under:

The petitioner appointment as Fair Price Shop dealer is not in dispute and is borne out of record. On inspection of the petitioner's premises on 27.11.2001, certain variations in respect of the commodities issued, with respect to the Book balance vis-à-vis ground balance were found. The variations were in respect of PDS Rice, AAY Rice, Food for Work Rice, Pink Card Rice and Sugar. Proceedings were initiated under Section 6A of the Essential Commodities Act, however, it appears that no final orders were made as on date.

Simultaneously, a Show Cause notice dated 20.12.2001 also came to be issued under the Control Order alleging that the petitioner had violated Condition 4.13 of the Authorization issued under Andhra Pradesh Schedule Commodities (Regulation of Distribution by Card

System) Order, 1973, and also violated Condition 2(b) of the A.P. Schedule Commodities Dealers (Licensing and Distribution) Order, 1982.

The charge in the Show Cause notice dated 20.12.2001 reads as under:

“The dealer violated condition 2(b) of the licence issued under A.P.S.C.D (L&D) Order, 1982 and violated condition 3, 4(i) and (ii), 8 and 11 of authorization issued under A.P.S.C. (RDCS) Order, 1973.”

Petitioner submitted a detailed explanation with respect to both the allegations i.e., variations in the stock, and also the storage of Food for Work Rice at the petitioner's residence. The appointing authority did not agree with the explanation and, thus, held that the petitioner had violated the conditions of the Control Order. The Joint Collector, in the appeal, accepted the explanation submitted by the petitioner with respect to the variation, and exonerated the petitioner from the charge as the variation found was in the permissible limit. However, the Joint Collector affirmed the cancellation of license on the ground that the petitioner stored the commodities at his residence, which is in contravention of the Circular issued by the Commissioner. The revision petition preferred before the Collector ended in dismissal.

All along the contention of the petitioner was to the effect that the proceedings initiated under Section 6A of the Essential Commodities Act, 1955, cannot be the basis for cancellation of his authorization, as there was no violation of any of the Clauses of the Control Order, 1982. It has also been the contention of the petitioner that the storage of Food for Work rice at petitioner's premises is not a violation of Control Order, as

either distribution or storage of Food for Work rice, is not a part of the Control Order, 1982, and hence the same is not governed by the Control Order, 1982. It is his grievance that his contentions were not considered by the respondent authorities and cancelled the authorization.

The petitioner challenges the cancellation order mainly on the crucial aspect that there is no power vested with the primary authority to cancel the authorization for alleged violation of storage of Food for Work rice at the petitioner's residence.

Heard Sri Mummaneni Srinivasa Rao, learned counsel for the petitioner; and learned Government Pleader for Civil Supplies, for the respondents.

Learned counsel for the petitioner placed on record the judgment of the Division Bench of this Court in **M. Shashikala v. the Collector, Civil Supplies, Mahabubnagar Dist. and another**¹ to support his case that proceedings under Section 6A of the Act, and the proceedings to be initiated under the Control Order, 1982, are independent; and that no punitive action can be taken under the Control Order, 1982, basing on the proceedings initiated under Section 6A of the Act. Learned counsel relied on paragraphs 14 and 15 of the Judgment in **M. Shashikala**, which read as under:

14. Though, no doubt, the authorities under Section 6-A of the Essential Commodities Act and under Clause 3(4) of the control Orders are distinct and different and each of the said authorities have to independently take proceedings in respect of alleged violations in

¹ 1997 (2) ALT 574 (D.B.)

accordance with law. It also cannot be disputed that till such time as the authorisation of the petitioners as fair price shop dealers is subsisting, they are entitled to run the business as fair price shop dealers. But, merely, because the authority under the Control Orders has failed to act notwithstanding the power vested in it under Clause 4(3) of the Control Orders, can this Court in exercise of its power under Article 226 of the Constitution of India issue a writ or a direction in the nature of a Mandamus compelling the authorities to supply the essential commodities to the petitioners for distribution to the card holders. In the judgments referred to supra learned Single Judges had no doubt issued such directions. To that extent, we differ with the aforesaid judgments with respect to the nature of directions issued therein.

15. As already noticed, power is vested in the Appointing Authority under the Control Orders to inter alia suspend or cancel the authorisation of fair price shop dealers for any breach or violation of the conditions of their license and provisions of the Control Orders. In the judgments of the learned single judges cited supra, it has been observed and rightly so in our opinion, that it would be open to the competent authority under the Control Order while deciding upon the action to be taken under the Control Orders to take into account the relevant material that would have come to light from Section 6-A proceedings and whether or not the authorisation is to be cancelled is a matter of independent decision to be taken by the competent authority exercising the power under the Control Order. The High Courts in exercising their jurisdiction under Article 226 of the Constitution have the power to issue a Writ of Mandamus or a Writ in the nature of Mandamus and give necessary directions where the Government or a Public Authority has failed to exercise or already exercised the discretion conferred upon it by a Statute or a Rule or a policy decision of the Government or has exercised such discretion *mala fide* or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance, in a proper and lawful manner, of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. In one of its earlier

decision in **Dwarakanath v. Income Tax Officer, Special Circle, Kanpur**² the Supreme Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirements of this country.

Learned Government Pleader submits that there is no illegality in the impugned orders, and the same does not require interference.

Having regard to the respective submissions, the question which falls for consideration is whether the factum of storage of Food for Work rice at the petitioners premises can be termed as a violation of Control Order, 1982.

A perusal of the Control Order, 1982, does not disclose that the Control Order deals, in any manner, with respect to the Food for Work scheme. The same is obviously on account of the fact that Food for Work scheme is a temporary intervention of the State basing on the contingency of providing work and getting certain of the jobs executed by providing essential commodities in lieu of wages. It may also be noted that so far as the violation of Control Order, 1982, on the ground of variation in the quantum of stocks as per Book balance vis-à-vis ground balance is concerned, the appellate authority has found that the variation in the stocks is condonable as the excess stock lying with the petitioner is within the permissible limit.

² AIR 1965 SC 81

In those circumstances, the very cancellation of authorization being on a ground which is outside the purview of Control Order, 1982, the impugned cancellation is *ultra vires* the Control Order, 1982, and hence the same is liable to be set aside.

At this juncture, learned Government Pleader prays for remitting the matter back to the primary authority for fresh consideration. Considering the fact that the issue with regard to jurisdiction being a pure question of law, and further considering that the original order came to be passed in the year 2002, and the order of the revision authority is of the year 2009, and the writ petition is filed in the 2009, a quietus has to be given to the matter at this point of time, and hence, in the facts and circumstances of the case, the prayer of the learned Government Pleader for remitting the matter back to the respondents for fresh consideration, cannot be acceded to.

In the facts of the present case, for the reasons stated supra, the writ petition is allowed, setting aside the impugned cancellation order dated 19.02.2002, as affirmed by the appellate and revision authorities, by orders dated 17.04.2002 and 23.04.2009, respectively.

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

CHALLA KODANDA RAM, J

22nd October, 2019

Note: LR Copy to be marked

B/o KSM

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