
(2012) 11 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27155 of 2012

Moka Subramanyam

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Citation : (2013) 2 ALD 427 : (2013) 3 ALT 139

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : K.L.N. Swamy, for the Appellant; K. Srinivas, Counsel for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This writ petition is filed seeking a mandamus declaring the action of the second respondent-Revenue Divisional Officer, Narsapuram Division, West Godavari District, in ordering resumption of fair price shop authorization held by the fourth respondent, under the provisions of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, vide order, dated 4.8.2012 in Roc. No. 2053/2012 (CS), as illegal and arbitrary. Respondent No. 4 was the authorized fair price shop dealer for Shop No. 92 of Dayyalathippa Village, Bhimavaram Mandal, West Godavari District. Based on the report submitted by the third respondent-Tahsildar, Bhimavaram Mandal, Bhimavaram, West Godavari District on 30.9.2002 alleging that the fourth respondent indulged in certain irregularities with regard to distribution of rice, disciplinary proceedings were initiated against him, and by order, dated 28.3.2006 passed in Roc. 2497/2002(E), the second respondent-Revenue Divisional Officer/appointing authority, Narsapur Division, West Godavari District, cancelled the fair price shop authorization held by the fourth respondent.

2. A copy of such order is produced before this Court during the course of hearing. A perusal of the same indicates that the second respondent had recorded a clear finding against the fourth respondent that he has diverted Q.

170.67 Kgs of rice for clandestine trade and thereby, he contravened Clause 17 of the Andhra Pradesh State Public Distribution System Control Order, 2001 and conditions 4, 6 to 8, 11 and 13 of the authorization. It is not in dispute that the said order passed by the second respondent cancelling the fair price shop authorization of the fourth respondent has become final, as the fourth respondent has not appealed to the appellate authority. It is to be noticed that as violation of the said provision also attracts penal action, the fourth respondent was prosecuted under the provisions of the Essential Commodities Act, 1955 in CC No. 63 of 2008 on the file of the learned I-Additional Junior Civil Judge-cum-Judicial First Class Magistrate, Bhimavaram. On his acquittal in CC No. 63 of 2008 vide judgment, dated 10.11.2009 the fourth respondent approached the first respondent-District Collector (CS), West Godavari at Eluru, by filing a representation which in turn was forwarded to the second respondent to take further action. Thereupon, the second respondent passed the impugned order resuming the fair price shop authorization held by the fourth respondent on the ground that there is acquittal recorded by the criminal Court in CC No. 63 of 2008.

3. In the meantime, after cancellation of fair price shop authorization held by the fourth respondent, notification was issued and the petitioner was selected and appointed as a fair price shop dealer for Shop No. 92 situated at Dayyalathippa Village, by the second respondent vide proceedings bearing Roc. No. 648/2009(E), dated 27.6.2009. But, his appointment was appealed to the Joint Collector, West Godavari, Eluru, by the third party applicant, by name, R. Krishnamurthy. It is stated that the appeal filed by such third party is pending.

4. In this writ petition, the impugned order is questioned mainly on the ground that restoration of fair price shop authorization in favour of the fourth respondent is illegal and contrary to Clause 5(4) of the Andhra Pradesh State Public Distribution System Control Order, 2001.

5. On the other hand, it is submitted by the learned Counsel appearing for the fourth respondent that the petitioner has no locus standi to question the impugned order as his appointment is stayed by the appellate authority and further, such appeal is an alternative remedy as provided under clause 20 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, as such, there is no reason to entertain this writ petition.

6. Appointment of fair price shop dealers and initiation of disciplinary proceedings in the event of violation of the provisions of the Andhra Pradesh State Public Distribution System Control Order and Conditions of Licence are presently governed by the provisions of the Andhra Pradesh State Public Distribution System (Control) Order, 2008.

7. Under sub-clause (5) of clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, the appointing authority is empowered to add to, amend, vary, suspend or cancel the authorization by

recording reasons either on suo motu after making enquiry, if necessary, or on the application.

8. Similarly, the disciplinary authority is conferred with the power to suspend and/or to order forfeiture of the security deposit partly or wholly under sub-clause (6) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008.

9. Correspondingly, under sub-clause (7) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, notwithstanding anything contained in sub-clauses (4) to (6), power is conferred on the appointing authority to cancel the authorization in the event of conviction under the provisions of the Essential Commodities Act, 1955. Further, as per the proviso to sub-clause (7) of Clause 5, the appointing authority is empowered to restore the authorization in cases where conviction is set aside on appeal or revision by the aggrieved person.

10. In this case, it is to be noticed that basing on the report submitted by the third respondent on 30.9.2002 in Roc. 367/2002, the second respondent, who is the appointing authority, by order, dated 28.3.2006 in Roc. 2497/2002(E), by recording a clear finding that the fourth respondent had indulged in clandestine business and thereby, contravened clause 17 of the Andhra Pradesh State Public Distribution System Control Order and Conditions 4, 6 to 8, 11 and 13, cancelled the authorization held by the fourth respondent. It is not in dispute that such order has become final. From this, it is clear that the impugned order is not passed in exercise of power under sub-clause (7) of clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, as such, the question of reissue of authorization does not arise as much as the order of cancellation passed against the fourth respondent is in exercise of power under sub-clause (4) of Clause 5 of the Andhra Pradesh State Public Distribution System Control Order, 2001. Reissue/restoration/resumption of authorization as contemplated under proviso to sub-clause (7) of Clause 5 is limited only for the cases where cancellation orders are passed in exercise of power under sub-clause (7) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008. When the order of cancellation is passed under sub-clause (4) of Clause 5 of the Andhra Pradesh State Public Distribution System Control Order, 2001 independently by recording a finding that the fourth respondent had indulged in clandestine business by diverting Q. 170.67 Kgs of rice, merely on the ground that acquittal is recorded in respect of the fourth respondent in the criminal proceedings, he is not entitled to seek for restoration of such authorization. As it is not in dispute that the order, dated 28.3.2006 is not passed against the fourth respondent cancelling his fair price shop authorization based on the conviction alone, the impugned order passed by the second respondent is illegal and contrary to the Scheme of the Control Order itself. Though it is pleaded by the learned Counsel for the fourth respondent that there is remedy of appeal to the petitioner, in the absence of any factual dispute, and

further, as the impugned order itself runs contrary to the proviso to sub-clause (7) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, this Court is of the view that it is not a fit case to direct the petitioner to avail the remedy of appeal. It is also not in dispute that as the petitioner is appointed in the vacancy, which arose in view of cancellation of fair price shop authorization of the fourth respondent vide order, dated 28.3.2006, it cannot be said that the petitioner is not having locus standi to question the impugned order. The mere pendency of appeal filed by the third party against the appointment of the petitioner, is also no ground to direct the petitioner for filing appeal against the impugned order, which itself is passed in favour of the fourth respondent in contravention of sub-clause (7) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008. For the aforesaid reasons, the resumption order, dated 4.8.2012, is hereby set aside and the writ petition is allowed as prayed for. It is made clear that the appointment of petitioner would be subject to further orders to be passed by the appellate authority in the appeal filed by the third party. No order as to costs.