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W.P.(MD)NO.6094 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6094 of 2015 AND
M.P.(MD)Nos.2 & 3 of 2015

K.Kumari Selvan

... Petitioner

Vs.

1. The Commissioner,
Civil Supplies and Consumer Protection,
Ezhilagam, Chepauk,
Chennai – 600 005.
2. The Joint Commissioner,
Civil Supplies and Consumer Protection,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. The Joint Registrar of Co-operative Societies,
Vedantha Street,
Water Tank Road,
Nagercoil.
4. The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Kanyakumari Region,
Konam, Nagercoil -4.
5. The District Supply Officer,
Collectorate,
Nagercoil.
6. The Taluk Supply Officer,
Agasteeswaram Taluk,
Collectorate Campus,
Nagercoil.



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7. The Special Revenue Inspector,
Agasteeswaram Taluk Supply Office,
Collectorate Campus,
Nagercoil.

8. The District Collector,
Kanyakumari District,
Nagercoil.

9. The District Revenue Officer,
Nagercoil.

10. The Revenue Divisional Officer,
Nagercoil.

11. The Tahsildar,
Agasteeswaram Taluk,
Nagercoil.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent vide Na.Ka.1788/2014 பொவிதி.1 dated 29.12.2014, quash the same and consequently directing the respondents to recover the amount for shortage of food materials from Fair Price Shop salesman only after issuing show cause notice as directed in the order of the first respondent vide Na.Ka.No.E1/8189/11 dated 08.04.2014.

For Petitioner : Ms.M.Viveka,
for Mr.C.T.Perumal.

For R-1 to R-3
& R-5 to R-11 : Mr.N.GA.Natraj,
Government Advocate.

For R-4 : Mr.G.Mohan Kumar

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ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Government Advocate appearing for respondents 1 to 3 and 5 to 11 and the learned Standing counsel appearing for the fourth respondent.

2. The writ petitioner is working as salesman in Y-183, Primary Agricultural Co-operative Credit Society at Sarakkalvilai, Nagercoil. The Fair Price Shop received supplies from Tamil Nadu Civil Supplies Corporation for eventual distribution among the members of the public. The petitioner's case is that periodical inspection was conducted by the officials of the Co-operative Society. As and when the shortage is discovered, the salesmen were levied with penalty. In this regard, the Commissioner of Civil Supplies and Consumer Protection, Chepauk, Chennai had issued the proceedings dated 06.05.2014 setting out the relevant guidelines for levying penalty in cases of shortfall of particular commodities. All that the petitioner wants is before levying penalty, show cause notice must be issued. The petitioner had



earlier filed W.P.(MD)No.15289 of 2014. The writ petition was disposed of on 15.09.2014 in the following terms:-

“ The petitioner is a Salesmen of a Fair Price Shop.

2. According to the petitioner, the third respondent used to visit the ration shop for the purpose of verification of stock in trade. In case, there is any shortage, the third respondent would recover the amount corresponding to the extent of shortage of goods without issuing any show cause notice or giving an opportunity to the Salesman to submit his response.

3. The learned counsel for the petitioner by placing reliance on the circular dated 08.04.2014 submitted that the petitioner has already filed W.P.(MD)No.9515 of 2014 to quash the circular dated 08.04.2013. It is the grievance of the petitioner that during the pendency of the writ petition, the third respondent collected amount from him, alleging shortage without issuing notice.



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4. The petitioner submitted a representation dated 24.07.2014, to the third respondent requesting him to refrain from collecting amount without issuing show cause notice.

5. The learned counsel for the petitioner submitted that the petitioner would be satisfied in case a direction is issued to the third respondent to consider and dispose of the representation dated 24.07.2014.

6. The third respondent is directed to consider and dispose of the representation dated 24.07.2014 on merits and as per law. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed. “

3. Pursuant thereto, an enquiry was conducted and the report was also submitted. The petitioner's demand for



issuance of show cause notice was rejected. Challenging the said stand, the present writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and he called upon this Court to grant the relief as prayed for.

5. The learned Government Advocate as well as the learned Standing counsel appearing for the Civil Supplies Corporation submitted that the present writ petition deserves to be dismissed. W.P.(MD)No.9515 of 2014 filed by the petitioner challenging the circular issued by the first respondent was dismissed. It is further contended that in matters such as this, only summary approach has to be adopted and full fledged enquiry cannot be held. They pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.



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7. The first respondent had earlier issued circulars dated 08.04.2014 and 06.05.2014 proposing levy of penalty in cases of shortage of particular commodities. The petitioner filed W.P.(MD)No.9515 of 2014. This Court vide order dated 06.03.2020 sustained the Circular and also mandated that it should be implemented in letter and spirit so that the problem of shortage of supply in PDS outlets does not arise. Therefore, I am not in a position to grant relief as sought for by the petitioner.

8. At the same time, the core contention advanced by the learned counsel appearing for the petitioner merits acceptance. When penalty is levied, it does have civil consequence. The amount may be meagre, but that is beside the point. The petitioner's career will be at stake. Therefore, the inspection must be conducted only in the presence of the concerned individual. Proceedings have to be drawn setting out the quantity that must be available as per stock register and the shortfall must be specifically mentioned. Signature must be obtained. The staff must be permitted to peruse the



figure set out in the mahazar and contest the same. The salesman concerned should be allowed to endorse their objection if any. In the event of the salesman contesting the allegation of shortfall, show cause notice will have to be issued. Otherwise based on the admitted position, penalty can be levied. There is no necessity or need to hold an enquiry. The issues can be dealt with in a rough and ready manner. But then, the salesman concerned must be associated in the process. Nothing should be done behind his back.

9. The impugned order shall be understood and applied in the light of the aforesaid clarification. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

13.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

PMU



To:

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G.R.SWAMINATHAN,J.



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